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WORKING DRAFT CONSOLIDATED COURTS BILL

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ACTS REFERRED TO

Civil Bill Courts (Ireland) Act 1851	1851, 14&15 Vic. c. 57
Competition Act 2002	2002 No 13
Court Officers Act 1926	1926, No. 27
Courts (No 2) Act 1997	1997 no 43
Courts Act 1981	1981, No. 11
Courts and Courts Officers Act 1995	1995, No. 31
Courts of Justice Act 1926	1926, No. 1
Courts of Justice Act 1928	1928, No. 15
Courts of Justice Act 1947	1947 No 20
Courts of Justice Act 1953	1953, No. 32
Criminal Justice (Legal Aid) Act 1962	1962 No 12
Criminal Justice (Safety of United Nations Workers) Act 2000	2000 No
Criminal Justice (United Nations Convention against Torture) Act 2000	2000 No
Debtors (Ireland) Act 1840	3&4 Vic c 105
Debtor's Act (Ireland) 1872	1872, 53&54 Vic. c. 57
District Judges (Temporary Provisions) Act 1923	1923, No. 6
Enforcement of Court Orders Act 1926	1926 No 18
Family Law (Maintenance Spouses and Children) Act 1976	1976, No. 11
Geneva Conventions Act 1962	1962 No 11
Genocide Act 1973	1973 No
Guardianship of Infants Act 1964	1964, No. 7
Illegitimate Children (Affiliation Orders) Act 1930	1930, No. 17
Income Tax Act 1918	1918, 8&9 Geo. 5 c. 40
Interpretation Act 1937	1937, No. 38
Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988	1988, No. 3
Labourers (Ireland) Act 1906	1906, 6 Edw. 7, c. 37
Law Reform Commission Act 1975	1975 no 3
Local Government Act 1925	1925, No. 5
Lunacy Regulation (Ireland) Act 1871	1871, 34&35 Vic. c.22
Merchant Shipping Act 1894	1894, 57&58 Vic. c.60

Offences Against the State Act 1939	1939, No. 13
Probation of Offenders Act 1907	1907, Edw 7. c
Public Dance Halls Act 1935	1935, No. 2
Public Health Acts Amendment Act 1890	1890, 53&54 Vic. c. 59
Revision of Rateable Property (Ireland) Amendment Act 1860	1860, 22&23 Vic. c. 4
Summary Jurisdiction Act 1857	1857, 20&21 Vic. c. 43
Superannuation Act 1859	1859, 22 Vic. c. 26
Towns Improvement (Ireland) Act 1854	1854, 17&18 Vic. c. 108
Treason Act 1939	1939, No. 10
Wireless Telegraphy Act 1926	1926, No. 45
Workmen's Compensation Act 1934	1934, No. 9

ENTITLED

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short Title

1.- This Act may be cited for all purposes as “The Courts Bill 2007”.

Commencement

2.- This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular provision and if different days may be appointed for different purposes or different provisions

Definitions

3.- In the construction of this Act, unless there is anything in the subject or context repugnant, the several words and expressions hereinafter mentioned shall have or include the meanings following, that is to say:— “District Court”, “Circuit Court”, “High Court” and “Supreme Court” shall mean the Courts so named in this Act,

“In lunacy” shall mean in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind;

“In minor matters” shall mean in relation to the wardship of infants, and the care of infants’ estates;

“Land” shall include all incorporeal as well as corporeal tenements and hereditaments.

Explanatory Note

Section 3 of 1924 Act

“ ‘market value’ means, in relation to land, the price that would have been obtained in respect of the unencumbered fee simple 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.”

Explanatory Note

Will be inserted when section 45 of the 2004 Act is commenced.

“Minister” shall mean the Minister for Justice, Equality and Law Reform;

Explanatory Note

Section 2 of 2004 Act

“the Act of 1924” means the Courts of Justice Act 1924;

“the Act of 1926” means the Courts of Justice Act 1926,

“the Court Officers Act 1926” shall mean the Court Officers Act 1926;

“the Act of 1928” means the Courts of Justice Act 1928;

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

“the Act of 1937” means the Circuit Court (Registration of Judgments Act) 1937;

“the Act of 1945” means the Court Officers Act 1945;

“the Act of 1946” means the Courts of Justice (District Court) Act 1946;

“the Act of 1947” means the Courts of Justice Act 1947;

“the Act of 1949” means the Courts of Justice (District Court) Act 1949;

the Act of 1951” means the Court Officers Act 1951;

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

“the Superannuation Act 1961” shall mean the Courts of Justice and Court Officers (Superannuation) Act 1961;

“the Supplemental Provisions Act 1961” shall mean the Courts (Supplemental Provisions) Act 1961;

“the Act of 1964” shall mean the Courts Act 1964;

“the Act of 1971” shall mean the Courts Act 1971;

“the Act of 1973” shall mean the Courts Act 1973;

“the Act of 1977” shall mean the Courts Act 1977;

“the Act of 1981” shall mean the Courts Act 1981;

“the Act of 1986” shall mean the Courts Act 1986;

“the Act (No 2) of 1986” shall mean the Courts Act (No 2) 1986;

“the Act (No 3) of 1986” shall mean the Courts Act (No 3) 1986;

“the Act of 1988” shall mean the Courts Act 1988;

“the Act of 1988 (No 2)” shall mean the Courts Act (No 2) Act 1988;

“the Act of 1991” shall mean the Courts Act 1991;

“the Act (No 2) of 1991” shall mean the Courts (No 2) Act 1991

“the Supplemental Provisions Act of 1991” shall mean the Courts (Supplemental Provisions) Act 1991;

“the Act of 1995” shall mean the Courts and Courts Officers Act 1995;

“the Act of 1997” shall mean the Courts (No 2) Act 1997;

“the Act of 1998” shall mean the Courts Service Act 1998;

“the Act of 2002” shall mean the Courts and Courts Officers Act 2002

“the Act of 2004” shall mean the Civil Liability and Courts Act 2004

“the Act of 2007” shall mean the Courts and Courts Officers (Amendment) Act 2007

“the Principal Act” shall mean the Courts (Establishment and Constitution) Act, 1961.

“the Dublin Metropolitan District” shall mean the district styled and known as the Dublin Metropolitan District under section 64 of the Act of 1936;

“enactment” includes a charter and any instrument made under an enactment;

Explanatory Note

Section 2 of the Supplemental Provisions Act 1961, as updated by the Commission.

“State authority” means any authority being—

- (a) a Minister of State, or
- (b) the Commissioners of Public Works in Ireland, or
- (c) the Irish Land Commission, or
- (d) the Revenue Commissioners, or
- (e) the Attorney General;

Explanatory Note

Section 2 of the 1991 Act. Note: section 2 of the Irish Land Commission (Dissolution) Act 1992 and the Irish Land Commission (Dissolution) Act 1992 (Commencement) Order 1999 (SI No.75) have dissolved the Irish Land Commission.

“Supreme Court” means the Supreme Court as established by section 1 of the *Courts (Establishment and Constitution) Act 1961* and for the time being maintained by law pursuant to Article 34 of the Constitution

“Court of Criminal Appeal” means the Court of Criminal Appeal as established by section 3 of the *Courts (Establishment and Constitution) Act 1961* and for the time being maintained by law,

“High Court” means the High Court as established by section 2 of the *Courts (Establishment and Constitution) Act 1961* and for the time being maintained by law pursuant to Article 34 of the Constitution

“Circuit Court” means the Circuit Court as established by section 4 of the *Courts (Establishment and Constitution) Act 1961* and for the time being maintained by law

“District Court” means the District Court as established by section 5 of the *Courts (Establishment and Constitution) Act 1961* and for the time being maintained by law

Explanatory Note

Definitions of the Courts come from Schedule 1 of the Interpretation Act 2005 (no 23 of 2005).

PART 2
CONSTITUTION OF COURTS

Chapter 1

The Supreme Court

Continuance of existing Supreme Court

4.- There shall continue to be a Supreme Court of record called, as heretofore, the Supreme Court:

Provided and it is hereby declared that the Supreme Court heretofore and now held and henceforth to be held and shall be deemed and taken to be the same Court

Explanatory Note

This section is based on section 57 of the New Zealand Judicature Act 1908, which provides for the constitution of the Court of Appeal.

Constitution of the Supreme Court

5.- (1) The Supreme Court shall be constituted of the following judges-

- (a) the president thereof, namely, An Príomh-Bhreitheamh (The Chief Justice) and
- (b) not more than seven ordinary judges, each of whom shall be styled “Breitheamh den Chúirt Uachtarach” (“Judges of the Supreme Court”).”

(2) Where a person who holds judicial office is appointed to be a Law Reform Commissioner, the following provisions are to have effect: In case on being so appointed such person is a judge of the Supreme Court, other than the Chief Justice or a judge who is ex-officio an additional judge of that Court, then for so long as such person continues to hold that judicial office, the number of ordinary judges of the Supreme Court otherwise provided for may be exceeded by one:

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 such person continues to hold the judicial office held on being so appointed, such person shall not be taken into account for the purposes of subsection (1) of section 6 of that Act 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 the said 4(2) relates.

(3) Where a person who holds judicial office in the Superior Courts is appointed to be the President of the Human Rights Commission, the following provisions shall have effect:

(a) in case 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) (inserted by the *Courts (No. 2) Act 1997*) 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,

(4) The President of the High Court shall be ex officio an additional judge of the Supreme Court.

(5) Where, owing to the illness of a judge of the Supreme Court, or for any other reason, a sufficient number of judges of the Supreme Court is not available for the transaction of the business of that Court, the Chief Justice may request any ordinary judge or judges of the High Court to sit on the hearing of any appeal to or other matter cognisable by the Supreme Court, and any judge so requested shall sit on the hearing of such appeal or other matter and be an additional judge of the Supreme Court for such appeal or other matter.

Explanatory Note

Section 1(2) of the Principal Act 1961. Subsection (2) was amended by section 6(1) the Courts and Court Officers Act 1995.

Subsection (2) section 14 of the Law Reform Commission Act 1975 as inserted by section 3 Courts No. 2 Act 1997.

Subsection (3) section 5(6) of the Human Rights Commission Act 2000.

Chapter 2

The Court of Criminal Appeal

Continuance of existing Court of Criminal Appeal

6.- There shall continue to be a Court of Criminal Appeal of record called, as heretofore, the Court of Criminal Appeal:

Provided and it is hereby declared that the Court of Criminal Appeal heretofore and now held and henceforth to be held and shall be deemed and taken to be the same Court

Explanatory Note

This section is based on section 57 of the New Zealand Judicature Act 1908, which provides for the constitution of the Court of Appeal.

Constitution of Court of the Criminal Appeal

7.- (1) For the purpose of hearing and determining any particular appeal cognisable by the Court of Criminal Appeal, the Court of Criminal Appeal shall be summoned in accordance with directions to be given by the Chief Justice, and the Court shall be duly constituted if it consists of not less than three judges—

- (a) of whom one shall be either—
 - (i) the Chief Justice, or
 - (ii) an ordinary judge of the Supreme Court nominated by the Chief Justice, and
- (b) of whom the other two shall be either—
 - (i) two ordinary judges of the High Court nominated by the Chief Justice, or
 - (ii) the President of the High Court, if nominated by the Chief Justice and willing to act, and one ordinary judge of the High Court nominated by the Chief Justice,

but any other available judge or judges of the Supreme Court or the High Court may, at the request of the Chief Justice, attend as a member or members of the Court.

Explanatory Note

Section 3 of the Principal Act 1961. Provision is made to repeal this section in section 3(2) of the 1995 Act, but this section has not yet been enacted. It awaits a commencement order from the Minister.

Power to Attorney General to send forward for trial

8.- (1) Where a person is brought before a [judge] of the District Court charged with an indictable crime, and such charge either cannot lawfully be or is not disposed of summarily by such [judge] refuses [...] to send such person forward for trial on such charge, then and in every such case it shall be lawful for the Attorney-General to direct that such person be sent forward for trial to a specified Court to such [judge] could lawfully have so sent such person.

(2) Whenever the Attorney-General gives a direction under this section that a person be sent forward for trial to any particular Court on any particular charge, the Attorney-General shall cause such direction to be communicated to the district court clerk for the district court area in which such person was brought before the District Court on such charge, and thereupon such direction shall have the same operation and effect in all respects as an order of a [judge] of the District Court sending such person forward for trial to such Court on such charge would have had, and all persons concerned shall act accordingly.

(3) When a direction by the Attorney-General under this section has been communicated to the district court clerk in pursuance of the next proceeding subsection of this section, such district court clerk shall cause to be served on the person to whose trial such direction relates notice in writing stating that the Attorney –General has directed under this section that such person shall be sent forward for trial to a particular Court (which shall be specified in such notice) on a particular charge (which shall be similarly specified) and that such person is required to attend before the said Court at a specified time and place and there to stand his trial on the said charge.

(4) If a person on whom a notice has been served under the next preceding sub-section of this section fails to attend before the Court at the time and place specified in such notice, it shall be lawful for such Court, on proof of service of such notice on such person not less than seven clear days before the day on which he is thereby required to attend before the said Court and of service on such person of copies of the relevant depositions and particulars of all additional evidence intended to be adduced by the prosecution on the trial of such person, to issue a bench warrant for the arrest of such person and the bringing of such person before the said Court in custody.

Explanatory Note

Section 62 of the 1936 Act, subsection amended by section 3 and Schedule 1 of the Criminal Procedure Act 1967.

Chapter 3

The High Court

Continuance of existing High Court

9.- (1) There shall continue to be a High Court of record called, as heretofore, the High Court:

Provided and it is hereby declared that the High Court heretofore and now held and henceforth to be held and shall be deemed and taken to be the same Court.

Explanatory Note

This section is based on section 57 of the New Zealand Judicature Act 1908, which provides for the constitution of the Court of Appeal.

Constitution of the High Court

10.- (1) The High Court shall be constituted of the following judges—

- (a) the President thereof, who shall be styled "Uachtarán na hArd-Chúirte" ("The President of the High Court"),
- (b) and such number of ordinary judges (each of whom shall be styled "Breitheamh den ArdChúirt" ("Judge of the High Court")) as may from time to time be fixed by Act of the Oireachtas.

(2) Where a person who holds judicial office is appointed to be a Law Reform Commissioner, the following provisions are to have effect: In case on being so appointed such person is the President of the High Court or another judge of the High Court, other than a judge who is ex-officio an additional judge of that Court, then for so long as such person continues to hold the judicial office held by such person on so being appointed the number of ordinary judges of the High Court otherwise provided for may be exceeded by one:

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 such person continues to hold the judicial office held on being so appointed, such person shall not be taken into account for the purposes of subsection (2) of section 6 of that Act 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 President of the High Court to whom the said section 364, section 4(2) relates.

(3) Where a person who holds judicial office in the Superior Courts is appointed to be the President of the Human Rights Commission, the following provisions shall have effect: In case 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) (inserted by the *Courts (No. 2) Act 1997*) 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.

(4) Where a person who holds judicial office in the Superior Courts is appointed to be the President of the Human Rights Commission, the following provisions shall have effect: 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 10(5) of the *Courts (Supplemental Provisions) Act 1961*.

(5) The Chief Justice shall be ex officio an additional judge of the High Court.

(6) The President of the Circuit Court shall be ex officio an additional judge of the High Court.

(a) Where, owing to the illness of a judge of the High Court or for any other reason, a sufficient number of judges of the High Court is not available for the transaction of the business of that Court or, on account of the volume of business to be transacted in the High Court or for any other reason arising from the state of business in that Court, it is expedient to increase temporarily the number of judges available for the purposes of the High Court, the Chief Justice, at the request of the President of the High Court, may request any ordinary judge of the Supreme Court to sit in the High Court as an additional judge thereof, and every ordinary judge of the Supreme Court so requested shall sit in the High Court.

(b) Whenever an ordinary judge of the Supreme Court sits in the High Court in pursuance of this subsection, he shall be an additional judge of the High Court for all the purposes of that Court.

(7) The number of ordinary judges of the High Court shall not be more than 35.

Explanatory Note

Subsection (1) section 2 of the Principal Act 1961. Subsection (7) Section 9 of the 1995 Act (as inserted by section 56(b) of the 2004 Act as amended by section 1 of the 2007 Act)

Subsection (2) section 14 of the Law Reform Commission Act 1975 as inserted by section 3 of Courts (No. 2) Act 1997.

Subsection (3) section 5(6) of the Human Rights Commission Act 2000.

Subsection (4) section 5(6) of the Human Rights Commission Act 2000.

Central Criminal Court

11.- (1) The High Court exercising the criminal jurisdiction with which it is invested shall be known as An Phríomh-Chúirt Choiriúil (The Central Criminal Court) and is in this Act referred to as the Central Criminal Court.

- (a) The jurisdiction exercisable by the Central Criminal Court shall be exercisable by a judge or judges of the High Court (including the President of the High Court) nominated from time to time by the President of the High Court.
- (b) the jurisdiction of the Court shall be exercisable by each judge for the time being so nominated save that, where the President of the High Court directs that two or more such judges shall sit together for the purpose of a particular case, the jurisdiction of the Court for that purpose shall be exercised by those judges sitting together.

(2) Every person lawfully brought before the Central Criminal Court may be indicted before and tried and sentenced by that Court, wherever it may be sitting, in like manner in all respects as if the crime with which such person is charged had been committed in the county or county borough in which the said Court is sitting.

(3) References in any other enactment (whether passed before or after this Act) to the Central Criminal Court shall be construed as references to the High Court exercising the criminal jurisdiction with which it is invested.

(4) [...] No indictment need be preferred to or found by a Grand Jury and no Grand Jury shall be summoned to the Central Criminal Court [...] for the consideration of indictments, but every indictment shall be preferred directly to the jury which tries the accused.

Explanatory Note

Section 11 of the Supplemental Provisions Act 1961.

It is worth noting that the Committee on Court Practice and Procedure in its Sixth Interim Report recommended that that the Central Criminal Court be known as “The High Court”. See the Sixth Interim Report of the Committee on Court Practice and Procedure, The Criminal Jurisdiction of the High Court, (Stationary Office, 1966,

Pr. 9168) at p. 6. Walsh J in The People (Attorney General) v. Bell [1969] IR 24 at 49 commented that “It is, to say the least, extremely doubtful if an Act of the Oireachtas can alter or modify the name of the High Court whatever jurisdiction it may be exercising”.

Subsection (5) Section 27 of 1924 Act. Grand Jury not to be summoned for consideration of indictments. Deletion by section 3 and sch 1 of the Supplemental Provisions Act 1961. Reference to the ‘High Court Circuit’ deleted by section 2 of the Courts of Justice Act 1926.

The High Court on Circuit

12.- (1) Twice in every year, at such times as shall be determined by the Chief Justice and the President of the High Court, the High Court shall sit in every county and county borough (other than the county of Dublin and the county borough of Dublin) to hear appeals from the Circuit Court and to transact such other business as shall lawfully be brought before it, and for that purpose one or more judges of the High Court shall travel each High Court Circuit and hold sittings of the High Court in such appeal towns where their attendance is required as determined by the President of the High Court.

(2) The High Court when sitting in an appeal town in pursuance of this section shall be known and is in this Act referred to as the High Court on Circuit, and the sittings of the High Court in any such appeal town in pursuance of this section shall be known and are in this Act referred to as sittings of the High Court on Circuit.

(3) The Chief Justice and the President of the High Court shall jointly determine, in respect of each twice-yearly sitting of the High Court on Circuit, the number of judges who shall travel and sit on a High Court Circuit for the purposes of sittings of the High Court on Circuit and the day and hour at which such sittings shall commence in an appeal town on each such Circuit.

(4) Where—

- (a) two or more judges are travelling a High Court Circuit for the purpose of holding therein any twice-yearly sittings of the High Court on Circuit, and
- (b) the senior of the judges ascertains that there is no business to be transacted at such sittings in any particular appeal town for a county or county borough in that High Court Circuit,

the senior of the judges may direct in writing that it shall not be obligatory to hold such sittings in that appeal town.

(5) Where—

- (a) one judge only is travelling a High Court Circuit for the purpose of holding therein any twice-yearly sittings of the High Court on Circuit, and

- (b) the judge ascertains that there is no business to be transacted at such sittings in any particular appeal town for a county or county borough in that High Court Circuit,

the judge may direct in writing that it shall not be obligatory to hold such sittings in that appeal town.

(6) A direction under this section may be filed in the Circuit Court Office serving the appeal town to which the direction relates.

(7) The references in sections 35 and 36 of the *Courts of Justice Act 1936* to 'half yearly' shall be construed as references to 'twice yearly'.

Explanatory Note

Section 34 of the 1936 Act, as substituted and amended by section 42 of 1995 Act. On and from the establishment day (1 January 1994 — see SI No. 401 of 1993) references to the county of Dublin in section 33 shall be construed as references to the counties of South Dublin, Fingal and Dun Laoghaire-Rathdown. Sections 1(5) and 25 of the Local Government (Dublin) Act 1993.

Commissioners of the High Court on Circuit

13.- (1) Whenever before or during a half-yearly sitting of the High Court on Circuit the [government] is satisfied, on representations made by the Chief Justice and the President of the High Court, that for any reason the number of judges of the Supreme Court and of the High Court available for travelling and sitting for the purposes of such half-yearly sittings is or has become insufficient for those purposes, a practising barrister of not less than twelve years' standing may be appointed to be a Commissioner of the High Court on Circuit for the purposes of those half-yearly sittings.

(2) Every Commissioner of the High Court on Circuit shall during the half-yearly sittings or the remainder of the half-yearly sittings (as the case may be) of the High Court on Circuit for the purposes of which he is appointed, be an additional judge of the High Court and be entitled to the privileges and immunities of a judge of the High Court, but shall not sit or act as such judge elsewhere than in the High Court on Circuit.

(3) Every Commissioner of the High Court on Circuit shall travel and sit on such High Court Circuit as shall be determined by the Chief Justice and the President of the High Court.

(4) Every Commissioner of the High Court on Circuit shall receive out of moneys provided by the Oireachtas such remuneration as the Minister for Justice, with the sanction of the Minister for Finance, shall determine

Explanatory Note

Section 36 of 1936 Act. Note amendment of this section by section 34 of the 1936 Act, subsection of which provides that references in sections 35 and 36 of the 1936 to 'half yearly' shall be construed as references to 'twice yearly'.

The judges of the High Court on Circuit

14.- (1) The President of the High Court shall, if and when he thinks proper, travel and sit as a judge of the High Court on Circuit, and every other judge of the High Court shall travel and sit as a judge of the High Court on Circuit when requested by the President of the High Court so to do.

(2) The Chief Justice shall, if and when he thinks proper, travel and sit as a judge of the High Court on Circuit, and every other judge of the Supreme Court shall travel and sit as a judge of the High Court on Circuit when requested by the Chief Justice to do so, and every such other judge when so travelling and sitting shall be an additional judge of the High Court.

(3) The Chief Justice and the President of the High Court, after such consultation as they think proper with the judges concerned, shall determine, in respect of every half-yearly sittings of the High Court on Circuit, the several judges of the Supreme Court and of the High Court who shall be requested to travel and sit for the purposes of such sittings and the particular judge or judges who shall so travel and sit on each High Court Circuit.

(4) At any time during a half-yearly sittings of the High Court on Circuit, the Chief Justice and the President of the High Court, after consultation with the judges concerned, may make such rearrangement of the judges travelling and sitting for the purposes of such sittings and their allocation in particular High Court Circuits as may have become necessary or desirable owing to unforeseen circumstances.

Explanatory Note

Section 35 of 1936 Act. Note amendment of this section by section 34 of the 1936 Act, subsection of which provides that references in sections 35 and 36 of the 1936 to 'half yearly' shall be construed as references to 'twice yearly'.

Chapter 4

The Circuit Court

Continuance of existing Circuit Court

15.- There shall continue to be a Circuit Court of record called, as heretofore, the Circuit Court:

Provided and it is hereby declared that the Circuit Court heretofore and now held and henceforth to be held and shall be deemed and taken to be the same Court

Explanatory Note

This section is based on section 57 of the New Zealand Judicature Act 1908, which provides for the constitution of the Court of Appeal.

Constitution of the Circuit Court

16.- (1) The Circuit Court shall be constituted of the following judges—

- (a) a judge, who shall be styled "Uachtarán na Cúirte Cuarda" ("The President of the Circuit Court"), and
- (b) such number of ordinary judges (each of whom shall be styled "Breitheamh den Chúirt Chuarda" ("Judge of the Circuit Court")) as may from time to time be fixed by Act of the Oireachtas

(2) The number of ordinary judges of the Circuit Court shall not be more than 37.

(3) The Circuit Court shall be a court of record.

Explanatory Note

Subsection (1) Section 4 of the Principal Act 1961.

Subsection (2) section 10 of 1995 Act as substituted by section 56 of 2004 Act as amended by section 2 of 2007 Act.

Subsection (3) Section 21 of Supplemental Provisions Act 1961.

Chapter 5

The District Court

Continuance of existing District Court

17.- There shall continue to be a Circuit Court of record called, as heretofore, the Circuit Court:

Provided and it is hereby declared that the Circuit Court heretofore and now held and henceforth to be held and shall be deemed and taken to be the same Court

Explanatory Note

This section is based on section 57 of the New Zealand Judicature Act 1908, which provides for the constitution of the Court of Appeal.

Constitution of the District Court

18.- (1) The District Court shall be constituted of the following judges—

- (a) a judge who shall be styled "Uachtaráin na Cúirte Dúiche" ("The President of the District Court"), and
- (b) such number of other judges (each of whom shall be styled "Breitheamh den Chúirt Dúiche" ("Justice of the District Court")) as may from time to time be fixed by Act of the Oireachtas.

(2) The number of judges of the District Court in addition to the President of the District Court shall not be more than 60.

(3) The District Court shall be a court of record.

Explanatory Note

Subsection (1) Section 5 of the Principal Act 1961.

Subsection (2) section 11 1995 Act as substituted by section 56 of 2004 Act as amended by section 3 of the 2007 Act.

Subsection (3) Section 13 1971 Act

The Children's Court

19.- (1) (a) The District Court, when hearing charges against children or 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 this or any other Act or by Part III, IV, IVA (inserted by this Act) or V of the Act of 1991, shall be known as the Children Court and is referred to as "the Court" in this Part and Part 8.

(b) When exercising any such jurisdiction the Court shall sit in a different building or room 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 such other court are held.

(2) So far as practicable sittings of the Court shall be so arranged that persons attending are not brought into contact with persons in attendance at a sitting of any other court.

(3) Where—

(a) in the course of any proceedings before the Court it appears to it that the person charged or to whom the proceedings relate is 18 years of age or upwards, or

(b) in the course of any proceedings before the District Court sitting otherwise than as the Children Court it appears to the District Court that the person charged or to whom the proceedings relate is under the age of 18 years,

nothing in this section shall be construed as preventing the Court or the District Court, as the case may be, if it thinks it undesirable to adjourn the case, from proceeding to hear and determine it.

(4) The Court shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on it by or under this or any other enactment.

(5) Any reference to a juvenile court in any enactment in force immediately before the commencement of this section shall be construed as a reference to the Court.

Explanatory Note

Section 71 of the Children's Act 2001, in force by virtue of Children's Act 2001 (Commencement Order) 2002, SI No 151 of 2002.

Section 80 of the 1924 Act which had provided for the Children's Court was repealed by section 5 and Schedule 2 of the Children's Act 2001, commenced by Children's Act 2001 (Commencement Order) 2005, SI No 468 of 2004.

Chapter 6

Miscellaneous

Supplemental Provisions on number of judges

20.- (1) This section shall not apply where, at the time a judge to whom section 4(2) relates ceases to be a presiding judge, there is a vacancy in the court concerned to which section 6 does not already relate-

- (a) in the case of the Supreme Court, the High Court or the Circuit Court, amongst the ordinary judges of that Court, and
- (b) in the case of the District Court, amongst the judges of that Court other than the President of the District Court.

(2) Notwithstanding section 1 (as amended by section 6 of the Act 1995) of the *Courts (Establishment and Constitution) Act 1961*, the number of judges of the Supreme Court provided by that section may, subject to section 6 be exceeded by one in each case where a former Chief Justice serves as a judge of the Supreme Court by virtue of being a former Chief Justice to whom section 4(2) relates.

(3) Notwithstanding section 9 (inserted by section 2 of the Act of 1995), the number of judges on the High Court provided for by section 2(2) of the *Courts (Establishment and Constitution) Act 1961* and by the said section 9 may, subject to section 6, be exceeded by one in each case where a former President of the High Court serves as a judge of the High Court by virtue of being a former President of the High Court to whom section 4(2) relates.

(4) Notwithstanding section 10 (as amended by section 1 of the *Courts Act 1996*) of the Act of 1995, the number of judges of the Circuit Court provided for by section 4(2) of the *Courts (Establishment and Constitution) Act 1961* and by the said section 10 may, subject to section 6 be exceeded by one in each case where a former President of the Circuit Court serves as a judge of the Circuit Court by virtue of being a former President of the Circuit Court to whom section 4(2) relates.

(5) Notwithstanding section 11 of the Act of 1995, the number of judges of the District Court provided by that section may, subject to section 6, be exceeded by one in each case where a former President of the District Court serves as a judge of the District Court by virtue of

being a former President of the District Court to whom section 4(2) relates.

Explanatory Note

Section 5 of the Courts (No. 2) Act 1997.

PART 3

JURISDICTION OF COURTS

Chapter 1

Jurisdiction exercisable by Courts

Jurisdiction to bind to the peace or to good behaviour

21.- The jurisdiction formerly exercisable by justices of the peace to make an order binding a person to the peace or to good behaviour or to both the peace and good behaviour and requiring him to enter into a recognizance in that behalf may be exercised by—

- (a) a judge of the Supreme Court or the High Court, or
- (b) a judge of the Circuit Court within the circuit to which he/she is for the time being assigned, or
- (c) a [judge] of the District Court within the district to which he/she is for the time being assigned.

Explanatory Note

Section 54 of the Supplemental Provisions Act 1961.

Compensation for mental distress in fatal accidents

22.- (1) Paragraph (b) of section 49(1) of the *Civil Liability Act 1961*, is hereby amended by the substitution of “£7,500” for “one thousand pounds”.

(2) Subsection (2) of section 18 (inserted by the *Air Navigation and Transport Act 1965*) of the *Air Navigation and Transport Act 1936*, is hereby amended by the substitution of “£7,500” for “one thousand pounds”.

(3) Subsections (1) and (2) of this section shall not have effect in relation to a cause of action that accrued before the 15th day of October 1980.

Explanatory Note

Section 28 of the Courts Act 1981. Section 2(1)(a) of the Civil Liability (Amendment) Act 1996 further increased the jurisdictional limit set out in section 49 of the Civil Liability Act 1961 to £20,000 and section 4(1)(b) of the 1996 Act similarly increased the jurisdictional limit set out in section 18 of the Air Navigation and Transport Act 1936 as amended to £20,000.

Variation of order of certain monetary limits

23.- (1) The Government may, if and whenever they are satisfied that—

- (a) a monetary amount for the time being standing specified in any provision of any enactment conferring jurisdiction in a civil matter on the Circuit Court or District Court and indicating the limit of the jurisdiction so conferred, or
- (b) a monetary amount for the time being standing specified in subsection (2) or (3) of section 17 (inserted by this Act) of the Act of 1981,

should, having regard to changes in the value of money generally in the State since the said monetary amount was so specified, be varied, make an order varying the monetary amount so standing specified and the said provision shall have effect in accordance with the terms of any such order.

(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.

Explanatory Note

Section 16 of the Courts Act 1991.

Chapter 2

The Supreme Court

General Jurisdiction of the Supreme Court

24.- (1) The Supreme Court shall be a superior court of record with such appellate and other jurisdiction as is prescribed by the Constitution.

(2) For the avoidance of doubt and without prejudice to the generality of the foregoing, there shall be vested in the Supreme Court—

(a) All jurisdiction which was, immediately before the commencement of Part I of the Act of 1924, vested in or capable of being exercised by the former Court of Appeal in Southern Ireland or any judge or judges thereof and was, immediately before the operative date, vested in or capable of being exercised by the existing Supreme Court, **[section 27 of the Supreme Court of Judicature (Ireland) Act 1877 provided that the jurisdiction of the Court of Appeal was to hear appeals from the High Court. The successor to this Court, the Court of Appeal for Southern Ireland, established by the Government of Ireland Act 1920, was vested with jurisdiction to hear appeals from the High Court of Justice in Southern Ireland].**

(b) all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act the Act of 1961 , was, immediately before the operative date, vested in or capable of being exercised by the existing Supreme Court.

(3) The Supreme Court may sit in two or more divisions and they may sit at the same time.

(4) Subject to subsection (5) of this section, the Chief Justice or, in his or her absence the senior ordinary judge of the Supreme Court for the time being available, may determine that an appeal to or other matter cognisable by the Supreme Court may be heard and determined by a division of five or three judges of the Supreme Court, including judges who are by virtue of subsection (3) or (4) of section 1 of the Principal Act, additional judges of the Supreme Court.

(5) An appeal to or other matter cognisable 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 determined by not less than five judges of the Supreme Court including judges who are, by virtue of subsection (3) or (4) of section 1 of the Principal Act, additional judges of the Supreme Court.

Explanatory Note

Section 7 of the Supplemental Provisions Act 1961. Subsections (3) and (4) substituted and subsection (5) inserted by section 7 of 1995 Act.

*The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether subsection (4) be amended to provide that the Supreme Court still in a division of 7. The Supreme Court has begun the practice of sitting in divisions of 7 to hear important constitutional cases. For example, in *Sinnott v. Minister for Education* [2001] 2 IR 545, 7 Judges sat to hear this appeal. They were: the Chief Justice, Mr. Justice Keane, Ms. Justice Denham, Mr. Justice Murphy, Mr. Justice Murray, Mr. Justice Hardiman, Mr. Justice Geoghegan and Mr. Justice Fennelly.*

Vesting of powers of Court Martial Appeal Court in Supreme Court

25.- (1) There shall be vested in the Supreme Court all powers, jurisdiction and functions which, before the coming into operation of an order under section 1 (2) of this Act were vested in or were capable of being exercised by the Courts-Martial Appeal Court.

(2) Any application or other matter that is pending before the Courts-Martial Appeal Court, on or before the coming into operation of an order under section 1(2) of this Act the Act of 1995, including cases listed for hearing by that Court and any notice of appeal or notice of application for leave to appeal to the Courts-Martial Appeal Court shall be heard by the Supreme Court.

(3) References to the Courts-Martial Appeal Court in any statute or statutory instrument shall be construed as references to the Supreme Court.

Explanatory Note

Section 5 of the 1995 Act, not yet in force.

Vesting of powers of Court of Criminal Appeal in the Supreme Court

26.- (1) There shall be vested in the Supreme Court all powers, jurisdiction and functions which, before the coming into operation of an order under section 1(2) of this Act the Act of 1995 were vested in or were capable of being exercised by the Court of Criminal Appeal.

(2) Any application or other matter that is pending before the Court of Criminal Appeal on or before the coming into operation of an order under section 1(2) of this Act the Act of 1995 including cases listed for hearing by that Court and any notice of appeal or notice of application for leave to appeal to the Court of Criminal Appeal shall be heard by the Supreme Court.

(3) References to the Court of Criminal Appeal in any statute or statutory instrument shall be construed as references to the Supreme Court.

Explanatory Note

Section 4 of the 1995 Act. Note: The alterations to the provisions which follow and which deal with the Court of Criminal Appeal are premised on an order having been made to bring section 4 of the Act of 1995 into operation, is brought into force, see section 1(2) of the 1995 Act. The Court of Criminal Appeal will continue to function until an order is made to vest its powers in the Supreme Court. This has yet to be enacted.

Chapter 3

The Court of Criminal Appeal

Jurisdiction of Court of Criminal Appeal

27.- (1) The Court of Criminal Appeal shall be a superior court of record and shall, for the purposes of this Act and subject to the enactments applied by section 48 of this Act, have full power to determine any questions necessary to be determined for the purpose of doing justice in the case before it.

(2) There shall be vested in the Court of Criminal Appeal all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Court of Criminal Appeal.

(3) In subsection (2) of section 44 of the *Offences Against the State Act 1939*, the reference to section 30 of the Act of 1924 shall be construed as a reference to subsection (1) of this section.

Explanatory Note

Section 12 of the Supplemental Provisions Act 1961.

Provision is made to repeal this section in section 3(2) of the 1995 Act, not yet enacted)

Review by Court of Criminal Appeal of alleged miscarriage of justice or exclusive sentence

28.- (1) 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 *Criminal Procedure Act 1967*, and who, after appeal to the Court including an application for leave to appeal, 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 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.

(2) An application under subsection (1) shall be treated for all purposes as an appeal to the Court against the conviction or sentence.

(3) In subsection (1) (b) the 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 alleges that there is a reasonable explanation for his failure to adduce evidence of that fact.

(4) The reference in subsection (1) (b) 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 determined or a fact the significance of which was not appreciated by the convicted person or his advisers during the trial or appeal proceedings.

(5) Where—

- (a) after an application by a convicted person under subsection (1) and any subsequent re-trial the person stands convicted of an offence, and

- (b) the person alleges that a fact discovered by him or coming to his notice after the hearing of the application and any subsequent re-trial or a fact the significance of which was not appreciated by him or his advisers during the hearing of the application 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 may apply to the Court for an order quashing the conviction or reviewing the sentence and his application shall be treated as if it were an application under that subsection.

Explanatory Note

Section 2 of the Criminal Procedure Act 1993.

Chapter 4

The High Court

Civil Jurisdiction

General Jurisdiction of the High Court

29.- (1) The High Court shall be a superior court of record with such original and other jurisdiction as is prescribed by the Constitution.

(2) For the avoidance of doubt and without prejudice to the generality of the foregoing, there shall be vested in the High Court—

- (a) all jurisdiction which was, immediately before the commencement of Part I of the Act of 1924, vested in or capable of being exercised by the former High Court of Justice in Southern Ireland or any division or judge thereof and was, immediately before the operative date, vested in or capable of being exercised by the existing High Court, **[The High Court of Justice in Southern Ireland inherited the jurisdiction of the High Court of Justice established by the Judicature Act 1877. This court had civil jurisdiction and appelland jurisdiction]**
- (b) all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act the Act of 1961, was, immediately before the operative date, vested in or capable of being exercised by the existing High Court.

(3) The jurisdictions vested in the High Court shall include all powers, duties and authorities incident to any and every part of the jurisdictions so vested.

Explanatory Note

Section 8 of the Supplemental Provisions Act 1961

Section 9 of the 1936 (now repealed by section 3 and Schedule 1 of the Supplemental Provisions Act 1961) transferred the jurisdiction of the Chief Justice in “lunacy and minors” to the President of the High Court. This jurisdiction continues to be vested in the President of the High Court by virtue of section 10(5) of the Supplemental Provisions Act 1961 which provides a saver for all jurisdiction vested in the

President of the High Court prior to the Supplemental Provisions Act 1961.

Jurisdiction of the High Court in lunacy and minor matters

30.- (1) There shall be vested in the High Court the jurisdiction in lunacy and minor matters which—

- (a) was formerly exercised by the Lord Chancellor of Ireland,
- (b) was, at the passing of the Act of 1924, exercised by the Lord Chief Justice of Ireland, and
- (c) was, by virtue of subsection (1) of section 19 of the Act of 1924 and subsection (1) of section 9 of the Act of 1936, vested, immediately before the operative date, in the existing High Court.

(2) The jurisdiction vested in the High Court by subsection (1) of this section shall be 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.

(3) References in the *Lunacy Regulation (Ireland) Act 1871*, and the rules and orders made thereunder to “the Lord Chancellor entrusted as aforesaid” shall be construed as references to the Judge of the High Court for the time being exercising the jurisdiction vested in the High Court by subsection (1) of this section.

- (4) (a) The President of the High Court or such other Judge of the High Court as may be assigned by him under subsection (2) of this section may from time to time by order made under section 118 of the *Lunacy Regulation (Ireland) Act 1871*, amend any form prescribed by or under that Act for use in relation to the jurisdiction in lunacy matters vested in the High Court by subsection (1) of this section by submitting in such form the expression “ward of court” or such other similar expression as he thinks proper for the word “lunatic” and the expression “person of unsound mind” respectively and by making such further consequential amendments in that form as he thinks necessary and proper.
- (b) Any order made under section 4 of the *Courts of Justice Act 1928*, as amended by paragraph (b) of subsection (2) of section 9 of the Act of 1936, which is in force immediately before the operative date shall continue in

force and be deemed to have been made under paragraph (a) of this subsection

(5) Such solicitors, doctors, visitors and other persons as were, immediately before the operative date, retained or nominated in relation to the exercise of any jurisdiction which, by virtue of subsection (1) of section 19 of the Act of 1924 and subsection (1) of section 9 of the Act of 1936, was, immediately before the operative date, vested in the existing High Court shall be retained or nominated by the President of the High Court and section 59 of the Act of 1926, as applied by section 48 of this Act, shall not apply to them.

Explanatory Note

Section 9 of the Supplemental Provisions Act 1961.

Criminal Jurisdiction

Cases which may be disposed of by the Central Criminal Court

31.- The cases which may be disposed of by the Central Criminal Court at any particular sitting of the Court shall include all cases in which the accused person is, at the beginning of or at any time during that sitting, in custody in the county or county borough in which the sitting is being held and is awaiting trial by the Circuit Court.

Explanatory Note

Section 8 of the Courts of Justice Act 1926.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section can be repealed.

The main criminal jurisdiction of the Central Criminal Court is that contained in section 25(2) of the 1961 Act as excluded from the criminal jurisdiction of the Circuit Court. Section 25(2) states "The jurisdiction conferred on the Circuit Court by subsection (1) of this section shall not extend to treason, an offence under section 2 of the Treason Act 1939, an offence under section 6 of the Offences Against the State Act 1939, murder, attempt to murder, conspiracy to murder, or piracy, including an offence by an accessory before or after the fact."

Criminal Jurisdiction of the Central Criminal Court

32.- The criminal jurisdiction of the Central Criminal Court shall be as follows:

- (1) Treason, an offence under section 2 of the *Treason Act, 1939*, an offence under section 6 of the *Offences Against the State Act 1939*, murder, attempt to murder, conspiracy to murder, or piracy, including an offence by an accessory before or after the fact;
- (2) Rape offences or the offence of aggravated sexual assault or attempted sexual assault or of aiding, abetting, counselling or procuring the offence of aggravated sexual assault or attempted sexual assault or of incitement to the offence of aggravated sexual assault or conspiracy to commit any of the foregoing offences;
- (3) Offences under the *Geneva Conventions Act 1962*;
- (4) Offences under the *Genocide Act 1973*: a person charged with an offence of genocide or any attempt, conspiracy or incitement to commit genocide shall be tried by the Central Criminal Court;
- (5) Offences under the *Criminal Justice (United Nations Convention Against Torture) Act 2000*;
- (6) Offence of murder under section 2 of the *Criminal Justice (Safety of United Nations Workers) Act 2000*;
- (7) Offences under section 6 and 7 of the *Competition Act 2002*.

Explanatory Note

Section (1) section 25(2) of the Supplemental Provisions Act 1961. Subsection (2) section 10 of the Criminal Law (Rape)(Amendment) Act 1990.

Chapter 5

The Circuit Court

Definitions

33.- In relation to the Circuit Court, including the Third, Fourth and Fifth Schedules to this Act the following definitions are applicable —

“action” means a civil proceeding in the Circuit Court commenced by civil bill;

“cause” means any action, suit or original proceeding between a plaintiff and a defendant;

“defendant” includes respondent;

“incorporeal hereditament” includes an easement and a licence in respect of land;

“matter” means any proceeding in the Circuit Court not in a cause;

“plaintiff” includes applicant and petitioner;

“proceedings” includes both causes and matters;

references to the judge of a particular circuit shall be construed as references to the judges of the Circuit Court for the time being assigned to that circuit;

“personalty” does not include chattels real;

“rules of court” means rules made under section 66 of the Act of 1924, as applied by section 48 of this Act.

Explanatory Note

Section 15 of the Supplemental Provisions Act 1961. Re rules of court, see section 36 of 1924 as amended by sections 3 of the 1936 Act and section 2 of 1926 Act.

Civil Jurisdiction

Jurisdiction of the Circuit Court, except in applications for new on-licences and in indictable offences

- 34.-** (1) (a) Subject to paragraphs (b) and (c) of this subsection, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in column (2) of the Third Schedule to this Act at any reference number.
- (b) 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 paragraph (a) of this subsection, have jurisdiction to hear and determine any cause of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number in the case mentioned in column (3) of the said Schedule at that reference number
- (c) The Circuit Court shall not, by virtue of paragraph (a) of this subsection, have jurisdiction to hear and determine any matter of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number in the case mentioned in column (3) of the said Schedule at that reference number.
- (d) The jurisdiction of the Circuit Court to hear and determine proceedings of the kind mentioned in column (2) of the Third Schedule to this Act at a particular reference number shall be exercised by the judge of the Circuit Court mentioned in column (4) of the said Schedule at that reference number.
- (e) Where an incorporeal hereditament is involved in any proceedings in respect of which the Circuit Court has jurisdiction by virtue of this subsection, references in column (4) of the Third Schedule to this Act to the circuit where the land or any part of the land is situate shall be construed as references to the circuit where the land or any part of the land to, out of or in respect of which the incorporeal hereditament is annexed, arises, issues or is exercisable is situate

(2) The Circuit Court shall concurrently with the High Court, have and exercise the jurisdiction in lunacy matters which was conferred on the Lord Chancellor of Ireland, by section 68 of the *Lunacy Regulation (Ireland) Act 1871*, that is to say, in cases where the property of the person alleged to be of unsound mind and incapable of managing his affairs does not exceed [five thousand pounds] in value or the income therefrom does not exceed [three hundred pounds] per annum.

(3) (a) The Circuit Court shall have and exercise the several jurisdictions which—

(i) were, under or by virtue of any enactment set out in column (2) of the Fourth Schedule to this Act or any other enactment formerly vested in or capable of being exercised by chairmen of quarter sessions, recorders, county court judges, or quarter sessions, and

(ii) were, immediately before the operative date, vested in or capable of being exercised by the existing Circuit Court.

(b) The jurisdiction vested in the Circuit Court by paragraph (a) of this subsection under any enactment set out in column (2) of the Fourth Schedule to this Act at a particular reference number shall be exercised by the judge of the Circuit Court mentioned in column (3) of the said Schedule at that reference number.

(c) The Minister may from time to time by order make such provisions (not inconsistent with the provisions of paragraph (b) of this subsection) for the exercise by judges of the Circuit Court severally of any jurisdiction vested in the Circuit Court by paragraph (a) of this subsection as are in his opinion necessary or proper having regard to the provisions of this Act relating to the Circuit Court and the judges thereof.

(d) Every order made by the Minister under paragraph (c) of this subsection shall, if the order so provides, have and be deemed always to have had effect as on and from the operative date.

- (4) (a) Each British statute mentioned in column (2) of the Fifth Schedule to this Act shall have effect subject to the adaptations specified in column (3) of the said Schedule opposite the mention of that statute.
 - (b) The Minister may from time to time by order make such adaptations (not inconsistent with the adaptations effected by paragraph (a) of this subsection) in any enactment (wherein there is a reference to the former civil bill courts, county courts or courts of quarter sessions, to the former assistant barristers, recorders, county court judges or chairmen of quarter sessions or to former officers of those courts) contained in any British statute or Saorstát Eireann statute as are, in his opinion, necessary or proper having regard to the provisions of this Act relating to the Circuit Court and the judges thereof.
 - (c) Every order made by the Minister under paragraph (b) of this subsection shall, if the order so provides, have and be deemed always to have had effect as on and from the operative date.
- (5) (a) There shall also be vested in the Circuit Court all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Circuit Court.
 - (b) A particular jurisdiction vested in the Circuit Court by paragraph (a) of this subsection shall, in case the exercise of that jurisdiction by the judges of the Circuit Court severally is not provided for in an enactment applied by section 48 of this Act, be exercised by the judges of the Circuit Court severally in the manner provided by rules of court.
- (6) The Circuit Court, as regards any cause of action for the time being within its jurisdiction, shall in any proceedings before it—
 - (a) grant such relief, redress or remedy or combination of remedies, absolute or conditional, and
 - (b) give such and the like effect to every ground of defence or counterclaim, legal or equitable,

as ought to be granted or given in the like case by the High Court and in as full and ample a manner.

(7) Without prejudice to any jurisdiction conferred by the previous subsections of this section, the Circuit Court shall have powers of attachment, garnishee and interpleader, and shall have all powers (including the power to appoint a receiver) ancillary to any jurisdiction exercisable by it.

(8) (a) [Any interested party may at any time apply to the judge of the Circuit Court before whom an action commenced in that court or an appeal from the District Court is pending to have the action or appeal forwarded to the High Court and thereupon, in case the action or appeal is one fit to be tried in the High Court and the High Court appears to be the more appropriate tribunal in the circumstances, the said judge may send forward the action or appeal to the High Court upon such terms and subject to such conditions as to costs or otherwise as may appear to him to be just, and an appeal shall lie under section 38 of the Act of 1936, as applied by section 48 of this Act, from the decision of the judge granting or refusing any such application.

(b) Any interested party may at any time apply to a [judge] of the District Court before whom an action commenced in that court is pending to have the action forwarded to the Circuit Court or the High Court and thereupon, in case the action is one fit to be tried in the Circuit Court or the High Court, as the case may be, and the Circuit Court or the High Court, as the case may be, appears to be the more appropriate tribunal in the circumstances, the said [judge] may send forward the action to the Circuit Court or the High Court, as the case may be, upon such terms and subject to such conditions as to costs or otherwise as may appear to him to be just, and an appeal shall lie under section 84 of the Act of 1924, as applied by section 48 of this Act, from the decision of the [judge] granting or refusing any such application.]

(9) A judge of the Circuit Court may, on the application of any party or on his own motion, if he thinks fit, by order change the venue for the trial of any action pending before him from one place of hearing to any other within his circuit, and an appeal shall lie under section 38 of the Act of 1936, as applied by section 48 of this Act, from the decision

of the judge of the Circuit Court making or refusing to make any such order.

(10) A judge of the Circuit Court may, on the application of any party to an action which has been partly heard, transfer the remainder or any portion of the hearing to another venue within his circuit or within the Dublin Circuit, and an appeal shall lie under section 38 of the Act of 1936, as applied by section 48 of this Act, from the decision of the judge granting or refusing any such application.

(11) A judge of the Circuit Court may, outside his circuit, hear and determine any application which he has power to hear and determine within that circuit and which, in his opinion, should be dealt with as a matter of urgency

(12) Where—

- (a) an action is pending before a judge of the Circuit Court for the time being assigned to a particular circuit, and
- (b) an application is made by any party to such action for the transfer of such action to another circuit for hearing by the judge of the Circuit Court for the time being assigned to such other circuit,

such first-mentioned judge may, with the consent of such other judge, transfer such action accordingly and thereupon such action shall be heard and determined by such other judge, and an appeal shall lie under section 38 of the Act of 1936, as applied by section 48 of this Act, from the decision of the first-mentioned judge granting or refusing any such application.

(13) A judge of the Circuit Court may adjourn the hearing of any proceedings before him to any other court within his circuit

(14) A judge of the Circuit Court may make out of court any orders which he may deem to be urgent.

(15) (a) Notwithstanding anything contained in Part IV of the Act of 1936, as applied by section 48 of this Act, no appeal shall lie from any decision of the Circuit Court in any proceedings in a cause if, before the decision is given, the parties agree, in writing signed by them, that the decision shall be final.

- (b) An agreement under paragraph (a) of this subsection shall not require a stamp.

Explanatory Note

Section 22 of the Supplemental Provisions Act 1961. Consequential Amendment: Section 22 was extended by section 7(4) of the Local Elections (Petitions and Disqualifications) Act 1974 which provides that a petition, meaning a petition presented under the Act of 1974, shall, for the purposes of section 22 of the Act of 1961, be an action within the meaning of Part III of the Act of 1961. Subsection (8) substituted by section 21 of the Courts Act 1971. Subsections 8, 9 and 10 overlap with the provisions dealing with transfer of actions below.

The Third Schedule of the Supplemental Provisions Act 1961 (as amended by section 2 of the Courts Act 1991 provides that the Circuit Court is limited to making awards of €38,092.14. There is provision to increase this monetary limit to €100,000, section 13 of the 2002 Act, but this is not yet in force. The most recent alteration in the monetary limits of the courts jurisdiction was by section 2 of the Act of 1991.

Section 22 of the Supplemental Provisions Act 1961 provides the Circuit Court with jurisdiction in 20 areas. These are contained in the Third Schedule of the 1961 Act. The Circuit Court is given concurrent jurisdiction with the High Court in tortuous matters such as libel, slander, malicious prosecution and false imprisonment which are excluded from the District Court. It is also given exclusive jurisdiction in granting of new applications for new intoxicating liquor 'on licences'.

What may be determined under Civil Bill

35.- It shall and may be lawful for each and every Assistant Barrister to hear and determine by Civil Bill all Disputes and Differences between Party and Party for any Sum, Damages, or Penalty, not exceeding Forty Pounds Sterling, and in all Cases whatsoever (Slander, Libel, Breach of Promise of Marriage, and Criminal Conversation with a Man's Wife, only excepted,) and for any ascertained and unpaid Balance, not exceeding Forty Pounds, of a Partnership Account, and also in all Actions by Civil Bill under any Act or Acts of Parliament now in force in Ireland and not hereby repealed, giving a Remedy by Civil Bill in any particular Cases, to the Extent and pursuant to the Provisions of the said Act or Acts respectively: Provided always, that the several Assistant Barristers may award Interest in all Cases where in Equity Interest ought to be decreed, so that the Debt or Damages and Interest shall not together exceed the Amount of the Jurisdiction, according to the Nature of the Case.

Explanatory Note

Section 35 of the Civil Bill Courts (Ireland) Act 1851 14&15 Vic. c. 57. Section 35 provides for the cases which an assistant barrister may determine by civil bill. These include: slander, ascertained and unpaid balance of money.

Amended by County Officers and Court (Ireland Act 1877 (40 & 41 Vic c 56) so that it reads fifty pounds and not forty pounds. Section 35 repealed in part by Statute Law Revisions Act 1892 (55&56 Vic c 19)..

In what courts proceedings shall be taken

36.- Proceedings under the authority of this part of the Act shall be taken in the Civil Bill Courts herein-after mentioned; that is to say,

- (a) Proceedings relating to the sale, redemption, or partition of any lands, or for enforcing any mortgage charge or lien upon any lands, or which pray an injunction to stay waste upon lands, shall be taken in the Civil Bill Court of the county in which the lands, or any part thereof, shall be situate:
- (b) [...]
- (c) [...]
- (d) Proceedings in partnership cases shall be taken in the Civil Bill Court within the jurisdiction of which the partnership business shall be or have been carried on, or which the defendants, or any of them, shall reside or carry on business:
- (e) Proceedings for the specific performance, or the reforming, cancelling, or delivering up any agreement shall be taken in the Civil Bill Court within the jurisdiction of which the defendants, or any of them, shall reside, or have a place of business, or in which the property affected, or any part thereof, shall be situate:
- (f) Proceedings under the Trustee's Relief Acts, or under the Trustee Acts, or any of such Acts, shall be taken in the Civil Bill Court within the jurisdiction of which the persons making the application, or any of them, shall reside:
- (g) Proceedings relating to infants shall be taken in the Civil Bill Court within the jurisdiction of which the infants, or any of them or any of them, shall reside:
- (h) Proceedings not otherwise provided for shall be taken or instituted in the Civil Bill Court within the jurisdiction of which the defendants, or any of them, shall reside or carry on business:

Provided that if during the progress of any such suit, matter or proceeding it shall be made to appear to the chairman that the same

way may be more conveniently prosecuted in some other Civil Bill Court, the chairman may, with the consent of the Lord Chancellor, transfer the same to such other Civil Bill Court, and thereupon the suit, matter, or proceeding shall proceed in such other Civil Bill Court.

Explanatory Note

Section 40 of the County Officers and Courts (Ireland) Act 1877. 40&41 Vic. c. 56.

Section 40 repealed in part, section 40(b) repealed by SLR 1883, section 40(c) repealed by Succession Act 1965.

Section 40 sets out the types of proceedings to be instituted in the Civil Bill Court. These include proceedings relating to the sale, redemption or partition of any land; proceedings in partnership cases in the jurisdiction of the civil bill court where the partnership business was carried on; proceedings relating to infants within the jurisdiction of the Civil Bill Court where the infant lives.

The origins of the Civil Bill can be traced from a 1703 Act entitled “An Act for the Recovery of Small Debts in a Summary Way before the Judges of the Assize.”¹ The summary way was stated by “an English bill, paper petition in English”, but in popular usage this was shortened to the description of “civil bill”.² The term “civil bill” was used 2 Geo. I, c. 11(Ir.) (1715) sections 8 and 11. This Bill was entitled “for the reviving and amending an Act, entitled “An Act for Recovery of Small Debts in a summary Way before the Judges of Assize.” The 1715 Act repealed the 1703 Act, and in turn the Civil Bill Act 1851 14&15 Vic. c. 57, repealed most of the 1715 Act. All that remains of the 1715 Act are sections 16 and 17 which relate to the amount of costs in actions of trespass and actions for battery and actions for assault and slander where damages are under 40s.

According to Greer “Three steps only are required to validate the line of descent [of the civil bill]. In 1796, the jurisdiction given by the Act of 1703 (as amended) was largely transferred from the Judges of the Assize to the newly created Assistant Barristers at Quarter Sessions.”³

¹ 2 Anne c.18 (Ir)

² The earliest official use of this term appears to be in the House of Commons Journals for 5 September 1695, see 2 H.c. Jo (Ir) 1662-1698, p.507.

³ 36 Geo. III c.25 (Ir) (1795-6). This Act was entitled “An Act for the Better and more Convenient Administration of Justice and for the Recovery of Small Debts in a summary Way at the Sessions of the Peace of the Several Counties

In 1877, the Assistant Barristers, when hearing and determining civil cases, were translated into County Court Judges.⁴ And when in 1920 partition of the island led to separate legal systems, the civil bill remained the basis of practice and procedure both in the county courts of Northern Ireland and in the circuit courts of the Republic.”⁵

at large within the Kingdom, and for the continuing and amending an act entitled “An Act for the Better Execution of the Law and Preservation of the Peace for the Counties at Large”. The 1795-6 Act was repealed in its entirety by the Civil Bill Act 1851.

⁴ County Officers and Courts (Ireland) Act 1877, 40&41 Vic. C. 56, section 8.

⁵ Greer “The Development of a civil bill procedure in Ireland” in ed McEldowney and O’Higgins, *Common Law Tradition: Essays in Legal Tradition*, (Irish Academic Press 1990) at 30.

Jurisdiction of Circuit Court in applications for new on-licences

37.- (1) In this section “on-licence” has the same meaning as in the Licensing Acts 1833 to 1960.

(2) The Circuit Court shall have jurisdiction in all cases of applications for new on-licences.

(3) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge of the circuit in which the premises in respect of which the new on-licence is sought are situate.

(4) Where the Circuit Court grants under this section a new on-licence, then, notwithstanding anything contained in any enactment, the licence shall not require to be confirmed at any subsequent sitting of the Circuit Court.

Explanatory Note

Section 24 of the Supplemental Provision Act 1961.

Jurisdiction of Circuit Court in certain remitted actions

38.- Where an action claiming unliquidated damages is remitted or transferred by the High Court to the Circuit Court, the Circuit Court shall have jurisdiction to award damages in excess of [£30,000][€38,092.14].

Explanatory Note

Section 20 of the 1936 Act.

Criminal Jurisdiction

Jurisdiction of Circuit Court in indictable offences

39.- (1) Subject to subsection (2) of this section, the Circuit Court shall have and may exercise every jurisdiction as respects indictable offences for the time being vested in the Central Criminal Court and every person lawfully brought before the Circuit Court in exercise of such jurisdiction may be indicted before and tried and, if convicted, sentenced by the Circuit Court accordingly.

(2) The jurisdiction conferred on the Circuit Court by subsection (1) of this section shall not extend to

- (a) treason, an offence under section 2 or 3 of the *Treason Act 1939*,
- (b) an offence under section 6, 7 or 8 of the *Offences Against the State Act 1939*,
- (c) murder, attempt to murder, conspiracy to murder, or piracy, including an offence by an accessory before or after the fact,
- (d) Offences under the *Geneva Conventions Act 1962*,
- (e) Offences under the *Genocide Act 1973* : a person charged with an offence of genocide or any attempt, conspiracy or incitement to commit genocide shall be tried by the Central Criminal Court;
- (f) Offences under the *Criminal Justice (United Nations Convention against Torture) Act 2000*;
- (g) Offence of murder under section 2 of the *Criminal Justice (Safety of United Nations Workers) Act 2000*
- (h) Offences under section 6 and 7 of the *Competition Act 2002*

(3) The jurisdiction vested in the Circuit Court by subsection (1) of this section shall be exercised 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.

(4) In section 6 of the *Courts of Justice Act 1926*, as applied by section 48 of this Act, and in subsection (1) of section 14 of the *Wireless Telegraphy Act 1926*, the references to section 53 of the Act of 1924 shall be construed as references to subsection (3) of this section.

Explanatory Note

Section 25 of the Supplemental Provisions Act 1961. Consequential amendments: Section 25(2) was extended by section 2(4) of the Genocide Act 1973 which provides that a person charged with an offence of genocide or any attempt, conspiracy or incitement to commit genocide shall be tried by the Central Criminal Court. In addition, section 10 of the Criminal Law (Rape) (Amendment) Act 1990 provides as follows: A person indicted for 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 shall be tried by the Central Criminal Court. Section 25(2) also extended to offences pursuant to the Criminal Justice (United Nations Convention against Torture) Act 2000, Offences under the Criminal Justice (United Nations Convention against Torture) Act 2000; the offence of murder under section 2 of the Criminal Justice (Safety of United Nations Workers) Act 2000 and offences under section 6 and 7 of the Competition Act 2002.

See also Fennelly Group Report (2003)

Section 27 to apply to indictments in Circuit Court

40.- Section 27 of the *Court of Justice Act 1924* shall apply to indictments in the Circuit Court.

Explanatory Note

Section 64 of the 1924 Act.

Jurisdiction of Circuit Court to remand accused to alternative circuit and to hear applications

41.- (1) Notwithstanding any other enactment, where the accused has been sent forward for trial in accordance with this Part to the Circuit Court, it may remand the accused in custody to appear at a sitting of the Circuit Court (“alternative court”) in the circuit of the Circuit Court in which is situated the prison or place of detention where the accused is to be held in custody.

(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 another alternative court,
- (b) a reference in section 4B(3) or (5), 4E or 4P to the trial court shall be read as a reference to the alternative court to which the accused is remanded, and
- (c) the alternative court shall have the same power to correct any defect in the charge against the accused as the trial court under section 4O.

(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 of the Circuit Court-

- (a) in which the offence was committed, or
- (b) in which the accused was arrested or resides.

Explanatory Note

Section 4Q of the Criminal Procedure Act 1967, as inserted by section 9 of the Criminal Justice Act 1999.

Chapter 6

The District Court

General

Jurisdiction transferred to the District Court

42.- There shall be transferred to the District Court all jurisdiction which at the commencement of this Act was vested in or capable of being exercised by District [Judges] under the provisions of the *District Judges (Temporary Provisions) Act 1923* (No. 6 of 1923), or under any Act now in force, and also all jurisdiction which at the commencement of this Act was vested in or capable of being exercised by the Divisional Justice of the Police District of Dublin Metropolis, and also all jurisdiction which at the commencement of this Act was vested in or capable of being exercised by the Court of Conscience, or by a person acting as Justice of the Peace under the *Towns Improvement (Ireland) Act 1854* [. . .]

Explanatory Note

Section 78 of the 1924 Act. Deletion by section 3 and Schedule 1 of the Supplemental Provisions Act 1961.

Civil Jurisdiction

Jurisdiction of the District Court

43.- (1) The District Court shall have and exercise all powers, jurisdictions, and authorities which immediately before the 6th day of December 1922, were vested by statute or otherwise in Justices or a Justice of the Peace sitting at Petty Sessions and also (by way of addition and not of exception) the following jurisdictions:—

(a) In Civil Cases—

- (i) in contract, breach of contract, tort (except slander, libel, seduction, slander of title, malicious prosecution and false imprisonment) and claims for damages unconnected with contract, where the claim does not exceed £5,000 [~~€~~3,48.69];

Provided also that the decision of a [judge] of the District Court in a case in which a question of title to land is in issue shall not operate as an estoppel in or bar to a suit in any court in relation to such land;

- (ii) in ejectment for non-payment of rent or overholding in any class of tenancy where the rent does not exceed such sum as amounts or might amount to £5,000 [~~€~~3,48.69] per annum;
- (i) in proceedings at the suit of the State or any State Authority (within the meaning of the *Courts (Supplemental Provisions) Act 1961*) or any officer thereof to recover any sum not exceeding £5,000 [~~€~~3,48.69] due to or recoverable by or on behalf of the State, whether by way of penalty, debt, or otherwise, and notwithstanding any enactment now in force requiring such sum to be sued for in the High Court or other superior court.
- (ii) in proceedings at the suit of the State or any Minister or Government Department or any officer thereof to recover any sum not exceeding £25 [~~€~~1.74] due to or recoverable by the State, whether by way of penalty, debt or otherwise, and notwithstanding any enactment now in force

requiring such sum to be sued for in the High Court or other superior court.

- (iii) in proceedings at the suit of the council of a county, a county or other borough, or an urban district, or the commissioners of a town or a board of conservators of fisheries or a drainage board constituted under the Drainage and Improvement of *Lands (Ireland) Acts 1863 to 1892*, for the recovery of any sum not exceeding [£5,000] in respect of rates due to such council, commissioners or board.

Provided that a judge of the District Court shall have jurisdiction to hear and determine any proceedings of the kind mentioned in this paragraph, notwithstanding any monetary limit that may for the time being apply under this section where the necessary parties to the proceedings sign, either before or at any time during the hearing, the form of consent prescribed by rules made under section 91 of this Act.]

- (b) [...]
- (c) In granting certificates for spirit and other licences—all licensing jurisdiction heretofore exercised 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 except the power of granting new licences conferred on the Circuit Court by section 50 of this Act.

Explanatory Note

Section 77 of the 1924 Act. Clause (iv) paragraph A inserted by section 52 1936 Act, monetary amount in (iv) substituted by section 4(a) and (b) of 1991 Act. Paragraphs (i) to (iii) substituted and provision at the end of paragraph A inserted by section 4(c) of 1991 Act.

Jurisdiction of the District Court

44.- (1) There shall be vested in and transferred to the District Court—

- (a) all jurisdiction which, by virtue of sections 77 and 78 of the Act of 1924, was, immediately before the operative date, vested in or capable of being exercised by the existing District Court,
- (b) all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing District Court.

(2) (a) In this subsection—

the Act of 1890” means the *Public Health Acts Amendment Act 1890*, as applied to Ireland by subsection (9) of section 12 of that Act and as amended by section 14 of the Act of 1935;

“the Act of 1935” means the *Public Dance Halls Act 1935*.

- (b) Section 51 (which relates to music and dancing licences) of the Act of 1890 shall have effect as if for the references therein to licensing justices there were substituted references to the District Court.
- (c) The jurisdiction vested in the District Court by this subsection shall be exercised by the [judge] of the District Court for the time being assigned to the district where there is situate the house, room, garden or other place in respect of which the licence under section 51 of the Act of 1890 is sought.
- (d) Subsections (2) and (3) of section 2 and section 9 of the Act of 1935 shall have effect as if the references therein to a public dancing licence included references to a licence under paragraph 2 of section 51 of the Act of 1890.

(3) The District Court shall have jurisdiction to hear and determine an action for wrongful detention (including jurisdiction to make an order for the return of the goods claimed) where the value of the goods claimed does not exceed [£5,000] [~~€~~3,48.68].

- (4) (a) The District Court shall have jurisdiction to hear and determine any action commenced after the commencement of this Act which is founded on a credit-sale agreement (within the meaning of the Hire-Purchase Acts 1946 and 1960) where the amount of the claim does not exceed [£5,000] [~~€~~3,348.68].

Explanatory Note

Section 33 of the Supplemental Provisions Act 1961:

Additional jurisdiction of the District Court

45.- In addition to the jurisdiction now vested in the District Court by the Principal Act as amended by this Act, the District Court shall have and may exercise concurrently with the Circuit Court the jurisdiction under section 82 of the *Civil Bill Courts (Ireland) Act 1851*, formerly vested in Recorders and County Court Judges and now vested in the Circuit Court. **That is to say, actions concerning ejectment against tenants at will or permissive occupants. The owner of land is permitted to proceed by way of civil bill ejectment process for the recovery of possession.**

Explanatory Note

Section 17 of the 1928 Act. Part in bold inserted by Commission in the interests of completeness. The Commission determined that section 82 of the 1851 Act is too procedural in nature to be placed in the Working Draft.

See also section 82 of the Civil Bill Courts (Ireland) Act 1851.

“And whereas Owners of Land in Ireland are often Sufferers by Caretakers, Servants, Herdsman and other Persons holding over Possessions of Lands and Premises which they do not hold under any Lease or Parole Demise, but strictly at Will or by Sufferance, or merely by Permission : Be it enacted, That if any Person who shall have been heretofore, or shall hereafter be, by the Owner of any Lands, Tenements or Hereditaments, or by his Agents, Receiver or Bailiff, or put or let into occupation or possession thereof by Permission, or as Servant or Caretaker, or as Tenant strictly at Will or by Sufferance, shall refuse or omit to quit and deliver up Possession of the said Premises, on Demand made by the Owner thereof, or his known Agent or Bailiff, it shall and may be lawful for such Owner, his Heirs, Executors, Administrators or Assigns (after such Demand and Refusal or Omission to deliver up same,) to proceed by Civil Bill Ejectment Process for the Recovery of the Possession thereof against such Person or Persons so in occupation or possession by, through, or under such Person or Persons; and it shall and may be lawful for the respective Assistant Barrister, Chairman, or Recorder to hear and determine such Civil Bill in the same or like Manner as he is hereby empowered in Cases of Ejectment against over-holding Tenants and to make a Decree or Dismiss thereon; Provided always, that nothing in this Provision contained shall be deemed to affect or prejudice any Right or Remedy which any such Owner of Lands, his Heirs, Executors, Administrators or Assigns, might have used or

exercised in such Case for taking or obtaining the actual Possession of such Premises, if this Act had not been passed.

Jurisdiction of Circuit Court and District Court under Family Law (Maintenance of Spouses and Children) Act 1976

46.- Notwithstanding anything contained in section 52 of the *Courts of Justice Act 1924*, the jurisdiction conferred on the Circuit Court by section 8 of the *Family Law (Maintenance of Spouses and Children) Act 1976* may be exercised by the judge of the circuit where either of the parties to the proceedings ordinarily resides or carries on his profession, business or occupation and proceedings under the 1976 Act may be brought, heard and determined 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.

Explanatory Note

Sections 2 and 23(3) of the Family Law (Maintenance of Spouses and Children) Act 1976

Note section 52 of the 1924 Act was repealed by section 3 and Schedule 1 of the Supplemental Provisions Act 1961.

Exercise of jurisdiction in desertion cases

47.- Notwithstanding anything contained in section 79 of the Principal Act 1924, proceedings by a married woman under section 1 of the Married Women (Maintenance in Case of Desertion) Act 1886 may be brought either before a judge for the time being assigned to the district where her husband ordinarily resides or carries on business or where she ordinarily resides.

Explanatory Note

Section 31 of the Courts Act 1953 - but note that the Act of 1886 was repealed by section 2 and section 30(1) of the Family Law (Maintenance of Spouses and Children) Act 1976.

Order under Debtor's Act (Ireland) 1872

48.- A [Judge] of the District Court shall have power to make such orders under section 6 of the *Debtor's Act (Ireland) 1872*, and any Act amending the same for the enforcement of any decree of the District Court as may seem just.

Explanatory Note

Section 81 of the 1924 Act.

Criminal Jurisdiction

Jurisdiction of District Court and place of remand

49.- (1) Notwithstanding section 27(3) of the *Courts of Justice Act 1953*, the court before which a person first appears charged with a particular offence or a judge exercising jurisdiction under section 79(2) of the Act of 1924 may remand that person in custody to appear at a sitting of the District Court ('alternative court') in the District Court District in which the prison or place of detention where he or she is to be held in custody is situated or a District Court District adjoining the first mentioned District Court District.

(2) The alternative court may from time to time, as occasion requires, further remand a person referred to in subsection (1) of section 79 in custody or on bail to that court or to 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 Court District-

- (a) In which the offence to which the trial relates was committed, or
- (b) In which the person resides or was arrested.

Explanatory Note

Section 5 of the Criminal Justice (Miscellaneous Provisions) Act 1997.

Subsection (3) was amended by section 21 of the Criminal Justice Act 1999.

Exercise of jurisdiction by District Court

Exercise by the [Judges] severally of jurisdiction

50.- (1) Provided that the jurisdictions by this Act vested in and transferred to the District Court shall be exercised by the [Judges] severally as follows:—

- (a) In civil cases, by a [Judge] for the time being assigned to the District wherein the defendant or one of the defendants ordinarily resides or carries on any profession, business or occupation;
- (b) In criminal cases, by a [Judge] for the time being assigned to the District wherein the crime has been committed or the accused has been arrested or resides;
- (c) In licensing cases, by a [Judge] for the time being assigned to the District wherein the licensed premises are situated.

(2) [On the coming into operation of section 41 of the *Courts and Courts Officers Act 1995*, where a judge for the time being assigned to a District Court District is unavailable, any judge of the District Court may exercise jurisdiction, subject to subsection (3) of this section, in respect of such District in a criminal case in any place in the State.

(2A) a judge of the District Court who exercises jurisdiction under subsection (2) of this section may hold a sitting of the District Court in the District Court District at a place or time not standing appointed for the time being for the hearing of cases of summary jurisdiction

(3) A judge of the District Court exercising jurisdiction under subsection (2) shall not have jurisdiction to conduct a preliminary examination under the provisions of the *Criminal Procedure Act 1967*, unless that jurisdiction is exercised in the District Court District —

- (a) in which the offence was committed, or
- (b) in which the accused resides or was arrested.

(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 crime has been committed or where the accused resides or was arrested, the judge may, on his or her own motion or on the

application of the accused or the prosecution, transfer the case to the District Court District where the offence was committed or where the accused resides or was arrested.

(5) On the coming into operation of section 41 of the *Courts and Court Officers Act 1995*, notwithstanding anything contained in section 16 (2) of the *Courts Act 1981*, 173 any judge of the District Court may make an order under the *Guardianship of Infants Act 1964*, where he or she is satisfied that the circumstances require that such an order be made as a matter of urgency.]

(6) Notwithstanding anything contained in section 79 of the Principal Act 1924—

- (a) any civil proceeding founded on contract which is within the jurisdiction of the District Court may be brought, heard, and determined (at the election of the plaintiff) either before and by the [judge] mentioned in that behalf in the said section 79 or before and by the [judge] for the time being assigned to the district wherein the contract is alleged to have been made, and
- (b) any civil proceeding founded on tort which is within the jurisdiction of the District Court may be brought, heard, and determined (at the election of the plaintiff) either before and by the [judge] mentioned in that behalf in the said section 79 or before and by the [judge] for the time being assigned to the district wherein the tort is alleged to have been committed, and
- (c) any civil proceeding in ejectment which is within the jurisdiction of the District Court may be brought, heard, and determined (at the election of the plaintiff) either before and by the [judge] mentioned in that behalf of the said section 79 or before and by the [judge] for the time being assigned to the district wherein the lands the subject of such proceedings are situate.

(7) Subsection 6(a) of this section shall not apply to an action

- (i) in which the defendant or one of the defendants ordinarily resides or carries on any profession, business or occupation in the State or
- (ii) to which paragraph (a) of subsection 33(4) relates.

Explanatory Note

Section 79 of the 1924 Act as amended. Consequential amendments. Subsections (2), (3), (4) and (5) inserted by section 41 of 1995 Act. Subsection (2) amended and (2A) inserted by section 24 of 2002 Act.

This section applies to offences committed on ships and aircraft: Section 14(1) of the Wireless Telegraphy Act 1926

Section 309(a) of the Fisheries (Consolidation) Act 1959 shall not be construed as affecting this section: Section 309(a) of the Fisheries (Consolidation) Act 1959

Where an offence has been, or is alleged to have been committed in or upon any waters forming the boundary between two or more districts established for the purposes of the District Court, then notwithstanding section 79, proceedings in respect of the offence may be brought, heard and determined before and by a district judge for the time being assigned to any one of the said districts and such offences may be alleged and stated in an information or summons to have been committed in the district where it is proposed to bring the proceedings.

Section 309(3) of Fisheries Consolidation Act 1959. See also section 15(2) of the Fisheries (Amendment) Act 1978 which amends section 309 (2) of the Fisheries Consolidation Act 1959.

Subsection (6) Section 53 of 1936. Section 53(a) shall not apply to an action to which section 20(1) of the Hire Purchase Act 1946 relates: Section 20(2) of the Hire-Purchase Act 1946

Section 19(3) of the Hire-Purchase (Amendment) Act 1960

Subsection (7): Section 33(4)(b) of the Courts (Supplemental Provisions) Act 1961.

Exercise of jurisdiction by District Court judges in criminal cases

- 51.-** (1) Where, in respect of a crime committed in the State-
- (a) The accused does not reside in the State,
 - (b) he or she was not arrested for and charged with the crime in the State, and
 - (c) either-
 - (i) the crime was committed in more than one district court district, or
 - (ii) it is known that it was committed in one of not more than five district court districts, but the particular district concerned is not known,

then for the purposes of section 79 of this Act, the crime shall be deemed to have been committed in each of the districts concerned and a judge assigned to any of the districts concerned may deal with the case.

(2) Where the circumstances of a crime committed in the State fall within paragraphs (a) and (b) but not (c) of subsection (1) of this section and the district court district in which the crime was committed is not known, then, for the purposes of section 79 of this Act, the crime shall be 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 crime concerned.

(4) Where a judge for the time being assigned to a district court district exercises jurisdiction in a criminal case by virtue of this section, the judge or any other judge assigned to the district shall have jurisdiction in the case until its conclusion in the District Court notwithstanding that it is later established that, but for this subsection, he or she would not have had jurisdiction in the case.

(5) A judge for the time being assigned to a district who exercises jurisdiction in a criminal case by virtue of this section may deal with the case in any court area within his or her district.

Explanatory Note

Section 178 of the Criminal Justice Act 2006, which inserted a new section 79A into the 1924 Act.

Venue in relation to certain jurisdictions of Circuit Court and District Court

52.- (1) The jurisdiction under the *Illegitimate Children (Affiliation Orders) Act 1930*, the *Guardianship of Infants Act 1964*, the *Family Law (Maintenance Spouses and Children) Act 1976*, and section 5 of this Act conferred on the Circuit Court shall be exercised by the judge of the circuit where any party to the proceedings ordinarily resides or carries on any profession, business or occupation.

(2) Notwithstanding anything contained in section 79 of the *Courts of Justice Act 1924*, and, as respects proceedings under the *Illegitimate Children (Affiliation Orders) Act 1930*, section 2 of the latter Act, proceedings under the latter Act, the *Guardianship of Infants Act 1964*, and the *Family Law (Maintenance of Spouses and Children) Act 1976*, may be brought, heard and determined before and by a [judge] of the District Court for the time being assigned to the District Court district where any party to the proceedings ordinarily resides or carries on any profession, business or occupation.

Explanatory Note

Section 16 of the Courts Act 1981. Note that the Illegitimate Children (Affiliation Orders) Act 1930 was repealed by section 25 of the Status of Children Act 1987.

PART 4
CIRCUITS AND DISTRICTS OF COURTS

Chapter 1

The High Court Circuit

High Court Circuits

53.- [. . .][. . .] (1) The [Courts Service] may by order, made after consultation with the President of the High Court, either—

- (a) alter the number of High Court Circuits and make such redistribution of the several counties and county boroughs (other than the county of Dublin and the county borough of Dublin) amongst the several High Court Circuits as [it] shall think proper having regard to such alteration of the number of such circuits, or
 - (aa) alter the composition of a High Court Circuit by adding to or removing from the Circuit a county or counties, a county borough or county boroughs or a county or counties and a county borough or county boroughs, or]
- (b) without altering the number of the High Court Circuits, make such variations as [it] thinks proper of the distribution of the several counties and county boroughs (other than the county of Dublin and the county borough of Dublin) amongst such circuits.

(2) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House shall, within the next twenty-one days on which such House sits after such order is laid before it, pass a resolution annulling such order, such order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

Section 33 of the 1936 Act. Paragraph (aa) inserted by section 1 of the Courts Act 1986.

High Court Circuits

54.- The grouping of the several counties and county boroughs (other than the county of Dublin and the county borough of Dublin) in the State into High Court Circuits under subsection (1) (repealed by the Act of 1961) of section 33 of the Act of 1936 shall, subject to any order which may be made under subsection (2) of the said section 33, as applied by section 48 of the Act of 1961, continue to have effect, and references in any enactment to High Court Circuits shall be construed accordingly.

Explanatory Note

Section 13 of the Supplemental Provisions Act 1961. Note that section 25 of the Local Government (Dublin) Act 1993 provides that on and from the establishment day (1 January 1994 — see SI No. 401 of 1993) references to the county of Dublin in section 13 of the Courts (Supplemental Provisions) Act 1961 shall be construed as references to the counties of South Dublin, Fingal and Dun Laoghaire-Rathdown.

Chapter 2

The Circuit Court

Powers to alter divisions

55.- It shall and may be lawful for the [Government] to alter the Divisions and Districts for the holding of [Circuits] now existing or hereafter to exist and to divide the several Counties or any of them or any Riding now existing or hereafter to exist, and to divide the several Counties or any of them, or any Riding or Division of a County, including all Counties of Cities and Counties of Towns, Borough, Towns and Places, into as many Divisions or Districts as shall be thought proper or expedient for the Purpose of more conveniently hearing and determining Causes by Civil Bill, and, and of transacting all such criminal or all such other Business as may be cognizable or determinable at any General or Quarter Sessions of the Peace [Circuit Court], and to appoint One or more convenient Town or Place, Towns or Places, in any such Division or District, in which a Civil Bill Court [Circuit Court], and a Court for transaction such criminal and other Business as aforesaid, or a Civil Bill Court [Circuit Court] only for hearing and determining Causes by Civil Bill, shall be held and from time to time to alter any such Division or District, or any town or place, towns or places, within such division, or to discontinue any such town or place, as to the said [Government] shall deem fit; and every such Sessions and Adjournment thereof, shall be good and effectual for the Administration of criminal business and Civil Bill Causes , and doing all other Business that may by Law be done at the General Quarter Sessions of the Peace [Circuit Court] or for hearing and determining Causes by Civil Bill only, as the Case may be; and in case of any Town or Place being so discontinued as aforesaid the same shall thereupon cease to be a Town or Place for the holding of Sessions therein for any Purpose whatsoever.

Explanatory Note

Section 31 of The Civil Bill Courts (Ireland) Act 1851. The Civil Bill Courts (Ireland) (Adaptation) (No. 1) and (No. 2) Orders 1992 state that “Section 31 of the Civil Bills Courts (Ireland) Act 1851 shall have effect as if for the reference to the Lord Lieutenant or other Chief Governor of Ireland for the time being acting with the consent and advice of the Privy Council and the reference to the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being acting with the advice of the Privy Council there were substituted for references to the Government. These two adaptation orders enable the

*Government to exercise functions formerly exercisable by the Lord
Lieutenant under section 31 of the 1851 Act*

Circuits and the Circuit Court

56.- (1) The circuits created under section 16 (repealed by the Act of 1961) of the Act of 1953 shall be the circuits for the purposes of the Circuit Court.

(2) [...]

(3) [...]

Explanatory Note

Section 20 of the Supplemental Provisions Act 1961. Note: It would not disturb the existing arrangements to re-state the basis upon which the division of the State into circuits should take place - in the interest of clarity. Equally, there is a strong argument for the rules governing the choice of circuit to be set out in long form in this Act. The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration on this issue.

Subsections (2) and (3) repealed by section 4 of the Courts Act 1977.

Assignment of judges of the Circuit Court to circuits

57.- (1) (a) There shall be ten judges of the Circuit Court permanently assigned to the Dublin Circuit.

(aa) There shall be three judges of the Circuit Court permanently assigned to the Cork Circuit

(b) There shall be one judge of the Circuit Court permanently assigned to each other circuit.

(2) Where a judge of the Circuit Court is appointed, the Government shall permanently assign him or her—

(a) to the Dublin Circuit if at the date of the appointment there are less than ten judges permanently assigned to that circuit, or

(b) to the Cork Circuit if at the date of the appointment there are less than three judges permanently assigned to that circuit, or

(c) to any other circuit to which at the date of appointment there is no judge permanently assigned.]

(3) Where a judge of the Circuit Court is appointed and cannot be permanently assigned to a particular circuit on appointment, such judge may, at any time thereafter, be permanently assigned to any circuit to fill a vacancy for a judge permanently assigned to that circuit.

(4) Any judge of the Circuit Court who is permanently assigned to a particular circuit may at any time, if he so consents but not otherwise, be transferred by the Government to another circuit to fill a vacancy for a judge permanently assigned to that other circuit and shall upon such transfer become and be permanently assigned to that other circuit in lieu of the first-mentioned circuit.

(5) Where a judge of the Circuit Court is permanently assigned to a circuit, the Government, at his request, may, if they so think fit, terminate his permanent assignment to that circuit and the judge may at any time thereafter be permanently assigned by the Government to any circuit to fill a vacancy for a judge permanently assigned to that circuit.

(6) A judge of the Circuit Court who is not for the time being permanently assigned to a particular circuit may from time to time be temporarily assigned to any circuit by the President of the Circuit Court.

(7) Where a judge of the Circuit Court is temporarily assigned, under subsection (6) of this section, to a circuit, such judge shall, while so temporarily assigned, have, in relation to such circuit and concurrently with any judge permanently assigned thereto and any judge who is temporarily assigned, under section 10 of the *Courts of Justice Act 1947* as applied by section 48 of the *Courts (Supplemental Provisions) Act 1961*, to such circuit, all the privileges, powers and duties for the time being conferred or imposed by law on a judge permanently assigned to such circuit.

Explanatory Note

Section 2 of the Courts Act 1977. Sub sections (1)(a) and (2) substituted and subsection (1)(aa) inserted by section 36 of 1995 Act.

Duties and powers of Circuit Court Judges temporarily assigned to circuits

58.- (1) Where a Circuit Judge is temporarily assigned under section 10 of this Act, to a circuit then, such Circuit Judge shall, while so temporarily assigned, have, in relation to such circuit and concurrently with the Circuit Judge permanently assigned thereto and any other Circuit Judge who is so temporarily assigned to such circuit, all the privileges, powers and duties for the time being conferred or imposed by law on a Circuit Judge permanently assigned to such circuit.

(2) In this section the expression “Circuit Judge” includes a person appointed under section 14 of the Act of 1936 to act as a Judge of the Circuit Court.

Explanatory Note

Section 11 of the 1947 Act.

Alteration of circuits

59.- (1) The Government may from time to time, if they so think fit, by order—

- (a) alter the composition of a circuit (other than the Dublin Circuit and the Cork Circuit) by adding to or removing from the circuit a county or counties or a county borough or county boroughs or a county or counties and a county borough or county boroughs, and
- (b) where appropriate, attach to the circuit a name by which the circuit shall be known in substitution for its existing name.

(2) Before making an order under this section the Government, acting through the Minister, shall consult with the President of the Circuit Court and the judges of the Circuit Court (if any) permanently assigned to the circuits to which the order will relate.

- (3) (a) 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 before the commencement of the order and is not completed before such commencement.
- (b) For the purposes of this subsection, business transacted in the Circuit Court shall be regarded as being initiated on the day on which the civil bill or other originating document relating to it is issued.

Explanatory Note

Section 3 of the Courts Act 1964

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this statutory provision be amended to make the President of the Circuit Court responsible for this task.

Chapter 3

District Court

Definitions

60.- (1) In this Schedule –

“district” means a district court district;

“district justice” means a justice of the District Court, but does not include a temporary district justice;

“temporary district justice” means a person appointed under section 51 of the Act of 1936, as applied by section 48 of this Act to act as a district justice.

Explanatory Note

Section 1 of the Sixth Schedule of the Supplemental Provisions Act 1961.

Permanent assignment of district court judges to districts

- 61.-** (1) (a) Where a person is appointed a district [judge], then, subject to clause (b) of this subparagraph, the Government, if they think fit, may, upon such appointment, assign him permanently to a particular district.
- (b) Where at the time of the appointment of a person to be a [judge] of the District Court, there are [20] [judges] of the District Court not permanently assigned to particular districts, the Government shall assign that person permanently to a particular district].
- (2) Where a district [judge] is not upon appointment permanently assigned to a particular district, the Government may at any time assign him permanently to a particular district.
- (3) A district [judge] who is permanently assigned to a particular district may, with his consent, be transferred by the Minister to another district and, if he is so transferred, he shall upon such transfer become and be permanently assigned to such other district in lieu of being permanently assigned to such first-mentioned district.
- (4) (a) Where a district [judge] is permanently assigned to a particular district, the Government, at his request, may, if they think fit, terminate his permanent assignment to that district,
- (b) Where the permanent assignment of a district [judge] is terminated under clause (a) of this subparagraph, the Government may at any time thereafter assign him permanently to a particular district.

Explanatory Note

Section 2 of the Sixth Schedule of the Supplemental Provisions Act 1961. Clause (b) of section 2(1) substituted by section 27 of 2002 Act and amended by section 5 of the 2007 Act.

The Dublin Metropolitan area and the Dublin District

62.- (1) In this section—

the word “enactment” means an enactment contained in a British Statute or in an Act of the Oireachtas.

(2) The Minister for Justice may, if and when he thinks proper, by order declare that as on and from a specified day (in this section referred to as the appointed day) a specified district prescribed under section 68 of the Principal Act or under sub-section (3) of section 47 of the *Court Officers Act 1926* (No. 27 of 1926) shall be styled and known as the Dublin Metropolitan District.

(3) If and when the [Courts Service] makes such order as is authorised by the next preceding sub-section of this section, the following provisions shall have effect as on and from the appointed day, that is to say:—

- (a) the said [Courts Service] may, at any time or times, by order transfer the title “Dublin Metropolitan District” to any other district prescribed under the said section 68 or the said section 47 differing wholly or partially from the district to which such title was previously attached;
- (b) so much of any Act of the Oireachtas as requires, expressly or by implication, that one of the districts so prescribed as aforesaid shall consist of or include or be delimited by reference to the Dublin Metropolitan area shall cease to have effect;
- (c) [. . .]
- (d) every enactment which shall, on the day before the appointed day, be in force in and apply to the Dublin Metropolitan Area and in and to no other part of [the State] shall, on and after the appointed day, cease to apply to the Dublin Metropolitan Area and in lieu thereof shall be in force in and apply to the Dublin Metropolitan District, and every reference in any such enactment to the Police District of Dublin Metropolis or to the Dublin Metropolitan Area shall be construed as a reference to the Dublin Metropolitan District;
- (e) every enactment which shall, on the day before the appointed day, be in force in and apply to the whole of

[the State] except the Dublin Metropolitan Area shall, on and after the appointed day, be in force in and apply to the whole of [the State] except the Dublin Metropolitan District, and every reference in any such enactment to the Police District of Dublin Metropolis or to the Dublin Metropolitan Area shall be construed as a reference to the Dublin Metropolitan District;

- (f) nothing in either of the two next preceding paragraphs of this subsection shall operate to keep in force any enactment or any provision in any enactment after the time at which such enactment or provision would have ceased to be in force if this section had not been enacted.

Explanatory Note

Section 64 of the 1936 Act. Subsection (3)(c) repealed by section 3 and Schedule 1 of Supplemental Provisions Act 1961. Section 27 of the Local Government (Dublin) Act 1993 states that area of the Dublin Metropolitan District shall remain unaltered despite the provisions of the Act.

Number of [judges] permanently assigned to districts

63.- The Minister may after consultation with the President of the District Court, determine the number of judges in the District Court to be assigned permanently to the Dublin Metropolitan District or other District Court District and may from time to time, as the Minister thinks fit, after consultation with the said President, alter the number of judges to be so assigned to that District.

Explanatory Note

Section 39 of the Supplemental Provisions Act 1961

Power of [district judge] to deal with urgent cases of summary jurisdiction in any part of his district

64.- (1) Whenever the Minister is of opinion that early trial or disposal by the District Court of summary offences of any specified kind is desirable, he may by order so declare and the provisions of subsections (2) and (3) of this section shall have effect in relation to summary offences of any kind standing so specified in an order under this section.

(2) A [judge] of the District Court in whose district an offence of a kind standing specified in an order under this section is committed—

- (a) shall have jurisdiction to deal with the case in any court area within his district, and
- (b) may hold a sitting of the District Court within his district to deal with the offence at a place or time not standing appointed for the time being for the hearing of cases of summary jurisdiction.

(3) A summons issued in respect of an offence standing specified in an order under this section may direct the appearance of the person named in the summons at any sitting (including a sitting of the kind referred to in subsection (2)(b) of this section) of the District Court within the district court district in which the offence was committed and may be served personally at any time not less than two clear days before the 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 twenty-one 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 thereunder.

Explanatory Note

Section 15 the 1971 Act.

Power to create, vary, abolish districts and areas

65.- (1) It shall be lawful for the [Courts Service] from time to time, as [it] shall consider expedient, by order to do all or any of the following things:—

- (a) vary or abolish any district court district,
 - (b) create any new district court district,
 - (c) vary or abolish any district court area,
 - (d) create any new district court area,
 - (e) vary the class or classes of business for which any district court area is delimited,
 - (f) alter the places or vary the days or hours for the time being appointed for holding the District Court in or for any district court area, **Before exercising the power contained in this section, the Minister [Courts Service] shall consult the President of the District Court.**
 - (g) after consultation with the President of the District Court, appoint one or more convenient places in every district court area created or varied under this section or within one mile boundary of such area in which, and such and so many convenient days and hours at which, the District Court shall be held for the purpose of transacting for such area the business for which the area is delimited,
 - (h) assign a name to or change the name of any district court district or district court area,
 - (i) revoke or amend an order under this section.]
- (2) (a) Whenever the [Courts Service] makes an order under subsection (1) of this section, [it] may make provision for securing the continuation and completion of any business transacted in the District Court which is initiated before the commencement of such order and is not completed before that date.
- (b) For the purposes of this subsection, business transacted in the District Court shall be regarded as being initiated on

the day on which the summons, warrant, process or other originating document relating to it is issued.

(3) The abolition of a district court district under subsection (1) of this section shall operate to terminate any assignment then in force of a [district judge] to that district and such [district judge] may be permanently assigned at any time to another district court district by the Government.

(4) References in section 64 of the Act of 1936 to section 47 of the Act of 1926 shall be construed as including references to subsection (1) of this section and the *District Court Districts (Dublin) Order* 1945 (S.R. & O. No. 279 of 1945), shall have effect accordingly.

Explanatory Note

Section 26 of the 1953 Act Paragraphs (g), (h) and (i) inserted by section 16 of 1971 Act. Section 43 of the Supplemental Provisions Act 1961 states that before the Minister [now transferred to Courts Service by schedule 2 of the 1998 Act] exercises his/her powers under (1)(f), he/she must consult the President of the District Court. (now contained in the section by the Commission in the interests of clarity).

Temporary assignment of districts to district [judges] and temporary district [judges]

66.- (1) A judge of the District Court who is permanently assigned to a particular district may, with his or her consent, from time to time be temporarily assigned by the President of the District Court to another district, but such temporary assignment shall be without prejudice to the exercise and performance by him of the privileges, powers and duties for the time being conferred or imposed on him by law in relation to the district to which he or she is permanently assigned.

(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) A temporary judge of the District Court may from time to time be temporarily assigned by the President of the District Court to any district.]

(4) Where a person is temporarily assigned to a district under subparagraph (1), (2) or (3) of this paragraph—

(a) in case there is for the time being a district [judge] permanently assigned to that district—he shall, in relation to that district have, while so temporarily assigned, concurrently with that district [judge], all the privileges, powers and duties for the time being conferred or imposed by law on that district [judge],

(b) in any other case—he shall, in relation to that district, have, while so temporarily assigned, all such privileges, powers and duties as would for the time being be conferred or imposed by law if he were a district [judge] permanently assigned to that district.

(5) The Minister may at any time terminate a temporary assignment made under this paragraph.

Explanatory Note

Section 3 of the Sixth Schedule of the Supplemental Provisions Act 1961. Paragraphs (1), (2) and (3) substituted by section 37 of 1995 Act.

District [judge] acting in certain cases for another district [judge] who is permanently assigned to a district

67.- (1) Whenever it appears to the President of the District Court, on the representation of a [judge] of the District Court permanently assigned to a particular district, that such [judge] cannot properly deal with any matter before him by reason of the fact that he has a personal interest therein or such personal knowledge of the facts or of the parties as might prejudice the trial of that matter, the President of the District Court may nominate another [judge] of the District Court, who so consents to hear and determine that matter in that district and, if the President does so, then that matter may be heard and determined accordingly.

(2) In the case of illness or absence of the district [judge] permanently assigned to a district (in this subparagraph referred to as the first [judge]), another district [judge] may, with the consent of the Minister (in addition, if he is permanently assigned to another district, to exercising and performing the privileges, powers and duties conferred by law in relation to the district to which he is permanently assigned) exercise and perform during such 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.

(3) Where a district [judge] permanently assigned to a particular district (in this subparagraph referred to as the first [judge]) requests another district [judge] (in this subparagraph referred to as the second [judge]) to act for him during a specified period (not exceeding seven days) the second [judge] may (in addition, if he is permanently assigned to another district, to exercising and performing the privileges, powers and duties conferred by law on him in relation to the district to which he is permanently assigned) 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.

Explanatory Note

Paragraph 4 of the Sixth Schedule to the Supplemental Provisions Act 1961. Section 12(2) of the Courts (No. 2) Act 1997 provides that nothing in subsection (1) of the section — which relates to a former President of the District Court continuing to be permanently assigned to the Dublin Metropolitan District — shall prevent the application of subparagraphs (3) and (4) of paragraph 2 of the Sixth Schedule to a former President of the District Court.

District court areas and districts and assignment of [judges] to districts

68.- (1) The areas created under section 21 (repealed by the Act of 1961) of the Act of 1953 shall be the district court areas for the purposes of the District Court.

(2) The districts created under section 22 (repealed by the Act of 1961) of the Act of 1953 and the Dublin Metropolitan District shall be the district court districts for the purposes of the District Court.

(3) The provisions (which relate to the assignment of [judges] of the District Court to districts) set out in the Sixth Eighth Schedule to this Act shall have effect.

Explanatory Note

Section 32 of the Supplemental Provisions Act 1961.

Exercise of certain powers by judge of the District Court outside district court district

69.- (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;
- (b) the power to issue a warrant to a member of the Garda Síochána or, if appropriate, any other person authorising the entry to, and search of, any place or premises (including a dwelling) and, if appropriate, the search of any person found at such place or 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 in any other respect 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 to make an order, upon the application of a member of the Garda Síochána or, if appropriate, any other person, directing another person to produce, 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 in any other respect 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.

(2) A judge of the District Court may, in relation to a relevant district, exercise while in any place in the State outside that relevant district any of the powers 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) Without prejudice to the generality of paragraph (b) of subsection (1) of this section, a warrant may fall within that paragraph notwithstanding that the warrant or the power under which it is issued authorises all or any of the following:

- (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 the acts specified in subsection (1)(b) of this section;
- (c) the execution of the warrant by a person other than the member of the Garda Síochána or, if appropriate, any other person to whom it is issued;
- (d) the accompaniment of the person executing the warrant by any other persons during the execution thereof.

(4) Without prejudice to the generality of paragraph (c) of subsection (1) of this section, an order may fall within that paragraph notwithstanding that the order or the power under which it is made authorises all or any of the following:

- (a) a member of the Garda Síochána or any 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, if appropriate, any other person who applies for it;

- (c) the retention, or copying, for the purposes of proceedings (criminal or civil) by a member of the Garda Síochána or any 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) In this section—

“enactment” means a statute or an instrument made under a power conferred by statute;

“district” means a district court district;

“relevant district”, in relation to a judge of the District Court, means a district—

- (a) to which he or she is permanently assigned under paragraph 2 of the Sixth Schedule to this Act,
- (b) to which he or she is temporarily assigned under subparagraph (1) or (2) of paragraph 3 of the said Schedule, or

in relation to which he or she is acting in the circumstances specified in subparagraph (1), (2) or (3) of paragraph 4 of the said Schedule for another judge of the District Court who is permanently assigned to the district.

Explanatory Note

Section 32A of the Supplemental Provisions Act 1961, as inserted by section 180 of the Criminal Justice Act 2006.

PART 5

APPEALS

Chapter 1

The Supreme Court

Reference of question of law to the Supreme Court

70.- The Act of 1967 is amended by the substitution of the following section for section 34:

(1) Where a person tried on indictment is acquitted (whether in respect of the whole or part of the indictment) the Attorney General in any case or, if he or she is the prosecuting authority in the trial, 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.

(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 of Public Prosecutions, 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 counsel on behalf of, the Attorney General or the Director of Public Prosecutions, as may be appropriate,
- (b) If the acquitted person so wishes, by counsel on his or her behalf or, with the leave of the Court, by the acquitted person himself or herself, and
- (c) If counsel are assigned under subsection (4), such counsel.

(4) The Supreme Court shall assign counsel 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.

(6) If the acquitted person wishes to be represented in proceedings before the Supreme Court under this section and a legal aid (Supreme Court) certificate is granted under subsection (7), or is deemed to have been granted under subsection (8), in respect of him or her, he or she shall be entitled to free legal aid in the preparation and presentation of any legal argument that he or she wishes to make to the Court and to have a solicitor and counsel assigned to him or her for that purpose in the manner prescribed by regulations under section 10 of *Criminal Justice (Legal Aid) Act 1962*.

(7) The acquitted person may, in relation to proceedings under this section, 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
- (b) The Supreme Court itself,

And the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

(8) If a legal aid (trial on indictment) certificate was granted in respect of the acquitted person in relation to the trial on indictment concerned, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to proceedings under this section.

(9) In this section ‘legal aid (Supreme Court) certificate’ and ‘legal aid (trial on indictment) certificate’ have the meanings they have in the *Criminal Justice (Legal Aid) Act 1962*

Explanatory Note

Section 21 of the Criminal Justice Act 2006, amending section 34 of the Criminal Procedure Act 1967.

Appeal in remitting applications

71.- An appeal shall lie from the High Court to the Supreme Court in all cases from the grant or refusal of any application to remit or transfer any action from the High Court to the Circuit Court, and from the exercise of the discretion of the High Court or any judge thereof in the matter.

Explanatory Note

Section 26 of the 1924 Act.

Chapter 2

The Court of Criminal Appeal

Summary Determination

72.- (1) If it appears to the registrar of the Court that a notice of an application for leave to appeal does not show any substantial ground of appeal or, in the case of an application under section 2, 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 may, without calling for the report of the official stenographer, refer the application to the Court for summary determination; and where the case is so referred the Court may, if it considers that the application is frivolous or vexatious and can be determined 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.

(2) The jurisdiction of the Court under subsection (1) may be exercised by a single judge of the Court and an appeal may be made to the Court by the convicted person against the summary determination of an application.

Explanatory Note

Section 5 of the Criminal Procedure Act 1993.

The Working Group on the Jurisdiction of the Courts in its Report on the Criminal Jurisdiction of the Courts noted that this procedure had not been used (up to the date of the Report in May 2003).⁶ They noted that if the procedure contained in the above section was utilised it would enable completely frivolous or unmeritorious appeals to be disposed of at an early stage by a single judge. However, the Group felt that the procedure placed an unfair onus on the registrar to initiate the procedure, without advanced judicial guidance. They recommended that the section be amended so that the judge in charge of the appeal list would initiate the procedure, following the registrar's consideration of the case list.⁷

⁶ The Working Group on the Jurisdiction of the Courts *Report on the Criminal Jurisdiction of the Courts* (Stationary Office 2003) at 163.

⁷ The Working Group on the Jurisdiction of the Courts *Report on the Criminal Jurisdiction of the Courts* (Stationary Office 2003) at 163.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section requires amendment.

Leave to appeal

73.- Leave to appeal shall be granted by the Court of Criminal Appeal (Supreme Court) in cases where the court is of opinion that a question of law is involved, or where the trial appears to the court to have been unsatisfactory, or where there appears to the court to be any other sufficient ground of appeal and the court shall have power to make all consequential orders it may think fit, including an order admitting the appellants to bail pending the determination of his appeal or application for leave to appeal.

Explanatory Note

Section 32 of the 1924 Act as amended by section 3(6) of the Criminal Procedure Act 1993

In DPP v. Corbally, Supreme Court, 5 December 2000, [2000] IESC 38 Mr. Justice Geoghegan made the following comment about the current procedure for appeals to the Court of Criminal Appeal:

“a mere reading of the relevant sections would not of itself give rise to any understanding as to how the appeal procedure is worked out in practice. In the vast majority of cases the trial judge refuses certificates enabling the convicted defendant to appeal to the court of criminal appeal. Accordingly, an application for leave to appeal is brought to that court. But usually, the court, having given a full hearing to the application for leave to appeal, either refuses such leave or grants it but treats the hearing of the application for leave as the hearing of the appeal itself and goes on to make an order allowing the appeal. This telescoped procedure was probably not anticipated by the draftsman of section 32 of the 1924 Act as that section seems to envisage that leave to appeal might be granted well before the hearing of the appeal itself “where the court is of the opinion that a question of law is involved” or in the other prima facie situations referred to in the section.”

Hearing of appeal

74.- (1) [The appeal, in case such certificate or leave to appeal is granted, shall be heard and determined by the Court of Criminal Appeal ('the court') Supreme Court on—

- (a) a record of the proceedings at the trial and on a transcript thereof verified by the judge before whom the case was tried, and
- (b) where the trial judge is of opinion that the record or transcript referred to in paragraph (a) of this subsection does not reflect what took place during the trial, a report by him as to the defects which he considers such record or transcript, as the case may be, contains,

with power to the court to hear new or additional evidence, and to refer any matter for report by the said judge.

(2) Where the court is of opinion that either the record or the transcript thereof is defective in any material particular, it may determine the appeal in such manner as it considers, in all the circumstances, appropriate.

(3) In this section, 'record' includes, in addition to a record in writing—

- (a) shorthand notes, or a disc, tape, soundtrack 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.

(4) Section 97 of the Act of 1924 is hereby repealed.]

Explanatory Note

Section 33 of the 1924 Act as substituted by section 7 of the Criminal Justice (Miscellaneous Provisions) Act 1997

Jurisdiction to affirm or reverse conviction

75.- (1) On the hearing of an appeal against conviction of an offence 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 applicant 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 must have been satisfied of facts which proved him 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.

(2) On the hearing of an appeal against sentence for an offence 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.

(3) The Court, on the hearing of an appeal or, as the case may be, of an application for leave to appeal, against a conviction or sentence may—

- (a) where the appeal 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 to attend for examination and be examined before the Court, whether or not he was called in those proceedings;
- (d) receive the evidence, if tendered, of any witness;
- (e) generally make such order as may be necessary for the purpose of doing justice in the case before the Court.

(4) For the purposes of this section, 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 officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court

(5) The reference in subsection (1) (d) to a jury shall, where the trial was before a court sitting without a jury, be construed as a reference to that court.

(6) Section 32 of the *Courts of Justice Act 1924*, is hereby amended by the addition after "pending the determination of his appeal" of "or application for leave to appeal".

(7) 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 re-trial.

(8) The references in section 44(2) of the *Offences Against the State Act 1939*, to section 34 of the *Criminal Justice Act, 1924*, and section 5 of the *Criminal Justice Act 1928*, shall be construed as references to this section.

Explanatory Note

Section 3 of the Criminal Procedure Act 1993, replacing section 34 of 1924 Act. Section 34 repealed by section 13 and Schedule of the 1993 Act.

Decision of Court of Criminal Appeal final save on certificate of Court or of Attorney General (or of Director of Public Prosecutions)

76.- (1) Subject to subsection (9A) of this section, no appeal shall lie to the Supreme Court from a determination by the Court of Criminal Appeal of any appeal or other matter except in accordance with this section.

(2) A person the subject of an appeal or other matter determined by the Court of Criminal Appeal may appeal the decision of that Court to the Supreme Court if that Court or the Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecution 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) The Attorney General in any case or, if he or she is the prosecuting authority in the matter, the Director of Public Prosecution may, in relation to an appeal or other matter determined by the Court of Criminal Appeal and without prejudice to the decision in favour of the accused person, appeal the decision of the Court to the Supreme Court if that Court or Attorney General in any case or, if he or she is the prosecuting authority in the matter, 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 Attorney General or the Director of Public Prosecution, as may be appropriate, should take an appeal to the Supreme Court.

(4) The Supreme Court shall, in an appeal under subsection (3) of this section, hear argument-

- (a) by, or by counsel on behalf of the Attorney General or the Director of Public Prosecutions, as may be appropriate,
- (b) if the accused person so wishes, by counsel on his or her behalf or, with the leave of the Court, by the accused person himself or herself, and
- (c) if counsel are assigned under subsection (5) of this section, such counsel.

(5) The Supreme Court shall, in an appeal under subsection (3) of this section, assign counsel to argue in support of the decision if-

- (a) the accused person waives his or her right to be represented or heard under subsection (4)(b) of this section, or
- (b) notwithstanding the fact that the accused person exercises his or her right to be represented or heard under (4)(b) of this section, the Court considers it desirable in the public interest to do so.

(5A) The Supreme Court, in appeal under subsection (2) or (3) of this section, may, if it considers it appropriate to do so, hear the argument and make a determination in relation to any part (not only the point of law of exceptional public importance which is the subject of the certificate concerned issued under whichever of those subsections is appropriate) of the decision of the Court of Criminal Appeal concerned.

(6) The Supreme Court shall ensure, in so far as it is reasonably practicable to do so, that the identity of the accused person in an appeal under subsection (3) of this section is not disclosed in connection with the appeal unless the person agrees to the use of his or her name in the appeal.

(7) If the accused person wishes to be represented in an appeal under subsection (3) of this section and a legal aid (Supreme Court) certificate is granted under subsection (8) of this section, or is deemed to have been granted under subsection (9) of this section, 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 for that purpose in the manner prescribed by regulations under section 10 of the Criminal Justice (Legal Aid) Act 1962.

(8) The accused person may in relation to an appeal under subsection (3) of this section, 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
- (b) to the Supreme Court itself,

- (c) and the Court shall grant the certificate if (but only if) it appears to the Court that the means of the person are insufficient to enable him or her to obtain legal aid.

(9) If a legal aid (trial on indictment) certificate was granted in respect of the accused person in relation to the trial on indictment concerned, a legal aid (Supreme Court) certificate shall be deemed to have been granted in respect of him or her in relation to an appeal under subsection (3) of this section.

(9A) This section shall not affect the operation of section 3 of the Criminal Justice Act 1993.

(10) In this section ‘legal aid (Supreme Court) certificate’ and ‘legal aid (trial on indictment) certificate’ have the meanings they have the Criminal Justice (Legal Aid) Act 1962”.

Explanatory Note

Section 29 of the Courts of Justice Act 1924, as amended by section 22 of the Criminal Justice Act 2006 and section 59 of the Criminal Justice Act 2007.

The Director of Public Prosecutions may also exercise the functions set out in this section. Section 3(1) and 3(4) of the Prosecution of Offences Act 1974

Provision is made to repeal this section in section 3(2) of the 1995 Act, not yet commenced.

Interlocutory applications

77.- Where a person convicted on indictment before the Central Criminal Court **or the Special Criminal Court** or the Circuit Court appeals to the Court of Criminal Appeal (Supreme Court) or applies to the Court of Criminal Appeal (Supreme Court) for leave to appeal, any interlocutory application in relation to such appeal or application may be heard and determined by the Chief Justice or by any Judge of the Supreme Court nominated by the Chief Justice for that purpose.

Explanatory Note

Section 7 of the 1928 Act.

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether it is the words in bold in the section be inserted to the section.

Chapter 3

The High Court

Appeal from Central Criminal Court

78.- An appeal shall not lie to the Supreme Court from a decision of the Central Criminal Court to acquit a person, other than an appeal under section 34 of the *Criminal Procedure Act 1967*.

Explanatory Note

Section 44 of the 1995 Act.

Appeal from Central Criminal Court

79.- A person convicted on indictment before the Central Criminal Court may appeal under this Act to the Court of Criminal Appeal (or Supreme Court when relevant enactments come into force) under the following conditions:—

- (i) if the appellant obtains a certificate from the judge who tried him that the case is a fit case for appeal;
- (ii) in case of refusal of such certificate if the Court of Criminal Appeal on appeal from such refusal grant leave to appeal.

Explanatory Note

Section 31 of the 1924 Act. Section 31 was re-enacted by section 48 of the Supplemental Provisions Act 1961 in relation to the present Court of Criminal Appeal.

Forms of appeal in jury cases

80.- Every appeal from a judgment of the High Court [. . .] in an action tried by a judge and jury, or from any other judgment of the High Court [. . .] founded on the verdict of a jury in a civil case, shall be made by way of motion before the appellate tribunal Supreme Court for a new trial. [. . .] In any appeal to which this section applies the appellate tribunal Supreme Court may, in lieu of ordering a new trial, set aside the verdict, findings, and judgment appealed against and enter such judgment as the court considers proper.

Explanatory Note

Section 96 of the 1924 Act.

Words in brackets repealed by section 3 of the Courts of Justice Act 1936.

Juries abolished in most civil cases apart from cases seeking damages for false imprisonment or intentional trespass to the person or both.

Miscellaneous provisions in relation to appeals

81.- The following provisions shall apply and have effect in relation to all appeals under this Part of this Act to the High Court sitting in Dublin or to the High Court on Circuit, that is to say:—

- (a) any such appeal may be limited to a specified part of the judgment or order which is the subject of such appeal;
- (b) where there are several plaintiffs or several defendants, any one or more of such plaintiffs or such defendants (as the case may be) may appeal although the other or others of such plaintiffs or defendants refuse to join in such appeal;
- (c) where there are several appellants or several respondents, and one or more but not all of such appellants or of such respondents dies or die before such appeal is determined, such appeal shall not abate by reason of such death or deaths;
- (d) every notice in writing given by any party to the suit or matter to another such party for the purposes of the trial or hearing in the Circuit Court shall be good for the hearing of the appeal without renewal;
- (e) the judge hearing the appeal shall have full powers of amendment in respect of summonses, civil bills, pleadings, notices, and other documents.

Explanatory Note

Section 40 of the 1936 Act.

Appeals by way of case stated by the High Court

Case stated by the High Court

82.- The **High Court** judge hearing an appeal under this section may, if he so thinks proper on the application of any party to such appeal, refer any question of law arising in such appeal to the Supreme Court by way of case stated for the determination of the Supreme Court and may adjourn the pronouncement of his judgment or order on such appeal pending the determination of such case stated and, in particular, may so adjourn such pronouncement to Dublin and there pronounce his said judgment or order at any time after such determination.

Explanatory Note

Section 38(3) of the 1936 Act, words in bold need to be inserted if appeal by way of case stated becomes a stand alone section.

*The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section should provide clarification on when a case may be stated pursuant to 38(3). See cases in Delany *The Courts Acts 1924-1997* (2nd ed Roundhall, 2000) pp. 134-139. See also section 17 of the *Courts of Justice Act 1947* which provides that a Circuit Court Judge may if application is made to him by one of the parties to a case in any matter pending before him, refer any question of law arising in such matters by way of a case stated to the Supreme Court.*

Chapter 4

The Circuit Court

Appeals from the Circuit Court in civil cases heard without oral evidence

83.- (1) An appeal shall lie to the High Court sitting in Dublin from every judgment given or order made (other than judgments and orders in respect of which it is declared by this Part of this Act that no appeal shall lie therefrom) by the Circuit Court in any civil action or matter at the hearing or for the determination of which no oral evidence was given.

(2) Every appeal under this section to the High Court shall be heard and determined by one judge of the High Court sitting in Dublin and shall be so heard by way of rehearing of the action or matter in which the judgment or order the subject of such appeal was given or made, but no evidence which was not given and received in the Circuit Court shall be given or received on the hearing of such appeal without the special leave of the judge hearing such appeal.

Explanatory Note

Section 37 of the 1936 Act.

Appeals from the Circuit Court in cases not otherwise provided for

84.- (1) An appeal shall lie from every judgment or order (other than judgments and orders in respect of which it is declared by this Part of this Act that no appeal shall lie therefrom and judgments and orders in respect of which other provisions in relation to appeals is made by this Part of this Act) of the Circuit Court in a civil action or matter—

- (a) where such judgment or order is given or made by a judge of the Circuit Court for the time being assigned to and sitting in the Dublin Circuit, to the High Court sitting in Dublin, and
- (b) in every other case, to the High Court on Circuit sitting in the appeal town for the county or county borough in which the action or matter resulting in such judgment or order was heard and determined.

(2) Every appeal under the section shall be heard and determined by one judge of the High Court and shall be so heard by way of a rehearing of the action or matter in which the judgment or order the subject of such appeal was given or made.

(3) In the case of an appeal under this section to the High Court on Circuit, the judge hearing such appeal may if he so thinks fit, at any stage of the hearing of such appeal, adjourn the hearing or any part of the hearing of such appeal or the pronouncement of his judgment or order on such appeal to any other appeal town on the same Circuit or to Dublin and there hear and determine such appeal or part thereof or pronounce such judgment or order, as the case may be

- (4) (a) Notwithstanding subsection (1) (b) of this section any party to an appeal may at any time apply to the High Court sitting in Dublin or to the High Court on Circuit for an order that the appeal be heard by the High Court sitting in Dublin or in another appeal town in the same circuit.
- (b) The application may be made ex parte if it is made on the consent of all parties to the appeal.
- (c) On the hearing of the application, the High Court may make such order as the justice of the case requires and the

appeal shall be heard in the venue as directed by the High Court.

Explanatory Note

Section 38 of the 1936 Act. Note subsection (3) can be removed and becomes stand alone section in appeals by way of case stated by the High Court.

Subsection (4) of this section was amended by section 43 of the Act of 1995 which inserted this section as a new section.

Amendment of Courts of Justice Act 1936

85.- Neither sections 52 or 53 of this Act shall operate to prejudice the generality of Article 10(4) of Regulation (EC) No. 805/2004 of the European Parliament and of Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. [Article 10(4) provides that no appeal shall lie against the issuing of a European Enforcement Order Certificate.

Explanatory Note

Regulation 4 of the European Communities (European Enforcement Order) 2005 (SI No 648 of 2006 inserted a new section 38A into 1936 Act.

The Dublin Circuit

86.- In this Part of this Act the expression “the Dublin Circuit” means the circuit which consists of the county of Dublin and the county borough of Dublin.

Explanatory Note

Section 29 of the 1936 Act On and from the establishment day (1 January 1994 — see SI No. 401 of 1993) references to the county of Dublin in section 33 shall be construed as references to the counties of South Dublin, Fingal and Dun Laoghaire-Rathdown. See sections 1(5) and 25 of the Local Government (Dublin) Act 1993

Appeals from Circuit court in workmen's compensation cases

87.- Nothing in this Part of this Act shall apply to appeals from decisions of the Circuit Court under the *Workmen's Compensation Act 1934* nor prejudice or affect the provisions of that Act in respect of such appeals.

Explanatory Note

Section 30 of the 1936 Act. Note: The Workmen's Compensation Act 1934 was repealed by section 40, Schedule of the Social Welfare (Occupational Injuries) Act 1966. This in turn was repealed by the Social Welfare Consolidation Act 1981

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this section could be repealed.

Finality of decisions of Circuit Court in certain cases

88.- (1) Notwithstanding anything contained in this Part of this Act, no appeal shall lie from any judgment or order of the Circuit Court in any civil action or matter which is final and conclusive by virtue of an Act of the Oireachtas whether passed before or after this Act, nor from any judgment or order of the Circuit Court made on a petition to the Circuit Court under section 6 of the *Labourers (Ireland) Act 1906*, or under the Sixth Schedule to the *Local Government Act 1925*.

(2) Notwithstanding anything contained in this Part of this Act, no appeal shall lie from any decision of the Circuit Court on an appeal to that Court under an enactment relating to a tax or duty under the care and management of the Revenue Commissioners, save only such (if any) appeal (including an appeal by way of case stated) as may lie under any such enactment as aforesaid in force immediately before the commencement of this Part of this Act.

(3) Notwithstanding anything contained in this Part of this Act, no appeal shall lie from any decision of the Circuit Court on an appeal to that Court under the Valuation Acts, but in lieu of such appeal the right to a case stated conferred by sections 10 and 11 of the Annual Revision of *Revision of Rateable Property (Ireland) Amendment Act 1860*, shall [. . .] become and be exercisable and the said sections 10 and 11 and also section 12 (to the words “case under this Act”) of the same Act, as adapted or modified by or under an Act passed before this Act, shall, [. . .] have full force and effect with and subject to the following modifications, that is to say:—

- (a) references to a court of general or quarter sessions shall be construed as references to the Circuit Court, and
- (b) references to the chairman of a court of general or quarter sessions shall be construed as references to the judge of the Circuit Court, and
- (c) references to a superior court of law shall be construed as references to the High Court, and

the decision of the High Court shall be subject to appeal to the Supreme Court.

Explanatory Note

Section 31 of the 1936 Act.

Subsection (3) amended by section 3 of the Supplemental Provisions Act 1961.

Appeal towns

89.- (1) Each city and town specified in the first column of the Second Schedule to this Act shall be an appeal town for the purposes of this Part of this Act.

(2) In this Part of this Act the expression “the appeal town” means, in relation to any county or county borough specified in the second column of the Second Schedule to this Act, the city or town specified in the first column of the said Schedule opposite the mention of such county or county borough.

Explanatory Note

Section 32 of the 1936 Act.

Amendment of Courts of Justice Act 1936

90.- (1) [...]

- (2) (a) (3)(a) Galway is hereby deemed to be the appeal town, within the meaning of Part IV of the Courts of Justice Act 1936 section 40 for the purposes of appeals from judgments or orders of the Circuit Court given or made in actions or matters heard and determined before the passing of this Act in the County Borough of Galway or before the 1st day of January 1986, in the area that, upon that date, constituted the said County Borough.
- (b) A notice of appeal served before such passing in respect of a judgment or order referred to in paragraph (a) of this subsection shall not be invalid by reason only of the fact that an appeal town, within the meaning aforesaid, for the County Borough of Galway did not stand specified, or that paragraph (a) of this subsection was not in force, at the time of such service.

Explanatory Note

Section 1 of the Courts Act 1986

Finality of decisions on appeals under this Part of the Act

91.- The decision of the High Court or of the High Court on Circuit on an appeal under this Part of this Act [**Appeals from the Circuit Court**] shall be final and conclusive and not appealable.

Explanatory Note

Section 39 of the 1936 Act as re-enacted by section 48 of the Supplemental Provisions Act 1961.

*The constitutionality of this section was upheld in *Eamonn Andrews Productions Ltd v Gaiety Theatre Enterprises Ltd* [1973] IR 295, 360 as the Supreme Court considered that it constituted a valid exception to the appellate jurisdiction of the High Court pursuant to Article 34.4.3°.*

Miscellaneous provisions in relation to appeals

92.- The following provisions shall apply and have effect in relation to all appeals under this Part of this Act to the High Court sitting in Dublin or to the High Court on Circuit, that is to say:—

- (a) any such appeal may be limited to a specified part of the judgment or order which is the subject of such appeal;
- (b) where there are several plaintiffs or several defendants, any one or more of such plaintiffs or such defendants (as the case may be) may appeal although the other or others of such plaintiffs or defendants refuse to join in such appeal;
- (c) where there are several appellants or several respondents, and one or more but not all of such appellants or of such respondents dies or die before such appeal is determined, such appeal shall not abate by reason of such death or deaths;
- (d) every notice in writing given by any party to the suit or matter to another such party for the purposes of the trial or hearing in the Circuit Court shall be good for the hearing of the appeal without renewal;
- (e) the judge hearing the appeal shall have full powers of amendment in respect of summonses, civil bills, pleadings, notices, and other documents.

Explanatory Note

Section 40 of the 1936 Act.

Appeal in all cases tried on indictment

93.- An appeal shall lie from the Circuit Court in all cases tried on indictment to the Court of Criminal Appeal under like conditions and in like manner and with like incidents and subject to like provisions as are hereinbefore enacted with respect to an appeal from the Central Criminal Court [...] to the Court of Criminal Appeal.

Explanatory Note

Section 63 of the 1924 Act. Reference to 'High Court Circuit' deleted by section 2 of the Courts of Justice Act 1926.

Appeal by way of case stated by the Circuit Court

Case stated by Circuit Judge

94.- A Circuit Judge may, if an application in that behalf is made by any party to any matter (other than a re-hearing, under section 196 of the *Income Tax Act 1918*, of any such appeal as is referred to in the said section) pending before him, refer, on such terms as to costs or otherwise as he thinks fit, any question of law arising in such matter to the Supreme Court by way of case stated for the determination of the Supreme Court and may adjourn the pronouncement of his judgment or order in the matter pending the determination of such case stated

Explanatory Note

Section 16 of the 1947 Act. The Income Tax Act 1918 was repealed in its entirety by schedule 19 part 1 and section 554 of the Income Tax Act 1967 Consequential amendment to sections 1(2) and 18(4) of the Malicious Injuries Act 1981 which provided that section 16 should not have effect in relation to proceedings taken under the 1981 Act.

*The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section should provide clarification on when a case may be stated. . See cases in Delany *The Courts Acts 1924-1997* (2nd ed Roundhall, 2000) pp. 134-139. See also section 38(3) of the Courts of Justice Act 1936 which provides for a consultative case to be stated from the High Court to the Supreme Court in limited circumstances.*

Chapter 5

The District Court

Criminal cases

Appeals from the District Court in criminal cases against sentence only

95.- Where –

- (a) an order is made in a criminal case by a [judge] of the District Court convicting a person and sentencing him to pay a penal or other sum or to do anything at any expense or to undergo a term of imprisonment or to be detained in Saint Patrick's Institution, and
- (b) an appeal is taken against the order, and
- (c) either—
 - (i) the notice of appeal states that the appeal is against so much only of the order as relates to the sentence, or
- (d) the appellant, on the hearing of the appeal, indicates that he desires to appeal against so much only of the order as relates to the sentence,
 - (i) then, notwithstanding any rule of law, the Circuit Court shall not, on the hearing of the appeal, rehear the case except to such extent as shall be necessary to enable the court to adjudicate on the question of sentence

Explanatory Note

Section 50 of the Supplemental Provisions Act 1961

Appeal from order under Probation of Offenders Act 1907

96.- An appeal shall lie to the Circuit Court from an order of the District Court under subsection (1) of section 1 of the *Probation of Offenders Act 1907*

Explanatory Note

Section 33 of the 1953 Act.

Appeals from the District Court in criminal cases

97.- (1) An appeal shall lie in criminal cases from a [Judge] of the District Court against any order (not being merely an order returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour) for the payment of a penal or other sum or for the doing of anything at any expense or for the estreating of any recognizance or for the undergoing of any term of imprisonment by the person against whom the order shall have been made.

(2) Where immediately before the commencement of Part III of the Principal Act of 1924 an appeal lay in a criminal case at the instance of a complainant or prosecutor against an order of a District [Judge] appointed under the *District Justices (Temporary Provisions) Act 1923* (No. 6 of 1923) an appeal of the like kind shall lie in such criminal case at the instance of a complainant or prosecutor from an order of a [Judge] of the District Court.

(3) Every appeal under this section from an order of a [Judge] of the District Court shall lie to the Judge of the Circuit Court within whose circuit [the courthouse in which such order was made is situate], and the decision of such judge on such appeal shall be final and conclusive and not appealable.

Explanatory Note

Section 18 of the 1928 Act.

Civil cases

Appeal in civil cases

98.- Subject to Article 10(4) of 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, an appeal shall lie in all cases other than criminal cases from any decision of a [Judge] of the District Court to the Judge of the Circuit Court within whose Circuit [the courthouse in which such decision was given is situate], and the decision of the Judge of the Circuit Court on any such appeal shall be final and conclusive and not appealable.

Explanatory Note

Section 84 of 1924 Act. Consequential amendments, section 57 of Courts of Justice Act 1936 (words in brackets). No appeal shall lie to the Circuit Court under section 84 with regard to the refusal of a certificate under section 13 of the Betting Act 1931: Section 13(5) of the Betting Act 1931

Amended by Regulation 3 of the European Communities (European Enforcement Order) Regulations 2005.

Note exceptions:

No appeal shall lie to the Circuit Court under section 84 with regard to the making or continuing of a prohibition order under section 41 of the Milk and Dairies Act 1935

Section 41(8)(c) of the Milk and Dairies Act 1935.

No appeal shall lie to the Circuit Court against an order of the District Court made under section 47 of the Extradition Act 1965: Section 47(5) of the Extradition Act 1965

Appeal in licensing cases

99.- In licensing cases the applicant or the persons at present entitled by law to object may appeal pursuant to such provisions as may be prescribed by the rules to be made under this Part of this Act.

Explanatory Note

Section 87 of the 1924 Act.

Appeal from conviction in licensing matters from District Court

100.- (1) The *Intoxicating Liquor Act 1927*, is hereby amended by the substitution of the following section for section 27:

“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] is situate, and the decision of such Judge shall be final and not appealable.

(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.”

Explanatory Note

Section 7 Courts (No 2) Act 1986. See now 2005 Bill.

Appeals in licensing and club cases

101.- Notwithstanding anything contained in any other enactment and, in particular, notwithstanding anything contained in section 210, section 18 of the *Courts of Justice Act 1928* (No. 15 of 1928), as amended by this Act, every appeal which lies to the Circuit Court from an order of the District Court in a criminal case under the *Licensing (Ireland) Acts 1833 to 1995* 1927, or under the *Registration of Clubs Acts 1904 to 1927*, shall lie to the judge of the Circuit Court within whose circuit is situate the licensed premises or the club premises on or in respect of which the offence the subject of such order was committed or to which such order otherwise relates.

Explanatory Note

Section 59 of the 1936 Act. Note 2005 Bill.

Appeal by way of case stated by District Court

Extension of section 2 of Summary Jurisdiction Act 1857

102.- (1) Section 2 of the *Summary Jurisdiction Act 1857*, is hereby extended so as to enable any party to any proceedings whatsoever heard and determined by a [judge] of the District Court (other than proceedings relating to an indictable offence which was dealt with summarily by the court) if dissatisfied with such determination as being erroneous on a point of law, to apply in writing within fourteen days after such determination to the said [judge] to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the High Court.

(2) Upon the making of an application under section 2 of the *Summary Jurisdiction Act 1857*, as extended by subsection (1) of this section, for a case stated, the determination in respect of which the application is made shall be suspended—

- (a) where the [judge] of the District Court to whom the application is made grants the application, until the case stated has been heard and determined, and
- (b) where he refuses to grant the application, until he so refuses.

(3) The references in sections 6, 8, 9, 10 and 14 of the *Summary Jurisdiction Act 1857*, to that Act shall be construed as references to that Act as extended by subsection (1) of this section.

(4) In section 2 of the *Summary Jurisdiction Act 1857*, and in this section, “party” means any person who was entitled to be heard and was heard in the proceedings in which the determination in respect of which an application for a case stated is made was given

Explanatory Note

Section 51 of the Supplemental Provisions Act 1961. See sections 1(2) and 18(4) of the Malicious Injuries Act 1981 which provide that the sections shall not have effect in relation to proceedings under the 1981 Act.

See also Delany The Courts Acts 1924-1997 (2nd ed Roundhall, 2000) pp.265-269

Judges on application of a Party aggrieved to state a Case for the Opinion of a Superior Court

103.- After the Hearing and Determination by a [Judge of the District Court] of any Information or Complaint which he or they have Power to determine in a summary Way, by any Law now in force or here after to be made, either Party to the Proceeding before the said [Judge or Judges] may, if dissatisfied with the said Determination as being erroneous in point of Law, apply in Writing within Three days after the same to the said [Judge or Judges], to state and sign a Case setting forth the Facts and Grounds of such Determination, for the Opinion thereon of One of the Superior Courts of Law to be named by the Party applying, and such Party, herein-after called “the Appellant” shall, within Three Days after receiving such case, transmit the same to the Court named in his Application, first giving Notice in Writing of such an Appeal, with a Copy of the Case so stated and signed, to the other Party to the Proceeding in which Determination was given herein after called the Respondent.

Explanatory Note

*Section 2 of the Summary Jurisdiction Act 1857, 20&21 Vic. c. 43.
Section 2: case stated by a District court judge of a summary case to the High Court.*

Section 2 extended and amended by Courts (Supplemental Provisions) Act 1961 (no. 39 of 1961), section 51(1) and (4).

Section 2 restricted by Malicious Injuries Act 1981, sections 1(2) and 18(4)

Section 2 extended and amended by Courts (Supplemental Provisions) Act 1961 (no. 39 of 1961), section 51(1) and (4).

Security and Notice to be given by the Appellant

104.- The Appellant, at the Time of making such Application, and before a Case shall be stated and delivered to him by the [Judge of the District Court], shall in every Instance enter into a Recognizance, before such [Judge], or any One or more of them, or any other [Judge] exercising the same Jurisdiction, with or without Surety or Sureties, and in such Sum as to the [Judge] shall seem meet; conditioned to prosecute without Delay such Appeal, and to submit to the Judgment of the Superior Court, and pay such Costs as may be awarded by the same; and the Appellant shall at the same Time, and before he shall be entitled to have the Case delivered to him, pay to the Clerk to the said [Judge] his fees for and in respect of the Cases and Recognizances, and any other Fees to which such Clerk shall be entitled; and the Appellant, if then in Custody, shall be liberated upon the Recognizance being further conditioned for his Appearance before the same [Judge], or if that is impracticable, before some other [Judge] exercising the same Jurisdiction, who shall be then sitting, within Ten Days after Judgment of the Superior Court shall have been given, to abide such Judgment, unless the Determination appealed against be reversed.

Explanatory Note

Section 3 of the Summary Jurisdiction Act 1857, 20&21 Vic. c. 43. Section 3: deals with security to be given and notice to be given by the appellant to a case stated.

Section 3 repealed in part by section 44 and Schedule 4 of Criminal Justice Administration Act 1914 4&5 Geo. c.58, the words from “which fees” to “section thirty” and Schedule A.

Judges may refuse a Case where they think the application is frivolous

105.- If the [Judge] be of the opinion that the Application is merely frivolous, but not otherwise, he may refuse to state a Case, and shall, on the Request of the Appellant, sign and deliver to him a Certificate of such a Refusal; provided that the [Judge] shall not refuse to state a Case where Application for that Purpose is made to them by or under the Direction of Her Majesty's Attorney General for England or Ireland, as the Case may be.

Explanatory Note

Section 4 of the Summary Jurisdiction Act 1857, 20&21 Vic. c. 43.

*Section 4: District court judge must state a case from the district court to the high court, when asked to do so, unless he or she is of the opinion it is merely frivolous. The District Court Judge cannot refuse to state a case where request is made by or under the direction of the AG, DPP, Minister of Government, or a Minister of State, or the Revenue Commissioners⁸. Constitutionality of this section was upheld in *Fitzgerald v. DPP* [2003] 2 ILRM 537.*

⁸ District Court Rules Order 102, r 15. Order 102 rule 15 District Court Rules. 1857 Act only refers to Attorney General. Collins and O'Reilly in *Civil Proceedings at the State* (2nd ed., 2004) at 1-07 footnote 39 have queried whether such an extension is within the competence of the District Court Rules Committee.

Superior Court to determine the Question on the case

106.- The Court to which a Case is transmitted under this Act to hear and determine the Question or Questions of Law arising thereon, and shall be thereupon reverse, affirm, or amend the Determination in respect of which the Case has been stated, and remit the Matter to the Justice or Justices [Judges], with the Opinion of the Court thereon, or may make such other Order in relation to the Matter; and may make such Orders as to Costs, as to the Court may seem fit; and all such Orders shall be final and conclusive on all Parties; Provided always, that no Justice or Justices [Judge] of the Peace who shall state and deliver a Case in pursuance of this Act shall be liable to any Costs in respect or by reason of such Appeal against his or their Determination.

Explanatory Note

Section 6 of the Summary Jurisdiction Act 1857.

Section 6 amended by section 51(3) of the Courts (Supplemental Provisions) Act 1961.

(3) The references in sections 6, 8, 9, 10 and, 14 of the Summary Jurisdiction Act 1857, to that Act shall be construed as references to that Act as extended by subsection (1) of this section.

Although this section states that the decision of the Superior court shall be final and conclusive, the Supreme Court has said that this is not the case. In the case of Attorney General (Fahy) v. Bruen⁹ The Supreme Court established that an appeal is available to the Supreme Court from a decision of the High Court on an appeal by way of a case stated, as a result of the constitutional guarantee of an appeal from all decisions of the High Court “with such exceptions as may be provided by law”. Although this case is pre 1937, the 1937 Constitution contains Article 34.4.3? and no statutory provision excluding a right of appeal. This seems to clearly establish that an appeal would lie to the Supreme Court.¹⁰

⁹ [1936] IR 750, at 764.

¹⁰ Delany and McGrath, *Civil Procedure in the Superior Courts*, (2nd ed) at 766.

Case may be sent back for amendment

107.- The Court for the Opinion of which a Case is stated shall have Power, if they think fit, to cause the Case to be sent back for Amendment, and thereupon the same shall be amended accordingly, and Judgment shall be delivered after it shall have been amended.

Explanatory Note

Section 7 of the Summary Jurisdiction Act 1857.

Section 7 amended by section 51(3) of the Courts (Supplemental Provisions) Act 1961.

The references in sections 6, 8, 9, 10 and, 14 of the Summary Jurisdiction Act 1857, to that Act shall be construed as references to that Act as extended by subsection (1) of this section.

Case stated or appeal to be in form, etc prescribed by rules

108.- Every case stated or appeal shall be in such form and manner in every respect and subject to such conditions whether as to time or otherwise (including the lodgment of any moneys in civil cases and the entering into a bond with sureties in criminal cases) as the rules to be made under this Part of this Act may prescribe. (The District Court.)

Explanatory Note

Section 86 of the 1924 Act.

Powers of Superior Court may be exercised by a Judge at Chambers

109.- The Authority and Jurisdiction now vested in a Superior Court for the Opinion of which a Case is stated under this Act shall and may (subject to any Rules and Orders of such Court in relation thereto) be exercised by a Judge of such Court sitting in Chambers [...].

Explanatory Note

Section 8 of the Summary Jurisdiction Act 1857. Part in brackets repealed by Statute Law Revision Act 1898. 61&62 Vic c 22.

Amended by section 51(3) of the Supplemental Provisions Act 1961 so that the references in the section are references to that Act as extended by subsection (1) of that section.

After the Decision of the Superior Court [Judges] may issue Warrants

110.- After the Decision of the Superior Court in relation to any Case stated for their Opinion under this Act, the Justice or Justices in relation to whose Determination the Case has been stated, or any other Justices or Justices of the Peace exercising the same Jurisdiction, shall have the same Authority to enforce any Conviction or Order, which may have been affirmed, amended, or made by such Superior Court, as the Justice or Justices who originally decided the Case would have had to enforce his or their Determination if the same had not been appealed against; and no Action or Proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such Conviction or Order, by reason of any Defect in the same respectively.

Explanatory Note

Section 9 of the Summary Jurisdiction Act 1857.

Amended by section 51(3) of the Supplemental Provisions Act 1961 so that the references in the section are references to that Act as extended by subsection (1) of that section.

Certiorari not to be required for Proceedings under this Act

111.- No Writ of Certiorari or other Writ shall be required for the Removal of any Conviction, Order, or other Determination in relation to which a Case is stated under this Act, or otherwise, for obtaining the Judgment or Determination of the Superior Court on such Case under this Act.

Explanatory Note

Section 10 of the Summary Jurisdiction Act 1857.

Amended by section 51(3) of the Supplemental Provisions Act 1961 so that the references in the section are references to that Act as extended by subsection (1) of that section

Appellants under this Act are not allowed to appeal to the Circuit Court

112.- Any person who shall appeal under the Provisions of this Act against any Determination of a Justice or Justices of the Peace [District Judge] from which he is by Law entitled to appeal to the Quarter Sessions [Circuit Court] shall be taken to have abandoned such last-mentioned Right of Appeal, finally and conclusively, and all Intents and Purposes.

Explanatory Note

Section 14 of the Summary Jurisdiction Act 1857.

Section 14 amended by section 51(3) of the Supplemental Provisions Act 1961.

The references in sections 6, 8, 9, 10 and, 14 of the Summary Jurisdiction Act 1857, to that Act shall be construed as references to that Act as extended by subsection (1) of this section.

Consultative case stated by District Court

Case stated for High Court on question of law

113.- (1) A [judge] of the District Court shall, if requested by any person who has been heard in any proceedings whatsoever before him (other than proceedings relating to an indictable offence which is not being dealt with summarily by the court) unless he consider the request frivolous, and may (without request) refer any question of law arising in such proceedings to the High Court for determination.

(2) An appeal shall lie by leave of the High Court to the Supreme Court from every determination of the High Court on a question of law referred to the High Court under subsection (1) of this section.

Explanatory Note

Section 52 of the Supplemental Provisions Act 1961. The effect of section 52 was restricted by sections 1(2) and 18(4) of the Malicious Injuries Act 1981 which provide that section 52 shall not have effect in relation to proceedings under the 1981 Act.

See Delany The Courts Acts 1924-1997 (2nd ed Roundhall, 2000) pp. 269-273.

The Committee on Court Practice and Procedure in its 6th Interim Report recommended that section 52 of the Courts (Supplemental Provisions) Act 1961 be amended so that a party who has applied for leave to appeal from a case stated decision in the High Court can appeal to the Supreme Court for leave to appeal.¹¹ The Committee based this on its view that many important points of law can be thrown up in this procedure, hence its recommendation.

¹¹ Sixth Interim Report of the Committee on Court Practice and Procedure The Criminal Jurisdiction of the High Court (Stationary Office, 1966, Pr. 9168) at 22.

PART 6

JUDICIAL POSTS

Chapter 1

Provisions applicable all judges

Vacation of certain offices before appointment to judicial office

- 114.-** (1) A person who for the time being holds the office of-
- (a) judge of the Court of First Instance;
 - (b) judge of the Court of First Instance attached to that Court;
 - (c) Advocate-General of the Court of Justice;
 - (d) judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November 1950;
 - (e) judge of the International Court of Justice established under the Charter of the United Nations;
 - (f) judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July 1998, upon the entry into force of that Statute;
 - (g) judge of the international tribunal within the meaning of section 2 of the International War Crimes Tribunal Act 1998.

shall vacate the office concerned before the President appoints the person to a judicial office.

Explanatory Note

Section 17A of the 1995 Act as inserted by section 10 of the 2002 Act.

Vacation of judicial office and filling of vacancy

115.- (1) In this section, the expression "judicial office" means an office being—

- (a) the office of Chief Justice, President of the High Court, ordinary judge of the Supreme Court, ordinary judge of the High Court, President of the Circuit Court or ordinary judge of the Circuit Court, or
- (b) the office of President of the District Court or [judge of the District Court.]

(2) A judicial office held by any person may be vacated by resignation in writing under his hand addressed to the President and transmitted to the Taoiseach.

(3) A judicial office held by any person shall be vacated by his being appointed, with his consent, to another judicial office.

(4) The office held by each person who, immediately before the commencement of this Act, was a judge or justice of any of the courts of justice mentioned in Article 58 of the Constitution shall be vacated by his being appointed, with his consent, to a judicial office.

(5) Each of the following Courts, namely, the Supreme Court, the High Court and the Circuit Court, shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any judge of that Court.

(6) The District Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of President or any [judge] thereof.

(7) Where a vacancy occurs in a judicial office, a person may be appointed to fill the vacancy.

Explanatory Note

Section 6 of the Principal Act 1961, sections (1)(b) and (6) amended by section 21 of 1991 Act.

Completion of partly heard cases by judges appointed to higher court

116.- (1) Where a judicial office within the meaning of section 6 of this Act is vacated by a person in accordance with subsection (3) of that section, the person shall complete the hearing of any case or cases that have been partly heard by that person in the Court in which the judicial office is vacated if, at the request of the President of that Court-

- (a) in case the person 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,
- (b) in case the person the person is appointed to the office of the ordinary judge of the Supreme Court, the Chief Justice requests the person to do so, or in case the person is appointed to the office of ordinary judge of the High Court or of Circuit Court, the President of the High Court or the President of the Circuit Court, as may be appropriate, requests the person to do so.

(2) Whenever a judge sits in a Court in pursuance of this section, he or she shall be an additional judge of that Court concerned for all the purposes of that Court.

Explanatory Note

Section 6A of the Principal Act 1961, as inserted by section 12 of 2002 Act.

It was noted by Fennelly J. in DPP v. Redmond [2006] IESC 25 that this section allows for a judge to continue hearing a case after he or she has been promoted to a higher court thus permitting a case stated by a judge when at a lower court to be transmitted back upon the decision of a higher court.

Consequences of membership of Law Reform Commission

117.- (1) Subject to subsection (2) of this section, when a person who is a barrister is appointed to be either-

- (a) a Commissioner in a whole-time capacity,
- (b) or a whole-time officer of the Commission,
- (c) then for the purposes of qualification for appointment—
- (d) under section 5(2)(a) of the Act of 1961, as a judge of the Supreme Court or the High Court,
- (e) under section 17(2)(a) of the Act of 1961, as a judge of the Circuit Court,
- (f) under section 14 of the Act of 1936, to act temporarily as a judge of the Circuit Court,
- (g) under section 29(2) of the Act of 1961, as a justice of the District Court,
- (h) under section 51 (as amended by section 48(8) of the Act of 1961) of the Act of 1936, to act temporarily as a justice of the District Court,
- (i) service by him as such a Commissioner or as such an officer of the Commission, shall be deemed to be practice as a barrister or solicitor as may be appropriate.

(2) 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 (as amended by section 4 of the *Courts and Court Officers Act 2002*) of the Act of 1961 of a continuous period of not less than 2 years practice by a person as a barrister or solicitor immediately before the appointment of the person as a judge of the Supreme Court or the High Court.

Explanatory Note

Section 14(2) of the Law Reform Commission Act 1975, as amended by section 7(a) of the 2002 Act.

Subsection (2) inserted by section 7(b) of the 2002 Act.

Periods of practice as barrister and solicitor reckonable

118.- Where a person has practised as a barrister and as a solicitor, periods of practice as a barrister and periods of practice as solicitor may be reckoned to satisfy the minimum period of practice as a barrister, or as a solicitor, required by –

- (a) subsection (2)(a) of section 5 (as amended by section 4) of the Act of 1961 in the case of an appointment as a judge of the Supreme Court or the High Court,
- (b) subsection (2) or (2B) of section 17 (as amended by section 5) of the Act of 1961 in the case of appointment as a judge of the Circuit Court,
- (c) section 14(1) (as amended by section 29 of the Act of 1995) of the Act of 1936 in the case of an appointment to act temporarily as a judge of the Circuit Court,
- (d) subsection (2) or (3) of section 29 of the Act of 1961 in the case of an appointment as a judge of the District Court, or
- (e) section 51(1) (as amended by section 48(8) of the Act of the 1961) of the Act of 1936 in the case of an appointment to act temporarily as a judge of the District Court.

Explanatory Note

Section 6 of the 2002 Act.

Chapter 2

Judges of the Superior Courts

General

Precedence between judges

119.- The precedence between judges shall be as follows:

- (a) the Chief Justice shall rank first;
- (b) the President of the High Court shall rank after the Chief Justice;
- (c) then shall rank the judges of the Supreme Court who are former Chief Justices each according to priority of his or her appointment as Chief Justice;
- (d) next shall 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 his or her appointment as an ordinary judge of the Supreme Court;
- (e) then shall 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 7(2) of the *Courts (No. 2) Act 1997*, relates) each according to priority of his or her appointment as President of the High Court;
- (f) next shall rank the other judges of the High Court, other than the ex-officio judges of that Court to whom paragraph (g) or (h) relates, each according to his or her priority of appointment as an ordinary judge of the High Court;
- (g) then shall rank the President of the Circuit Court by virtue of being an additional judge of the High Court; and
- (h) next shall 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 7(3) of the *Courts (No. 2) Act 1997*, relates) each according to

priority of his or her appointment as President of the Circuit Court.]

Explanatory Note

Section 9 of the 1924 Act as substituted by section 9 of the Courts (No.2) Act 1997.

Mode of address

120.- The judges of the High Court and the Supreme Court shall be addressed in the manner to be determined by the rules to be made under this Part of this Act, and shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction one with another.

Explanatory Note

Section 10 of the 1924 Act.

Note Rules of the Superior Courts (Mode of Address of Judges) 2006 (SI No 196 of 2006) which amends Order 119 of the Rules of the Superior Courts. With effect from April 25 2006, the Chief Justice and the President of the High Court are to be addressed in court by their respective titles in English or Irish. Other Judges of the Superior Courts are to be addressed as “A Bhreithimh” or “Judge” or “An Chuirt” or “The Court”.

Preservation of judicial control of court business

121.- (1) Nothing in this Act shall prejudice or affect the control of any judge or justice over the conduct of the business of his court.

(2) When an officer attached to any court is engaged on duties relating to business of that court which is for the time being required by law to be transacted by or before or under or pursuant to the order of a judge or judges of that court he shall observe and obey all directions given to him by such judge or judges.

(3) All proofs and all other documents and papers lodged in or handed in to any court in relation to or in the course of the hearing of any suit or matter shall be held by or at the order and disposal of the judge or the senior of the judges by or before whom such suit or matter is heard.

Explanatory Note

Section 65 of the Court Officers Act 1926

Judge to have jurisdiction to hear all cases, but no judge to hear appeal from order made by himself

122.- Each judge of the High Court and the Supreme Court (including the Chief Justice) shall have jurisdiction to hear and determine any case whether civil or criminal, in equity, or at common law, or under statute: Provided always that no judge shall sit upon the hearing of an appeal in an action tried before him whether with or without a jury, or upon an appeal from a judgment or order made by him or to which he was a party whether concurring or dissenting.

Explanatory Note

Section 24 of the 1924 Act.

The Judicial Commissioners of the Irish Land Commission

123.- (1) [...]

(2) The President of the High Court shall from time to time as occasion requires, assign a judge of the High Court to discharge the office of Judicial Commissioner of the Irish Land Commission, and the President of the High Court may, whenever he thinks proper to do so, terminate any such assignment previously made by him.

(3) The President of the High Court may, whenever the judge for the time being assigned by him under the next preceding sub-section of this section to discharge the office of Judicial Commissioner of the Irish Land Commission is temporarily unable owing to the public duties or services temporarily imposed on him or on account of illness or for any other sufficient cause to discharge the duties of the said office, assign temporarily (without terminating the assignment of the said judge) another judge of the High Court to discharge during such inability the said office.

(4) Every judge of the High Court who shall be assigned under this section to discharge the office of Judicial Commissioner of the Irish Land Commission (including a judge so assigned temporarily) shall be deemed to be so assigned in manner prescribed by law within the meaning of section 3 of the *Land Law (Commission) Act 1923* (No. 27 of 1923), and that section shall apply and have effect accordingly.

Explanatory Note

Section 7 of the 1936 Act. Note: section 2 of the Irish Land Commission (Dissolution) Act 1992 and the Irish Land Commission Act 1992 (Commencement) Order 1999 (S.I. No. 75) appointed 31 March 1999 as the day on which the jurisdiction vested in the office of Judicial Commissioner was vested in the High Court. It is now exercised by the President of the High Court or where he so directs, by an ordinary judge of the High Court.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration this section can be repealed as it is obsolete.

Qualifications of Superior Court Judges

Qualifications of judges of Supreme Court and High Court

124.- (1) The existing Chief Justice shall be qualified for appointment as Chief Justice and, if he is willing to accept office, no other person shall be qualified for appointment as Chief Justice.

- (a) the existing President of the High Court shall be qualified for appointment as President of the High Court and, if he is willing to accept office, no other person shall be qualified for appointment as President of the High Court.
 - (b) each of the persons who are ordinary judges of the existing Supreme Court immediately before the operative date shall be qualified for appointment as an ordinary judge of the Supreme Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as an ordinary judge of the Supreme Court.
 - (c) each of the persons who are ordinary judges of the existing High Court immediately before the operative date shall be qualified for appointment as an ordinary judge of the High Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as an ordinary judge of the High Court.
 - (d) paragraphs (a), (b), (c) and (d) of this subsection apply only in relation to the qualification for appointment of the first judges of the Supreme Court and High Court.
 - (e) subsections (2), (3), (4) and (5) of this section shall have effect subject to the preceding paragraphs of this subsection.
- (2) (a) Subject to paragraphs (b) and (c) of this subsection, a person shall not be qualified for appointment as a judge of the Supreme Court or the High Court if the person is for the time being a practising barrister or a practising solicitor of not less than 12 years' standing who has practised as a barrister or a solicitor for a continuous

period of not less than 2 years immediately before such appointment.

- (b) A person who
 - (i) is or was at any time during the period of 2 years immediately before the appointment concerned-
 - (I) a judge of the Court of First Instance of the European Communities,
 - (II) a judge of the Court of First Instance attached to that Court,
 - (III) an Advocate-General of the Court of Justice of the European Communities,
 - (IV) a judge of the European Court of Human Rights established under the Convention established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,
 - (V) a judge of the International Court of Justice established under the Charter of the United Nations,
 - (VI) a judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,
 - (VII) a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunal Act 1998 and
 - (ii) was a practising barrister or a practising solicitor before appointment to any of the office referred to in subparagraph (i) of this paragraph,

shall be qualified for appointment as a judge of the Supreme Court or the High Court,

(c) a judge of the Circuit Court who has served as such as a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the Supreme Court or the High Court.

(3) An ordinary judge of the Supreme Court shall be qualified for appointment as President of the High Court or as Chief Justice.

(4) The President of the High Court shall be qualified for appointment as an ordinary judge of the Supreme Court or as Chief Justice.

(5) An ordinary judge of the High Court shall be qualified for appointment as an ordinary judge of the Supreme Court or as President of the High Court or as Chief Justice.

Explanatory Note

Section 5 of the Supplemental Provisions Act 1961.

Subsection (2) amended by section 4 2002 Act

Age of retirement

Retirement age of judge of Supreme Court and High Court

125.- (1) Subject to subsections (2) and (3) of this section, the age of retirement of a judge of the Supreme Court and the High Court shall be 70 years.

(2) The age of retirement of a judge of the Supreme Court and the High Court who holds office at the time of the coming into operation of this section shall be 72 years.

(3) The age of retirement shall be 72 years for a person who holds office on or before the coming into operation of this section as a judge of the High Court, the Circuit Court, the District Court, the Court of Justice, the Court of First Instance attached thereto or an Advocate-General of the Court of Justice and who is subsequently appointed to be a judge of the Supreme Court or High Court.

Explanatory Note

Section 47 of the 1995 Act.

Note that section 12 of the 1924 Act, repealed by the 1995 Act provided that the age of retirement for all judges of the High and Supreme Court was 72.

The Joint Oireachtas Committee on the Courts of Justice Act 1924 recommended that the age of retirement of Supreme and High Court judges be 75 and not 72 as it was under the 1924 Act.

Chapter 3

High Court Judges

Rota of judges for election petitions

126.- The judges to be placed on the rota for the trial of election petitions in [the State] in each year under the provisions of the *Parliamentary Elections Act 1868* , shall be selected out of the judges of the High Court in such manner as may be provided by any rules of court to be made for that purpose, and in the meantime and subject thereto shall be selected out of the judges of the High Court in like manner as they have heretofore been selected out of the judges of the King's Bench Division of the High Court of Justice in Ireland.

Explanatory Note

Section 23 of the 1924 Act. The Parliamentary Elections Act 1868 was repealed by sections 1(6) and 5 and the Schedule of the Electoral Act 1992 (No 23 of 1992).

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration given that Election petitions are now governed by the Electoral Act 1992, as amended by the Electoral Act 1997. Section 132(7) states that the High Court shall determine the matter at issue in the petition at the trial of the petition.

Chapter 4

Judges of the Circuit Court

Judge of the Circuit Court acting outside his own Circuit

127.- Whenever it appears to the Minister on the representation of a Judge of the Circuit Court that such Judge cannot properly deal with any matter pending before him by reason of the fact that he has a personal interest in such matter or such personal knowledge of the facts or of the parties as might prejudice the trial of such matter, the Minister may appoint another Judge of the Circuit Court (who so consents) to hear and determine such matter in the Circuit of the first mentioned Judge and thereupon such matter may be so heard and determined.

Explanatory Note

Section 10 of the 1928 Act.

Power of Circuit Judge assigned to a particular circuit to hear and determine urgent applications outside his circuit

128.- Notwithstanding anything contained in the Courts of Justice Acts 1924 to 1946 a Circuit Court Judge for the time being assigned (whether permanently or temporarily) to a particular circuit may, outside his circuit, hear and determine any application which he has jurisdiction to hear and determine within the circuit and which, in his opinion, should be dealt with as a matter of urgency.

Explanatory Note

Section 17 of the 1947 Act.

Duties and powers of Circuit Judges temporarily assigned to circuits

129.- (1) Where a Circuit Judge is temporarily assigned, under section 10 of this Act , to a circuit then, such Circuit Judge shall, while so temporarily assigned, have, in relation to such circuit and concurrently with the Circuit Judge permanently assigned thereto and any other Circuit Judge who is temporarily assigned to such circuit, all the privileges, powers and duties for the time being conferred or imposed by law on a Circuit Judge permanently assigned to such circuit.

(2) In this section the expression “Circuit Judge” includes a person appointed under section 14 of the Act of 1936 to act as a Judge of the Circuit Court.

Explanatory Note

Section 11 of the 1947 Act.

Modes of Address and precedence of judges

130.- (1) All the judges of the Circuit Court (hereinafter called Circuit Judges) shall be addressed in such manner as may be determined by the rules to be made under this Part of this Act, and shall rank amongst themselves according to priority of appointment.

(2) The President of the Circuit Court [. . .] shall take precedence over all other Circuit Judges.

Explanatory Note

Subsection (1) Section 38 of the 1924 Act.

Subsection (2) Section 9 of the 1947 Act, as amended by section 3 and Schedule of Supplemental Provisions Act 1961

Tenure of office

131.- The Circuit Judges shall hold office by the same tenure as the Judges of the High Court and the Supreme Court.

Explanatory Note

Section 39 of the 1924 Act. Consequence of this section is that the method removal of Judge of Circuit Court is the same as that for Superior Court Judges.

Murray CJ in Curtin v. Dáil Eireann and Ors stated that this section “remains in force and applies to judges of the Circuit Court established under the present Constitution. Section 48 of the Courts (Supplemental Provisions) Act 1961 provided, inter alia, that the Act of 1924 applied to the judges of the then newly established Circuit Court “as if it were enacted in this Act”.

He went on to state” Thus, for all the purposes of the present proceedings, the appellant is subject to and entitled to the protection of Art. 35.4.1° of the Constitution to the same extent as a judge of the High Court or the Supreme Court. Technically, he is protected by a legislative rather than a constitutional protection. But that is a distinction of no consequence. This legislation has decided to confer on judges of the Circuit Court tenure equivalent to the constitutional protections”.

Ex-officio judge of the Circuit Court

132.- The President of the District Court shall be an ex officio judge of the Circuit Court.

Explanatory Note

Section 33 of the 1995 Act.

Appointment of persons to act temporarily as additional judges of the Circuit Court

133.- (1) Whenever it appears to the [government] that, owing to the temporary absence from duty for any cause of a judge of the Circuit Court, or an unusual and temporary increase in the business of the Circuit Court on any circuit, or any other cause, it is necessary, in order to prevent the work of the Circuit Court getting into arrears either generally or on any particular circuits or circuit, to increase temporarily the number of the judges of the Circuit Court, one or more persons who are practising barristers [or practising solicitors] of at least ten years' standing at the date of appointment may be appointed to act as a judge or judges of the Circuit Court for such period as the [government] shall think proper in respect of each such person.

(2) [. . .]

(3) Every person appointed under this section to act as a judge of the Circuit Court shall, during the period for which he is so appointed, be paid out of moneys provided by the Oireachtas such remuneration as the Minister for Justice shall, with the sanction of the Minister for Finance, determine.

Explanatory Note

Section 14 of the 1936 Act, subsection (1) as amended by section 29 of 1995 Act

Qualifications of Judges of the Circuit Court

Qualifications of judges of the Circuit Court

134.- (1) (a) The existing President of the Circuit Court shall be qualified for appointment as President of the Circuit Court and, if he is willing to accept office, no other person shall be qualified for appointment as President of the Circuit Court.

(b) Each of the persons (other than the existing President of the Circuit a Court) who are judges of the existing Circuit Court immediately before the operative date shall be qualified for appointment as an ordinary judge of the Circuit Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as an ordinary judge of the Circuit Court.

(c) Paragraphs (a) and (b) of this subsection apply only in relation to the qualification for appointment of the first judges of the Circuit Court.

(d) Subsections (2) and (3) of this section shall have effect subject to the preceding paragraphs of this subsection.

(2) A person who is for the time being a practising barrister [or a practising solicitor] of not less than ten years' standing shall be qualified for appointment as a judge of the Circuit Court.

(2A) A judge of the District Court shall be qualified for appointment as a judge of the Circuit Court.

(2B) A county registrar who practiced as a barrister or a solicitor for not less than 10 years' standing before he or she was appointed to be county registrar shall be qualified for appointment as a judge of the Circuit Court.

(3) An ordinary judge of the Circuit Court shall be qualified for appointment as President of the Circuit Court.

Explanatory Note

Section 17 of the Supplemental Provisions Act 1961. Note section 14(2) of Law Reform Commission Act 1975.

Subsection (2) substituted and subsections (2A) and (2B) inserted by section 5 of the 2002 Act.

Qualifications of judges of the Circuit Court

135.- (1) For the purpose of qualification of appointment—

- (a) under section 43 of the *Courts of Justice Act 1924*, as a judge of the Circuit Court of Justice constituted by section 37 of that Act, or
- (b) under section 14 of the *Courts of Justice Act 1936*, to act temporarily as such a judge,

service by a person appointed under the said section 14 to act temporarily as a judge of that Court shall be deemed always to have been practice at the Bar [or practice as a solicitor].

(2) For the purpose of qualification for appointment—

- (a) under section 17(2)(a) of the *Courts (Supplemental Provisions) Act 1961*, as a judge of the Circuit Court, or
- (b) under the said section 14 to act temporarily as such a judge, service by a person appointed under the said section 14 to act temporarily as a judge of that Court shall be deemed to be, and always to have been, practice at the Bar [or practice as a solicitor].

Explanatory Note

Section 2 of the Courts Act 1973, as amended by section 31 of 1995 Act. See also 2002 Act.

Circuits comprising Irish speaking districts

136.- So far as may be practicable having regard to all relevant circumstances, the Circuit Judge assigned to any Circuit which includes a district where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.

Explanatory Note

Section 44 of the 1924 Act.

Retirement of Judges of Circuit Court

Age of retirement

137.- (1) The age of retirement of a judge of the Circuit Court shall be seventy years.

(2) Notwithstanding subsection (1) of this section, the age of retirement of a judge of the Circuit Court who was a judge of the existing Circuit Court at the passing of the Act of 1947 shall be seventy-two years.

Explanatory Note

Section 18 of the Supplemental Provisions Act 1961.

It is worth noting that the Joint Oireachtas Committee on the Courts of Justice Act 1924 recommended that the retirement ages of Circuit Court Judges be 75.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether subsection (2) can be repealed as is spent.

Chapter 5

Judges of the District Court

General

Tenure of office of Judges

138.- (1) District Judges shall hold office by the same tenure as the Judges of the Supreme Court and the High Court.

(2) This section shall not apply to temporary judges of the District Court.

Explanatory Note

Section 20 of the 1946. Note the significance of this to removal of district court judges from office.

Appointment of persons to act temporarily as additional judges of the District Court

139.- (1) Whenever it appears to the [government] that, owing to the temporary absence from duty for any cause of a [judge] of the District Court or an unusual and temporary increase in the business of the District Court in any district or any other cause, it is necessary, in order to prevent the work of the District Court getting into arrear either generally or in any particular districts or district, to increase temporarily the number of the [judges] of the District Court, one or more persons who are practising barristers or solicitors of [ten] years' standing at least at the date of appointment may be appointed to act as a [judge] or [judges] of the District Court for such period as the [government] shall think proper in respect of each such person.

(2) [. . .]

(3) Every person appointed under this section to act as a [judge] of the District Court shall, during the period for which he is so appointed, be paid out of moneys provided by the Oireachtas such remuneration as the Minister for Justice shall, with the sanction of the Minister for Finance, determine.

(4) [. . .]

Explanatory Note

Section 51 of the 1936 Act. Subsections (2) and (4) repealed by section 3 and Schedule 1 of the Supplemental Provisions Act 1961

Qualifications of District Court Judges

Qualifications of [judges] of District Court and interpretation of section 2 of the Act 1949, as applied to section 48 of this Act

140.- (1) Each of the persons who are [judges] of the existing District Court immediately before the operative date shall be qualified for appointment as a [judge] of the District Court and, if and so long as there is one or more than one of those persons who is willing to accept office and has not been appointed, no other person shall be qualified for appointment as a [judge] of the District Court.

- (a) paragraph (a) of this subsection applies only in relation to the qualification for appointment of the first [judges] of the District Court.
- (b) subsections (2) and (3) of this section shall have effect subject to the preceding paragraphs of this subsection.

(2) A person who is for the time being a practising barrister or solicitor of not less than ten years' standing shall be qualified for appointment as a [judge] of the District Court.

(3) A barrister or solicitor who actually practised his profession for not less than ten years shall be qualified for appointment as a [judge] of the District Court if for the time being he holds an office in respect of which it was (at the time of his appointment thereto) required by statute that every person appointed thereto should be or should have been—

- (a) a practising solicitor, or
- (b) a practising barrister or solicitor.

(4) Where a person (being, immediately before the operative date, a [judge] of the existing District Court by virtue of a warrant made under section 2 of the Act of 1949) is appointed a [judge] of the District Court, he shall, for the purposes of the Act of 1949, as applied by section 48 of this Act, be deemed to have been continued in office under the Act of 1949, as so applied, for a year commencing on the date on which he attained—

- (a) if the warrant is the first in respect of him, sixty-five years or

- (b) if the warrant is the second in respect of him, sixty-six years, or
- (c) if the warrant is the third in respect of him, sixty-seven years, or
- (d) if the warrant is the fourth in respect of him, sixty-eight years, or
- (e) if the warrant is the fifth in respect of him, sixty-nine years.

Explanatory Note

Section 29 of the Supplemental Provisions Act. 1961. Note section 14(2) of the Law Reform Commission Act 1975.

Court Districts comprising Irish speaking areas

141.- So far as may be practicable having regard to all relevant circumstances the [Judge] of the District Court assigned to a District which includes an area where the Irish language is in general use shall possess such a knowledge of the Irish language as would enable him to dispense with the assistance of an interpreter when evidence is given in that language.

Explanatory Note

Section 71 of the 1924 Act.

Business of District Court in Dublin Metropolitan District

142.- (1) The President of the District Court shall—

- (a) arrange for the distribution of the business of the District Court in the Dublin Metropolitan District or in such other District Court District where more than one judge is permanently assigned amongst the judges of the District Court assigned to the Dublin Metropolitan District or to such other District Court District].
- (b) determine the class or classes of business to be transacted in each of the several places appointed by the Minister under section 40 of this Act for the transaction of the business of the District Court in the Dublin Metropolitan District and the days and hours at which such class or classes of business shall be transacted in the several places so appointed.

(2) Before arranging for the distribution of any business under paragraph (a) of subsection (1) of this section, the President shall consult with any Principal [Judge] of the Dublin Metropolitan District.

Explanatory Note

Section 42 of the Supplemental Provisions Act 1961. Subsection 1(a) substituted by sections 39 of 1995 Act.

Age of retirement

Age of retirement of [Judge] of District Court

143.- (1) The age of retirement of a [judge] of the District Court shall be sixty-five years.

(2) The age of retirement shall be 72 years for a person who holds office on or before the coming into operation of this section as a judge of the District Court,

(3) The references in section 2 of the Act of 1949, as applied by section 48 of this Act, to section 15 (repealed by this Act) of the Act of 1946 shall be construed as references to subsection (1) of this section.

Explanatory Note

Subsections (1) and (3), section 30 of the Supplemental Provisions Act 1961. Subsection (2) removed as obsolete and spent. It dealt with the age of retirement for district court judges appointed before 29 July 1946.

Subsection (2), section 47(3) of 1995 Act.

Note the Joint Oireachtas Committee on the Courts of Justice Act 1924 recommended that the age of retirement for District Court Judges be 72, and not 70 (for District Court Judges of the Police District of Dublin Metropolis or a district comprising the City of Cork) or 65 (for all other District Court Judges).

Power to extend retirement age of certain [judges]

144.- (1) (a) In this section the expression “the Committee” means a committee consisting of—

- (i) the Chief Justice,
- (ii) the President of the High Court, and
- (iii) the Attorney General.

(b) The Committee may act by a majority of its members and a warrant under this section shall be sufficiently authenticated if signed by two members of the Committee.

(2) Where—

- (a) a [judge] of the District Court, whose age of retirement under section 30(1) of the Courts (*Supplemental Provisions*) Act 1961 is 65 years, is about to reach that age, and
- (b) he satisfies the Committee that he is not suffering from any disability which would render him unfit to continue to discharge efficiently the duties of his office,

the Committee may, if they so think proper after consultation with the Minister for Justice, by warrant made before such [judge] attains the said age, continue him in office for one year commencing on the date on which he will attain the said age.

(3) Where—

- (a) a [judge] of the District Court to whom a warrant under subsection (2) of this section or under this subsection relates is about to reach the age of (as the case may be) 66, 67, 68 or 69 years, and
- (b) he satisfies the Committee that he is not suffering from any disability which would render him unfit to continue to discharge efficiently the duties of his office.

the Committee may, if they so think proper after consultation with the Minister for Justice, by warrant made before such [judge] attains the

said age, continue him in office for one year commencing on the date on which he will attain the said age.

(4) The provisions of this section shall have effect notwithstanding anything contained in section 15 of the Act of 1946.

Explanatory Note

Section 2 of the 1949 Act.

Chapter 6

Presiding Judges

Appointment of Presiding Judges

Appointment of Chief Justice, etc

145.- Where the Government proposes to advise the President on an appointment to the office of the Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court it shall have regard first to the qualifications and suitability of persons who are serving at that time as judges in courts established in pursuance of Article 34 of the Constitution.

Explanatory Note

Section 23 of the 1995 Act.

Interpretation

146.- (1) In this division –

“the Act of 1995” means the Courts and Court Officers Act 1995,

“presiding judge” means –

- (a) in the case of the Supreme Court, the judge of that Court who is also the Chief Justice;
- (b) in the case of the High Court, the judge of that Court who is also the President of the High Court;
- (c) in the case of the Circuit Court, the judge of that Court who is also the President of the Circuit Court;
- (d) in the case of the District Court, the judge of that Court who is also the President of the District Court.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Explanatory Note

Section 1 of the Courts (No 2) Act 1997.

Appointment of presiding judges

147.- (1) A person who, after the commencement of this Act, is appointed as the presiding judge of the Supreme Court, High Court, Circuit Court or District Court shall be so appointed—

- (a) for a period of 7 years, or
- (b) until he or she reaches the appropriate age of judicial retirement as a judge of that Court, whichever first occurs, and, in a case to which paragraph (a) relates, shall not be eligible for re-appointment as presiding judge of that Court.

(2) Except in a case to which paragraph (b) of subsection (1) relates, nothing in that subsection shall be construed as affecting the continuance of a person as a judge of the court of which he or she was the presiding judge and, accordingly, every such person shall, as the case may be, continue to serve as a judge of that court.

Explanatory Note

Section 4 of the Courts (No. 2) Act 1997.

This follows a recommendation of the Working Group on a Courts Commission in its Second Report: Case Management and Court Management that appointments to the Presidency of Benches be for 7 years and non-renewable. (page 17 of its second report). The primary reason advanced by the Committee for this recommendation was increase in workload of the Presidents of the Benches resulted in it being impractical for an individual to be appointed as President and remain in that position for a long period of time.

Former presiding judges and vacancies in relevant court

148.- (1) In respect of each former Chief Justice who is still serving as a judge of the Supreme Court and to whom section 4(2) relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the Chief Justice, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former Chief Justice so serving,
- (c) shall not be filled until that former Chief Justice has ceased to be a judge of the Supreme Court to whom section 4(2) relates.

(2) In respect of each former President of the High Court who is still serving as a judge of the High Court and to whom section 4(2) relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the President of the High Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former President of the High Court so serving,
- (c) shall not be filled until that former President of the High Court has ceased to be a judge of the High Court to whom section 4(2) relates.

(3) In respect of each former President of the Circuit Court who is still serving as a judge of the Circuit Court and to whom section 4(2) relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of ordinary judges of that Court—

- (a) at the time when he or she ceases to be the President of the Circuit Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former President of the Circuit Court so serving,
- (c) shall not be filled until that former President of the Circuit Court has ceased to be a judge of the Circuit Court to whom section 4(2) relates.

(4) In respect of each former President of the District Court who is still serving as a judge of the District Court and to whom section 4(2) relates, a vacancy which, but for the application of this subsection to such judge, could be filled in the number of judges (other than as President) of that Court—

- (a) at the time when he or she ceases to be the President of the District Court, or
- (b) where there is no such vacancy at that time, such a vacancy as next arises or, where appropriate, such a vacancy as next arises after this subsection has been applied to any other preceding former President of the District Court so serving,
- (c) shall not be filled until that former President of the District Court has ceased to be a judge of the District Court to whom section 364 4(2) relates.

Explanatory Note

Section 6 of the Courts (No. 2) Act 1997.

Ex-officio membership of courts

149.- (1) Nothing in this Act shall be construed as affecting a former Chief Justice who serves as a judge of the Supreme Court to whom section 4(2) relates from continuing to be ex officio an additional judge of the High Court.

(2) Nothing in this Act shall be construed as affecting a former President of the High Court who serves as a judge of the High Court to whom section 4(2) relates from continuing to be ex officio an additional judge of the Supreme Court.

(3) Nothing in this Act shall be construed as affecting a former President of the Circuit Court who serves as a judge of the Circuit Court to whom section 4(2) relates from continuing to be ex officio an additional judge of the High Court.

(4) A former President of the District Court who serves as a judge of the District Court to whom section 4(2) relates shall be ex officio an additional judge of the Circuit Court.

Explanatory Note

Section 7 of the Courts (No. 2) Act 1997.

Functions exercisable by presiding judges

150.- References, however expressed, in any enactment 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.

Explanatory Note

Section 10 of the Courts (No. 2) Act 1997.

References to senior ordinary judge

151.- 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—

- (a) in the case of the Supreme Court, by reference to the order of precedence of judges of that Court contained in paragraphs (c) and (d) of section 9 of the *Courts of Justice Act 1924* (inserted by section 9), and
- (b) in the case of the High Court, by reference to the order of precedence of judges of that Court contained in paragraphs (e) and (j) of section 9 of the *Courts of Justice Act 1924* (as so inserted).

Explanatory Note

Section 11 of the Courts (No. 2) Act 1997.

Assignment of former Presidents of the District Court

152.- (1) Subject to subsection (2), in respect of a former President of the District Court to whom section 4(2) relates, he or she shall continue to be permanently assigned by virtue of section 35(2) of the *Courts (Supplemental Provisions) Act 1961*, to the Dublin Metropolitan District.

(2) Nothing in subsection (1) shall prevent the application of subparagraphs (3) and (4) of paragraph 2 of the Sixth Eighth Schedule to the *Courts (Supplemental Provisions) Act 1961*, to a former President of the District Court to whom section 4(2) relates.

Explanatory Note

Section 12 of the Courts (No. 2) Act 1997.

Temporary discharge of duties of certain judges

153.- (1) If, during any period, the Chief Justice is unable owing to illness or for any other reason to transact the business of his office or the office of Chief Justice is vacant, all jurisdictions, powers, authorities and functions for the time being vested in him by virtue of his office, other than the power of determination specified in section 7(4) of the *Courts (Supplemental Provisions) Act 1961*, shall be exercised or performed by the President of the High Court or, if the President of the High Court is unable owing to illness or for any other reason to exercise or perform the said jurisdictions, powers, authorities and functions, or if there is a vacancy in the office of President of the High Court, by the senior ordinary judge of the Supreme Court who is for the time being available.

- (a) the power of determination conferred by section 7(4) of the *Courts (Supplemental Provisions) Act 1961*, on the Chief Justice and exercisable in his absence, by virtue of that provision, by the senior ordinary judge of the Supreme Court for the time being available shall also be exercisable by the latter judge if the office of Chief Justice is vacant.

(2) If, during any period, the President of the High Court is unable owing to illness or, for any other reason to transact the business of his office or the office of President of the High Court is vacant, all jurisdictions, powers, authorities and functions for the time being vested in him by virtue of his office, other than those conferred on him by subsection (1) of this section, shall be exercised or performed by the senior ordinary judge of the High Court who is for the time being available.

(3) If, during any period, the President of the Circuit Court is unable 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 him by virtue of his office shall be exercised or performed by the senior judge for the time being available of the judges of the Circuit Court permanently assigned to the Dublin Circuit.

(4) If, during that period, the President of the District Court is unable 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 him by virtue of his office shall be exercised or performed by the senior [judge] of the District Court for the time

being available of the [judges] of the District Court permanently assigned to the Dublin Metropolitan District.

Explanatory Note

Section 18 of the Courts(No. 1) Act 1981.

Chapter 7

Powers of Presiding Judges

Power of Chief Justice

Administration of Supreme Court

154.- Notwithstanding section 18(1)(a) of the *Courts Act 1981*, it shall be the function of the Chief Justice or in his or her absence the senior ordinary judge of the Supreme Court to arrange the distribution and allocation of the business of the Supreme Court.

Explanatory Note

Section 8 of the 1995 Act.

Interview of District Court Judge on conduct by Chief Justice

155.- Where the Chief Justice is of the opinion that the conduct of the a justice of the District Court has been such as to bring the administration of justice into disrepute, the Chief Justice may interview the justice privately and inform him of such opinion.

Explanatory Note

Section 10(4) of the Supplemental Provisions Act 1961. The Committee on Judicial Conduct recommended that this section be repealed in its 2000 Report. The repeal of this section would occur on the establishment of a Judicial Council.

Judicial Inquiry into the health or conduct of [Judges]

156.- Whenever the Minister requests the Chief Justice to appoint a judge to –

- (a) investigate the condition of health, either physical or mental, of a [judge], or
- (b) to inquire into the conduct (whether in the execution of his office or otherwise) of a [judge], either generally or on a particular occasion,

and, in either case, with particular reference to such matters as may be mentioned in the request, the following provisions shall have effect, that is to say—

- (i) the Chief Justice shall appoint either a judge of the Supreme Court or, with the consent of the President of the High Court, a judge of the High Court to conduct the investigation or inquiry;
- (ii) the judge so appointed may conduct the investigation or inquiry in such manner as he thinks proper whether by examination of witnesses or otherwise, and in particular may conduct any proceedings in camera, and for this purpose shall have all such powers, rights and privileges as are vested in a judge of the High Court on the occasion of an action;
- (iii) upon conclusion of the investigation or inquiry, the said judge shall report the result thereof to the Minister.

(2) This section does not relate to temporary District Court judges.

Explanatory Note

Section 21 of the 1946 Act. The Committee on Judicial Conduct recommended that this section be repealed in its 2000 Report.

Subsection (2) inserted as a consequence of section 2 of the 1946 Act which states that the definition of “justice” in the Act does not include a temporary justice of the District Court.

Jurisdiction of Chief Justice and President of the High Court

Jurisdictions transferred to Chief Justice

157.- (1) [...]

(2) There shall be transferred to the Chief Justice and exercisable by him all such jurisdiction in relation to solicitors as was lately exercised by the Lord Chancellor of Ireland and is at the passing of this Act exercised by the Lord Chief Justice of Ireland

(3) [...]

Explanatory Note

Section 19 of the 1924 Act as amended by Supplemental Provisions Act 1961, (1) and (3) repealed by section 3 and Schedule 1 of 1961 Act.

Jurisdiction of Chief Justice and President of the High Court

158.- (1) There shall be exercisable by the Chief Justice—

- (a) the jurisdiction in relation to solicitors which, by virtue of subsection (2) of section 19 of the Act of 1924, and subsection (3) of section 14 of the *Solicitors Act 1954*, was, immediately before the operative date, vested in or capable of being exercised by the existing Chief Justice,
- (b) the power of appointing notaries public and commissioners to administer oaths,
- (c) all jurisdiction which, by virtue of any enactment which is applied to section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing Chief Justice.

(2) [. . .]

(3) It shall be the function of the President of the High Court [. . .] to arrange the distribution and allocation of the business of the High Court.

(4) There shall be exercisable by the President of the High Court all jurisdiction which, by virtue of any enactment which is applied by section 48 of this Act, was, immediately before the operative date, vested in or capable of being exercised by the existing President of the High Court.

Explanatory Note

Section 10 of the Supplemental Provisions Act 1961 amended by 1981 Act, section 32 and Schedule. This section and section 19 of 1924 Act require proper consolidation as well as amendment in the light of the enactment of new Solicitors Acts.

Subsection (4) relating to interview of District Court Judge by Chief Justice is a stand alone section in the District Court Judges section.

President of President of the Circuit Court

Powers of President of the Circuit Court

159.- (1) For ensuring an equitable distribution of the work of the Circuit Court amongst the several judges thereof and the prompt dispatch of the business of the Circuit Court in the several circuits thereof, the President of the Circuit Court shall have and exercise the powers conferred on him by subsections (2), (3), (4), (5) and (6) of this section.

- (2) (a) The President of the High Court may, from time to time, by order fix, in respect of any circuit, the places therein at which sittings are to be held, and whenever an order, made under this paragraph in relation to a circuit, is in force, sittings within that circuit shall be held at the places fixed by the order and not elsewhere.
 - (b) The President of the Circuit Court may, from time to time, by order fix, in respect of any circuit, the dates on which sittings shall commence at each place therein at which sittings are to be held, and, whenever an order under this paragraph is in force, sittings shall commence at each such place in accordance with the order.
 - (c) The President of the Circuit Court may at any time by order revoke or amend an order made under this subsection (including this paragraph).
 - (d) The President of the Circuit Court shall, before exercising his powers under this subsection in respect of a circuit, first consult the Circuit judge permanently assigned to that circuit.
 - (e) Every order made under this subsection shall, as soon as may be after it is made, be published in such manner as the President of the Circuit Court may direct.
 - (f) In this subsection the word “sittings” means sittings of the Circuit Court.
- (3) (a) The president of the Circuit Court may at any time temporarily assign to any circuit (whether there is or is not a Circuit judge permanently assigned thereto) any Circuit judge, whether he is or is not permanently assigned to another circuit.

- (b) Where a Circuit judge who is permanently assigned to a particular circuit is temporarily assigned under this subsection to another circuit, such temporary assignment shall not terminate or affect such permanent assignment or deprive or relieve him of any of the privileges, powers and duties vested in or imposed on him by virtue of such permanent assignment.
- (4) Where a person is appointed under section 14 of the Act of 1936 to act as a Circuit Judge, the President of the Circuit Court may, during the period for which that person is so appointed, from time to time assign him to any circuit, whether there is or is not a Circuit judge permanently assigned thereto.
- (5) (a) Where two or more Circuit judges are for the time being assigned (whether permanently or temporarily to a particular circuit, the President of the Circuit Court, after consultation with the said Circuit judges, may, from time to time, allocate the business of the Circuit Court in that circuit amongst the said Circuit judges.
- (b) References in this subsection to Circuit judges shall be construed as including references to persons appointed under section 14 of the Act of 1936 (section 152) to act as Circuit judges.
- (6) For the purposes of enabling the President of the Circuit Court to perform his functions under this section, the county registrar for a county or a county borough shall, when so requested by the President of the Circuit Court, furnish to him such particulars, in relation to the business of the Circuit Court in such county or county borough, as may be specified in the request.
- (7) [...]

Explanatory Note

Section 10 of the 1947 Act, subsection (7) repealed by section 32 and Schedule of Courts Act 1981.

President of the District Court

General powers of President of the District Court

160.- (1) For ensuring the prompt and efficient discharge of the business of the District Court in the several districts thereof, the President of the District Court shall have and exercise the powers conferred on him by subsections (2), (3) and (4) of this section.

- (2) (a) Where it appears to the President of the District Court that the conduct of a [judge] of the District Court is prejudicial to the prompt and efficient discharge of the business of that Court, he shall investigate the matter and may report the result of the investigation to the Minister.
- (b) In the course of an investigation under this subsection , the President shall consult the [judge] concerned.
- (3) (a) The President of the District Court may convene meetings of the [judges] of the District Court for the purpose of discussing matters relating to the discharge of the business of that Court, including, in particular, such matters as the avoidance of undue divergences in the exercise by the [judges] of the jurisdiction of that Court and the general level of fines and other penalties.
- (b) Such meetings shall not be convened more frequently than twice in one year.
- (c) Every [judge] shall attend at every such meeting unless unable to do so owing to illness or any other unavoidable cause and, where a [judge] is unable to attend such a meeting, he shall as soon as may be inform the President of the reason therefore.
- (4) The President of the District Court may, whenever he thinks fit, make recommendations to the Minister in relation to the following matters:
 - (a) the number of [judges] of the District Court to be assigned to the Dublin Metropolitan District;
 - (b) the places for holding the District Court in or for any district court area; and

- (c) the days and hours for holding the District Court in or for any district court area other than the area for the time being comprising the Dublin Metropolitan District.

Explanatory Note

Section 36 of the Supplemental Provisions Act 1961

Qualifications

Qualifications for appointment as President of the District Court and assignment

161.- (1) (a) A [judge] of the District Court shall be qualified for appointment as President of the District Court, provided however that a person who is a [judge] of the existing District Court immediately before the operative date shall be qualified for appointment as first President of the District Court.

(b) a person who is qualified for appointment as a [judge] of the District Court shall be qualified for appointment as President of the District Court, other than as first President thereof.

(2) The President of the District Court shall be permanently assigned by the Government to the Dublin Metropolitan District.

(3) [...]

Explanatory Note

Section 35 of the Supplemental Provisions Act 1961. Subsection (3) repealed by section 32 and Schedule to the 1981 Act.

PART 7
OFFICERS OF THE COURT

Chapter 1

General

Officers transferred to the Courts Service

162.- (1) Every principal officer within the meaning of Part I of the *Court Officers Act 1926*, other than the Master of the High Court and the Taxing Masters.

(2) Every District Court Clerk.

(3) Every member of the general staff employed in the several offices mentioned in paragraph 2 of the Eighth Schedule to the *Courts (Supplemental Provisions) Act 1961*.

(4) Every member of the general staff employed in Circuit Court Offices under section 42 of the *Court Officers Act 1926*.

(5) Every member of the staff attached to the Circuit Court and to judges thereof under section 43 of the *Court Officers Act 1926*.

(6) Every servant attached to a judge of the High Court under section 43 of the *Courts of Justice Act 1936*.

(7) Every other officer or servant who, immediately before the establishment day, is either attached to a court established pursuant to the Constitution or to the person of a judge then holding office or employed in a court office and is performing duties in relation to any court or judge or employed in any court office.

Explanatory Note

First Schedule to the 1998 Act.

Performance of the duties, etc, by principal officers and county registrars

163.- The several powers, authorities, duties and functions conferred or imposed by Part I of this Act on the respective officers therein referred to as principal officers and by Part II of this Act on the county registrars shall be exercised and performed by those officers and registrars with the assistance of the officers and servants employed in the offices under their management respectively, and every such principal officer and county registrar shall arrange for the exercise and performance by officers or servants employed in the office under his management of such of his powers, authorities, duties and functions (other than those which he is for the time being expressly required by statute or rule of court to exercise or perform in person) as he cannot conveniently exercise or perform himself.

Explanatory Note

Section 58 of the Court Officers Act 1926.

Saver for Officers of the Court

164.- (1) The following provisions shall apply to any person who, immediately before the operative date, holds any office, employment or position under the *Court Officers Acts 1926 to 1951*—

- (a) he shall continue to hold his office, employment or position as if this Act had not been passed,
- (b) nothing in this Act shall affect the terms and conditions on and subject to which he held his office, employment or position immediately before the operative date.

Explanatory Note

Section 55(5) of the Supplemental Provisions Act 1961

Nomination of court stock-brokers, court receivers, etc

165.- (1) All such stockbrokers, receivers, auctioneers, assessors, and other persons as shall from time to time be required to be retained to render occasional services in or for any court or for any judge or officer of any court shall be nominated and retained by the [Courts Service] on such terms and conditions as [it] shall (subject to the sanction of the Minister for Finance in respect of any payment of remuneration out of public moneys) think proper.

(2) Every nomination and retainer made by the [Courts Service] under the foregoing sub-section may be revoked by the [Courts Service] at any time.

(3) Every nomination or retainer by whomsoever made of any such person as aforesaid which is in force at the commencement of any Part (other than this Part) of this Act in relation to any court, judge, or officer to which such Part relates may be revoked by the [Courts Service] at any time after such commencement, but unless and until such nomination or retainer is so revoked the same shall continue in force according to the terms thereof including any term relating to the duration thereof.

(4) [. . .]

(5) This section shall not apply to the appointment in any suit or matter by the judge or by the parties with the approval of the judge of an auctioneer, receiver, assessor, liquidator, manager, agent or other like person to render services in relation to the subject matter of such suit or matter where the appointment does not extend to any other suit or matter and either there is no person retained under this section available to render such services or the judge is of opinion that it is not expedient in the special circumstances of the case to appoint the person or any of the persons so retained.

Explanatory Note

Section 59 of the Court Officers Act 1926. Subsection (4) repealed by section 3 and Schedule 1 of the Supplemental Provisions Act 1961

Security to be given by certain officers

166.- (1) Every person appointed to a post or situation to which this section for the time being applies shall before entering on the duties of such post or situation give security for the discharge of the duties of such post or situation in such manner and for such amount as shall be prescribed under this section.

(2) The [Courts Service] may with the sanction of the Minister for Finance from time to time by order prescribe the posts created by this Act and the posts and situations in the offices established by this Act to which this section shall apply and may by any such order prescribe, with the sanction of the Minister for Finance, the manner in which and the amount for which security is to be given under this section in respect of each such post and situation but so that the amount for which such security is to be given shall not in any case exceed twice the annual salary of the post or situation in respect of which the security is given.

Explanatory Note

Section 61 of the Court Officers Act 1926

Transfer of property vested in officials

167.- (1) All securities and moneys which are immediately before the commencement of this Part of this Act standing in the books of the government of Saorstát Eireann or any foreign government or any bank or any company or other body corporate whatsoever (whether such bank, company, or body is within or outside Saorstát Eireann) in the name or to the account of the Accountant-General of the High Court of Justice of Saorstát Eireann or of the Accountant-General of the Supreme Court of Judicature in Southern Ireland shall immediately upon the commencement of this Part of this Act become and be vested in the Accountant, for the time being, of the, Courts of Justice in Saorstát Eireann without any transfer, assignment, or other instrument.

(2) All real and personal property (including choses-in-action) whatsoever which is immediately before the commencement of this Part of this Act vested in the Official Assignee of the High Court shall immediately upon the commencement of this Part of this Act become and be (without any conveyance, transfer, or other instrument) vested in the Official Assignee in Bankruptcy for the time being of the High Court for all the estate and interest and subject to the trusts and for the purposes for and subject to which such property was respectively vested in the said Official Assignee, and accordingly all securities and moneys which are immediately before the commencement of this Part of this Act standing in the books of the government of Saorstát Eireann or any foreign government or any bank, or any company or other body corporate whatsoever (whether such bank, company, or body is within or outside Saorstát Eireann) in the name or to the account of the Official Assignee of the High Court of Justice of Saorstát Eireann or of the Official Assignee of the High Court of Justice in Southern Ireland shall immediately upon the commencement of this Part of this Act become and be vested in the Official Assignee in Bankruptcy of the High Court of Justice of Saorstát Eireann without any transfer, assignment, or other instrument.

(3) All chattels and all documents which immediately before the commencement of this Part of this Act are deposited for safe custody or otherwise with the Accountant-General of the High Court of Justice in Saorstát Eireann shall upon the commencement of this Part of this Act and without any further order be transferred to the Accountant of the Courts of Justice and be held by him for the same purposes as such chattels and documents were respectively held by the said Accountant-General immediately before such commencement.

(4) In this section—

the word “securities” includes every description of stocks, shares, debentures, bonds, mortgages, and other securities and all dividends and interest accrued or accruing thereon;

the word “moneys” includes moneys in bank on deposit or current accounts; and references to the “books of a government, bank, company, or other body corporate” includes books kept for a government, bank, company, or body corporate by any bank, company, body, or person.

Explanatory Note

Section 29 of the Court Officers Act 1926.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section is appropriate for the Bill.

Court officer performing the duties of another office

168.- (1) (a) Where there is a vacancy in an office attached to any court or the holder of an office attached to any court is absent or incapacitated, the [Courts Service] may, subject to subsection (2) of this section, require and authorise any officer attached to that or any other court to perform, during a specified period or until otherwise directed by the [Courts Service], the duties (in addition to his or her own duties) of such office.

(b) Notwithstanding the provision of paragraph (a) of subsection (1) of this section, the [Courts Service] may, where [it] considers it appropriate, require and authorise a County Registrar to perform-

(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 Courts 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]

(2) The power conferred on the [Courts Service] by subsection (1) of this section shall, where the officer required to perform the duties of another office is attached to the Supreme Court, be exercised only after consultation with the Chief Justice and shall, where such officer is attached to the High Court, be exercised only after consultation with the President of the High Court.

(3) Whenever an officer is required under this section to perform the duties of another office, he shall, while the requisition remains in force, have all the powers of the holder of that office as fully as if he had been appointed thereto.

(4) Where an officer attached to a court has, before the passing of this Act, performed by direction of the Minister the duties of another office (whether attached to the same or to another court) in addition to his own duties, he shall be deemed while so performing those duties to have had all the powers of the holder of that office as fully as if he had been appointed thereto and nothing done by him in the execution of those duties shall be questioned, or be deemed ever to have been capable of being questioned, on the ground that he had not been appointed to that office.

(5) Where at the passing of this Act an officer attached to a court is performing by direction of the Minister the duties of another office (whether attached to the same or to another court) in addition to his own duties, he shall, as from the passing of this Act, be deemed to have been required and authorised under this section to perform those duties and this section shall apply and have effect in relation to him accordingly.

(6) Any requisition made under section 9 of the Act of 1945 before the operative date shall, if it is in force immediately before the operative date, continue in force and be deemed to have been made under the said section 9, as applied by section 48 of this Act.

Explanatory Note

Section 9 of the Court Officers Act, 1945. Subsection (6) section 55(4) of the Supplemental Provisions Act 1961.

Deputies for principal officers

169.- (1) The [Courts Service] may in the case of each of the offices established by this Part of this Act (other than [. . .] the Taxing-Master's Office) nominate one of the officers for the time being serving in the office to be the deputy for the principal officer having under this Act the management of such office, and every officer so nominated shall, during every temporary absence and every temporary incapacity through illness of such principal officer and every occasion on which the office of such principal officer is vacant occurring while such nomination remains unrevoked, have and exercise the powers and authorities and perform and fulfil the duties and functions for the time being vested by law in such principal officer.

(2) [...]

Explanatory Note

Section 28 of the Court Officers Act 1926, subsection (1) amended and subsection (2) repealed by section 3 and Schedule of the Supplemental Provisions Act 1961.

Abolition of existing posts and offices

170.- (1) Whenever it is expressly enacted by this Part of this Act (Part I of the 1926 Act) that any officer holding a post (in this sub-section referred to as the new post) created by this Part of this Act is to have or exercise the powers or authorities or perform or fulfil the duties or functions which were formerly vested in or imposed on the holder of a post (in this sub-section referred to as the existing post) existing immediately or at any other time before the commencement of this Part of this Act, the existing post if not abolished by virtue of any other provision of this Act is hereby abolished as from the commencement of this Part of this Act, and as from the abolition of the existing post (whether effected by this sub-section or by some other provision of this Act) every enactment referring to the existing post (other than enactments relating to the appointment to, qualification for, or remuneration or tenure of the existing post) shall, if and so far as such enactment continues in force and [is] capable of taking effect, be construed and have effect as if in lieu of the references therein to the existing post there were inserted therein references to the new post.

(2) Whenever it is enacted by this Part of this Act (Part I of the 1926 Act) that the business to be transacted in any office (in this sub-section referred to as the new office) is to be or to include the business formerly transacted in an office (in this sub-section referred to as the existing office) existing immediately or at any other time before the commencement of this Part of this Act, the existing office if not abolished by virtue of any other provision of this Act is hereby abolished as from the commencement of this Part of this Act, and as from the abolition of the existing office (whether effected by this sub-section or by some other provision of this Act) all references in any enactment to the existing office (other than references to the staff of the existing office) shall be construed as references to the new office and such enactment shall have effect accordingly.

(3) Every post—

- (a) which is at the commencement of this Part of this Act attached to the Supreme Court, the High Court, the Court of Criminal Appeal, or the Chief Justice or was attached to the former Supreme Court of Judicature or the Lord Chancellor for Ireland, and
- (b) was created by statute or rule of court, and

- (c) the powers, authorities, duties, or functions of the holder of which are not expressly transferred by this Part of this Act to the holder of a post created by this Act,
- (d) is hereby abolished (unless abolished by virtue of any other provision of this Act) as from the commencement of this Part of this Act, and as from such abolition (whether effected by this sub-section or by any other provision of this Act) the powers, authorities, duties, and functions of the holder of the post shall, so far as they remain capable of being exercised or performed, be vested in the Master of the High Court unless and until otherwise provided by rules of court, and every enactment referring to the holder of such post (other than enactments relating to the appointment to, qualification for, or remuneration or tenure of such post) shall, if and so far as the same continues in force and [is] capable of taking effect, be construed and have effect as referring to the Master of the High Court in lieu of the holder of such post.

(4) Every office—

- (a) which is at the commencement of this Part of this Act attached to the Supreme Court, the High Court, the Court of Criminal Appeal, or the Chief Justice or was attached to the former Supreme Court of Judicature or the Lord Chancellor for Ireland, and
- (b) was established by statute or rule of court, and
- (c) the business of which is not transferred by this Part of this Act to any of the offices established by this Act,
- (d) is hereby abolished (unless abolished by virtue of some other provision of this Act) as from the commencement of this Part of this Act, and as from such abolition (whether effected by this sub-section or by some other provision of this Act) the business formerly transacted in such office shall, if and so far as the same shall require to be transacted, be transacted in the Central Office unless and until otherwise provided by rules of court, and every enactment referring to such office (other than enactments relating to the staff of such office) shall, if and so far as the same continues in force and [is] capable of taking

effect, be construed and have effect as referring to the Central Office in lieu of such office.

Explanatory Note

Section 31 of the Court Officers Act 1926.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section should be contained in the Bill. The section provides for the abolition of posts which were in existence prior to the commencement of the 1926 Act, but as a result of the 1926 Act, the duties of these posts were transferred to new established officers.

Application of Civil Service Regulation Act 1924

171.- Save as is otherwise provided in this Act, the Civil Service Regulation Act 1924 (No 5 of 1924) and every Act for the time being amending the Act shall apply to every office and situation under this Act other than offices and situations for the time being comprised to the said *Civil Service Regulation Act 1924*.

Explanatory Note

Section 60 of the Court Officers Act 1926.

Chapter 2

Officers of the Superior Courts

General

Officers and Offices of Superior Courts

172.- The provisions set out in the Eighth Schedule to this Act shall apply in relation to offices and officers to be attached to the High Court, the Supreme Court and the President of the High Court respectively.

Explanatory Note

Section 55(1) of the Supplemental Provisions Act 1961.

Offices attached to the High Court, the Supreme Court and the President of the High Court

173.- There shall become and be attached to the High Court, the Supreme Court and the President of the High Court respectively the following offices—

To the High Court,
The Central Office,
The Taxing-Masters' Office,
The Probate Office,
The Office of the Official Assignee in Bankruptcy,
Two Examiners' Offices or the Examiner's Office, [**note section 12 of Eighth Schedule of Supplemental Provisions Act 1961.**]
The Accountant's Office;

To the Supreme Court,
The Office of the Registrar of the Supreme Court;

To the President of the High Court,
The Office of Wards of Court.

Explanatory Note

Section 2 of Schedule 8 of the Supplemental Provisions Act 1961.

Note section 12 of the Eighth Schedule of the Supplemental Provisions Act 1966 states that upon the occurrence of the first vacancy of the office of examiner, the number of examiners shall be reduced to one.

Officers attached to the High Court, the Supreme Court and the President of the High Court

174.- There shall become and be attached to the High Court, the Supreme Court and the President of the High Court respectively the following officers (each of whom shall be a principal officer within the meaning of Part I of the Act of 1926 this Act :-

To the High Court,
The Master of the High Court,
Two Taxing Masters,
The Probate Officer,
The Official Assignee in Bankruptcy,
Two Examiners or the Examiner,
The Accountant;

To the Supreme Court,
The Registrar of the Supreme Court;

To the President of the High Court,
The Registrar of Wards of Court.

Explanatory Note

Section 3 of Schedule 8 of the Supplemental Provisions Act 1961.

Offices and principal officers of the Supreme Court and the High Court

175.- (1) [...]

(2) [...]

(3) The Master of the High Court and the Taxing-Masters shall be appointed by the Executive Council Government and every other of the said principal officers shall be appointed by the [Courts Service], and all the said principal officers (including the Master of the High Court and the Taxing-Masters) shall hold office at the pleasure of the Executive Council Government.

(4) No principal officer nor any officer for the time being nominated to be a registrar of the High Court shall be removed from his office without the concurrence of the Chief Justice and the President of the High Court.

(5) [...]

Explanatory Note

Section 3 of the Court Officers Act 1926 as amended. Note that section 20(3)(b) of the Civil Service Regulation Act 1956 provides that nothing in the Act shall be construed as affecting section 3(4) of that Act of 1926.

Subsection (5) repealed by section 4 of the 1945 Act.

Subsections (1) and (2) repealed by section 3 and Schedule of the Supplemental Provisions Act 1961.

General staffs of offices of Supreme Court and High Court and the President of the High Court

176.- (1) In addition to the principal officers there shall be employed in the several offices mentioned in paragraph 2 of this Schedule described in this Part such and so many officers, clerks, messengers, criers and servants as the [Courts Service] shall from time to time determine with the sanction of the Minister for Finance and after consultation with the President of the High Court in the case of an office attached to the High Court or in the case of the Office of Wards of Court and with the Chief Justice in the case of the Office of the Registrar of the Supreme Court.

(2) All officers (other than the principal officers), clerks, messengers, criers and servants employed in any of the offices mentioned in paragraph 2 of this Schedule in this Part shall be interchangeable amongst such offices and shall be liable to serve in any of those offices as the Minister shall from time to time direct after consultation with the President of the High Court in the case of an office attached to the High Court or in the case of the Office of Wards of Court and with the Chief Justice in the case of the Office of the Registrar of the Supreme Court.

Explanatory Note

Section 22 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Claims for debts and liquidated debts

177.- (1) Where, in the case of a claim in the High Court for a debt or a liquidated sum, an application is made for judgement in default of defence, the Master of the High Court may exercise the discretion to award interest conferred on a judge by section 22 of the Courts Act 1981

(2) Where, in the case of a claim in the High Court for a debt or a liquidated sum, an application is made for judgement in default of appearance, the Registrar of the Central Office may exercise the discretion to award interest conferred on a judge by section 22 of the *Courts Act 1981*.

(3) Where, in the case of a claim in the Circuit Court for a debt or a liquidated sum, an application is made for judgement in default of appearance or defence, the County Registrar may exercise the discretion to award interest conferred on a judge by section 22 of the *Courts Act 1981*.

(4) A decision under subsection (1) or subsection (2) of this section may be appealed to a judge of the High Court.

(5) A decision under subsection (3) of this section may be appealed to a judge of the Circuit Court.

Explanatory Note

Section 50 of the 1995 Act.

Master of the High Court

The Master of the High Court

178.- (1) In this paragraph “rules of court” means rules made under section 36 of the Act of 1924.

(2) The Master of the High Court shall have and exercise such powers and authorities and perform such duties and functions as are from time to time conferred on or assigned to him by statute or rules of court, by regulations under section 3 of the *European Communities Act 1972* or by rules of court and in particular (unless and until otherwise provided by statute, by such regulations or by rules of court) shall have and perform all such other powers, authorities, duties and functions as are vested in him or her by virtue of section 31(3) of the Act of 1926.

Explanatory Note

Section 4 of the Eight Schedule of the Supplemental Provisions Act 1961. Subsection (2) substituted by section 43 of the Civil Law (Miscellaneous Provisions) Bill 2006.

Powers of Master of High Court

179.- (1) The Master of the High Court is hereby authorised by law to exercise limited functions and powers of a judicial nature within the scope of Article 37 of the Constitution.

(2) In this paragraph “rules of court” means rules made under section 36 of the Act of 1936.

(3) The Master of the High Court shall have and exercise such powers and authorities and perform such duties and functions as are from time to time conferred on or assigned to him by statute or rules of court and in particular (unless and until otherwise provided by statute or rules of court) shall have and perform an such other powers, authorities, duties and functions as are vested in him by virtue of subsection (3) of section 31 of the Act of 1926.

Explanatory Note

Subsection (1), Section 24 of the 1995 Act.

Subsections (2) and (3), section 2 Eighth Schedule of the Supplemental Provisions Act 1961.

Qualification of Master of High Court

180.- No person shall be appointed to be Master of the High Court unless at the time of his appointment he is a barrister of not less than ten years' standing who is then actually practising.

Explanatory Note

Section 17 of Eighth Schedule of the Supplemental Provisions Act 1961.

Hearings by Master of the High Court

181.- (1) Subject to subsection (2) of this section and section 26 of this Act, the Master of the High Court may, in all such applications made *ex parte* or by motion on notice whether interlocutory or otherwise and in all such applications for judgement by consent or in default of appearance or defence as may from time to time be allocated for hearing by the Master of the High Court by the President of the High Court, exercise all the functions, powers and jurisdiction which a judge of the High Court exercises from time to time.

(2) Without prejudice to the powers of the Master of the High Court under the *Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988*, the Master of the High Court shall not exercise any function, power or jurisdiction in respect of any of the following matters:

- (a) matters relating to criminal proceedings;
- (b) matters concerning the liberty of the person, including attachment;
- (c) the granting of injunctions;
- (d) bail;
- (e) the trial of any issue before the trial of an action;
- (f) conditional or other orders in State Side matters, or any other form of application for judicial review, save orders for enlargement or abridgement of time;
- (g) any cause or matter concerning a Ward of Court, save an application under Council Regulation (EC) No. 2201/2003 of 27 November 2003;
- (h) matters relating to custody of children, save an application under that Council Regulation;
- (i) approval of settlements in cases in which damages are claimed on behalf of infants;
- (j) applications under section 63 of the *Civil Liability Act 1961*.

(3) All the functions, powers and jurisdiction exercised by the Master of the High Court immediately before the passing of this Act by virtue of any statute or rule of court may continue to be exercised by the Master of the High Court save in so far as the same are inconsistent with the exceptions mentioned in subsection (2) of this section.

(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 an action as may from time to time be conferred on the Master of the High Court by rules of court.

(5) Subject to Article 10(4) of 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, all orders of the Master of the High Court shall be subject to appeal to the High Court.

(6) Rules of court may be made by the Superior Courts Rules Committee, with the concurrence of the Minister in relation to any function, power or jurisdiction conferred on the Master of the High Court under this section.

Explanatory Note

Section 25 of the 1995 Act Subsection (6) is superfluous in view of the powers already conferred on the Superior Court Rules Committee.

Subsection (g) and (h) amended by Regulation 9 of the European Communities (Judgements in Matrimonial Matters and Matters of Parental Responsibility) Regulations 2005 (SI No 112 of 2005).

Subsection (5) amended by Regulation 5 of the European Communities (European Enforcement Order) Regulations 2005, SI No 648 of 2005.

Sittings of Master of the High Court

182.- It shall be the function of the President of the High Court, or where the President of the High Court is not available the senior ordinary judge of the High Court who is for the time being available, to 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 section 25 (Section 78) of this Act.

Explanatory Note

Section 26 of the 1995 Act.

Appointments of temporary deputies for Master and Taxing-Master

183.- (1) In the event of the temporary absence or the temporary incapacity through illness of the Master of the High Court or any Taxing-Master or in the event of the office of such Master or Taxing-Master being vacant the [Courts Service] may appoint a deputy to execute the office of such Master or Taxing-Master during such absence, incapacity, or vacancy.

- (a) In any of the following cases, namely-
 - (i) the temporary absence or the temporary incapacity through illness of the Master of the High Court
 - (ii) the office of the Master of the High Court being vacant, or
 - (iii) in any case in which the Courts Service considers it desirable that the following power be exercised,

the Courts Service may appoint one or more deputy to execute the office of the Master of the High Court or, as the case may be, to execute such office concurrently with the Master of the High Court.

(2) A deputy appointed under this section shall while his appointment continues have and exercise all the powers and authorities and shall perform and fulfil all the duties and functions of the officer whose deputy he is-

- (a) in a case falling within subsection (1) or subsection (1)(A)(a) or (b) of this section, in place of their being exercised, performed and fulfilled by that officer, and
- (b) in a case falling within paragraph (c) of subsection (1A), concurrently with their being exercised, performed and fulfilled by that officer

(3) [...]

(4) No person shall be appointed under this section to be a Deputy Master of the High Court unless at the time of his appointment he either possesses the qualifications prescribed by this Act for persons appointed to be Master of the High Court or is an officer employed in the Central Office who has during the next preceding twelve years been employed in one or more of the offices established by this Part of

this Act or of the offices the business of which is transferred by this Act to the offices established by this Part of this Act.

(5) No person shall be appointed under this section to be a Deputy-Taxing Master unless at the time of his appointment he possesses the qualifications prescribed by this Act for persons appointed to be Taxing Master.

Explanatory Note

Section 27 of the Court Officers Act 1926.

Subsections (1) and (2) substituted and subsection (1A) inserted, by section 43 of the 2004 Act now in force.

Subsection (3) repealed by section 1 of the Court Officers Act 1972.

Retirement age of Master of High Court and Taxing Master

184.- The Master of the High Court and every Taxing-Master shall retire from office on attaining the age of seventy years [. . .]

Explanatory Note

Section 3(6) of the Court Officers Act 1926 as amended. Subsection (6) amended by section 3 and Schedule 1 of the Supplemental Provisions Act 1961.

The Central Office

The Central Office

185.- (1) The Central Office shall be under the management of such principal officer serving in the Central Office as the [Courts Service], after consultation with the President of the High Court, may from time to time nominate in that behalf.

(2) There shall be transacted in the Central Office all such business as is from time to time directed by statute or rule of court to be transacted therein and also all other business of the High Court except such business as is for the time being required by law to be transacted by or before one or more judges or the Master of the High Court and except such business as is for the time being assigned by law either to another office attached to the High Court or to the Office of Wards of Courts.

(3) The person who, immediately before the operative date, had, by virtue of a nomination under paragraph (a) of subsection (2) of section 2 (repealed by this Act) of the Act of 1945, the management of the Central Office shall continue to have the management of the Central Office and be deemed to have been nominated under sub paragraph (1) of this paragraph.

Explanatory Note

Section 5 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Office of Registrar of the Supreme Court

The Office of Registrar of the Supreme Court

186.- The Office of the Registrar of the Supreme Court shall be under the management of the Registrar of the Supreme Court and there shall be transacted in that office all the business of the Supreme Court (except such business as is for the time being required by law to be transacted by or before one or more of the judges of that Court) and also all the business of the Court of Criminal Appeal (except such business as is for the time being required by law to be transacted by or before one or more of the judges of that Court).

Explanatory Note

Section 17 of the Court Officers Act 1926.

The Registrar of the Supreme Court

187.- (1) The Registrar of the Supreme Court shall have the superintendence and control of the Office of the Registrar of the Supreme Court but shall in the exercise of such superintendence and control be subject to the general direction of the [Courts Service] in regard to all matters of general administration and to the directions of the Chief Justice in regard to all matters relating to the conduct of that part of the business of the Supreme Court and the Court of Criminal Appeal respectively which is for the time being required by law to be transacted by or before one or more of the judges of those courts respectively.

(2) In addition to the superintendence and control aforesaid the Registrar of the Supreme Court shall act as registrar to that Court and also as Registrar to the Court of Criminal Appeal and shall perform and fulfil in relation to those Courts all such duties and functions as are usually performed and fulfilled by the registrar of a court and shall also have and exercise such powers and authorities and perform and fulfil such duties and functions as shall from time to time be assigned to him by statute or rule of court.

Explanatory Note

Section 18 of the Court Officers Act 1926 as amended by section 29 and Second Schedule of the Courts Service Act 1998 (this transfers the functions of the Minister for Justice in section 18(1) of the 1926 Act to the Courts Service to the exclusion of the Minister).

Office of the Registrar of the Supreme Court

188.- There shall be transacted in the office of the Registrar of the Supreme Court all business in relation to the jurisdictions exercisable by the Chief Justice under subsection (1) of section 10 (1961 Act) of this Act.

Explanatory Note

Section 13 of the Eighth Schedule of the Supplemental Provisions Act 1961.

The Registrar of the Supreme Court

189.- (1) 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 under subsection (1) of section 10 (1961 Act) of this Act.

(2) The Registrar of the Supreme Court shall be subject to the direction of the Chief Justice in regard to the transaction of the business which in pursuance of paragraph 13 of this Schedule of this Act is to be transacted in the office of the Registrar of the Supreme Court.

Explanatory Note

Section 14 of the Eighth Schedule 8 of the Supplemental Provisions Act 1961.

The Office of Wards of Court

The Office of Wards of Court

190.- (1) The Office of Wards of Court shall be under the management of the Registrar of Wards of Court, and there shall be transacted in that office all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all such business in relation to the exercise of the jurisdiction vested in the High Court by subsection (1) of section 9 of this Act as was formerly transacted in relation to the exercise of that jurisdiction in the Lunacy Office of the Lord Chancellor of Ireland or in the offices attached to the Chambers of the said Lord Chancellor or in any other office attached to the former Supreme Court of Judicature in Southern Ireland.

(2) The Office of Wards of Court shall for the purpose of section 9 of the Act of 1945 this Act be deemed to be an office attached to a court.

Explanatory Note

Section 15 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Registrar of the Wards of Court

191.- (1) The Registrar of Wards of Court shall have the superintendence and control of the Office of Wards of Court and shall in the exercise of such superintendence and control be subject, in regard to all matters of general administration, to the general direction of the [Courts Service], and, in regard to all matters relating to the jurisdiction vested in the High Court by subsection (1) of section 9 of this Act, to the directions of the judge in the High Court for the time being exercising that jurisdiction.

(2) In addition to the superintendence and control of the Office of Wards of Court, the Registrar of Wards of Court shall have and exercise all such powers and authorities and perform and fulfil such duties and functions in relation to the exercise of the jurisdiction vested in the High Court by subsection (1) of section 9 of this Act as shall from time to time be conferred on or assigned to him by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) shall have and exercise all such powers and authorities as were formerly vested in the Registrar in Lunacy in Ireland or in the Chief Clerk to the Lord Chancellor of Ireland and shall perform and fulfil all such functions and duties in relation to the jurisdiction aforesaid as were formerly performed and fulfilled by the said Registrar in Lunacy and the said Chief Clerk respectively.

(3) The Registrar of Wards of Court shall for the purposes of section 9 of the Act of 1945 this Act be deemed to be an officer attached to the High Court.

Explanatory Note

Section 16 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Qualification of Registrar of Wards of Court

192.- No person shall be appointed to be Registrar of Wards of Court unless at the time of his or her appointment he or she—

- (a) is a barrister of not less than 10 years' standing, or
- (b) is a barrister employed in one or more of the offices mentioned in paragraph 2 who, at the 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 Courts Service and holds such qualification or qualifications as the Courts Service, with the consent of the President of the High Court, determines to be appropriate for such appointment.

Explanatory Note

Section 21 of the Eighth Schedule of the Supplemental Provisions Act 1961. Amended by section 43(b) of the Civil Law (Miscellaneous) Provisions Bill 2006.

The Taxing-Master

Qualifications of Taxing Master

193.- No person shall be appointed to be a Taxing-Master unless at the time of his appointment he is a solicitor of not less than ten years' standing who either is then actually practising or has previously practised for not less than ten years.

Explanatory Note

Section 18 of the Eighth Schedule of the Supplemental Provisions Act 1961

The Taxing Master

194.- Each of the Taxing Masters shall have and exercise the following duties and authorities and perform and fulfil the following duties and functions—

- (a) such powers, authorities, duties and functions as are for the time being conferred on or assigned to them by statute or rule of court,
- (b) unless and until otherwise provided by statute or rule of court—all such powers, authorities, duties and functions in relation to the High Court, and the Supreme Court, as were formerly possessed, and performed by the Taxing-Masters of the former Supreme Court of Judicature in Southern Ireland in relation to that Court,
- (c) unless and until otherwise provided by statute or rule of court—all such powers, authorities and functions in relation to the Court of Criminal Appeal, the Chief Justice and the President of the High Court, as were immediately before the operative date possessed or exercised by them in relation to the existing Court of Criminal Appeal, the existing Chief Justice and the existing President of the High Court respectively,
- (d) such other powers, authorities, duties and functions as were immediately before the passing of the Act of 1924 vested or imposed by law in or on the several Taxing Masters of the former Supreme Court of Judicature in Southern Ireland, and
- (e) the duty of taxing any costs to be received, allowed or paid to a solicitor as respects business undertaken on or after the 1st day of October 1957, in relation to the exercise by a local authority of their powers under the Labourers (Ireland) Acts 1883 to 1958.

Explanatory Note

Section 19 of the Eighth Schedule of the Supplemental Provisions Act 1961.

The Taxing Masters' Office

195.- The Taxing-Masters' Office shall be under the management of the senior Taxing-Master, and there shall be transacted in that Office the business of the Taxing-Master other than such business as is required by law to be transacted by a Taxing-Master in person.

Explanatory Note

Section 8 of the Eighth Schedule of the Supplemental Provision Act 1961.

Additional Powers of Taxing Master

196.- (1) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to examine the nature and extent of any work done, or services rendered or provided by counsel (whether senior or junior), or by a solicitor, or by an expert witness appearing in a case or any expert engaged by a party, and may tax, assess and determine the value of such work done or service rendered or provided in connection with the measurement, allowance or disallowance of any costs, charges, fees or expenses included in a bill of costs.

(2) On a taxation of costs as between party and party by a Taxing Master of the High Court, or by a County Registrar exercising the powers of a Taxing Master of the High Court, or on a taxation of costs as between solicitor and client by a Taxing Master of the High Court, the Taxing Master (or County Registrar as the case may be) shall have power on such taxation to allow in whole or in part, any costs, charges, fees or expenses included in a bill of costs in respect of counsel (whether senior or junior) or in respect of a solicitor or an expert witness appearing in a case, or any expert engaged by a party as the Taxing Master (or County Registrar as the case may be) considers in his or her discretion to be fair and reasonable in the circumstances of the case, and the Taxing Master shall have power in the exercise of that discretion to disallow any such costs, charges, fees or expenses in whole or in part.

(3) The High Court may review a decision of a Taxing Master of the High Court and the Circuit Court may review a decision of a County Registrar exercising the powers of a Taxing Master of the High Court made in the exercise of his or her powers under this section, to allow or disallow any costs, charges, fees or expenses provided only that the High Court is satisfied that the Taxing Master, or the Circuit Court is satisfied that the County Registrar, has erred as to the amount of the allowance or disallowance so that the decision of the Taxing Master or the County Registrar is unjust.

(4) No standby or retainer fee shall be payable to any solicitor, counsel (whether senior or junior) or to any witness whether professional or otherwise, on a taxation of costs as between party and party, nor on a taxation of a solicitor and client bill of costs where the Taxing Master (or County Registrar as the case may be) deems the

payment of such fee to be unreasonable in the circumstances of the case.

(5) 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 disbursements (including counsel's fees), but on the completion of the taxation no Certificate of Taxation shall issue until proper vouchers or receipts for disbursements have first been produced and vouched, and accepted by the Taxing Master or unless the parties agree or the Taxing Master decides that proper vouchers or receipts for disbursements need not be provided.

(6) Without prejudice to the provisions of Order 99, rule 29 (12) and (14) of the Rules of the Superior Courts 1986, or without prejudice to any enactment 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 solicitor or legal cost accountant or other cost drawer shall be entitled to any fees, disbursements, charges or expenses in relation to the taxation of costs as against the opposing party, but save as against the party who incurred such fees, disbursements, charges or expenses.

(7) On a review of taxation (whether on a solicitor and client or party and party basis) by the High Court, or the Circuit Court, no solicitor or legal costs accountant or other costs drawer retained to present the bill of costs to the Taxing Master or a County Registrar shall be entitled to be paid any fees, disbursements, charges or expenses for his or her attendance in court to give evidence in relation to the bill of costs, save as against the party who incurred such fees, disbursements, charges or expenses.

(8) The Taxing Master (or County Registrar as the case may be) may, at the request of the parties involved in any 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 or items of cost which are in dispute between the parties.

(9) Where a Taxing Master (or County Registrar as the case may be) undertakes a partial taxation of costs under subsection (8) of this section the Taxing Master (or County Registrar as the case may be) shall be empowered to request any party to the taxation to provide such information or further information as the Taxing Master (or County Registrar as the case may be) may require in connection with the taxation, and to submit any documents or papers relating to the

cause or matter that are in the possession of any such party, to him or her for consideration in connection with the taxation.

(10) Where part of a bill of costs has been taxed, the costs of taxation, including any duty payable, shall be based on such item or items in the bill of costs as were taxed

(11) Legal costs arising from formal investigations under section 466 of the *Merchant Shipping Act 1894*, may be taxed by the Taxing Master of the High Court (or County Registrar as the case may be).

Explanatory Note

Section 27 of the 1995 Act.

The Office of the Official Assignee in Bankruptcy

The Office of the Official Assignee in Bankruptcy

197.- The Office of the Official Assignee in Bankruptcy shall be under the management of the Official Assignee in Bankruptcy, and there shall be transacted therein all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all such business as was formerly transacted in the Office of the Official Assignee of the King's Bench Division of the High Court of Justice in Southern Ireland.

Explanatory Note

Section 9 of the Eighth Schedule of the Supplemental Provisions Act 1961.

The Registrars of the High Court

Registrars of the High Court

198.- (1) Such and so many as the [Courts Service] thinks proper of the officers for the time being serving in the Central Office shall be nominated by the [Courts Service] to be registrars of the High Court and every such registrar (in addition to any other duties which may be assigned to him by the officer for the time being managing the Central Office) shall act as registrar to the High Court as and when directed to do so by the officer for the time being managing the Central Office.

(1A) Each officer nominated under subparagraph (1) of this paragraph who stands directed to act as registrar to the High Court under that subparagraph shall (in addition to any other duties which may be assigned to him or her by the officer for that 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.

(2) The officers for the time being nominated under subparagraph section (1) of this paragraph section to be registrars of the High Court shall be principal officers within the meaning of Part I of the Act of 1926.

(3) Every person, who immediately before the operative date, was, by virtue of a nomination under subsection (2) of section 4 (repealed by this Act) of the Act of 1926, a registrar of the existing High Court shall become and be a registrar of the High Court and be deemed to have been nominated under subparagraph (1) of this paragraph.

Explanatory Note

Section 6 of the Eighth Schedule of the Supplemental Provisions Act 1961, subparagraph (1A) inserted by section 42 of the Civil Liability and Courts Act 2004, in force.

General superintendence and control of the High Court offices

199.- The officer for the time being managing the Central Office shall have the general superintendence and control of the offices attached to the High Court, but shall in the exercise of such superintendence and control be subject to the general direction of the [Courts Service] in regard to all matters of general administration and to the directions of the President of the High Court in regard to all matters relating to the conduct of that part of the business of the High Court which is for the time being required by law to be transacted by or before one or more judges of the High Court.

Explanatory Note

Section 7 of the Eighth Schedule of the Supplemental Provisions Act 1961.

The Examiner

The Examiner's Office

200.- (1) Until the number of Examiners shall be reduced to one, one Examiner's Office shall be under the management of one of the Examiners and the other Examiner's Office shall be under the management of the other Examiner.

(2) There shall be transacted in each Examiner's Office or in the Examiner's Office (where there is only one Examiner) all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all such business as was formerly transacted in the offices attached to the respective Chambers of the Master of the Rolls and the ordinary judge of the Chancery Division of the High Court of Justice in Southern Ireland and also such business as was formerly transacted in the offices attached to the Land Judge of the said Chancery Division, including the offices attached to that Judge in his capacity of Receiver Judge.

(3) There shall also be transacted in the Office of one of the Examiners (to be nominated by the Minister after consultation with the President of the High Court) or in the Examiner's Office (where there is only one Examiner) all such business as was formerly transacted in the Bankruptcy Office of the King's Bench Division of the High Court of Justice in Southern Ireland.

Explanatory Note

Section 10 of the Eighth Schedule 8 of the Supplemental Provisions Act 1961.

The Examiners

201.- (1) Each of the Examiners or the Examiner (where there is only one Examiner) shall have and exercise all such powers and authorities and perform and fulfil all such duties and functions as shall from time to time be conferred on or assigned to him by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) shall perform and fulfil such duties and functions as were formerly performed or fulfilled by the several Chief Clerks and Assistant Chief Clerks of the Master of the Rolls and the ordinary judge of the Chancery Division of the High Court of Justice in Southern Ireland respectively and the Chief Receiver or the Receiver-Examiner.

(2) One of the Examiners (to be nominated by the Minister after consultation with the President of the High Court) or the Examiner (where there is only one Examiner) shall have and exercise all such powers and authorities as were formerly vested in the Chief Registrar in Bankruptcy of the King's Bench Division of the High Court of Justice in Southern Ireland and shall perform and fulfil such duties and functions as were formerly required by law to be or were in fact performed or fulfilled by the said Chief Registrar and the Registrar and Deputy Registrar in Bankruptcy of the said King's Bench Division respectively

(3) The powers, authorities, duties and functions of an Examiner or of the Examiner (where there is only one Examiner) may, subject to any restrictions which the President of the High Court may think fit to impose, be executed, performed or fulfilled by an officer (to be designated by the President of the High Court) who is employed in that Examiner's Office or in the Examiner's Office (where there is only one Examiner) and who is qualified to be appointed Examiner.

Explanatory Note

Section 11 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Reduction in the number of Examiners

202.- On the occurrence of the first vacancy in the office of Examiner, the number of Examiners shall be reduced to one, who shall be the Examiner, and the two Examiners' Offices shall be consolidated into one office, which shall be the Examiner's Office and shall be under the management of the Examiner.

Explanatory Note

Section 12 of the Eighth Schedule of the Supplemental Provisions Act 1961.

Probate Office

The Probate Office

203.- The Probate Office shall be under the management of the Probate Officer and there shall be transacted therein all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all the business which immediately before the passing of this Act was required by law to be transacted in the Principal Probate Registry and also such other business as has heretofore been transacted in the offices of the Principal Probate Registrar.

Explanatory Note

Section 8 of the Court Officers Act 1926.

The Probate Officer

204.- The Probate Officer shall have and exercise all such powers and authorities and perform and fulfil such duties and functions as shall from time to time be conferred on or assigned to him by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) shall have and exercise all such powers and authorities as immediately before the passing of this Act were vested by law in the Principal Probate Registrar or an Assistant Probate Registrar and shall perform and fulfil such duties and functions as immediately before the passing of this Act were required by law to be or were in fact performed or fulfilled by the Principal Probate Registrar and the Assistant Probate Registrars respectively.

Explanatory Note

Section 9 of the Court Officers Act 1926.

Appointment of Probate Officer or Examiner

205.- (1) An appointment under this Principal Act of a person to be a Probate Officer or an Examiner shall be made as follows:—

- (a) the [Courts 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 Courts Service and who—
 - (i) is a barrister or solicitor, or
 - (ii) at any time prior to such appointment has been employed for a period of not less than 9 years, or for periods together totalling not less than 9 years, in an office or offices established under Part 1 of the Principal Act, or
 - (iii) holds such other qualification or qualifications as the Courts Service, with the consent of the President of High Court, determines to be appropriate for such appointment.
- (b) if the [Courts Service], after consultation with the President of the High Court, is satisfied that none of the persons qualified to be appointed under paragraph (a) of this subsection is suitable to be appointed, he may appoint—
 - (i) a person who at the time of the appointment is a barrister of not less than six years' standing who either is then actually practising or has previously practised for not less than six years, or
 - (ii) a person who at the time of the appointment is a solicitor of not less than six years' standing who either is then actually practising or has previously practised for not less than six years.

(2) In determining for the purposes of paragraph (b) of subsection (1) of this section the period during which a person has practised as a barrister or solicitor, any period during which he served in a situation in the Civil Service for which previous practice as a barrister or solicitor was specified (whether by statute or otherwise) as an essential qualification shall be regarded as a period of such practice.

(3) Sections 23 and 24 of the Principal Act 1924 are hereby repealed.

Explanatory Note

Section 6 of the 1945 Act.

Subsection 6(1)(a) amended by section 52 of the Civil Law (Miscellaneous Provisions) Bill 2006.

District probate registries

206.- (1) Every district probate registry shall, for the purposes of section 9 of the Act of 1945, be deemed to be an office attached to the High Court.

(2) Subsection (1) of this section shall be deemed to have come into operation on, and shall have effect as on and from, the 26th day of July, 1945.

Explanatory Note

Section 5 of the 1951 Act. Note: "Where a person, referred to in the subsection as the acting district probate registrar, is for the time being required and authorised by the Minister for Justice under section 9 of the Act of 1945 as amended by section 5 of the Court Officers Act 1951, to perform the duties of district probate registrar for the district served by a particular district probate registry, the Minister may authorise a specified officer serving in that district probate registry or the Circuit Court office which serves the area within which such district probate registry is located to execute, during the temporary absence or incapacity through illness of the acting district probate registrar, the office of district probate registrar for that district and, if the minister does so, then such officer shall, during the temporary absence or incapacity have and exercise all the powers and fulfil all the duties of the district probate registrar for that district until the Minister otherwise directs."

Section 24(2) of the Administration of Estates Act 1959.

Saving for district probate registries

207.- Save and except section 56 (which relates to the closing of district probate registries) and section 62 (which relates to the grant of Civil Service Certificates to certain officers) nothing in this Act shall apply to the District Probate Registries, and none of those Registries shall for the purposes of this Act (except section 62) be deemed to be or to have been attached to the High Court or to the former Supreme Court of Judicature or any branch or division thereof.

Explanatory Note

Section 33 of the Court Officers Act 192. The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration given that sections 56 and 62 are now repealed.

The Accountant

The Accountant's Office

208.- The Accountant's Office shall be under the management of the Accountant and there shall be transacted in that office all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all such business in relation to the High Court, the Supreme Court, and the Chief Justice as was formerly transacted in the Consolidated Accounting Office of the Supreme Court of Judicature in Ireland in relation to that Court and in relation to the Lord Chancellor for Ireland.

Explanatory Note

Section 15 of the Court Officers Act 1926.

The Accountant

209.- The Accountant (who shall be styled the Accountant of the Courts of Justice) shall have and exercise all such powers and authorities and perform and fulfil such duties and functions as shall from time to time be conferred on or assigned to him by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) shall perform and fulfil 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.

Explanatory Note

Section 16 of the Court Officers Act 1926.

The High Court on Circuit

Registrars to the High Court on Circuit

210.- (1) In every county and county borough (other than the county of Dublin and the county borough of Dublin) the county registrar for such county or county borough shall act as registrar to the High Court on Circuit when sitting in such county or county borough, and shall perform and fulfil such other duties and functions in relation to that Court as shall be assigned to him by Rules of Court.

(2) It shall be lawful for the [Courts Service], whenever [it] shall think proper so to do after consultation with the President of the High Court, to direct one or more of the officers for the time being serving in the Central Office of the High Court to travel to a particular appeal town for a particular sitting of the High Court on circuit in that appeal town and there perform such duties as are mentioned in that behalf in this section

(3) It shall be lawful for the [Courts Service], whenever [it] shall think proper so to do after consultation with the Chief Justice, to direct one or more of the officers for the time being serving in the Office of the Registrar of the Supreme Court to travel to a particular appeal town for a particular sitting of the High Court on circuit in that appeal town and there perform such duties as are mentioned in that behalf in this section.

(4) Every officer who is directed under this section to travel to an appeal town for a sitting of the High Court on circuit shall travel to such appeal town in accordance with such directions and shall there act as registrar (in addition to the county registrar) to the High Court on Circuit during the said sitting of that Court, and shall be and stay in such appeal town for such time before, during, and after such sitting as shall be necessary for the proper discharge of his duties as such registrar.

(5) Every officer travelling to and staying in an appeal town in pursuance of this section shall receive, out of moneys provided by the Oireachtas, such travelling expenses and subsistence allowance in respect of such travelling and staying as the [Courts Service] shall, with the sanction of the Minister for Finance, from time to time direct

Explanatory Note

Section 42 of the 1936 Act. Note: consequential amendment to section 38(1)(c) of the Referendum Act 1942 but the 1942 was repealed in its entirety by the Referendum Act 1994 (No 12 of 1994).

Servants of judges of the High Court on Circuit

211.- There shall be attached to every judge travelling and sitting as a judge of the High Court on Circuit and to every Commissioner of the High Court on Circuit one servant to perform such duties in relation to such judge or commissioner while travelling and sitting as such judge or commissioner as the [Courts Service] may appoint, and every such servant shall be appointed by the said [service] and shall hold office on such terms and conditions and receive out of moneys provided by the Oireachtas such remuneration and travelling expenses as the said [service], with the sanction of the Minister for Finance, shall determine.

Explanatory Note

Section 43 of the 1936 Act. Note: consequential amendment to section 38(1)(c) of the Referendum Act 1942 but the 1942 was repealed in its entirety by the Referendum Act 1994 (No 12 of 1994).

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether the terminology in this section requires updating.

Chapter 3

Officers of the Circuit Court

General

General staff of circuit court office

212.- There shall be employed in every circuit court office established under this Act such and so many officers, clerks, messengers, and servants as the [Courts Service] shall, with the sanction of the Minister for Finance, from time to time determine and all such officers, clerks, messengers, and servants shall hold office on such terms and conditions as the Minister for Finance shall prescribe.

Explanatory Note

Section 42 of the Court Officers Act 1926.

Staff attached to the Circuit Court and the judges thereof

213.- (1) In addition to the persons employed under this Act in circuit court offices there may be attached to the circuit court such and so many officers and servants as the [Courts Service] shall, with the sanction of the Minister for Finance from time to time determine and all such officers and servants shall hold office on such terms and conditions as the Minister for Finance shall prescribe.

(2) Every officer and servant attached to the circuit court shall be assigned by the [Courts Service] to a particular circuit and any such officer or servant may with his own consent be transferred from one circuit to another circuit and every such officer and servant shall perform and fulfil in the circuit to which he is for the time being assigned such duties and functions in relation to the circuit court as the [Courts Service] shall from time to time prescribe.

(3) In addition to the officers and servants mentioned in the foregoing sub-sections of this section there may be attached to any judge of the circuit court by direction of the [Courts Service] and with the sanction of the Minister for Finance one servant to perform such duties in relation to such judge as the [Courts Service] shall prescribe, and every such servant shall be appointed by the [Courts Service] and shall hold office on such terms and conditions as the [Courts Service] shall, with the sanction of the Minister for Finance determine, and the Civil Service Regulation Act 1924 shall not apply to the situation of any such servant.

(4) The Minister for Finance may out of moneys to be provided by the Oireachtas pay to any judge of the circuit court to whom a servant is not attached under the foregoing sub-section an allowance of such amount as the said Minister shall determine in lieu of such servant.

Explanatory Note

Section 43 of the Court Officers Act 1926.

Court office and County Registrar

- 214.-** (1) (a) Every Circuit Court office shall become and be attached to the Circuit Court.
- (b) Every county registrar shall become and be attached to the Circuit Court.
- (c) Every assignment of a county registrar made or deemed to have been made under section 10 of the Act of 1945 before the operative date shall, if it is in force immediately before the operative date, continue in force and be deemed to have been made under the said section 10, as applied by section 48 of this Act.

Explanatory Note

Section 55(2) of the Supplemental Provisions Act 1961.

The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether subsection (c) should be retained in the Bill as it is arguable that it is obsolete.

Court Office

Court Office

215.- (1) There shall be established in and for every county and every county borough an office attached to the Circuit Court and styled the Circuit Court Office.

(2) The [Courts Service] may at any time and for so long as [it] thinks proper amalgamate any two or more counties or any county borough and one or more counties for the purposes of the Circuit Court, and while any such amalgamation continues there shall be only one circuit court office in and for such amalgamated counties or county borough and county or counties.

(3) The [Courts Service] may at any time divide any county into two or more parts for the purposes of the Circuit Court and whenever any county is so divided a separate circuit court office shall be established in and for every such part of such county.

Explanatory Note

Section 34 of the Court Officers Act 1926.

The County Registrar

The County Registrar

216.- (1) There shall be attached to the Circuit Court so many County Registrars as the Minister, with the sanction of the Minister for Finance, shall from time to time direct.

(2) Every county registrar shall be appointed by the Executive Council and shall hold office at the pleasure of the Executive Council.

(3) No person shall be appointed to be a county registrar unless at the time of his appointment he is either-

- (a) a solicitor of not less than eight years standing who is then actually practising or has previously practised for not less than eight years, or
- (aa) a barrister of not less than eight years standing who is then actually practising or has previously practised for not less than eight years,
- (b) a Clerk of the Crown and Peace, or
- (c) a person who has been a Clerk of the Crown and Peace or a county registrar.

(4) For the purposes of paragraph (a) of the foregoing sub-section, service as a [Judge] of the District Court shall in the case of a [Judge] of the District Court who was admitted as a solicitor before he was appointed to be such [Judge], be deemed to be practice as a solicitor.

(5) [. . .]

(6) Every county registrar shall retire on attaining the age of sixty-five years [. . .]

Explanatory Note

Section 35 of the Court Officers Act 1926 as amended. Section 3(aa) inserted by section 51 of 1995 Act. Subsection (5) repealed by section 4 of Court Officers Act 1945. Subsection (6) amended by section 3 and Schedule 1 of Supplemental Provisions Act 1961.

Assignment of County Registrars to circuit court offices

217.- (1) [. . .]

(2) Every county registrar shall be known and is in this Act referred to as the county registrar for the county, county borough, or other area served by the circuit court office to which he 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 under this section to such office and all references in this Act to a county registrar in relation to a county, county borough, or other area shall be construed as references to the county registrar for the time being assigned to the circuit court office for that area.

Explanatory Note

Section 36 of the Court Officers Act 1926. Section (1) repealed by section 10 of 1945 Act.

County Registrars and Service

218.- Subject to section 9, every County Registrar shall, on the establishment day (of the Courts Service), be transferred to the Service in respect of those functions of County Registrars which relate to a function of the Service.

Explanatory Note

Section 31 of the 1998 Act.

Assignment of County Registrars to Circuit Court Offices

219.- (1) Every County Registrar appointed (whether before or after the passing of this Act) under the Principal Act (1926 Act) shall be assigned to such circuit court office as the Government shall from time to time direct.

(2) Subsection (1) of section 36 of the Principal Act (*Court Officers Act 1926*) is hereby repealed.

(3) Every assignment under subsection (1) of section 36 of the Principal Act (*Court Officers Act 1926*) in force immediately before the passing of this Act shall, after the passing of this Act, continue in force and be deemed to be an assignment under this section.

(4) Every reference in the Principal Act or in any other enactment to an assignment under subsection (1) of section 36 of the Principal Act shall be deemed to be a reference to an assignment made or deemed to be made under this section.

Explanatory Note

Section 10 of the 1945 Act.

The business of the circuit court

220.- Every circuit court office shall be under the control and management of the county registrar and there shall be transacted in every circuit court office all such business as is from time to time directed by statute or rule of court to be transacted therein and (unless and until otherwise directed by statute or rule of court) also all other business of the Circuit Court in the county, county borough, or other area served by such office except such business as is required by law to be transacted by or before the Circuit Judge.

Explanatory Note

Section 37 of the Court Officers Act 1926.

Offices and Officers, etc under the Court Officers Acts 1926 to 1951

221.- The business to be transacted in the Circuit Court office for the circuit consisting of the county and county borough of Cork, pursuant to section 37 of the Act of 1926, shall include the business of the Cork Local Admiralty Court and the Cork Local Bankruptcy Court and section 65 of the *Courts of Justice Act 1936*, which relates to the prescribing of court fees, shall have effect accordingly.

Explanatory Note

Section 55(7) of the Supplemental Provisions Act 1961.

But Cork Local Bankruptcy Court was abolished by section 6 and Second Schedule to the Bankruptcy Act 1988. The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this provision is now obsolete and repealed on that basis.

Duties of the county registrar

222.- (1) Every county registrar shall have and exercise such powers and authorities and shall perform and fulfil such duties and functions as shall be from time to time conferred or imposed on him by statute or rule of court and in particular shall perform and fulfil the duties and have and exercise the powers and authorities expressly imposed or conferred on him by this Act and (unless and until otherwise provided by statute or rule of court) shall also, save as is otherwise provided by this Act perform and fulfil all the duties and have and exercise all the powers and authorities which immediately before the commencement of this Part of this Act were by law imposed on or vested in the clerk of the crown and peace or the registrar of a civil bill court [. . .]

(2) Rules of court made under section 66 of the *Courts of Justice Act 1924* (No. 10 of 1924), this Part may provide for the hearing and determination (subject or not subject to an appeal to the Circuit Judge) by the county registrar of all or any class or classes of interlocutory applications and unopposed final applications in or in relation to suits or matters in the Circuit Court as well as the taking or making of all or any class or classes of accounts and inquiries in such suits or matters.

(3) The county registrar of the county, county borough, or other area (other than the county or borough of Dublin) in which the Central Criminal Court is for the time being, sitting shall perform the following functions, that is to say:

- (a) the function of acting as registrar for that court, and
- (b) the function of performing such powers and carrying out of such duties in relation to the court as are assigned to the registrar of the Central Criminal Court by the rules of the court,

when requested to so do by the officer for the time being managing the Central Office of the High Court.

- (c) The functions performable by a county registrar pursuant to a request under subsection (3) shall be performed by a member of the staff of the Circuit Court office in the county concerned to whom those functions have been delegated by that county registrar

Explanatory Note

Section 38 of the Court Officers Act 1926. Subsection (1) amended by section 3 and Schedule 1 of the Supplemental Provisions Act 1961. Subsection (3) and (4) substituted by section 44 of 2004 Act.

Hearings by County Registrar

223.- (1) Without prejudice to any powers, authorities, duties or functions that may be exercised by or conferred by statute or by rules of court on a County Registrar, a County Registrar may make any of the orders mentioned in the Second Seventh Schedule to this Act.

(2) Subject to Article 10(4) of Regulation (EC) No. 805/2004 of the European Parliament creating a European Enforcement Order for uncontested claims, all orders of a County Registrar shall be subject to appeal to the Circuit Court.

Explanatory Note

Section 34 of the 1995 Act. Subsection (2) amended by Regulation 6 of the European Communities (European Enforcement Order) Regulations 2005, SI No 648 of 2005.

Appointment of temporary duty county registrar

224.- (1) In the event of the temporary absence or the temporary incapacity through illness of any county registrar or in the event of the office of county registrar for any circuit court office being vacant the [Courts Service] may appoint a deputy to execute the office of such county registrar during such absence, incapacity, or vacancy, but unless and until the [Courts Service] appoints such deputy the office of such county registrar shall (save as is hereinafter provided) be executed during such absence, incapacity, or vacancy by the senior officer in the circuit court office.

(2) A deputy appointed under this section shall, while his appointment continues, have and exercise all the powers and authorities and shall perform and fulfil all the duties and functions of the county registrar whose deputy he is.

(3) Rules of court may provide that specified powers, authorities, duties, and functions of a county registrar shall not be exercised or performed by the senior officer under this section, and where rules of court so provide the powers, authorities, duties, and functions so specified shall not be exercised or performed by the senior officer under this section.

(4) 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 section for any period or periods exceeding in all three months in any year.

(5) No person shall be appointed under this section to be a deputy for a county registrar unless he possesses the qualifications prescribed by this Act for persons appointed to be county registrars.

(6) This section shall not operate to authorise the senior officer in a circuit court office to exercise the powers or authorities or perform the duties or functions of the county registrar [pursuant to the Second Schedule of the *Electoral Act 1992*

(7) After the powers, authorities, duties, and functions of any under-sheriff have become transferred under this Act to a county registrar, the powers, authorities, duties and functions of such under-sheriff as returning officer under the *Electoral Act 1923*(No. 12 of 1923) shall not be exercisable by the senior officer under this section [. . .].

Explanatory Note

Section 40 of the Court Officers Act 1926.

Words in subsection (7) deleted by section 3 and Schedule of Electoral Act 1963.

Orders which can be made by County Registrars

225.- (1) A County Registrar may make any of the following orders:

- (i) Any order which may be made as of course.
- (ii) An order for a statement of the names of persons who may be co-partners in any firm suing or being sued in an action or matter.
- (iii) An order for enlargement of the time for doing any act or taking any step in an action or matter.
- (iv) An order for discovery, limited or general, or inspection of documents or real or personal property, or delivery of interrogatories.
- (v) A conditional order for the appointment of a receiver by way of equitable execution and, if that appointment is contested to or is uncontested, an order for the appointment of the receiver, and an order for the discharge of a receiver
- (va) A conditional order of garnishee and, if the order is contested to or is uncontested, an order of garnishee.
- (vi) An order to dismiss an action with costs for want of prosecution or for failure to make an affidavit of discovery or to answer interrogatories.
- (vii) An order to strike out a defence with costs for failure to make an affidavit of discovery or to answer interrogatories.
- (viii) An order for the taking of evidence on commission.
- (ix) An order on an application for directions as to-
 - (I) service in case of a civil bill not inter partes
 - (II) or any other procedure in any action or matter.]

- (x) An order adding or substituting a party in any proceeding.
- (xi) An order giving liberty to intervene and appear.
- (xii) An order for the amendment of pleadings on consent.
- (xiii) An order to receive a consent and make the same a rule of court where the parties are sui juris.
- (xiv) An order under the Bankers' Books Evidence Acts 1879 and 1959.
- (xv) An order for payment out of court of funds standing to the credit of an infant on attaining majority, or (if so authorised by order of a judge) for his or her benefit during minority.
- (xvi) An order in uncontested cases to have an account taken or inquiry made.
- (xvii) An order for the issue, for service outside the jurisdiction of a citation to see proceedings in contentious probate matters.
- (xviii) An order for the issue of a citation to lodge in court a grant of probate or letters of administration in contentious probate matters.
- (xix) An order giving liberty to file a supplemental affidavit of scripts.
- (xx) An order for the lodgement of scripts by any party.
- (xxi) 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.
- (xxii) A stop order on moneys or securities in court.
- (xxiii) An order for the issue of a sub-poena under Order 39, rule 30 of the Rules of the Superior Courts.

(xxiv) [An order to vacate a lis pendens on the application of-

- (I) the person on whose application it was registered, or
- (II) any person affected by it, on notice to the person on whose application it was registered,

where the action to which it relates has been discontinued or determined or a document or pleading has not, for a period of not less than a year before the application to vacate it, been filed in that action by or on behalf of the person on whose application it was registered.]

(xxv) An order under Order 33, rule 1 of the Rules of the Superior Courts, on consent, settling the issues to be tried.

(xxvi) An order giving liberty to issue execution in the name of or against the legal personal representative of a deceased party.

(xxvii) [An order giving liberty to issue an execution order to replace an execution order that is lost or mislaid

(xxviiia) An order giving liberty to issue an execution order at any time during the period of 12 years from the date of the judgment or order of the Court whose execution is directed or authorized by the execution order.]

(xxviiib) 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 judgment or order of the Court whose execution is directed or authorized 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.

(xxviii) An order for transfer of proceedings to the High Court or the District Court including all ancillary orders for the transfer of monies lodged in Court.

(xxix) An order giving liberty to—

(I) serve a third party notice to proceedings on notice to the plaintiff in the proceedings,

(II) join a party as a co-defendant to proceedings on notice to the plaintiff in the proceedings, or

(III) join a party as a co-plaintiff to proceedings on notice to the defendant in the proceedings.

(xxx) An order for the recovery of—

(I) a liquidated amount, or

(II) a specific chattel or chattels,

(III) or both in any proceedings in which an appearance has not been entered or a defence has not been delivered.

(xxxi) An order entering judgment in an action for unliquidated damages, together with interest thereon and the costs, charges and expenses of the action, in which an appearance has not been entered or a defence has not been delivered.

(xxxii) An order for the recovery of possession of any land in ejectment proceedings in which an appearance has not been entered or a defence has not been delivered.

(xxxiii) An order for possession of any land within the meaning of section 3 of the *Registration of Title Act 1964*, in proceedings for an application under section 62(7) of that Act in which an appearance has not been entered or a defence has not been delivered.

(xxxiv) An order for the recovery of possession of any land on foot of a legal mortgage or charge in proceedings in which no other relief is claimed and an appearance has not been entered or a defence has not been delivered.

(xxxv) An order that—

- (I) A debtor liable under a judgment or order of the Court to pay an amount of money or, where the debtor is a body corporate, an officer, employee or member of the body corporate, and
- (II) any other person who a County Registrar considers appropriate,

may be examined orally by the County Registrar to ascertain what (if any) debts are owing to the debtor and what (if any) property or other means the debtor has to satisfy the judgment or order.]

(2) In paragraph 1 of this Schedule “execution order” has the meaning it would have if the words “issued by a court” were deleted from the meaning assigned to it by section 2 of the *Enforcement of Court Orders Act 1926*.”

Explanatory Note

Second Schedule of the 1995 Act, as amended and substituted by section 22 of 2002 Act.

Subsection (2) section 2 of the Second Schedule of the 1995 Act, as inserted by section 22 of 2002 Act.

County Registrars may assess and award damages

226.- A County Registrar may 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.

Explanatory Note

Section 3 of the Second Schedule of the 1995 Act.

Surrender by county registrar of certain fees

227.- (1) Where the powers, duties, authorities, rights and obligations of an undersheriff of a county or county borough are, by virtue of section 54 of the Principal Act, transferred to a county registrar, then, notwithstanding anything contained in that section, all fees received by that county registrar under any order made under section 14 of the *Enforcement of Court Orders Act 1926*(No. 18 of 1926), shall be surrendered by him to the Exchequer.

(2) This section shall be deemed to have come into operation on, and shall have effect as on and from, the 1st day of September, 1926.

Explanatory Note

Section 2 of the 1951 Act.

Circumstances in which a County Registrar may try issue of fact

228.- A County Registrar may, with the consent of all parties concerned, try any issue of fact.

Explanatory Note

Section 3 of the Second Schedule to the 1995 Act.

Ancillary powers of County Registrar when making orders

229.- In any cases in which a County Registrar may make an order he or she may-

- (a) make any supplementary or ancillary order
- (b) place a stay, subject to such conditions as he or she thinks just, on any order made, or
- (c) may give any necessary directions.

Explanatory Note

Section 4 of the Second Schedule of the 1995 Act, as substituted by section 22 of 2002 Act.

Costs

230.- In any case in which a County Registrar may make an order the costs of the application shall be in the discretion of the County Registrar, who may direct payment of a sum in gross in lieu of payment of costs to be taxed.

Explanatory Note

Section 5 of the Second Schedule of the 1995 Act.

Power of County Registrar to transfer case to courts list

231.- A County Registrar may in his or her discretion transfer any case to the Court lists for hearing.

Explanatory Note

Section 6 of the Second Schedule of the 1995 Act.

Power of County Registrar to summon witnesses, require production of documents, etc

232.- (a) A County Registrar shall for the purpose of any proceedings before him or her have full power to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits, affirmations and acknowledgements, and examine parties and witnesses either upon interrogatories or viva voce.

- (b) Parties and witnesses summoned to attend before a County Registrar shall be bound to attend and shall be liable to process of contempt in like manner as parties and witnesses are liable thereto in case of disobedience to any order of the Court.

Explanatory Note

Section 7 of the Second Schedule of the 1995 Act.

Application to discharge order made by County Registrar

233.- Any party aggrieved by an order, including an order as to costs, made by a County Registrar may, within ten days from the perfecting of the same, or if made ex parte from the date of service of the order, or in the case of a refusal from the date of such refusal, apply to the Circuit Court to discharge such order or to make the order refused.

Explanatory Note

Section 8 of the Second Schedule of the 1995 Act.

Counsel may be heard by County Registrar

234.- Counsel may be heard in any case before a County Registrar, but the costs of such counsel shall not be allowed unless certified for by a County Registrar.

Explanatory Note

Section 9 of the Second Schedule of the 1995 Act.

Power of County Registrars to enter judgment for unpaid amount
235.- A County Registrar may, at the request of a party to proceedings, enter judgment in the proceedings for the amount that is agreed by the parties thereto and remains unpaid in respect of the costs, charges and expenses of the proceedings.

Explanatory Note

Section 9A of the Second Schedule of the 1995 Act, as inserted by section 22 of 2002 Act.

Side-bar orders

236.- A County Registrar may make any of the following side-bar orders:

- (i) For plaintiff, lately an infant to proceed in his or her own name, he or she having attained his or her full age.
- (ii) To proceed against a defendant, lately an infant, he or she having attained his or her full age.
- (iii) To proceed notwithstanding the death of a party his or her rights surviving.
- (iv) To proceed by or against a new Attorney General.
- (v) That a party do furnish a rental.
- (vi) That tenants do pay their rents to receiver, sequestrator, guardian or administrator pendente lite.
- (vii) That persons indebted to personal estate do pay the sums due by them to receiver or administrator pendente lite.
- (viii) For injunction to Sheriff to put purchaser into possession in the case of a County Registrar assigned to the Circuit Court offices for the counties of Dublin and Cork.
- (ix) For injunction to Sheriff to put tenant into possession in the case of a County Registrar assigned to the Circuit Court offices for the counties of Dublin and Cork.
- (x) To confirm sale absolutely.
- (xi) To receive a consent and make the same a Rule of Court where the parties are sui juris.
- (xii) 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 order.

(xiii) For judgement of ouster on a disclaimer.

(xiv) To proceed compromise off.

Explanatory Note

Section 10 of the Second Schedule of the 1995 Act.

Power to continue county registrars in office after reaching age of sixty-five years

237.- (1) (a) In this section “the Committee” means a committee consisting of—

- (i) the Chief Justice,
 - (ii) the President of the High Court, and
 - (iii) the Attorney General.
- (b) The Committee may act by a majority of its members and a warrant under this section shall be sufficiently authenticated if signed by two members of the Committee.

(2) Where—

- (a) a county registrar is about to reach the age of sixty-five years, and
- (b) he satisfies the Committee that he is not suffering from any disability which would render him unfit to discharge efficiently the duties of his office,
- (c) the Committee may, if they so think proper after consultation with the Minister, by warrant made before such county registrar attains the said age, continue him in office for one year commencing on the date on which he will attain the said age.

(3) Where—

- (a) a country registrar to whom a warrant under subsection (2) of this section or under this subsection relates, or to whom a warrant under this subsection is deemed to relate, is about to reach the age of (as the case may be) sixty-six, sixty-seven, sixty-eight or sixty-nine years, and
- (b) he satisfies the Committee that he is not suffering from any disability which would render him unfit to continue to discharge efficiently the duties of his office,
- (c) the Committee may, if they so think proper after consultation with the Minister, by warrant made before

such county registrar attains the said age, continue him in office for one year commencing on the date on which he will attain the said age.

(4) Where, immediately before the operative date, there is a county registrar whose age of retirement was extended under subsection (6) of section 35 of the Act of 1926, such county registrar shall be deemed to have been continued in office by warrant under subsection (3) of this section and to be a county registrar to whom that subsection relates.

(5) The provisions of this section shall have effect notwithstanding anything contained in subsection (6) of section 35 of the Act of 1926.

Explanatory Note

Section 56 of the Supplemental Provisions Act 1961.

The Office of the sheriff

Transfer of duties of under-sheriff

238.- (1) No appointment shall be made to the office of under-sheriff after the passing of this Act. In every county and county borough in which the office of under-sheriff is vacant at the commencement of this Part of this Act all the powers, duties, authorities, rights and obligations of the several under-sheriffs of such counties and county boroughs respectively shall as on and from such commencement become and be transferred to and vested in or imposed on the several county registrars of such counties and county boroughs respectively.

(2) In every county and county borough in which the office of under-sheriff is not vacant at the commencement of this Part of this Act all the powers, duties, authorities, rights and obligations of the several under-sheriffs of such counties and county boroughs respectively shall as on and from the respective dates on which the office of under-sheriff in such counties and county boroughs respectively first becomes vacant after the commencement of this Part of this Act become and be transferred to and vested in or imposed on the several county registrars of such counties and county boroughs respectively.

Explanatory Note

Section 54 of the Court Officers Act 1926. Note: the effect of section 54 was restricted by the provisions of section 12 of the Court Officers Act 1945 and section 2 of the Court Officers Act 1951.

The Office of the Sheriff

239.- (1) The Minister, whenever he so thinks proper, may, by order made with the consent of the Minister for Finance, declare in respect of any county or county borough in which there is at the passing of this Act an under-sheriff that, upon the office of the under-sheriff becoming vacant, subsection (3) of section 54 of the Principal Act shall not apply or have effect in respect of such county or county borough either (as shall be specified in the order) at all or in regard to specified powers, duties, authorities, rights, and obligations of the under-sheriff.

(2) The Minister, whenever he so thinks proper, may, by order made with the consent of the Minister for Finance in respect of any county or county borough in which the powers, duties authorities, rights, and obligations of the under-sheriff have either before or after the passing of this Act been transferred to the county registrar by virtue of subsection (2) or subsection (3) of section 54 of the Principal Act, 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 be vested in such county registrar.

(3) The following provisions shall have effect in relation to the county or county borough in respect of which an order under subsection (1) or subsection (2) of this section has been made:—

- (a) it shall be lawful for the Government, as and when occasion requires, to appoint a person to be the sheriff of the county or county borough;
- (b) such of the powers, duties, authorities, rights, and obligations of the under-sheriff as by virtue of the order do not become or 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 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 thinks proper;
- (d) on the occasion of a vacancy in the office of sheriff, the Minister, if he so thinks proper, may, by order made with

the consent of the Minister for Finance, revoke the order under subsection (1) or subsection (2) of this section;

- (e) where the Minister makes an order under paragraph (d) of this subsection, 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 or under-sheriff (as the case may be) is for the time being imposed by virtue of this section on the sheriff, every reference in that enactment to the county registrar or under-sheriff (as the case may be) shall be construed and have effect as a reference to the sheriff:
- (g) [. . .]

(4) [Where an order is made under subsection (2) of this section in respect of the county borough of Dublin before the person holding office on the date of the passing of this Act as undersheriff of the county of Dublin ceases to hold office, the making of the order shall not affect the operation of subsection (3) of section 23 of the *Local Government (Dublin) Act 1930*(No. 27 of 1930), or subsection (2) of section 9 of the *Local Government (Dublin)(Amendment) Act 1940* (No. 21 of 1940), but, in applying those provisions respectively on such person's ceasing to hold that office, the word 'sheriff' shall be substituted for the word 'undersheriff'—

- (a) in paragraphs (a) and (b) of subsection (3) of the said section 23, and
- (b) in subsection (2) of the said section 9 where the word 'undersheriff' last occurs therein."

(5) No person shall be appointed under this section to the office of sheriff unless—

- (a) he is a barrister who has practised for not less than five years, or
- (b) he is a solicitor who has practised for not less than five years, or

- (c) he has acted for not less than five years as managing clerk or principal assistant to an under-sheriff or sheriff.
- (6) The following provisions shall have effect in relation to the office of sheriff:—
- (a) the office of sheriff shall be non-pensionable and shall be held at the will and pleasure of the Government;
 - (b) the age of retirement from the office of sheriff shall be seventy years;
 - (c) every person appointed to the office of sheriff shall give security to such amount and in such manner as the Minister shall direct (either generally or in any particular case) for the due performance of his duties;
 - (d) every sheriff shall furnish to the Minister such annual or other returns and such accounts as the Minister shall from time to time direct, either generally or in any particular case;
 - (e) any officer of the Minister authorised in that behalf by the Minister shall be entitled at all reasonable times to enter the offices of any sheriff and thereupon to inspect the offices, to inquire into the work done therein, to examine the accounts of the sheriff, and to be furnished by the sheriff with any information in regard to such offices, work, or accounts which he may require;
 - (f) the same person may be appointed to be sheriff for a county borough and one or more adjoining counties or for two or more adjoining counties;
 - (g) the conditions of employment of every sheriff shall, subject to the foregoing provisions of this section, be such as the Minister for Finance, after consultation with the Minister, shall from time to time determine.

Explanatory Note

Section 12 of the Court Officers Act 1945. Subsection (4) substituted by section 6 of Court Officers Act 1951.

Note: Where an order which was made before the passing of the Act under section 12 of the Act of 1945 contains a reference to levy under a certificate issued under section 7 of the Finance Act 1923, the reference shall be construed as including a reference to levy under a certificate issued under section 7 as extended by section 56 of the Act of 1963: Section 56(5) of the Finance Act 1963.

Where an order which was made before the passing of the Act under section 12 of the Act of 1945 contains a reference to levy under a certificate issued under section 7 of the Finance Act 1923, or to levy under a certificate issued under section 7 as extended by section 55 of the Finance Act 1958, the reference shall be construed as being a levy under a certificate issued under section 485. Section 485(6) of the Income Tax Act 1967

Where an order which was made before the passing of the Act under section 12 of the Act of 1945 contains a reference to levy under a certificate issued under section 7 of the Finance Act 1923, or to levy under a certificate issued under section 485 of the Income Tax Act 1967, that reference shall be construed as including a reference to levy under a certificate issued under section 485 as extended by section 24 of the Act of 1972.

See also section 6(2) of the Court Officers Act 1951 which provides that notwithstanding section (6)(b) of this section, the age of retirement from the office of sheriff of the person holding the office of sheriff for the county borough of Dublin on the date of the passing of the 1951 Act shall be seventy-two years.

Section 24(5) of the Value Added Tax Act 1972

Abolition of High Sheriff

240.- The office of high sheriff is hereby abolished in every county and county borough.

Explanatory Note

Section 52 of the Court Officers Act 1926.

Summons Server

Summons server

241.- (1) There shall be attached to every circuit court office such and so many summons-servers as the county registrar, with the sanction of the Minister and (as regards numbers) of the Minister for Finance, shall think proper.

(2) Every such summons-server shall be appointed by the county registrar with and subject to the approval of the Minister and shall hold office at the will of and may be removed by the Minister and shall be paid out of moneys to be provided by the Oireachtas such salaries as the Minister shall, with the consent of the Minister for Finance, direct.

(3) Whenever there is in the opinion of the county registrar reason to believe that any such summons-server has misconducted himself or displayed gross incapacity in the performance of his duties, the county registrar may suspend such summons-server from the performance of his duties for any period or periods not exceeding altogether one month pending the decision of the Minister on the matter.

(4) [Every such summons server shall be assigned by the County Registrar to such area served by the Circuit Court Office to which the summons server is attached and in respect of such documents as may be specified by the County Registrar and every summons server so assigned shall be competent to serve within the area to which he is so assigned any document specified as aforesaid.]

(5) Section 44 of the *Court Officers Act 1926* shall not be construed as requiring that one or more summons servers shall be attached at all times or at any time to every or any Circuit Court office.

Explanatory Note

Section 44 of the Court Officers Act 1926, subsection (4) substituted by section 22 1971 Act.

Subsection (4) Section 7(8) of the Courts Act 1964.

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this function should remain, given that only one summons server remains, especially in light of any amendment to section 7 of the Courts Act 1964).

Chapter 4

Officers of the District Court

Appointment of Peace Commissioners

242.- (1) The Minister for [Justice] may from time to time by warrant under his hand appoint and remove such and so many fit and proper persons as he shall think expedient in each county to be called “Feadhmannáigh Shíochána” or (in English) “Peace Commissioners” and to perform and exercise within such county and (if so expressed in his warrant of appointment) within the counties immediately adjoining such county the duties and powers of Peace Commissioners under this Act.

(2) So far as may be practicable having regard to all relevant circumstances, every person appointed to be a Peace Commissioner in a County 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 his office in that language.

(3) A Peace Commissioner shall have all the powers and authorities which immediately before the 6th day of December 1922, were vested in a Justice of the Peace in respect of the several matters following, that is to say:—

- (a) signing summonses;
- (b) signing warrants;
- (c) administering oaths and taking declarations, affirmations, informations, bonds and recognizances;
- (d) committing dangerous lunatics and idiots to lunatic asylums under Section 10 of the *Lunacy (Ireland) Act 1867*

and providing for the remuneration of the medical officer and the examiner of lunatics under Section 14 of the *Lunatic Asylums (Ireland) Act 1875*

- (e) signing certificates for the admission of lunatics and idiots to lunatic asylums;
- (f) signing the certificate required by Section 2 of the *Registration of Clubs (Ireland) Act 1904*

- (g) condemning and ordering the destruction or disposal of any article intended for the food of man which appears to him to be diseased or unsound or unwholesome or unfit for the food of man under Section 133 of the *Public Health (Ireland) Act 1878* as amended by Section 28 of the *Public Health Acts Amendment Act 1890*

Provided always that any summons against any member of the Garda Síochána shall be signed by a [Judge] of the District Court.

(4) [...]

Explanatory Note

Section 88 of the 1924 Act as amended. Note: that the Lunacy (Ireland) Act 1867 and the Lunatic (Asylums) Ireland Act 1875 were repealed by section 11, First Schedule of the Mental Treatment Act 1945. In addition, section 133 of the Public Health (Ireland) Act 1878 and section 28 of the Public Health Acts Amendment Act 1890 were repealed by section 4, First Schedule of the Health Act 1947.

Subsection (4) repealed by section 19 of the Courts of Justice Act 1928. See also section 26 of the Criminal Justice Act 1984 (proceedings after arrest).

*The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this section should be retained in the Courts Bill given the questions raised in case law as to its constitutionality. . See Delany *The Courts Acts 1924-1997* (2nd ed Roundhall, 2000) pp.51-54.*

In the case of Ryan v Sean O’Callaghan (Unreported, High Court, 22 July 1987), Mr. Justice Barr dealt in dealt with the nature of the powers of Peace Commissioner to issue a search warrant pursuant to the provisions of section 42(1) of the Larceny Act 1916 and the basis for such powers contained in section 88(3) of the Courts of Justice Act 1924. The issue raised and argued in that case was whether a Peace Commissioner in purporting to exercise the power granted to him by section 42 of the Larceny Act 1916 by issuing a warrant authorising the entry and search of the dwelling house of the citizen was thereby exercising judicial power in a criminal matter which is a function lawfully exercisable only by Judges appointed under the Constitution. Barr J held that the prosecution of offences commences with the issue of a summons of the preferring of a charge. He went on to say that the issue of a search warrant prior to the commencement of a prosecution

and the search itself were merely steps in the investigative process, and accordingly were of an executive, as opposed to judicial, nature. Although, Mr. Justice Barr's comments were dealing with the power of a peace commissioner to issue a summons pursuant to the Larceny Act 1916, they were cited with approval in a later case¹² which dealt with the power pursuant to section 88(3) of the 1924 Act, so can be said to apply generally to statutory provisions conferring the power to issue a search warrant.

However, it is worth noting the comments of Mr. Justice Barr re search warrants were restricted to those issued prior to the commencement of a prosecution and he also remarked that the powers of a peace commissioner to issue summons and to remand persons in custody "might well be regarded as judicial in nature."

*Section 88(4) was repealed and replaced by section 19 of the Courts of Justice Act 1928 which introduced a requirement that in cases where persons were remanded in custody by a peace commissioner, the remand should be to a sitting of the District Court to be held within eight days after the arrest. Section 19 was repealed by section 26 and the Second Schedule of the Criminal Justice Act 1951 and replaced by section 15 of that Act. A new section was substituted for section 15 by section 26 of the Criminal Justice Act 1984. Keane J in *O'Mahony v. Melia* [1989] IR 335; [1990] ILRM 14 held that the exercise by a peace commissioner of the functions conferred on him by section 15 of the 1951 as substituted by section 26 of the 1984 was a judicial rather than administrative act and accordingly section 15 was to that extent invalid having regard to Article 34.1 of the Constitution. (Article 34.1 states that justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution). On that basis the portions of section 15 of the 1951 Act relating to peace commissioners were unconstitutional. Section 15 was duly amended by section 18 of the Criminal Justice (Miscellaneous Provisions) Act 1997 to reflect this.*

¹² *Byrne v. Grey* [1988] IR 31.

Appointment of District Court Clerks

243.- (1) There shall be attached to the District Court such and so many district court clerks as the [Courts Service] shall, with the sanction of the Minister for Finance, from time to time direct.

(2) Subject to the provisions of this section, every district court clerk shall be appointed by the [Courts Service] and shall (unless he is a pensionable officer) hold office at the will of and may be removed by the [Courts Service].

(3) Every person who immediately before the commencement of this Part of this Act holds the office of district court clerk under the *District Justices (Temporary Provisions) Act 1923* (No. 6 of 1923) or, in the Dublin Metropolitan Area and in the County Borough of Cork, the office of chief or other clerk of the District Court in that area and borough respectively shall, on the commencement of this Part of this Act, become and be a district court clerk under this Act and shall hold such office on the same terms and conditions in all respects as if he had been appointed thereto by the Minister under this Act.

(4) Every person who becomes a district court clerk under this Act by virtue of the next preceding sub-section of this section shall, when computing the period of his service for the purposes of the Superannuation Acts 1834 to 1923, be entitled to reckon as continuous service for those purposes whatever period (if any) of service he was immediately before the commencement of this Part of this Act entitled to reckon as service for those purposes and his period of pensionable service as a district court clerk under this Act.

(5) The district court clerk's office shall for the purposes of this Act be deemed to be an office established by this Act.

Explanatory Note

Section 46 of the Court Officers Act 1926.

District Court Clerks

244.- (1) (a) Every district court clerk shall become and be attached to the District Court.

(b) Every assignment of a district court clerk made under section 48 of the Act of before the operative date shall, if it is in force immediately before the operative date, continue in force and be deemed to have been made under the said section 48, as applied by section 48 of this Act.

(2) Any appointment made under section 4 (which relates to deputies for district court clerks) of the Court Officers Act 1951, before the operative date shall, if it is not terminated before the operative date, be deemed to have been made under the said section 4, as applied by section 48 of this Act.

Explanatory Note

Section 55(3) of the Supplemental Provisions Act 1961 and subsection (2) section 55(5) of the 1961 Act.

Duties of district court clerks

245.- (1) Every district court clerk shall be assigned to such one or more district court areas as the [Courts Service] shall from time to time direct and shall have and exercise all such powers and authorities and perform and fulfil all such duties and functions in relation to the District Court in such district court area or areas as shall from time to time be conferred or imposed on him by statute or rule of court and in particular (unless and until otherwise provided by statute or rules of court) shall have and exercise all such powers and authorities and perform and fulfil all such duties and functions in such district court area or areas as immediately before the commencement of this Part of this Act were vested by law in or required by law to be performed or fulfilled by the district court clerk or, in the Dublin Metropolitan Area and the County Borough of Cork, by the chief and other clerks of the District Court in that area and borough respectively.

(2) In addition to the powers, authorities, duties and functions mentioned in the foregoing sub-section, every district court clerk in the Dublin Metropolitan Area shall have, exercise, perform and fulfil, within so much of that Area as is within his district court area all the powers, authorities, duties and functions vested or imposed by any statutes in force immediately before the commencement of this Part of this Act in or on the chief clerk, or the principal clerk, or any other clerk of the Dublin Metropolitan Police Courts.

Explanatory Note

Section 48 of the Court Officers Act 1926.

Deputies for district court clerks

246.- (1) In the event of the temporary absence or the temporary incapacity of any district court clerk or in the event of the office of district court clerk for any district court area being vacant, the [Courts Service] may, with the concurrence of the Minister for Finance, appoint a deputy to execute the office of such district court clerk during such absence, incapacity or vacancy, and any person so appointed shall hold office on such conditions as the Minister for Finance, after consultation with the [Courts Service], may from time to time determine.

(2) A deputy appointed under this section shall, while his appointment continues, have and exercise all powers and authorities and fulfil all the duties and functions of the district court clerk whose deputy he is.

(3) Any appointment made under this section before the operative date of the Supplemental Provisions Act 1961 (29 September 1961), if not terminated before the operative date, be deemed to have been made under the said section 4, as applied by section 48 of this Act.

Explanatory Note

Section 4 of the 1951 Act.

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether subsection (4) which derives from section 55(5) of the Supplemental Provisions Act 1961 be included or is this provision spent as it is a saver.

Offices of officers, etc under the Court Officers Acts 1926 to 1951

247.- Every assignment of a District Court clerk made under section 48 before the operative date shall, if it is in force immediately before the operative date, continue in force and be deemed to have been made under section 48 as applied by section 48 of the Act of 1961.

Explanatory Note

Section 55 (3)(b) of the Supplemental Provisions Act 1961.

Grant of civil service certificates to certain existing district court clerks and gratuities to certain existing district court clerks

248.- (1) This section applies to –

- (a) a person who, on the date of the passing of this Act, is employed during the whole of his time as a district court clerk and in respect of whose situation as a district court clerk a certificate of qualification has not been granted before that date,
 - (b) a person who, on that date, is employed during part of his time as a district court clerk and who becomes employed during the whole of his time as a district court clerk.
- (2) (a) The Civil Service Commissioners may, on the recommendation of the Minister given with the concurrence of the Minister for Finance, grant to any person to whom this section applies a certificate of qualification in respect of his situation as a district court clerk.
- (b) a certificate of qualification granted under paragraph (a) of this subsection may, with the consent of the Minister for Finance, be expressed to take effect from a date prior to the date on which it is granted and, when a certificate of qualification is so expressed to take effect from a date prior to the date on which it is granted, the person to whom the certificate is granted shall be deemed to have been paid from moneys provided by the Oireachtas within the meaning of section 17 of the *Superannuation Act 1859*, as from the date from which the certificate is expressed to take effect.
- (3) Where a person to whom this section applies has for any reason not been granted a certificate of qualification in respect of his situation as a district court clerk under subsection (2) of this section or otherwise before his discharge, the Minister for Finance may, out of moneys provided by the Oireachtas, grant to such person on his discharge a gratuity of such amount (not exceeding twice the amount of his salary and emoluments during the last year of his employment) as the Minister for Finance thinks proper

Explanatory Note
Section 3 of the 1951 Act.

PART 8

ADMINISTRATION OF COURTS

Chapter 1

The High Court

Times and sittings of Central Criminal Court

249.- (1) Clause (iv) of section 36 of the Principal Act (1924 Act) is hereby repealed and in lieu thereof it is hereby enacted that the sittings of the Central Criminal Court shall be held (with and subject to a general power of adjournment) at such times and in such places as the President of the High Court shall from time to time direct.

(2) Every application to the Central Criminal Court in relation to a matter pending or formerly pending in that Court may, if and when that Court is not sitting, be made to and heard and disposed of by any Judge of the High Court.

Explanatory Note

Section 5 of Courts of Justice Act 1926.

Provision of accommodation for judges of the High Court on Circuit

250.- (1) On the occasion of every sitting of the High Court on Circuit in an appeal town, it shall be the duty of the county registrar within whose functional area such appeal town is situate to arrange for the provision of suitable lodgings, meals, and other accommodation for the judges (including commissioners of the High Court on Circuit) constituting the said Court at such sitting and for the servants attached to each such judge or commissioner in pursuance of this Part of this Act while they respectively are in such appeal town for the purposes of their duties as such judges, commissioners, or servants.

(2) All expenses incurred in the provision of accommodation for judges (including commissioners) of the High Court on Circuit and their servants in pursuance of this section shall, to such extent as the [Courts Service], with the sanction of the Minister for Finance, shall determine, be paid out of moneys provided by the Oireachtas.

Explanatory Note

Section 44 of the 1936 Act. Section 45 of the 2002 Act provides that the function contained in (2) shall be performed by the Minister to the exclusion of the Courts Service.

Non-availability of suitable courthouse accommodation

251.- (1) Whenever suitable courthouse accommodation is, for some temporary reason, not available in an appeal town for the purposes of a particular sitting of the High Court on circuit in that appeal town, the judge or judges assigned to sit in such appeal town for the purposes of such sitting may adjourn such sitting to any other convenient place (in the same or other county) at which suitable courthouse accommodation is available, and may so adjourn such sitting at any time after it comes to his or their knowledge that such courthouse accommodation is not or will not be available in such appeal town, and whether such judge has or has not, or such judges have or have not, entered such appeal town for the purposes of such sitting.

(2) Whenever, during a sitting of the High Court on circuit in an appeal town, suitable courthouse accommodation ceases to be available in such appeal town for the purposes of such sitting or the courthouse accommodation available in such appeal town becomes or is found to be unsuitable for the purposes of such sitting, the judge or judges sitting in such appeal town for the purposes of such sitting may adjourn the remainder of such sitting to any other convenient place (whether in the same or another county) at which suitable courthouse accommodation is available.

(3) Whenever a sitting or any part of a sitting of the High Court on circuit is adjourned under this section from an appeal town, the place to which such sitting or part of a sitting is so adjourned shall become and be the appeal town within the meaning of this Act for the holding of such sitting or part of a sitting, and such sitting or part of a sitting shall be held at such place accordingly.

Explanatory Note

Section 41 of the 1936 Act.

Note: consequential amendment to section 38(1)(c) of the Referendum Act 1942. This provides that in relation to the trial of a referendum petition, if a trial or any part thereof is transferred to a place outside the City of Dublin, section 41 (among other sections) shall apply and have effect as if the court were the High Court on Circuit and the said place (if it is not an appeal town) as if it were an appeal town. But the 1942 was repealed in its entirety by the Referendum Act 1994 (No 12 of 1994).

Chapter 2

The District Court

Times and places at which business may be transacted

252.- (1) In this section “appointed” means appointed under section 40 of the *Courts (Supplemental Provisions) Act of 1961* or under section 21 or section 26 of this Act.

(2) It shall be lawful for a [district judge] when sitting at a place, on a day, and at an hour appointed for the transaction of any particular class of business of the District Court, to transact at such sitting any other class of business of the District Court.

(3) It shall be lawful for a [district judge] to transfer or adjourn the transaction of any business of the District Court in which he has jurisdiction to either—

- (a) another occasion at the place in which he was transacting such business at the time of such transfer or adjournment, whether such occasion is or is not a day and hour appointed, or
- (b) to another occasion (whether such occasion is or is not a day and hour appointed) at some other place in his district which is a place appointed for the transaction of business of the District Court, whether such business does or does not include the said business so transferred or adjourned.

Explanatory Note

Section 27 of the 1953 Act.

Number of sitting days in each week for [judges] assigned to Dublin Metropolitan District

253.- The [Courts Service] may from time to time, as [it] shall think fit, after consultation with the President of the District Court, determine the number of days in each week on which the [judges] of the District Court assigned to the Dublin Metropolitan District shall normally sit in that District for the transaction of the business of the District Court.

Explanatory Note

Section 41 of the Supplemental Provisions Act 1961.

Places at which Dublin Metropolitan District is to be transacted

254.- On the operative date, the [Courts Service] shall, after consultation with the President of the District Court, appoint the places in the Dublin Metropolitan District for the transaction of the business of the District Court in that District and may from time to time, as [it] shall think fit, after consultation with the said President, alter the places so appointed.

Explanatory Note

Section 40 of the Supplemental Provisions Act 1961.

Abolition of Division of Dublin Metropolitan Justices

255.- On and from the operative date, the three Divisions of the [judges] permanently assigned to the Dublin Metropolitan District, being the Divisions formed by section 5 (repealed by this Act) of the Act of 1946, shall stand abolished.

Explanatory Note

Section 37 of the Supplemental Provisions Act 1961.

Principal [Judges] of the Dublin Metropolitan District

256.- (1) Each person who was nominated under subsection (1) of section 6 (repealed by the Act of 1961) of the Act of 1946 to be a Principal [Judge] of a Division of the Dublin Metropolitan [Judges] and who is appointed under subsection (1) of section 29 of this Act to be a [judge] of the District Court shall hold the office of Principal [Judge] of the Dublin Metropolitan District (to which District such person shall be permanently assigned by the Government) and shall hold that office so long as he holds the office of [judge] of the District Court.

(2) Where a person who holds the office of Principal [Judge] of the Dublin Metropolitan District ceases to hold that office, that office, in so far as it was held by that person, shall stand abolished.

Explanatory Note

Section 38 f the Supplemental Provisions Act 1961.

PART 9
PROCEDURE
Chapter 1

Court fees, funds, payment and transactions

Power of Minister for Justice to prescribe court fees

257.- (1) It shall be lawful for the Minister for Justice, by order made with the consent of the Minister for Finance, to prescribe and from time to time as occasion requires vary or otherwise revise the fees to be charged in the several offices established by the *Court Officers Act 1926 (No. 27 of 1926)*, as amended by subsequent enactment (including this Act), and the persons by whom and the occasions on which such fees are to be paid and the officers by whom and the manner in which such fees are to be collected.

(2) An order made by the Minister for Justice under this section may provide that in every financial year commencing after the making of such order there shall be payable, by way of court fees, a percentage of the annual income arising in such year from the property of every person of unsound mind and every minor under the jurisdiction transferred by sub-section (1) of section 19 of the Principal Act to the Chief Justice, and such order may prescribe and from time to time vary the amount, method of calculation, collection, and disposal of such percentage, and, if thought fit, general or special exemptions therefrom, and such order may, in relation to the property of persons of unsound mind, be made by way of variation or extension of or in substitution for all or any of the provisions of section 109 to 114 of the *Lunacy Regulation (Ireland) Act 1871*.

(3) Unless and until the fees to be charged in any office established by the *Court Officers Act 1926*, as amended by subsequent enactments (including this Act) are prescribed by an order made under this section, there shall be charged in such office the fees which were chargeable therein immediately before the passing of this Act, and all such fees shall be paid by the persons and on the occasions and be collected by the officers and in the manner by whom and on and in which such fees were payable and collectable immediately before such passing.

(4) All fees collected under this section or under an order made under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

(5) The *Public Office Fees Act 1879*, shall not apply to any fees chargeable under this section or an order made under this section.

Explanatory Note

Section 65 of the 1936 Act.

Note potential amendment by section 39 of Civil Law (Miscellaneous Provisions) Bill 2006:

- (1) *The Minister for Justice, Equality and Law Reform, may, by order made with the consent of the Minister for Finance, prescribe the fees to be charged in the several offices established by the Courts (Supplemental Provisions) Act 1961 and the persons by whom and the occasions on which such fees are to be paid.*
- (2) *An order under this section may-*
 - (a) *provide that in every financial year commencing after the making of the order there shall be payable, by way of court fees, a percentage of the annual income arising in such year from the property of every person of unsound mind and every minor under the jurisdiction vested in the High Court by section 9 of the Courts (Supplemental Provisions) Act 1961,*
 - (b) *prescribe the amount, method of calculation, collection and disposal of such percentage,*
 - (c) *prescribe general or special exemptions from the order,*
 - (d) *in relation to the property of persons of unsound mind, be made by way of variation or extension of or in substitution for all or any of the provisions of sections 109 to 114 of the Lunacy Regulations (Ireland) Act 1871.*
- (3) *All fees collected under an order made under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.*
- (4) *The Public Offices Fees Act 1879 shall not apply to any fees chargeable under an order made under this section.*

(5) *The Courts Service-*

- (e) *shall collect all fees chargeable under an order made under this section in such manner and upon such occasions as it thinks fit , and*
- (f) *may provide services in relation to the collection of such fees subject to such conditions (including the payment of charges for such services) as the Courts Service thinks fit.”*

Disposal of fines, etc

258.- (1) Save as is otherwise provided under this section, all fines, amerciaments, penalties and forfeited recognisances imposed or levied by any court [. . .] shall be paid into or disposed for the benefit of the Exchequer in such manner as the Minister for Finance shall direct and notwithstanding any enactment to the contrary, no part of any such fine, amerciamment, penalty, or recognisance shall be paid or allowed to any prosecutor, informer, or other person or paid into any fund.

(2) [. . .]

(3) Whenever any fine, amerciamment, penalty, or forfeited recognisance is remitted in whole or in part after the same has been paid into or disposed for the benefit of the Exchequer under this section, such fine, amerciamment, penalty or forfeited recognisance or the portion thereof so remitted (as the case may be) shall be repaid out of the Exchequer in such manner as the Minister for Finance shall direct.

(4) The Minister may, with the concurrence of the Minister for Finance, by order direct that the whole or any specified portion of every fine or penalty belonging to any particular class or classes of fines or penalties specified in the order shall not be paid into the Exchequer under this section and that, in lieu of being so paid, the whole or such specified portion (as the case may be) of every such fine or penalty shall be paid to such prosecutor, informer, or other person or into such fund and upon such terms and conditions as shall be specified in the order in respect of each particular class or classes of fines.

Explanatory Note

Section 51 of the Court Officers Act 1926. Section 51 shall not apply to a fine to which section 78 of the Foyle Fisheries Act 1952 (which deals with disposal of fines) applies. Section 78 of the Foyle Fisheries Act 1952. Subsection (1) amended and (2) repealed by section 3 and Sch 1 of the Supplemental Provisions Act 1961.

Money paid into the Circuit Court

259.- (1) The [Courts Service] may by order prescribe the places at which and the post office savings banks and other banks in which money hereafter paid into the circuit court in any proceedings or heretofore paid under section 39 of the *County Officers and Courts (Ireland) Act 1877* into the former county court or into the circuit court shall be deposited in each circuit and may by the same or any other order make in respect of each circuit rules and regulations in respect of such deposits, and may by such rules and regulations make such provision as may appear to him to be necessary for the transfer of money heretofore paid into the former county court or into the circuit court as aforesaid to the bank or banks and into the names prescribed by such order for money hereafter paid into the circuit court.

(2) No order shall be made under this section without the concurrence of the judge of the circuit court assigned at the date of the order to the circuit to which the order relates.

No order made under this section shall authorise the payment out otherwise than on an order of a judge of the circuit court of any money deposited under this section.

Explanatory Note

Section 41 of the Court Officers Act 1926.

As to deposit of money paid into court in equitable proceedings

260.- The Lord Chancellor [Government/Minister], with the concurrence of the chairman of each county, may from time to time at what places and in what post offices savings banks or other banks moneys paid into court [Circuit Court] in any equitable proceedings under this Act shall be deposited, and may make rules and regulations for such deposits; and every such deposit, if in a post office savings bank, may be made without restriction as to amount, and without the declaration required of a depositor; and no money when deposited under this Act shall be paid out except upon an order signed by the Lord Chancellor or by the chairman of the court by the order of which the money was deposited.

Explanatory Note

Section 39 of the County Officers and Court Officers Act 1877. This Act was enacted to amend the laws relating to County Officers and to Courts of Quarter Sessions and Civil Bill Courts in Ireland.

This section and the preceding section overlap with the rule making authority of the Circuit Court to make rules re lodgement and investment of funds. The Commission notes the recent addition of Rule 64A to the Circuit Court Rules which is concerned with the issue of Funds in Court.

Chapter 2

Procedure applicable to courts in certain matters

Administration of justice otherwise than in public

261.- Justice may be administered otherwise than in public in any of the following cases:

- (a) applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction;
- (b) matrimonial causes and matters;
- (c) lunacy and minor matters;
- (d) proceedings involving the disclosure of a secret manufacturing process;

(2) The cases prescribed by subsection (1) of this section shall be in addition to any other cases prescribed by any Act of the Oireachtas.

(3) Any provision contained in any statute of the Parliament of the former United Kingdom or of the Oireachtas of Saorstát Eireann which provided for the administration of justice otherwise than in public and which is not in force by reason of its being inconsistent with the provisions of the Constitution of Saorstát Eireann or the Constitution as the case may be, shall have full force and effect.

Explanatory Note

Section 45 of the Supplemental Provisions Act 1961. See section 40 of 2004 Act, which provides that section 45 of the SP Act 1961 is a “relevant enactment” for the purposes of section 40. Section 40 allows solicitors, barristers and ‘a person falling within any other class of persons’ to be specified in Regulations access to court (subject to the final directions of the judge) to report on in camera proceedings.

Proceedings heard otherwise than in public

262.- (1) In this section “court” includes the Master of the High Court.

(2) For the purposes of this section each of the following shall be a “relevant enactment”—

- (a) section 2(1B) (inserted by section 20 of the *Courts Act 1971*) of the *Legitimacy Act 1931*;
- (b) section 45 of the *Courts (Supplemental Provisions) Act 1961* (in so far as it relates to matrimonial causes or matters, or minor matters);
- (c) section 25 of the *Family Law (Maintenance of Spouses and Children) Act 1976*;
- (d) section 10 of the Act of 1976;
- (e) section 36 of the *Status of Children Act 1987*;
- (f) section 34 of the Act of 1989;
- (g) section 7 of the *Maintenance Act 1994*;
- (h) section 33 of the Act of 1995;
- (i) section 38 of the Act of 1995;
- (j) section 38 of the Act of 1996;
- (k) section 16 of the *Domestic Violence Act 1996*.

(3) Nothing contained in a relevant enactment shall operate to prohibit—

- (a) the preparation by a barrister at law or a solicitor or a person falling within any other class of persons specified in regulations made by the Minister and publication of a report of proceedings to which the relevant enactment relates, or
- (b) the publication of the decision of the court in such proceedings, in accordance with rules of court, provided that the report or decision does not contain any

information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified and, accordingly, unless in the special circumstances of the matter the court, for reasons which shall be specified in the direction, otherwise directs, a person referred to in paragraph (a) may, for the purposes of preparing such a report, attend the proceedings subject to any directions the court may give in that behalf.

(4) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates 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.

(5) Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from being accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf.

(6) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the production of a document prepared for the purposes or in contemplation of such proceedings or given in evidence in such proceedings, to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
- (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(7) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the giving of information or evidence given in such proceedings to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of

the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or

- (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(8) A court hearing proceedings under a relevant enactment shall, on its own motion or on the application of one of the parties to the proceedings, have discretion to order disclosure of documents, information or evidence connected with or arising in the course of the proceedings to third parties if such disclosure is required to protect the legitimate interests of a party or other person affected by the proceedings.

(9) A hearing, inquiry or investigation referred to in subsection (6) or (7) shall, in so far as it relates to a document referred to in subsection (6) or information or evidence referred to in subsection (7), be conducted otherwise than in public and no such document, information or evidence shall be published.

(10) This section shall apply to proceedings brought, and decisions of a court made, whether before or after the commencement of this section.

Explanatory Note

Section 40 of the 2004 Act, now in force since 31 March 2005, SI No 712 of 2004.

Certain applications to court to be heard using videolink

263.- (1) This section applies to an application to court in criminal proceedings where-

- (a) the application is one of those specified in subsection (11),
- (b) the accused or person convicted of the offence concerned (“the prisoner”) is in a prison,
- (c) the application is made or to be made to the Director or Public Prosecutions or by the prisoner, and
- (d) the prisoner is legally represented or has obtained legal advice or been given the opportunity of obtaining or being provided with such advice.

(2) An application to which the section applies may be heard without the prisoner being present in court if the court so directs on being satisfied that-

- (a) to do so would not be prejudicial to the prisoner,
- (b) the interests of justice do not require his or her presence at the hearing,
- (c) the facilities provided by a live television link, between the court and the prison concerned are such as to enable
 - (i) the prisoner to participate in, and to view and hear, the proceedings before the court,
 - (ii) those present in the court to see and hear the prisoner, and
 - (iii) the prisoner and his or her legal representative to communicate in confidence before the hearing,
- (d) to do so is otherwise appropriate having regard to-
 - (i) the nature of the application,
 - (ii) the complexity of the hearing,
 - (iii) the age of the prisoner, and

(iv) his or her mental and physical capacity,

and

(e) no other circumstances exist that warrant the prisoner's presence in court for the hearing.

(3) An application for such a direction 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.

(4) On such an application the judge, if he or she considers it desirable in the interests of justice to do so, may require notice of the application to be given to the prisoner or his or her legal representative or, as the case may be, to the Director of Public Prosecutions.

(5) Where the court decides not to give a direction under this section, it shall state its reason for not doing so.

(6) At any time under a direction under this section is given an application may be made to the court by or on behalf of the prisoner to revoke the direction on the ground that one or more of the considerations mentioned in paragraphs (a) to (e) of subsection (2) do not apply in the prisoner's case.

(7) The court may at any time revoke a direction, whether on an application under subsection (6) or not.

(8) If, on any application under subsection (6), the court refuses to revoke a direction, it shall state its reason for the refusal.

(9) Where the provisions of this section are complied with in relation to the hearing of an application to which this section applies, the prisoner is deemed to be present in court 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 or her.

(10) Nothing in this section affects the right of the prisoner to be present during any criminal proceedings other than the hearing of an application to which this section applies.

(11) The following applications (other than applications under subsections (3) and (6) are specified for the purposes of subsections (1):

- (a) an application for bail or 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, or
 - (iii) any other application that appears to the court to require the presence of the prisoner at the hearing including-
 - (I) an application relating to the capacity of the prisoner to stand trial, or
 - (II) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put him or her on trial;
- (c) in relation to proceedings in the District Court, any other application to the Court before the date on which-
 - (i) a trial before it begins or the court accepts a plea of guilty, or
 - (ii) the accused is sent forward for trial or sentence;
- (d) any application in appeal proceedings or any subsequent proceedings.

(12) In this section “criminal proceeding” means proceedings for an offence and includes any appeal proceedings or subsequent proceedings.

Explanatory Note

Section 33 of the Prisons Act 2007 (no 10 of 2007).

Videoconferencing in civil proceedings

264.- (1) Subject to subsection 2, in any civil proceedings, a court, may, of its own motion or on the application of any of the parties, and having heard the parties, direct that a party may participate in any hearing in the proceedings, or that a witness may give evidence in any such hearing, from a location other than the court itself, whether from within or outside the State, by means of a live television link.

(2) A court shall not give a direction under subsection (1) unless facilities are available which enable the party or witness 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, and in any event shall not give such direction if-

- (a) it would be unfair to any of the parties to do so, or
- (b) it would otherwise be contrary to the interests of justice to do so,

(3) Where a court gives a direction under subsection (1), the party or witness concerned shall be deemed to be present at the hearing concerned.

(4) If a court, on an application made to it under subsection (1), does not give a direction under that subsection, it shall give its reasons for not doing so.

(5) This section applies to civil proceedings that are either-

- (a) Brought on or after the commencement of this section, or
- (b) Pending at the date of such commencement.

Explanatory Note

Section 51 of the Civil Law (Miscellaneous Provisions) Bill 2006

Verdict of nine members of jury in civil cases

265.- In every trial whether in the High Court or the Circuit Court of a civil case before a judge and jury, the jury shall consist of twelve members and a majority vote of nine of those twelve members shall be necessary and sufficient to determine the verdict. The judge shall so inform the jury and the verdict of such nine members or upwards shall be taken and recorded as the verdict of the jury, without disclosure of the dissentients, if any such there be.

Explanatory Note

Section 95 of 1924 Act.

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this section requires amendment. The main difficulty with this section concerns whether it has to be the same majority of nine jurors when dealing with each of the several issues.

Cooper Flynn v. RTE &Ors [2004] IESC 27 Geoghegan J “It would appear that the draftsman of the section and the trial judge had one thing in common. They both concentrated their minds on the correct and, indeed, just concept that if a plaintiff wins his or her case by majority verdict that same majority should assess the damages. The separate problems which could arise from different majorities answering different questions (including, as in this case, a question the answer to which could have a dramatic bearing on damages) before ever the issue of assessing damages was reached did not loom large, if at all, in their thinking.”

The section itself contains the expression “the verdict” in three different places. In context, the expression seems to relate to the final result of the case. It seems strange that the section was not drafted in a more elaborate way to cover the problems arising out of separate questions relating to liability and, indeed, separate questions relating to liability on the one hand and assessment of damages on the other particularly as the word “verdict” at the time of the passing of the Act was regularly used in two different senses. There was a distinction between general and special verdicts.

The Supreme Court in Arnott v. O’Keeffe [1977] IR 1 stated (Walsh J): It appears to me that the statute clearly intended that when the jury was operating on a majority vote of nine of the twelve members the verdict should be that of a particular nine and that when the verdict depended upon the answers to several components of the

verdict the answers in all cases must be those of the same nine. The Act did not preclude other members of the joining in the verdict, that is to say, adding their voice in support of the answers agreed upon by the particular nine in any question on which there was not unanimity. The correct direction to a jury on the matter to which section 95 of the Act of 1924 requires the trial judge to explain to them is one which informs them, in the absence of unanimity, the verdict should be that of at least nine members of the jury and that, when there are several questions to be answered, if there is not unanimity on the way each of them is to be answered then there must be a majority of at least nine and that the same nine must concur in the answer to be given to each of the questions even though the number agreeing upon the answer is great than nine.”

Geoghegan J In Cooper-Flynn stated that the Arnott case was “clear authority for the view that if a number of questions go to the jury they must either each be answered unanimously by the jury or alternatively, if there is a majority of nine or more in relation to any one of them that same majority in terms of personnel must be in agreement on all the other questions”.

Denham J stated “where issues are dependent on each other then same nine jurors must decide on these.”

Liability of unsuccessful defendant for costs of successful defendant

266.- Where, in a civil proceeding in any court, there are two or more defendants and the plaintiff succeeds against one or more of the defendants and fails against the others or other of the defendants, it shall be lawful for the Court, if having regard to all the circumstances it thinks proper so to do, to order that the defendant or defendants against whom the plaintiff has succeeded shall (in addition to the plaintiff's own costs) pay to the plaintiff by way of recoupment the costs which the plaintiff is liable to pay and pays to the defendant or defendants against whom he has failed.

Explanatory Note

Section 78 of the 1936 Act.

Prohibition of imitation of Court documents

267.- (1) It shall not be lawful for any person to issue, send, give, or deliver to or serve on or cause to be issued, sent, given or delivered to or served on any other person any document not issued under lawful authority which by its form, contents, or appearance is calculated or is reasonably likely to lead the person receiving it to believe that it is issued by lawful authority.

(2) Every person who issues, sends, gives, delivers or serves or causes to be issued, sent, given, delivered, or served any document in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds [~~€~~3.49].

(3) In this section the expression “issued by lawful authority” means issued by, from, or by order of any Court of Justice or any judge [. . .] of any such Court or by or from any officer of or office attached to any such Court.

Explanatory Note

Section 81 of the 1936 Act.

Exclusion of certain witnesses, etc in personal injuries actions

268.- (1) The court in a personal injuries action may, upon the application of a party to the action, direct that a person (other than another party to the action or an expert witness) who it is intended will be called to give evidence at the trial of the action shall not attend that trial until he or she is called to give evidence.

(2) Where a court gives a direction under subsection (1), it may give all such other directions as it considers necessary or expedient to secure that a witness to whom the first-mentioned direction applies does not—

- (a) communicate with other witnesses who it is intended will be called to give evidence at the trial of the action concerned, or
- (b) receive information such as might influence him or her when giving evidence.

(3) In this section “expert witness” means, in relation to a personal injuries action, a person who it is intended will be called as a witness to give expert evidence at the trial of that action.

Explanatory Note

Section 54 of the 2004 Act

Right of audience of solicitors

269.- A solicitor who is acting for a party in an action, suit, matter or criminal proceedings in any court and a solicitor qualified to practise (within the meaning of the *Solicitors Act 1954*) who is acting as his assistant shall have a right of audience in that court.

Explanatory Note

Section 17 of the 1971 Act.

Regulation of number of counsel appearing in certain actions

270.- (1) Notwithstanding any provision made by or under statute, or any rule of law or practice, the Minister may specify by regulations the maximum number of counsel in respect of whom costs may be allowed, on taxation by a Taxing Master, for payment by another party or other parties to an action in relation to which section (1)(1) of this Act applies, or a question of fact or an issue arising in such an action, or an appeal from a decision in such an action or on such a question or issue.

(2) Regulations under this section may—

- (a) specify different numbers of counsel (whether junior counsel or senior counsel or both) in relation to different classes (designated in such manner and by reference to such matters as the Minister considers appropriate) of such actions, questions, issues or appeals as aforesaid,

and

- (b) provide for the allowance, on taxation by a Taxing Master, for payment by another party or other parties to such actions, questions, issues or appeals as aforesaid, of the costs in respect of different counsel or different numbers of counsel engaged in relation to different stages of such actions, 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 the Oireachtas and the regulation shall not be made unless a resolution approving of the draft is passed by each such House.

Explanatory Note

Section 5 of the Courts Act 1988

Chapter 3

Costs

Limitation on amount of plaintiff's costs in certain proceedings

271.- (1) Where an order is made by a court in favour of the plaintiff or applicant in any proceedings (other than an action specified in subsections (2) and (3) of this section) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the said lowest court.

(2) In any action commenced and determined in the High Court, being an action where the amount of damages recovered by the plaintiff exceeds £25,000[€31,743.45] but does not exceed £30,000[€38,092.14], the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the proceedings had been commenced and determined in the Circuit Court, unless the judge hearing the action grants a special certificate, for reasons stated in the order, that, in the opinion of such judge, it was reasonable in the interests of justice generally, owing to the exceptional nature of the proceedings or any question of law contained therein, that the proceedings should have been commenced and determined in the High Court.

(3) In any action commenced and determined in the High Court, being an action where the amount of the damages recovered by the plaintiff exceeds £5,000[€6,348.69] but does not exceed £15,000[€19,046.07], the plaintiff shall not be entitled to recover more costs than whichever of the following amounts is the lesser, that is to say, the amount of such damages or the amount of costs which he would have been entitled to recover if the action had been commenced and determined in the Circuit Court.

(4) It shall not be lawful for rules of court to contain or impose any restriction on the amount of costs recoverable by any party from any other party in any action or other proceeding, but nothing in this subsection shall prevent the insertion in rules of court of a restriction on the amount of the costs recoverable which is identical with a restriction imposed by this section nor the fixing by rules of court of the amount recoverable by any person as and for the costs and expenses incurred by him in the doing of any specified thing in any particular form of action or other proceeding.

- (5) (a) Where an order is made by a court in favour of the plaintiff or applicant in any proceedings (not being an appeal) and the court is not the lowest court having jurisdiction to make an order granting the relief the subject of the order, the judge concerned may, if in all the circumstances he thinks it appropriate to do so, make an order for the payment to the defendant or respondent in the proceedings by the plaintiff or applicant of an amount not exceeding whichever of the following the judge considers appropriate:
- (i) the amount, measured by the judge, of the additional costs as between party and party incurred in the proceedings by the defendant or respondent by reason of the fact that the proceedings were not commenced and determined in the said lowest court, or
 - (ii) an amount equal to the difference between—
 - (I) the amount of the costs as between party and party incurred in the proceedings by the defendant or respondent as taxed by a Taxing Master of the High Court or, if the proceedings were heard and determined in the Circuit Court, the appropriate county registrar, and
 - (II) the amount of the costs as between party and party incurred in the proceedings by the defendant or respondent as taxed by a Taxing Master of the High Court or, if the proceedings were heard and determined in the Circuit Court, the appropriate county registrar on a scale that he considers would have been appropriate if the proceedings had been heard and determined in the said lowest court.
- (b) A person who has been awarded costs under paragraph (a) of this subsection may, without prejudice to his right to recover the costs from the person against whom they were awarded, set off the whole or part thereof against any costs in the proceedings concerned awarded to the latter person against the first-mentioned person.

(6) In this section 'relief' includes damages.

Explanatory Note

Section 17 Courts No. 1 Act 1981, as substituted by section 14 of 1991 Act. Note section 17 of 2002 Act makes provision for an increase in the monetary limits contained in this section. These provisions of the 2002 Act await enactment.

Scales of costs

272.- (1) Where—

- (a) a rule-making authority is requested by the Minister to submit for the concurrence of the Minister rules governing questions of costs including scales of solicitors' costs and counsels' fees, and
- (b) either—
 - (i) the rules-making authority fails to submit such rules within three months of the request, or
 - (ii) such rules as have been submitted contain scales of either solicitors' costs or counsels' fees or both which are in the opinion of the Minister excessive, the Minister may by regulation, prescribe appropriate scales of solicitors' costs and counsels' fees.

(2) The consent of the Minister for Enterprise and Employment shall be required under the provisions of the Prices Act 1958 to 1972, for the exercise by the Minister of the power of the Minister under subsection (1) of this section.

(3) Every regulation made 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 regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) "Rule-making authority" means the Superior Courts Rules Committee, the Circuit Court Rules Committee or the District Court Rules Committee.

Explanatory Note

Section 46 of the 1995 Act.

Chapter 4

General Procedure

Superior Courts

Service by post of superior courts documents

273.- (1) Service of a superior court document may be effected by leaving the document or a copy thereof (as may be appropriate) at, or sending the document or a copy thereof (as may be appropriate) by registered prepaid post to, the residence or place of business in the State of the person to be served or the place of business in the State of the solicitor (if any) acting for him in the proceedings to which the document relates.

(2) In this section “superior court document” means any document for or in relation to the service of which provision is made in any rules made by the Superior Courts Rules Committee but for which personal service is not required.

Explanatory Note

Section 23 of the 1971 Act. Section 7(4)(b) of the Maintenance Act 1994 provides that service of a notice on a maintenance debtor may be effected personally or in any manner in which service of a superior court document within the meaning of section 23 of the Courts Act 1971 may be effected.

This provision seems to conflict with the rules of court, Order 9 Rule 2 of the RSC and Order 8 Rule 3 of the Rules of the Superior Courts, which state that superior court documents should be personally served.

The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this section has been superseded by Rules of Court.

Court of Criminal Appeal

Court of Criminal Appeal to sit in Dublin. One member alone to pronounce judgment

274.- The Court of Criminal Appeal [. . .] shall sit in Dublin, except in cases where the Chief Justice gives special directions that it shall sit elsewhere, and the President of the court shall be such member present as shall be entitled to precedence over the other members, and the determination of all questions before the court shall be according to the opinion of the majority of the members present, but unless the court direct to the contrary, the judgment of the court shall be pronounced by the President of the court or by such other member of the court as the President directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the court.

Explanatory Note

Section 28 of the 1924 Act.

Provision is made to repeal this section in section 3(2) of the 1995 Act, not yet enacted).

Execution of sentence

275.- (1) In the case of a sentence of [...]corporal punishment—

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal to the Court of Criminal Appeal or the Supreme Court may be given in accordance with Rules of Court, and
- (b) if such notice is so given, the appeal or the application for leave to appeal shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is refused, of the application.

(2) [...]

Explanatory Note

Section 6 of the 1928 Act. . The inclusion in the final Courts Bill to emerge from this project would require further consideration as to whether this section should be repealed given its reference to corporal punishment. However, there is a strong argument for the inclusion of a comprehensive section dealing with stays in both criminal and civil cases.

Subsection (1) amended and (2) repealed by section 9 of the Criminal Justice Act 1990.

The High Court

Law and equity to be concurrently administered

276.- In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2) If any defendant claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been

duly served with notice in writing of such claim pursuant to any Rule of Court of any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for a like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same right in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the courts of any cause of matter in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or other wise, any judgment, decree, rule, or order, contrary to which all or any party of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

(6) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been

recognised and given effect to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Explanatory Note

Section 27 of the Supreme Court of Judicature Act (Ireland) 1877 40&41 Vic. c. 57. This section sets out that law and equity be concurrently administered in every civil cause or matter commenced in the High Court of Justice and Court of Appeal. Also allows for equitable relief to be available the High Court of Justice.

Wylie The Judicature Acts (Ireland) and Rules of the Supreme Court (Ireland) 1905 (Sealy, Bryers and Walker 1906) at p. 38 states that the 1877 Act does not create any new equities but only enables the Court to administer in a more complete, perfect and efficacious manner utilising remedies already existing (as at 1877) by law and equity.

Section 36 of the Supreme Court of Judicature (Consolidation) Act 1925 ch 49 restated this section in a modern form as is as follows:

“Subject to the express provisions of any other Act, in every civil cause or matter commenced in the High Court law and equity shall be administered by the High Court and the Court of Appeal, as the case may be, according to the provisions of the seven sections of this Act next following.”

Sections 37-44 then dealt with the procedure in specific actions, such as equities of the plaintiff, equitable defences, defence or stay instead of injunction or prohibition.

The Supreme Courts Act 1981 ch 54 (which repeals the 1925 Act) amalgamates these sections into one section, section 49 which is as follows:

“49(1) Subject to the provisions of this or any other Act, every court exercising jurisdiction in England and Wales in any civil cause or matter shall continue to administer law and equity on the basis, that wherever there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity shall prevail.

(2) Every such court shall give the same effect as hitherto-

(a) to all equitable estates, titles, rights, reliefs, defences and counterclaims, and to all equitable duties and liabilities; and

(b) subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom or created by any statute,

and, subject to the provisions of this or any other Act, shall so exercise its jurisdiction in every cause or matter before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.

(3) Nothing in this Act shall affect the power of the Court of Appeal or the High Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person, whether or not a party to the proceedings.

According to the Current Law Statutes Annotated 1981 volume 2 (Sweet and Maxwell 1982) 49-50, the reasoning behind the change to the section in the 1981 Act was to reflect the fact that the unified High Court had existed for more than a century. Accordingly it was thought appropriate to reduce the treatment of the relationship between law and equity. Lord Hailsom said that the section “restates in more economical fashion the fusion of equity and law with the predominance of equity which was originally contained in nine successive sections of the old Judicature Acts.”

The Courts of Justice Act (Ontario) 1990, section 96 is entitled rules of law and equity. Section 96 is as follows:

“(1) Courts shall administer concurrently all rules of equity and common law.

(2) Where a rule of equity conflicts with a rule of common law, the rule of equity prevails.

(3) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided.”

Section 86 of the Judicature (Northern Ireland) Act 1978 chapter 23:

(1) Every court exercising jurisdiction in Northern Ireland in a civil cause or matter shall continue to administer law and equity upon the basis that, wherever there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

(2) Every court shall give the same effect as heretofore—

(a) To all equitable estates, titles, rights, remedies, reliefs, counterclaims and defences and to all equitable duties and liabilities; and

(b) Subject thereto, to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by common law or by any custom or created by any statute,

And shall ensure that, as far as possible and subject to any statutory provision (including subject (3)) to the contrary, all matters in dispute in a cause or matter before it may be completely and finally determined without further proceedings in respect thereof.

(3) Without prejudice to any other powers exercisable by it, a court, acting on equitable grounds, may stay proceedings or the execution of any of its process subject to such conditions as it thinks fit.

Nothing in this Act shall authorise a cause or proceeding pending in the High Court or the Court of Appeal to be stayed by prohibition or injunction

Rules of law upon certain points. Cases of conflict not enumeration

277.- An whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next herein-after mentioned: Be it enacted as follows:

“(8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all case in which it shall appear to the Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim or title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title and whether the estates claimed by both or by either of the parties are legal or equitable.

(11) Generally, in all matters not herein-before particularly mentioned in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.”

Explanatory Note

Sections 28(8) and 28(11) of the Supreme Court of Judicature Act (Ireland) 1877 40&41 Vic. c. 57. On section 28(8) see Wylie, The Judicature Acts (Ireland), (Sealy Publishers, 1906), pp 71-80. For section 28(11) note by section 79 of the Judicature Act 1877, infra, the rules of law enacted and declared by this Act are to be in force in all Courts whatsoever in Ireland, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

Section 44 of the Supreme Court of Judicature (Consolidation) Act 1925 ch 49 restated the principle that equity was to prevail as follows:

“Subject to the express provisions of any other Act, in questions relating to the custody and education of infants and generally in all matters not particularly mentioned in this Act, in which there was formerly or is any conflict or variance between the rules of equity and

the rules of the common law with reference to the same matter, the rules of equity shall prevail in all Courts whatsoever in England so far as the matters to which those rules are cognisable by those Court.”

On subsection (11), see section above the Supreme Court Act 1981 ch 54 and the Courts of Justice Act (Ontario) 1990 have incorporated the general rule that where there is conflict between rules of law and rules of equity, the rules of equity shall apply, into their general provision on law and equity.

Right to jury in civil cases, and costs in such cases

278.- Nothing contained in this Act shall take away or prejudice the right of any party to any action in the High Court or the Circuit Court (not being an action for a liquidated sum, or an action for the enforcement, or for damages for the breach of a contract) to have questions of fact tried by a jury in such cases as he might heretofore of right have so required in the Supreme Court of Judicature in Ireland, and with like directions as to law and evidence, but no party to an action in the High Court or the Circuit Court for a liquidated sum, or an action for the enforcement or for damages for the breach of a contract or in an action for the recovery of land shall be entitled to a jury [unless the Court on the application of any party instituted at any time not later than seven days after notice of trial or on its own motion at the trial shall consider a jury to be necessary or desirable for the proper trial of the action and so shall order]. Subject to all existing enactments limiting, regulating, or affecting the costs payable in any action by reference to the amount recovered therein, the costs of every civil action, and of every civil question and issue, tried by a jury in the High Court or the Circuit Court shall follow the event, unless, upon application made, the Judge at the trial shall for special cause shown and mentioned in the order otherwise direct; and any order of a Judge as to such costs may be discharged or varied by the appellate tribunal.

Explanatory Note

Section 94 of the 1924 Act as amended by section 20 of the 1928 Act, and section 6 of the 1971 Act. See section 1 of the Courts Act 1988 which provides for abolition of juries in certain actions in the High Court notwithstanding the provisions of this section.

Abolition of juries in certain actions in the High Court

279.- (1) Notwithstanding section 94 of the Courts of Justice Act 1924 (Section 336) or any other provisions made by or under statute, or any rule of law, an action in the High Court—

- (a) claiming damages in respect of personal injuries to a person caused by negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or a provision made by or under a statute or independently of any such contract or any such provision),
- (b) under section 48 of the Civil Liability Act, or
- (c) under section 18 (inserted by the Air Navigation and Transport Act 1965) of the Air Navigation and Transport Act 1936,

or a question of fact or an issue arising in such an action, shall not be tried with a jury.

(2) Subsection (1) of this section also applies in relation to—

- (a) an action in which damages are claimed both in respect of personal injuries to a person caused as specified in subsection (1)(a), or the death of a person, and in respect of another matter, and
- (b) an action in which—
 - (i) the damages claimed consist only of damages in respect of a matter other than personal injuries to, or the death of, a person, and
 - (ii) the claim arises directly or indirectly from an act or omission that has also resulted in personal injuries to, or the death of, a person, and in relation to a question of fact or an issue arising in an action referred to in paragraph (a) or (b) of this subsection.

(3) Subsection (1) of this section does not apply in relation to—

- (a) an action where the damages claimed consist only of damages for false imprisonment or intentional trespass to the person or both,

- (b) an action where the damages claimed consist of damages for false imprisonment or intentional trespass to the person or both and damages (whether claimed in addition, or as an alternative, to the other damages claimed) for another cause of action in respect of the same act or omission, unless it appears to the court, on the application of any party, made not later than 7 days after the giving of notice of trial or at such later time as the court shall allow, or on its own motion at the trial, that, having regard to the evidence likely to be given at the trial in support of the claim, it is not reasonable to claim damages for false imprisonment or intentional trespass to the person or both, as the case may be, in respect of that act or omission, or
- (c) a question of fact or an issue arising in an action referred to in paragraph (a) or (b) of this subsection other than an issue arising in an action referred to in the said paragraph (b) as to whether, having regard to the evidence likely to be given at the trial in support of the claim concerned, it is reasonable to claim damages for false imprisonment, intentional trespass to the person or both, as the case may be, in respect of the act or omission concerned.

(4) For the purpose of the application of subsection (1) of this section in relation to an action, or a question of fact or an issue arising in an action, any set-off or counterclaim, or any other claim by a party (other than a plaintiff) to the action, shall be disregarded.

(5) Subsection (1) of this section does not apply in relation to an action, or a question of fact or an issue arising in an action, if the trial thereof began before the commencement of this Act but does apply to the retrial of such an action, question of fact or issue if the retrial begins after such commencement.

(6) Where, as respects an action in relation to which subsection (1) of this section applies, or a question of fact or an issue arising in such an action—

- (a) a notice of trial containing a requirement to have the action, question or issue tried with a jury, or
- (b) a notice signifying a desire to have the action, question or issue tried with a jury,

- (c) was served or given before the commencement of this Act, the requirement referred to in paragraph (a) of this subsection or, as the case may be, the notice referred to in paragraph (b) of this subsection shall be disregarded.

(7) In this section “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.

Explanatory Note

Section 1 of the Courts Act 1988. Section 12 of the Liability for Defective Products Act 1991 provides that section 1 of the Courts Act 1988 shall apply to an action in the High Court claiming damages under the Act or a question of fact or an issue arising in such an action as if such damages were mentioned in subsection (1)(a) of that section.

The Circuit Court

Power to strike out with cost actions in excess of jurisdiction

280.- (1) Where an action is brought in the Circuit Court which that Court has not jurisdiction to hear and determine, the judge shall, on the application of the defendant or one of the defendants or on his own motion, as soon as such want of jurisdiction becomes apparent (unless such consent as may be sufficient to cure such want of jurisdiction is duly lodged within such time as the judge shall allow) order the action to be struck out and may, if he thinks proper, make an order awarding to the defendant such costs as the Court could have awarded if it had had jurisdiction to hear and determine such action and the plaintiff either had not appeared or had appeared and failed to prove his demand.

(2) Whenever a judge of the Circuit Court is required by the foregoing sub-section of this section to order an action to be struck out, such judge may, if he so thinks proper having regard to all the circumstances of the case, in lieu of making such order as aforesaid, transfer such action to the High Court and make such order as to the costs of the proceedings theretofore had in the Circuit Court as shall appear to him to be proper.

Explanatory Note

Section 21 of the 1936 Act.

Duration of judgments of the Circuit Court

281.- Every judgment made (whether before or after the passing of this Act) by the Circuit Court in a civil proceeding shall continue and, in the case of any such judgment made before the passing of this Act, be deemed always to have continued to be in force and to have effect for so long as such judgment would so continue or have so continued if it had been a judgment of the High Court.

Explanatory Note

Section 24 of the 1936 Act

Power of procuring attendance of witnesses

282.- A Circuit Judge shall have the same powers for procuring the attendance of witnesses in the Circuit Courts as a judge of the High Court of Justice in Ireland formerly exercised for procuring the attendance of witnesses in the High Court.

Explanatory Note

Section 58 of the 1924 Act

Service of court documents by post

283.- In this section—

“Circuit Court document” means any document by which proceedings in the Circuit Court (including appeals from the District Court) are instituted and any other document relating to civil proceedings in the Circuit Court which is a notice, order or witness summons;

“District Court document” means any document by which proceedings in the District Court (other than proceedings by way of summons in which the complainant is a member of the Garda Síochána, a Minister of State, an officer of such a Minister, the Attorney General or an officer of the Revenue Commissioners) are instituted and [any other document relating to such proceedings which is a notice, order or witness summons].

(1) [This section shall apply in relation to the service of any Circuit Court document or any District Court document in any area whenever and so long as no summons server stands assigned to that area for the service of that document by the County Registrar for the county in which the area is situated.]

(2) Service of a Circuit Court document or a District Court document may be effected by sending a copy of the document by registered prepaid post in an envelope addressed to the person to be served at his last known residence or place of business in the State and the document may be posted by the person on whose behalf it purports to be issued or a person authorised by him in that behalf.

(3) Service of a Circuit Court document or a District Court document upon a person pursuant to subsection (3) of this section shall, upon proof that the envelope containing a copy of the document was addressed, registered and posted in accordance with the provisions of that subsection, be deemed to be good service upon the person unless it is proved that such copy was not delivered.

(4) (a) Where—

- (i) a person upon whom it is proposed to effect service of a document pursuant to subsection (3) of this section is outside the State or his whereabouts are unknown and cannot be ascertained by reasonable inquiries, or

- (ii) an envelope containing a copy of a document intended to be served upon a person pursuant to the said subsection (3) is sent to the person by registered post and returned undelivered to the sender, the Circuit Court or District Court, as may be appropriate, may make such order for substituted service or for the substitution for service of notice by advertisement or otherwise as it may think proper.
 - (b) The power conferred on the Circuit Court and District Court by this subsection is without prejudice to any other power of those Courts to make orders for substituted service or for the substitution for service of notice by advertisement or otherwise.
 - (c) In this subsection “substituted service” means service otherwise than by a summons server or pursuant to subsection (3) of this section.
- (5) (a) Where service of a document on a person is effected by sending a copy thereof by registered prepaid post in an envelope addressed to the person pursuant to subsection (3) of this section—
- (i) the document shall be deemed to be served upon the person at the time at which the envelope would be delivered in the ordinary course of post,
 - (ii) the document shall be deemed to be issued at the time at which the envelope is posted,
 - (iii) the addressing, registering and posting, in accordance with the provisions of subsection (3) of this section, of the envelope may be proved by a statutory declaration (which [...] shall be made, not earlier than ten days after the day on which the envelope is posted, by the person who posted the envelope) exhibiting the certificate of posting of the envelope aforesaid and stating, if it be the case, that the original document was duly stamped at the time of posting and that the envelope has not been returned undelivered to the sender, and

- (iv) the time, date and place of posting of the envelope shall be endorsed upon the original document.
 - (b) Where a document of which service is effected pursuant to subsection (3) of this section falls to be lodged at any court office, the statutory declaration specified in subparagraph (iii) of paragraph (a) of this subsection shall be lodged therewith and the endorsement specified in subparagraph (iv) of the said subparagraph (a) shall be effected on the document before lodgment at that office.
- (6) Where a Circuit Court document or a District Court document is required by law to be stamped, service thereof pursuant to subsection (3) of this section shall have no effect or validity unless at the time of such service the document bears a stamp or stamps of the character and value required by law.
- (7) Section 44 of the *Court Officers Act 1926*, shall not be construed as requiring that one or more summons servers shall be attached at all times or at any time to every or any circuit court office.

Explanatory Note

Section 7 of the 1964 Act. Section 13 of the Family Law (Protection of Spouses and Children) Act 1981 provides that the rules of court may make provision for the expeditious hearing of an application for a barring order and for the service of documents other than in accordance with section 7 of the Act of 1964 as amended by section 22 of the Courts Act 1977. Section 33 of the Child Care Act 1991 also provides that for the purpose of ensuring the expeditious hearing of applications under Parts III, IV and VI of the Act, rules of court may make provision for the service of documents otherwise than under section 7 as amended by section 22 of the Courts Act 1971.

Subsection (1) amended and subsection (2) substituted by section 22 of the Courts Act 1971. Subsections (6)(a)(iii) and (iv) and subsection (6)(b) amended by section 25 of the Courts and Courts Officers Act 2002.

Right to abandon excess in Circuit Court

284.- (1) No cause of action for a liquidated sum in excess of [£30,000] [€38,092.14] shall be split or divided, so as to be made the ground of two or more different actions, in order to bring such action within the jurisdiction of the Circuit Court and, if any cause of action is so split or divided, proceedings shall not (save as is authorised by the next following sub-section of this section) be sustainable in the Circuit Court in respect of any portion of such cause of action.

(2) A person having a cause of action for a liquidated sum in excess of [£30,000] [€38,092.14] may institute one proceeding in the Circuit Court founded on such cause of action if the amount claimed in such proceeding does not exceed [£30,000] [€38,092.14] and it is stated in the document originating such proceeding that the plaintiff thereby abandons all claims founded on such cause of action and not included in such proceeding.

(3) If in any such proceeding as is authorised by the next preceding sub-section of this section the Court gives judgment in favour of the plaintiff, the Court shall state in such judgment that the amount thereby awarded by the plaintiff is in full satisfaction of all claims which, in pursuance of the said sub-section, are stated in the document originating such proceeding to be thereby abandoned by the plaintiff.

Explanatory Note

Section 23 of the 1936 Act. Amended by section 2 of the Courts Act 1991.

See also section 13 and Schedule of the Courts and Courts Officers Act 2002 which make provision for the increase in the monetary jurisdiction mentioned in subsection (1) and (2) above. These provisions await commencement order.

Abolition of juries in civil cases in Circuit Court

285.- Notwithstanding section 94 of the Act of 1924 (Section 336) or section 44 of the Succession Act 1965 a civil action in the Circuit Court or a question of fact or an issue arising in the action or a question of fact arising in any proceedings in the Circuit Court under the Succession Act 1965, shall not be tried by a jury.

Explanatory Note

Section 6 of the 1971 Act. Note: Amendment of section 29(1) of the Value Added Tax Act 1972 needed so as to substitute new statutory reference when section 94 superseded. The effect of the section was further curtailed by the enactment of section 1 of the Courts Act 1988 which provided that actions in the High Court claiming damages in respect of personal injuries shall not be tried with a jury. Must be corresponding section.

District Court General

Examination of debtor as to means

286.- (1) The Enforcement of Courts Orders Act 1926, is hereby amended by the substitution of the following section for section 15:

“15.—(1) (a) Whenever a debt is due on foot of a judgment, order or decree of a competent court by a person (in this Part of the Act referred to as ‘the debtor’) to another person (in this Part of this Act referred to as ‘the creditor’) the creditor may, subject to this section, apply to a District Court clerk for the District Court Area wherein the examination is to take place for the issue of a summons requiring the debtor to attend for examination as to his means by a [Judge] of the District Court.

(b) Such summons shall be in a form required by rules of court and shall, subject to subsection (2), be issued by the District Court clerk mentioned in paragraph (a).

(c) Upon service of such summons and for the purposes of such examination, the debtor shall lodge a statement (in this Part of this Act referred to as ‘a statement of means’) in accordance with subsections (3) and (4) of this section.

(2) An application for a summons under subsection (1) of this section shall be supported by a statutory declaration by or on behalf of the creditor that—

(a) the debt is due under a judgment, order or decree of a court of competent jurisdiction, and

(b) the debtor is ordinarily resident in the District Court District wherein his examination is to take place.

(3) The statement of means shall be in a form required by rules of court and shall specify the assets and liabilities of the debtor, his income earned and unearned, the means by which it is earned or the source from which it is derived, and the persons for whose support he is legally or morally liable.

(4) The statement of means shall, not less than one week before the sitting of the District Court at which the examination is to take place, be lodged with the District Court clerk for the District Court Area wherein the debtor’s examination is to take place.

(5) The creditor shall be entitled, on payment of the prescribed fee, to inspect and take or obtain copies of the statement of means when lodged.

(6) At an examination pursuant to a summons under this section of a debtor the creditor shall produce evidence—

(a) of the original debt due to the creditor under a judgment, order or decree of a competent court (together with a certificate in a form required by rules of court setting out the amount outstanding at the date of the certificate), and

(b) that the debtor is ordinarily resident in the District Court District in which the examination is taking place.

(7)(a) In this section ‘prescribed’ means prescribed by regulations made by the Minister for Justice with the consent of the Minister for Finance.

(b) For the purposes of this section, the Dublin Metropolitan District shall be deemed to be a District Court Area.

(c) For the purposes of this Part of this Act, ‘debt’ includes any balance of a debt remaining due after payment or recovery of part thereof.

(8) Any proceedings under section 15 of the Enforcement of Court Orders Act 1926, which were pending in the District Court immediately before the commencement of this section may be continued and completed as if this section had not been passed.”

Explanatory Note

Section 1 of the Courts (No 2) Act 1986.

District Court seal

287.- (1) An order recording a decision of a judge of the District Court shall, when signed by –

- (a) any judge of the District Court assigned to the District Court District in which the order was made, or
- (b) any district court clerk assigned to the District Court Area in which the order was made,

be evidence in any legal proceedings of the decision until the contrary is shown.

(2) A warrant other than a warrant issued on foot of a sworn information issued by a judge of the District Court shall, when signed by –

- (a) any judge of the District court assigned to the District Court District in which the warrant was issued, or
- (b) any district clerk assigned to the District Court Area in which the warrant was issued,

be evidence in any legal proceedings of the matters to which the warrant relates until contrary is shown.

Explanatory Note

Section 13A of the 1971 Act. Inserted by section 20 of Criminal Justice (Miscellaneous Provisions) Act 1997, and substituted by section 49 of the Civil Law (Miscellaneous Provisions) Bill 2006.

Enforcement of decision on appeal from District Court

288.- Where an appeal from the District Court in any matter is determined (whether before or after the passing of this Act) by the Circuit Court, then, unless the Circuit Court has issued the instrument necessary to enforce its decision, the District Court should issue the said instrument.

Explanatory Note

Section 23 of the 1946 Act.

Civil Actions – District Court

Power to strike out with costs in excess of jurisdiction

289.- Where a civil proceeding is brought in the District Court which that court has not jurisdiction to hear and determine, the [judge] shall, as soon as such want of jurisdiction becomes apparent, order such proceeding to be struck out and may, if he thinks proper, make an order awarding to the defendant such costs as the court could have awarded if it had jurisdiction to try and determine such proceeding and either the plaintiff did not appear or appeared and failed to prove his demand.

Explanatory Note

Section 60 of the 1936 Act.

Attendance of witnesses in civil cases

290.- A [judge] of the District Court shall have the same powers of procuring the attendance of witnesses in the District Court in the exercise of his jurisdiction in civil cases as are vested in him in the exercise of his jurisdiction in criminal cases.

Explanatory Note

Section 63 of the 1936 Act.

Duration of decree of dismiss at District Court

291.- Every decree and every dismiss made (whether before or after the passing of this Act) by the District Court in a civil proceeding shall continue and, in the case of every such decree or dismiss made before the passing of this Act, be deemed always to have continued to be in force and to have effect for so long as such decree or dismiss would so continue or have so continued if it had been a judgment of the High Court.

Explanatory Note

Section 61 of the 1936 Act.

Enforcement of certain orders under Guardianship of Infants

292.- (1) In this section “the Act of 1964” means the Guardianship of Infants Act 1964, as amended by the *Courts Act 1981*, the *Age of Majority Act 1985*, the *Status of Children Act 1987* and the *Children's Act 1997*.

(2) Without prejudice to the law as to contempt of court, where the District Court has made an order under [section 7 or section 11 or 11B] of the Act of 1964 containing a direction regarding—

- (a) the custody of an infant, or
- (b) the right of access to an infant,

any person having the actual custody of the infant 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 infant is committed by the direction, to give up the infant to that person, or
- (ii) having been required, by or on behalf of a person entitled to access to the infant in accordance with the direction, to allow that person to have such access, fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [£1500] [€904.61] or, at the discretion of the Court, to imprisonment for a term not exceeding [twelve months] or to both such fine and such imprisonment.

(3) For the purposes of this section a person shall be deemed to have been given or shown a copy of an order made under [section 7, section 11, or section 11B] of the Act of 1964 if that person was present at the sitting of the Court at which such order was made.

(4) The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act 1940, to an order shall be construed as including references to a maintenance order made under section 7(6) or section 11(2)(b) of the Act of 1964 and to a variation order made under section 12 of the Act of 1964. Section 5 Courts No. 2 Act 1986. Amendments to subsections (1), (2) and (3) by section 14 of the *Children's Act 1997*.

Explanatory Note

Section 5 of the Courts (No. 2) Act 1986. Amendments to subsections (1), (2) and (3) by section 14 of the Children's Act 1997.

Grant of renewal of intoxicating liquor licences without court certificates

293.- (1) In this section—

“the Act of 1902” means the Licensing (Ireland) Act 1902;

“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;

“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) of this section, 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 the Licensing (Combating Drug Abuse) Act 1997], it shall not be necessary to produce a certificate of the District Court to an officer of the Revenue Commissioners empowered to grant a renewal of such a licence.

(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 fine not exceeding £300 [€380.92].

(4) Where the applicant is convicted of an offence under subsection (3) of this section or where there was a failure to comply with subsection (11) of this section, the District Court may order that the licence be forfeited.

(5) Notwithstanding subsection (2) of this section, a licence shall not be renewable on expiry without the production of a certificate of the District Court for the district court area within which the premises concerned are situate where—

- (a) a notice of objection to such renewal has been lodged with the Court within the time prescribed in rules of court, or
- (b) the licence is one which is renewable by virtue of the provisions of section 30(1)(b) of the Act of 1960, or
- (c) it is proposed to insert a condition in the licence in pursuance of section 8 or section 9 of the Act of 1927.

(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) of this section.

(7) Subject to subsection (8) of this section the certificate required by subsection (5) of this section shall be as to—

- (a) the good character of the licensee,
- (b) the peaceable and orderly manner in which the licensed premises were conducted in the year ending on the expiry of the licence, and
- (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.

(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) of this section shall be as to—

- (a) the good character of the applicant, and
- (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.

(9) Notwithstanding subsection (2) of this section, a licence for an hotel, being a licence—

- (a) in respect of which effect was given to section 42(1) of the Act of 1952, or
- (b) which was granted after the passing of the Act of 1960, by virtue of paragraph (2) of section 2 of the Act of 1902,
- (c) 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 by Bord Fáilte Éireann.

(9A) [...]

(10) [...]

(11) In applying for a renewal of a licence, the applicant shall inform the Revenue Commissioners of the following, where applicable:

- (a) that section 30 of the Act of 1960 applies;
- (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;
- (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;
- (d) [that the licence is a special restaurant licence granted pursuant to the Intoxicating Liquor Act 1988.]
- (e) [that the license has been suspended pursuant to an order under section 18(10) of the *Licensing (Combating Drugs Abuse) Act 1997*.]

Explanatory Note

Section 4 of the Courts (No 2) Act 1986. Definition of licence in subsection (1) amended by section 50 of Intoxicating Liquor Act 1988, and Intoxicating Liquor Act 2000. Subsection (2) amended and paragraph (e) of subsection (11) inserted by section 19 of Licensing (Combating Drug Abuse) Act 1997. Subsection (9A) removed by Intoxicating Liquor Act 2000. Paragraph (d) of subsection (11)

inserted by section 18 of Intoxicating Liquor Act 1988. Subsection (10) repealed by Intoxicating Liquor Act 2000.

See now draft scheme of Intoxicating Liquor Bill 2005.

Criminal Actions

Issue of summons in relation to offences

294.- (1) Proceedings in the District Court in respect of an offence may be commenced by the issuing, as a matter of administrative procedure, of a document (in this section referred to as a ‘summons’) to the prosecutor by the appropriate office.

(2) The issue of a summons may, in addition to being effected by any method by which the issue of a summons could be effected immediately before the enactment of section 49 of the Act of 2004, be effected by transmitting it by electronic means to the person who applied for it or a person acting on his or her behalf.

(3) An application for the issue of a summons may be made to the appropriate office by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or any person authorised by or under an enactment to bring and prosecute proceedings for the offence concerned.

(4) The making of an application referred to in subsection (3) of this section may, in addition to being effected by any method by which the making of an application for a summons could be effected immediately before the enactment of section 49 of the Act of 2004, be effected by transmitting it to the appropriate office by electronic means.

(5) Where an application for the issue of a summons is made to—

- (a) an office referred to in paragraph (a) of the definition of ‘appropriate office’ in this section, the summons may, instead of its being issued by that office, be issued by an office referred to in paragraph (b) of that definition, or
- (b) an office referred to in paragraph (b) of that definition, the summons may, instead of its being issued by that office, be issued by an office referred to in paragraph (a) of that definition.

(6) A summons shall—

- (a) specify the name of the person who applied for the issue of the summons,
- (b) specify the application date as respects 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 he or she 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 location and, insofar as is practicable, its time, and
- (e) specify the name of an appropriate District Court clerk.

(7) For the avoidance of doubt, particulars of the penalty to which a person guilty of the offence concerned would be liable are not required to be stated in a summons.

(8) For the avoidance of doubt, particulars of the penalty to which a person guilty of the offence concerned would be liable are not required to be stated in a summons.

(9) 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 such date, unless the contrary is shown.

(10) In any proceedings in which the issue of a summons was effected in accordance with subsection (2) of this section, a true copy of the summons shall, unless the contrary is shown, be evidence of the summons concerned.

(11) A summons duly issued under this Act shall be deemed for all purposes to be a summons duly issued pursuant to the law in force immediately before the passing of this Act.

(12) Any provision made by 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 subsection (3) of this section.

(13) The procedures provided for in this section in relation to applications for, and the issue of, summonses are without prejudice to

any other procedures in force immediately before the passing of this Act whereby proceedings in respect of an offence can be commenced and, accordingly, any of those other procedures may be adopted, where appropriate, as if this Act had not been passed.

(14) In this section—

‘Act of 2004’ means the *Civil Liability and Courts Act 2004*;

‘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 any district court area in the district court 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 any District Court clerk assigned to any district court area in the district court district in which a judge of the District Court has jurisdiction in relation to the offence to which the summons relates, or
- (b) any office of the Courts Service designated by the Courts Service for the purpose of receiving applications referred to in subsection (3) of this section;

‘prosecutor’ includes a person acting on behalf of the prosecutor;

‘summons’ has the meaning assigned to it by subsection (1);

‘true copy’ means, in relation to a summons the issue of which was effected in accordance with subsection (2), a document that purports to be a reproduction in writing of the summons certified by the prosecutor as being a true copy thereof.

Explanatory Note

Section 1 of the Courts (No. 3) Act 1986. As substituted by section 49 of Civil Liability Act 2004.

Either/ or

Information and Complaints

295.- (1) In all cases of summary jurisdiction (other than those specifically mentioned in subsection (4) which are not applicable) the complaint shall be made within six months from the time when the cause of complaint shall have arisen, but not otherwise.

(2) Section 70 of the *Dublin Police Act 1842*, is hereby amended by the deletion of the words “within six calendar months at the farthest next after the commission of such offence, or within such shorter time as shall be limited by the Act specifying the offence, and not afterwards” now contained therein.

(3) Paragraph 4 of section 10 of the *Petty Sessions (Ireland) Act 1851*, shall apply to cases of summary jurisdiction within the Dublin Metropolitan Area in like manner as it applies to cases of summary jurisdiction outside the Dublin Metropolitan Area.

Explanatory Note

Subsection (1) of section 10(4) of the Petty Sessions (Ireland) Act 1851. 14&15 Vic, c.93. Subsections (2) and (3) section 21 of 1928 Act

Section 10 of 1851 Act: Laying of information and complaints to a Justice about summary or indictable case within the limits of jurisdiction of the Justice of the Peace and the person accused is residing within the limits of jurisdiction of the Justice of the Peace. Lays out procedure in respect which summons or warrants may be issued by the Justice. Section 10(4) states that the complaint must be made within 6 months from time of complaint, this section has been restricted in a number of Acts.

Section 104 of the Garda Síochána Act 2005 provides:

“Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings in respect of a matter relating to an offence reported to the Director of Public Prosecutions under this Act may be instituted within 12 months from the date of the offence”.

This section awaits commencement.

The most recent restriction of section 10(4) of the 1851 Act is section 177 of the Criminal Justice Act 2006, which states that section 10(4) shall not apply to a scheduled offence or a either way offence or hybrid offence. The effect of section 177 is the six month time limit for

prosecuting offences will apply only to those which can be tried summarily as summary offence. The section makes it clear that it will not apply to an offence committed before the commencement of the section.

Section 10 restricted by a number of Acts including section 27 of the Merchandise Marks Act 1931, section 189 of Harbours Act 1946, section 24(3) of the Oil Pollution Act 1956.

Section 10(4) amended by Charitable Loan Societies, Ireland Act 1906 6 Edw. 7 c. 23, section 1: extension of time to 12 months for taking proceedings for promissory note current or unpaid on the 1/3/1899.

Section 10(4) applied by section 21 of the Courts of Justice Act 1928.

Section 10(4) application restricted section 3 and 53(6) of the Dublin Transportation Authority Act 1986 (No. 15 of 1986). Section 10(4) application restricted by SI No. 292 of 1986, reg. 42(2) of European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations 1986. Section 10(4) application restricted by Safety Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987), sections 1(2), and 37(6). Section 10(4) application restricted by Control of Clinical Trials Act 1987 (No. 28 of 1987), sections 13(3) and 19(2). Section 13 is as follows (and is reflective of the standard form of restriction of section 10(4) of the 1851 by extending the time period set out in section 10(4) from 6 months to 12 months): Section 13(3) "Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date of the offence." Section 10(4) repealed in part by Statutes of Limitations Act 1957 (No. 6 of 1957), section 9 and Schedule part 2. Paragraph 4 of section 10, save in so far as it relates to summary proceedings of a criminal nature in the District Court. Therefore the parts of the section relating to non-payment of tax, poor rate, nonpayment for wages, etc are repealed.

Proceedings before Justices

296.- All offences committed within the limits of the police district which, under this or any other Act, are punishable on summary conviction before a justice or justices of the peace, may be heard and determined by any one or more of the said divisional justices sitting at one of the divisional offices, or at any place within such district where any justice may be directed to attend, by warrant of the chief or under secretary, as herein provided, in a summary way.... Whether or not any information in writing shall have been exhibited or taken by or before such justices; and all such proceedings by summons, without information in writing shall be as valid and effectual as if an information in writing had been first exhibited in that behalf: Provided also that the justice, if he shall think fit, may require an information to be laid, in every case in which it shall seem to him to be expedient, before the matter of the complaint or charge shall be brought before him; and the justice examine into the matter of every complaint or charge brought before him; and if upon the confession of the party accused, or on the oath of any one or more witnesses, the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty as the justice shall seem fit, not more than the greatest penalty made payable in respect of such offence, together with the costs of the conviction, to be ascertained by such justice.

Explanatory Note

Section 70 of the Dublin Police Act 1842, 5&6 Vic c 24.

Amended by section 21 of the 1928 Act (see above section). First proviso repealed by section 24 of the 1971 Act.

This section provides for the procedure for all offences of summary jurisdiction within the Dublin District Metropolitan area.

Service of summonses

297.- (1) Notwithstanding section 12 of the Act of 1851 and without prejudice to the provisions of any Act authorising the service of summonses in any particular manner in particular cases, a summons issued in a case of summary jurisdiction under section 11(2) or 13 of the Act of 1851 or section 1 of the Act of 1986 may be served upon the person to whom it is directed—

- (a) by sending, by registered prepaid post, a copy thereof in an envelope addressed to him at his last known residence or most usual place of abode or at his place of business in the State,
- (b) by sending, by any other system of recorded delivery prepaid post specified in rules of court, a copy thereof in such an envelope as aforesaid, or
- (c) by delivery by hand, by a person other than the person on whose behalf it purports to be issued authorised in that behalf by rules of court, of a copy thereof in such an envelope as aforesaid.

(2) Service of a summons upon a person pursuant to subsection (1) of this section shall, upon proof that a copy of the summons was placed in an envelope and that the envelope was addressed, recorded, prepaid and sent or was delivered in accordance with the provisions of the said subsection (1), be deemed to be good service of the summons upon the person unless it is proved, whether in pursuance of an application under subsection (6) of this section or otherwise, that the person did not receive notice of the summons or of the hearing to which the summons relates.

(3) Where service of a summons upon a person is effected by a means provided for in subsection (1)(a) or (b) of this section—

- (a) the summons shall, subject to subsection (2) of this section, be deemed to be served upon the person at the time at which the envelope containing a copy of the summons would be delivered in the ordinary course of post,
- (b) the placing of a copy of the summons in the envelope and the addressing, recording, preparing and sending, in accordance with the provisions of subsection (1)(a) or (b) of this section, of the envelope may be proved by a

statutory declaration (which shall be endorsed upon the original summons and shall be made, not earlier than 10 days after the day on which the envelope is posted, by the person who posted the envelope) exhibiting the record of posting of the envelope aforesaid and stating, if it be the case, that the original summons was duly issued at the time of posting and that the envelope has not been returned undelivered to the sender, and

- (c) the time, date and place of posting of the envelope shall be endorsed upon the original summons.

(4) Where a summons has been issued under section 11(2) of the Act of 1851 or section 1 of the Act of 1986 and served upon the person to whom it is directed by a means of service provided for in subsection (1) of this section and that person neither appears at the time and place specified in the summons nor at the hearing of the complaint or accusation 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 place as the Court may direct to enable the person to be notified in such manner as the Court may direct of the adjourned hearing.

(5) Where the District Court has adjourned the hearing of a complaint or accusation under subsection (4) of this section and the person to whom the summons concerned is directed does not appear at the adjourned hearing, the District Court may, if the complaint or accusation has been substantiated on oath and if the Court is satisfied that reasonable notice of the adjourned hearing was given to the person in accordance with the said subsection (4), issue a warrant for the arrest and bringing of the person before it to answer the said complaint or accusation or proceed to hear the complaint or accusation in the absence of the person.

(6) (a) where a summons has been issued under section 11(2) of the Act of 1851 or section 1 of the Act of 1986 and the District Court has proceeded to hear the complaint or accusation to which the summons relates, the person to whom the summons is directed may, if he did not receive notice of the summons or of the hearing to which the summons relates, within 21 days after the said summons or hearing comes to his notice or such further period as the District Court may, having regard to the

circumstances, allow, apply to the District Court to have the proceedings set aside.

- (b) notice of an application under paragraph (a) of this subsection shall—
 - (i) be lodged with the District Court clerk for the District Court area in which the hearing to which the summons relates has taken place,
 - (ii) be in the form prescribed by rules of court,
 - (iii) state that the applicant did not receive notice of the summons or of the hearing to which the summons relates until a time specified in the notice of the said application, being a time after the commencement of the hearing to which the summons relates,
 - (iv) and the hearing of the application shall not take place before the expiration of a period of 21 days from the date of such lodgment as aforesaid or such shorter period as the District Court may allow.
- (c) a person who, in connection with an application under this subsection, makes a statement that he knows to be false or misleading in a material respect shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 [~~€34.69~~] or to 3 months' imprisonment or to both.

(7) A person who, in connection with an application under this subsection, makes a statement that he knows to be false or misleading in a material respect shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 [~~€34.69~~] or to 3 months' imprisonment or to both.

(8) The rule-making authority for the time being for the District Court may make rules for carrying this section into effect.

(9) In this section—

(10) “the Act of 1986” means the *Courts (No. 3) Act 1986*;

(11) “a case of summary jurisdiction” means a case which may be heard or disposed of only summarily or under section 6 of the Criminal Justice Act 1951;

“District Court area” shall include the Dublin Metropolitan District

Explanatory Note

Section 22 of the Courts Act 1991.

Sending forward of accused persons to trial

298.- It is hereby enacted that in all criminal cases not disposed of summarily by a [Judge] of the District Court, the [Judge] shall, if all 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 to the Circuit Judge or one of the Circuit Judges (to be selected by the [Judge]) who under section [25(3) of the 1961 Act] has jurisdiction to try the case and in every other case shall send the accused person forward for trial to the Central Criminal Court.

Explanatory Note

Section 6 of the Courts of Justice Act 1926 as amended. Note: This section was applied to offences on ships and aircraft by section 14(1) of the Wireless Telegraphy Act 1926. Consequential amendment

Imprisonment on summary conviction in default of payment of fine

299.- (1) Where on summary conviction a fine is imposed a court may order that, in default of due payment of the fine, the person liable to pay the fine shall be imprisoned for a term not exceeding the appropriate period specified in the following scale:

Amount of Fine	Period of Imprisonment
Not exceeding £50 (€ 3.49)	5 days
Exceeding £50 (€ 3.49) but not exceeding £250 (€ 17.43)	15 days
Exceeding £250 (€ 17.43) but not exceeding £500 (€ 34.87)	45 days
Exceeding £500 (€ 34.87)	90 days

(2) Where on summary conviction a fine is imposed on a body corporate, the fine may, in default of due payment, be levied by distress and sale of the goods of the body corporate.

(3) [...]

(4) In this section—

“fine” includes any compensation, costs or expenses in addition to a fine ordered to be paid;

“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.

Explanatory Note

Section 2 of the Courts(No. 2) Act 1986. Subsection (3) repealed by section 125 and Schedule 4 of Finance Act 1991.

Amendment of section 23 of Petty Sessions (Ireland) Act 1851

300.- (1) Subject to subsection (2) of this section, in all cases of summary jurisdiction whenever an order has been made, upon the conviction of any person for an offence, for the payment of a penal sum or the performance of a condition and the penal sum has not been paid or the condition has not been performed, a warrant of committal to imprisonment for the non-payment of the penal sum or the non-performance of the condition may be issued by a [judge] of the District Court—

- (a) not later than six months from the expiration of the time fixed by the said order for the payment of the penal sum or the performance of the condition where—
 - (i) the said order was made after the passing of this Act, or
 - (ii) the said order was made before the passing of this Act and the time for the payment of the penal sum or the performance of the condition expired after the passing of this Act, and
- (b) not later than six months after the passing of this Act, where the time for the payment of the penal sum or the performance of the condition expired not earlier than the 1st day of July 1989, and not later than the day before the passing of this Act.

(2) This section shall apply notwithstanding either—

- (a) the references in section 23 of the Petty Sessions (Ireland) Act 1851, to the times for the issue of any warrant, or
- (b) the issue before the passing of this Act of any warrant under the said section 23 for the nonpayment of a penal sum or the nonperformance of a condition.

Explanatory Note

Section 1 of the Courts (No. 2) Act 1991

Accused to be sent forward for trial

301.- (1) Where an accused person is brought before the District Court charged with an indictable offence, the Court shall send the accused forward for trial to the court before which he is to stand trial (the trial court) unless-

- (a) the case is being tried summarily;
- (b) the case is being dealt with under section 13 (where the accused pleads guilty in the District Court), or
- (c) the accused is unfit to plead.

(2) The accused shall not be sent forward for trial under subsection (1) without the consent of the prosecutor.

(3) Where the prosecutor refuses to give a consent required under subsection (2) in relation to an indictable offence, the District Court shall strike out the proceedings against the accused in relation to that offence.

(4) The striking out of proceedings under subsection (3) shall not prejudice the institution of proceedings against the accused by the prosecutor.

(5) The accused shall not be sent forward for trial under subsection (1) until the documents mentioned in section 4B(1) have been served on the accused.

Explanatory Note

Section 4A of the Criminal Procedure Act 1967, as inserted by section 9 of the Criminal Justice Act 1999.

Amendment of Criminal Procedure Act 1967

302.- (1) [...]

(2) The Criminal Procedure Act 1967, is hereby amended by the substitution of the following subsection for subsection (5) of section 24:

(3) “(5) (a) Where there is no sitting of the Court on the day to which a person is remanded in custody, he shall stand so remanded to the sitting of the Court next held in the same district court district.

(b) Where there is no sitting of the Court on the day to which a person is remanded on bail, he shall stand so remanded to the sitting of the Court next held in the same district court area.”

Explanatory Note

Section 8 of the Courts (No. 2) Act 1986. Subsection (1) repealed by section 22 of Criminal Justice Act 1999

The inclusion of this section in the final Courts Bill to emerge from this project will have to correlate this sections with the fact that section 4 of the Criminal Justice (Miscellaneous Provisions) Act 1997 amended section 24 of the Criminal Procedure Act 1967 by the substitution of a new section and the new substituted section 24(5) reads as follows:

(5)(a) If the court is satisfied that a person who has been remanded in custody is unable by reason of illness or accident to be brought before the court at the expiration of the period of remand, the court may, in that person’s absence, remand that person for such further period, which may exceed fifteen days, as that court considers reasonable.

(b) If the court is satisfied that a person who has been remanded on bail is unable by reason of illness or accident to be brought before the court at the expiration of the period of remand, the court may, in that person’s absence, remand that person for such further period, which may exceed eight days, as court considers reasonable.

Evidence of decision in cases of summary jurisdiction

303.- (1) In any legal proceedings regard shall not be had to any record, relating to a decision of a judge of the District Court in any case of summary jurisdiction, other than an order which, when an order is required, shall be drawn up by the District Court clerk and either-

- (a) signed by the judge who made the order, or
- (b) affixed with the seal of the District Court in respect of the District Court Area in which the order was made or, where the order was made by a judge of the District Court sitting in the Dublin Metropolitan District, affixed with the seal of that District,

or a copy thereof certified in accordance with the rules of court.

(2) A seal of the District Court when affixed to an order drawn up in accordance with this section shall be authenticated by the signature of the judge who made the order or the District Court clerk who drew up the order.

Explanatory Note

Section 14 of the 1971 Act, as substituted by section 20 of Criminal Justice (Miscellaneous Provisions) Act 1997.

Chapter 5

Remittal of actions

The High Court

Remittal or transfer of actions by High Court or Master of High Court

304.- (1) When any action shall be pending in the High Court which might have been commenced in the Circuit Court, any party to such action may, at any time before the commencement of the trial therein, apply to the High Court that the action be remitted or transferred to the Circuit Court, and thereupon, in case the court shall consider that the action is fit to be prosecuted in the High Court, it may retain such action therein, or if it shall not consider the action fit to be prosecuted in the High Court it may remit or transfer such action to the Circuit Court or (where the action might have been commenced in the District Court) the District Court, to be prosecuted before the Judge assigned to such Circuit or (as the case may require) the [Judge] assigned to such District, as may appear to the High Court suitable and convenient, upon such terms, in either case and subject to such conditions, as to costs or otherwise as may appear to be just:

Provided that the High Court shall have jurisdiction to remit or transfer any action, whatever may be the amount of the claim formally made therein, if the court shall be of opinion that the action should not have been commenced in the High Court but in the Circuit Court or in the District Court if at all.

(2) The power to remit or transfer an action conferred by this section may, with the consent of the parties to the action, be exercised by the Master of the High Court, and any actions remitted or transferred by him shall be regarded as having been remitted or transferred under that section by the High Court

Explanatory Note

Subsection (1) Section 25 of the 1924 Act, see also section 11 of 1936 Act. See Delany and McGrath Civil Procedure in the Superior Courts (2nd ed.,) pp. 235-241, and Delany The Courts Acts 1924-1997 (2nd ed Roundhall, 2000)7, pp. 6-11.

See section 15 Courts of Justice Act 1991 and amendments to section 15 by section 18 Courts and Court Officers Act 2002 (not yet commenced).

Subsection (2) section 13 of the Courts of Justice Act 1953.

Remittal or transfer of actions by the High Court

305.- (1) An application under section 25 of the Principal Act 1924 for the remittal or transfer of an action pending in the High Court may be made at any time after an appearance is entered therein and before service of notice of trial therein and, where the summons in such action is required by rules of court to be set down for hearing before the Master of the High Court, notwithstanding that such summons has not been so set down.

(2) Notwithstanding anything contained in section 25 of the Principal Act 1924 the following provisions shall have effect in relation to the remittal or transfer of actions under that section, that is to say:—

- (a) an action shall not be remitted or transferred under the said section if the High Court is satisfied that, having regard to all the circumstances, and notwithstanding that such action could have been commenced in the Circuit Court, it was reasonable that such action should have been commenced in the High Court.
- (b) an action for the recovery of a liquidated sum shall not be permitted or transferred under the said section unless the plaintiff consents thereto or the defendant either satisfies the High Court that he has a good defence to such action or some part thereof or discloses facts which, in the opinion of the High Court, are sufficient to entitle him to defend such action.

(3) The jurisdiction of the High Court under section 25 of the Principal Act 1924 may, on application to the High Court in that behalf by any party to such an action, be exercised in relation to the action at any time before the commencement of the trial thereof.

Explanatory Note

Section 11 of the 1936 Act.

Subsection (3) section 15 (3) of the Courts Act 1991

Application of section 26 of Hire Purchase (Amendment) Act 1960
306.- Section 26 of the Hire-Purchase (Amendment) Act 1960, shall apply to any action pending in the High Court which is founded on a credit-sale agreement (within the meaning of the Hire-Purchase Acts 1946 and 1960).

Explanatory Note

Section 53 of the Supplemental Provisions Act 1961. Section 26 of the Hire Purchase (Amendment) Act 1960 provides: 'The jurisdiction of the High Court under this section to remit or transfer actions may, in relation to an action pending in the High Court by the owner of goods let under a hire-purchase agreement—(a) to enforce a right to recover possession of the goods from the hirer, or (b) to enforce payment of a sum due under the hire-purchase agreement or under any contract of guarantee relating thereto at any time before judgment is given in the action, be exercised by the High Court of its own motion without application in that behalf having been made to it by any party to the action.' Note: the Hire Purchase Act 1946 and the Hire-Purchase (Amendment) Act 1960 were repealed by the Consumer Credit Act 1995, section 19 and Second Schedule.

The inclusion of this section in the final Courts Bill to emerge from this project will have to be considered given that it is arguable that this section can be repealed or amended as the Acts referred to in the section are repealed.

The Circuit Court Civil

Remittal or transfer of certain actions

307.- (1) When any action is pending in the Circuit Court which might, apart from section 4(c) of this Act, have been commenced in the District Court, any party to the action may, at any time before the commencement of the trial thereof, apply to the Circuit Court that the action be remitted or transferred to the District Court, and, if the court considers that the action is fit to be prosecuted in the Circuit Court, it may retain such action therein, and, if it does not consider the action fit to be prosecuted in the Circuit Court, it may remit or transfer the action to the District Court to be prosecuted before the judge assigned to such district court district as may appear to the Circuit Court suitable and convenient upon such terms and subject to such conditions as to costs or otherwise as may appear to it to be just:

Provided that the Circuit Court may remit or transfer any action, whatever may be the amount of the claim formally made therein, if the court is of opinion that the action should not have been commenced in the Circuit Court but in the District Court if at all.

(2) In an action for unliquidated damages that has been remitted or transferred to the District Court under this section or under section 27 25 of the Act of 1924, the District Court may make an order awarding an amount in excess of £5,000 [~~€~~348.69], but not exceeding £10,000 [~~€~~2,697.38], to a party to such an action.

(3) The jurisdiction of the High Court under section 25 of the Act of 1924, which relates to the remittal or transfer of actions pending in the High Court, may, on application to the High Court in that behalf of any party to such an action, be exercised in relation to the action at any time before the commencement of the trial thereof.

(4) Section 2 of the *Courts Act, 1988*, is hereby repealed.

Explanatory Note

Section 15 of the Courts (No. 1) Act 1991.

Note: Section 18 of the 2002 Act makes provision in relation to increase of monetary limits in subsection (2), not yet enacted.

Extension of jurisdiction of Circuit Court under Married Women's Status Act 1957

308.- Section 12 of the *Married Women's Status Act 1957*, is hereby amended by the substitution of the following subsection for subsection (3):

“(3) Where the rateable valuation of the land exceeds £200 [€292.95] and the application is made to the Circuit Court, that Court shall, if a defendant or respondent so requires before the hearing thereof, 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.”

Explanatory Note

Section 3 the Courts Act 1981. Note 2004 Act and market value appears not to amend this section.

Jurisdiction Family Home Protection Act 1976

309.- Section 10 of the *Family Home Protection Act 1976*, is hereby amended—by the substitution of the following subsection for subsection (4):

“(4) Where the rateable value of the land to which the proceedings relate exceeds £200 [~~£292.95~~] and the proceedings are brought in the Circuit Court, that court shall, if a defendant so requires before the hearing thereof, 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.”

Explanatory Note

Section 13 of the Courts Act 1981. Amended by section 48 of the 2004 Act. Section 48 of the 2004 Act amends Section 10 of the 1976 Act to ensure that the new ‘market value’ approach to land valuation, introduced by the Valuation Act 2001 (rather than rateable valuation) is the basis for the jurisdiction of the courts. But section 48 is not yet in force.

Criminal

Transfer of trials in criminal cases by judge of the Circuit Court

310.- (1) A judge of the Circuit Court may, if he thinks fit, transfer the trial of a criminal issue from the place in his circuit where it is required by law to be held to any other place in that circuit, and, 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 the latter place.

(2) An order of a judge of the Circuit Court under subsection (1) of this section—

- (a) may be made only on the application of the Attorney General or an accused person;
- (b) may provide for matters ancillary or incidental to the transfer, and
- (c) shall be final and unappealable.

Explanatory Note

Section 26 of the Supplemental Provisions Act 1961.

Transfer of trials in criminal cases by judges of the Circuit Court

311.- (1) Where a person (in this section referred to as “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 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.

(2) Provision may be made by rules of court for the giving of notice of intention to make an application under subsection (1) of this section 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) of this section 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.

Explanatory Note

Section 32 of the 1995 Act.

Note: The Circuit Court may exercise the jurisdiction recognised by section 25 of 1924 in proceedings commenced under the Legitimacy Declaration (Ireland) Act 1868 and section 25 and the provisos under section 48 of the 1924 Act shall apply in respect of all such proceedings: Section 2(2) of the Legitimacy Act 1931.

Transfer of proceedings from Circuit Court to Central Criminal Court

312.- Where, after being sent forward for trial in accordance with this Part to the Circuit Court for an indictable offence (the original offence), the accused 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 would not be in the interests of justice to do so, transfer the trial of the original offence to the Central Criminal Court.

Explanatory Note

Section 4P of the Criminal Procedure Act 1967, as inserted by section 9 of the Criminal Justice Act 1999.

Chapter 6

Rules Committee of the Courts

General

Reports by rule-making committees

313.- (1) The secretary of each of the several committees established by this Part of this Act shall summon a meeting of such committee once at least in every year on such day as may be fixed by the chairman of such committee, for the purpose of the general consideration by such committee of the practice, procedure, and administration of the court in relation to which such committee is constituted and the law affected or administered by such court or, in the case of the Local Registration of Title Rules Committee, the practice, procedure, and administration under the *Local Registration of Title (Ireland) Act 1891*, and the operation and effect of that Act.

(2) As soon as conveniently may be after every meeting of any such committee in pursuance of this section, such committee shall report to the Minister whether any and if so what amendments or alterations should, in the opinion of such committee, be made in the practice, procedure, or administration of the court in relation to which such committee is constituted or in the law affecting or administered by such court with a view to the improvement of the administration of justice or, in the case of the Local Registration of Title Rules Committee, in the practice, procedure, and administration under the *Local Registration of Title (Ireland) Act 1891*, with a view to the improvement of the operation of that Act.

Explanatory Note

Section 75 of the 1936 Act.

Chief Executive to be member of committees on rules of court, etc

314.- (1) Subject to subsection (2), the Chief Executive for the time being shall be a member of the Superior Courts Rules Committee (established under section 67 of the *Courts of Justice Act 1936*), the Circuit Court Rules Committee (established under section 69 of the *Courts of Justice Act 1936*), and the District Court Rules Committee (established under section 71 of the *Courts of Justice Act 1936*)

(2) The Chief Executive for the time being may, from time to time, delegate in writing his or her membership of any of the Committees referred to in subsection (1) to a member of the staff of the Service and any such delegation may be revoked at any time by the Chief Executive.

Explanatory Note

Section 30 of the 1998 Act.

Provision is made to repeal this section by the Schedule of the Civil Law (Miscellaneous Provisions) Bill 2006 as this section is amalgamated into the Civil Law Bill's new sections on rules of courts.

The Rules of the Superior Courts

The Superior Court Rules Committee

315.- (1) There shall be and is hereby constituted a committee to be styled and in this Part of this Act referred to as the Superior Courts Rules Committee to fulfil the functions assigned to it by this Part of this Act.

(2) The Superior Courts Rules Committee ('the Committee') shall consist of 6 ex-officio members and 8 nominated members.

(3) The ex-officio members of the Committee shall be—

- (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 Courts Service,
- (d) The Attorney General,
- (e) The Registrar of the Supreme Court, and
- (f) the Master of the High Court.

(4) Of the nominated members of the Committee—

- (a) 2 shall be ordinary judges of the Supreme Court nominated by the Chief Justice,
- (b) 2 shall be ordinary judges of the High Court nominated by the President of the High Court,
- (c) 2 shall be practising barristers nominated by the General Council of the Bar of Ireland, of whom one shall be of the Senior Bar and the other of the Junior Bar, and
- (d) 2 shall be practising solicitors nominated by the Council of the Law Society of Ireland.

(5) Every nominated member of the Committee shall hold office as such member until—

- (a) the fifth anniversary of the date of his or her nomination, or
- (b) he or she—
 - (i) dies,
 - (ii) resigns as such member, or
 - (iii) ceases to be an ordinary judge of the Supreme Court, an ordinary judge of the High Court, a practising barrister of the Senior Bar, a practising barrister of the Junior Bar or a practising solicitor, as the case may be,
 - (iv) whichever is the earlier.

(6) A nominated member of the Committee whose membership thereof expires pursuant to subsection (5)(a) shall be eligible for re-nomination.

(7) The quorum of the Committee shall be 6 members.

(8) The Committee may act notwithstanding one or more vacancies in its membership.

(9) Each of the ex-officio members of the Committee specified in paragraphs (a) to (d) of subsection (3) may appoint in writing a person to act in his or her place as a member of the Committee except that the person so appointed must be—

- (a) an ordinary judge of the Supreme Court if the ex-officio member is the Chief Justice,
- (b) an ordinary judge of the High Court if the ex-officio member is the President of the High Court,
- (c) a member of the Courts Service if the ex-officio member is the Chief Executive Officer of the Courts Service,
- (d) an officer of the Attorney General if the ex-officio member is the Attorney General.

(10) The Chief Executive Officer of the Courts Service, in consultation with the chairperson of the Committee, shall appoint in

writing a member of the staff of the Courts Service to be the secretary of the Committee.

(11) A person who made an appointment under subsection (9) or (10) may revoke the appointment at any time.

Explanatory Note

Subsection (1) Section 67 of the 1936 Act. Subsections (2)-(10) inserted by section 46 of the Civil Law (Miscellaneous Provisions) Bill 2006. In effect, section 46 of the 2006 Bill restates section 67 of the 1936 Act and section 15 of the 1953 Act, with the amendments made to the membership of the Superior Courts Rules Committee by section 30 of the 1998 Act (Chief Executive of the Courts Service is now a member) and section 35 of the Courts and Courts Officers Act 2002 (the Attorney General is now a member).

The Bill also proposes to repeal section 30 of the 1998 Act and section 35 of the 2002 Act.

Superior Courts Rules Committee power rules for election petitions

316.- (1) [...]

(2) [...]

(3) [...]

(4) [...]

(5) To avoid doubts, it is hereby declared that the Committee has and shall be deemed always to have had the power to make rules for the trial of election petitions under any statute for the time being in force, including power to modify or adapt any such statute for the purpose of such rules.

Explanatory Note

Section 15 of the 1953 Act. Subsections (1), (2), (3) and (4) are proposed to be repealed by Schedule of the Civil Law (Miscellaneous Provisions) Bill 2006.

Rules of Court

317.- The [Superior Courts Rules Committee, with the concurrence of the Minister for [Justice Equality and Law Reform] may at any time and from time to time after the passing and before or after the commencement of this Act, but with the concurrence of the Minister for Finance in respect of any matter affecting public revenue or expenditure make rules to be styled “Rules of Court” for carrying Part I of this Act into effect (including the hearing of appeals from the Circuit Court and cases stated by the District Court) and may annul the said rules and make new rules. In particular rules may be made for all or any of the following matters:—

- (i) pleading, practice and procedure generally (including the entering-up of judgment and the granting of summary judgment in appropriate cases) in all civil cases including revenue cases and proceedings as to the validity of any law having regard to the provisions of the Constitution and proceedings in the nature of a petition of right
- (ii) pleading, practice and procedure generally in all criminal cases before the Central Criminal Court or any court of the High Court Circuit or the Court of Criminal Appeal;
- (iii) [...]
- (iv) [...]
- (v) the use of the national language of [the State] in the said courts;
- (vi) the mode of address to be adopted to the judges and the robes and official dress to be worn by the Bench and the Bar
- (vii) the commencement and duration of the sittings and the vacations;
- (viii) the fixing and collection of fees;
- (ix) the adaptation or modification of any statute that may be requisite for any of the purposes of this Act and all subsidiary matters.

Explanatory Note

Section 36 of the 1924 Act as amended by sections 3 of the 1936 Act and section 2 of the 1926 Act.

See section 68 of the 1936 Act.

Further powers of Superior Courts Rules Committee and Circuit Court Rules Committee

318.- (1) 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 Superior Courts Rules Committee, or the Circuit Court Rules Committee as the case may be, may, with the concurrence of the Minister, make rules—

- (a) requiring any party to a High Court or Circuit Court personal injuries action, to disclose to the other party or parties, without the necessity of any application to court by either party to allow such disclosure, by such time or date as may be 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 case;
 - (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 case;
 - (iii) names and addresses of all witnesses intended to be called to give evidence as to facts in the case;
 - (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 action;
 - (v) a written statement from the Department of Social Welfare showing all payments made to a plaintiff subsequent to an accident or an authorisation from the plaintiff to the defendant to apply for such information; and
 - (vi) such other relevant information or documentation (as may be provided for by rules of court) so as to facilitate the trial of such personal injuries actions;
 - (vii) providing for the imposition by the High Court, or the Circuit Court as the case may be, of a sanction

for non-compliance with a requirement under paragraph (a) of this subsection including termination of an action, prohibition on a party from adducing such evidence as has not been disclosed without leave of the court, and penalties as to award of costs.

(2) Rules of court made for the purposes of this section may make different provisions for different classes of cases

(3) References in this section to an expert report or to a report of statements 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

(4) 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 Superior Courts Rules Committee or the Circuit Court Rules Committee may, with the concurrence of the Minister, make rules allowing for the admission in evidence in personal injuries actions in the High Court or the Circuit Court of information, documentation, reports or statements disclosed pursuant to subsection (1) of this section, subject to such conditions and procedures as may be necessary to protect the interests of the parties.

Explanatory Note

Section 45 of the 1995 Act.

Rule making authorities under section 36 of the Courts of Justice Act 1936

319.- (1) From and after the passing of this Act the power of making, annulling, or altering rules of court and making new rules conferred by section 36 of the Principal Act 1924 shall cease to be exercisable by the Minister for Justice, and in lieu thereof it is hereby enacted that, subject and without prejudice to the provisions of this Act in regard to the fees chargeable in court offices, the said power shall be exercisable by the Superior Courts Rules Committee with the concurrence of the Minister for Justice.

(2) The reference in sub-section (1) of section 12 of the Approved Investments Act 1933 (No. 34 of 1933), to the Committee mentioned in section 36 of the Principal Act shall be construed and have effect as a reference to the Superior Courts Rules Committee.

Explanatory Note

Section 68 of the 1936 Act. Pursuant to Section 312 of the Companies Act 1963, Section 68 shall extend to the making of rules in respect of the winding up of companies whether by the court or voluntarily. Equally, rules of court may be made with respect to the evidence which must be furnished by a party seeking to enforce a foreign award under Part V of the Arbitration Act, 1954, pursuant to section 57(3) of the same Act. It may be desirable to repeal these sections and re-enact them in the new Courts Act in order to have a comprehensive listing.

Regulation 3 of the European Communities (Rules of Court) Regulations 1972

320.- The powers conferred by section 36 in respect of rules of court shall include corresponding powers in respect of rules of court for enabling section 2 of the European Communities Act 1972 to have full effect.

Explanatory Note

Regulation 3 of the European Communities (Rules of Court) Regulations 1972 (SI No. 320 of 1972)

Jurisdiction to be exercised pursuant to rules of court

321.- (1) In this section “rules of court” means rules made under section 36 of the Act of 1924, as applied by section 48 of this Act (application of enactments relating to existing courts and judges and officers thereof, and rules of court).

(2) The jurisdiction which is vested in or exercisable by the Supreme Court, the High Court, the Chief Justice, the President of the High Court, the Central Criminal Court and Court of Criminal Appeal respectively shall be exercised so far as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court, and, where no provision is contained in such rules and so long as there is no rule with reference thereto, it shall be exercised as nearly as possible in the same manner as it might have been exercised by the respective existing courts or judges by which or by whom such jurisdiction was, immediately before the operative date, respectively exercisable.

(3) Rules of court may, in relation to proceedings and matters (not being criminal proceedings or matters or matters relating to the liberty of the person) in the High Court and Supreme Court, authorise the Master of the High Court and other principal officers, within the meaning of the Court Officers Acts 1926 to 1951, to exercise functions, powers and jurisdictions in uncontested cases and to take accounts, conduct inquiries and make orders of an interlocutory nature.

Explanatory Note

Section 14 of the Supplemental Provisions Act 1961. But see People (Attorney General) v. Bell [1969] IR 24 for true reading of first lines of subsection (2). Walsh J in that case commented that the first two lines of subsection (2) were “unhappily worded” and if given a literal interpretation would exclude from the scope of the rules provided for the jurisdiction of the High Court referred to in section 8(1) of the Act (general jurisdiction of the High Court), the jurisdiction of the High Court conferred directly by the Constitution.

The inclusion of this section in the final Courts Bill to emerge from this project will require consideration of whether an amendment of the section is required given the case cited above.

Rules of law to apply to inferior courts

322.- The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts. And Rules of Court as to pleading, practice, and procedure, empowered to be made by Order of Council as hereinbefore provided, shall be applicable to Recorders Local Courts of Record in Ireland, or to such one or more of them, and to such extent and in such manner only as to the said Order may direct.

Explanatory Note

Section 79 of the Supreme Court of Judicature Act (Ireland) 1877 40&41 Vic. c. 57: Rules of law apply to inferior courts. Rules of court as to pleading, practice and procedure made for Superior Courts apply to Recorders of Local Courts of Record in Ireland.

The Rules of the Circuit Court

Circuit Court Rules Committee

323.- (1) There shall be and is hereby constituted a committee to be styled and in this Part of this Act referred to as the Circuit Court Rules Committee to fulfil the functions assigned to it by this Part of this Act.

(2) The Circuit Court Rules Committee ('the Committee') shall consist of 4 ex-officio and 6 nominated members.

(3) The ex-officio members of the Committee shall be—

- (a) the President of the Circuit Court, who shall be the chairperson of the Committee,
- (b) the Chief Executive Officer of the Courts Service,
- (c) the Attorney General, and
- (d) the county registrar for the county and city of Dublin.

(4) Of the nominated members of the Committee—

- (a) 2 shall be judges of the Circuit Court nominated by the judges of the Circuit Court,
- (b) 2 shall be practising barristers nominated by the Council of the Bar of Ireland, and
- (c) 2 shall be practising solicitors nominated by the Council of the Law Society of Ireland.

(5) Every nominated member of the Committee shall hold office as such member until—

- (a) the fifth anniversary of the date of his or her nomination, or
- (b) he or she—
 - (i) dies,
 - (ii) resigns as such member, or

(iii) ceases to be a judge of the Circuit Court, a practising barrister, or a practising solicitor, as the case may be,

(iv) whichever is the earlier.

(6) A nominated member of the Committee whose membership thereof expires pursuant to subsection (5)(a) shall be eligible for re-nomination.

(7) The quorum of the Committee shall be 4 members.

(8) The Committee may act notwithstanding one or more vacancies in its membership.

(9) Each of the ex-officio members of the Committee specified in paragraph (a) to (c) of subsection (3) may appoint in writing a person to act in his or her place as a member of the Committee except that the person so appointed must be—

(a) an ordinary judge of the Circuit Court if the ex-officio member is the President of the Circuit Court,

(b) a member of the staff of the Courts Service if the ex-officio member is the Chief Executive Officer of the Courts Service,

(c) an officer of the Attorney General if the ex-officio member is the Attorney General.

(10) The Chief Executive Officer of the Courts Service, in consultation with the chairperson of the Committee, shall appoint in writing a member of the staff of the Courts Service to be the secretary of the Committee.

(11) A person who made an appointment under subsection (9) or (10) may revoke the appointment at any time.

Explanatory Note

Subsection (1) section 69(1) of the 1936 Act. Subsections (2)-(11) inserted by section 47 of the Civil Law (Miscellaneous Provisions) Bill 2006. This section now incorporates the changes made by section 30 of 1998 Act and section 35 of 2002 Act. The 2006 Bill also proposes

to repeal section 12 of 1947 Act which is concerned with ex-officio members of the Circuit Court Rules Committee.

Jurisdiction to be exercised pursuant to rules of court (Circuit Court, Cork Local Admiralty Court, Cork Local Bankruptcy Court)

324.- (1) The jurisdiction which is by virtue of this Act vested in or exercisable by the Circuit Court [. . .] and the Cork Local Bankruptcy Court respectively shall be exercised so far as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court, and where, as regards the jurisdiction of the [. . .] Cork Local Bankruptcy Court, there is no provision in such rules and so long as there is no rule in reference thereto, it shall be exercised as nearly as possible in the same manner as it might have been exercised by the former Recorder of Cork.

(2) The rule-making authority of the Circuit Court shall also be the rule-making authority for the [. . .] Cork Local Bankruptcy Court.

Explanatory Note

Section 27 of the Supplemental Provisions Act 1961.

The Cork Local Bankruptcy Court was abolished by section 6 and Second Schedule to the Bankruptcy Act 1988. The inclusion of this section in the final Courts Bill to emerge from this project will require further consideration as to whether so this provision is now obsolete.

Service of documents and enforcement of judgments

325.- The rules to be made under this Part of this Act (Circuit Court) shall provide for the service of all originating or other documents or notices both inside and outside the circuit of the judge before whom the matter is intended to be brought or is pending [...]

Explanatory Note

Section 60 of the 1924 as amended. Deletion by section 3 and Schedule 1 of SP Act 1961.

Rules of Circuit Court

326.- (1) The [Circuit Court Rules Committee, with the concurrence of the Minister for Justice] may at any time and from time to time after the passing and before or after the commencement of this Act make rules to be styled “Rules of the Circuit Court” for carrying into effect this Part of this Act (except the hearing of appeals from the Circuit Court but including the hearing of appeals from the District Court) and may annul or alter such rules and make new rules. In particular rules may be made for all or any of the following matters:—

(2) For regulating the sessions, vacations and circuits of the Circuit Judges and the practice, pleading and procedure generally (including liability of parties as to costs and also the entering-up of judgment and granting of summary judgment in appropriate cases) of the Circuit Court and the use of the national language of [the State] therein and the fixing and collection of fees and the adaptation or modification of any statute that may be necessary for any of the purposes aforesaid and all subsidiary matters.

Explanatory Note

Section 66 of the 1924 Act as amended. The powers conferred by this section 66 in respect of rules of court shall include corresponding powers in respect of rules of court for enabling section 2 of the European Communities Act 1972 to have full effect.

Regulation 3 of the European Communities (Rules of Court) Regulations 1972 (SI No. 320 of 1972)

Rule making Authority for the Circuit Court

327.- Subject and without prejudice to the provisions of this Act in regard to the fees chargeable in court offices, the rule-making authority for the Circuit Court for the purposes of section 66 of the Principal Act 1924 shall be the Circuit Court Rules Committee with the concurrence of the Minister for Justice.

Explanatory Note

Section 70 of the 1936 Act

The Rules of the District Court

District Court Rules Committee

328.- (1) There shall be and is hereby constituted a committee to be styled and in this Part of this Act referred to as the District Court Rules Committee to fulfil the functions assigned to it by this Part of this Act.

(2) The District Court Rules Committee ('the Committee') shall consist of 4 ex-officio and 7 nominated members.

(3) The ex-officio members of the Committee shall be—

- (a) the President of the District Court, who shall be the chairperson of the Committee,
- (b) the Chief Executive Officer of the Courts Service,
- (c) the Attorney General, and
- (d) such one of the district court clerks of the Dublin Metropolitan District as the Chief Executive Officer of the Courts Service nominates.

(4) Of the nominated members of the Committee—

- (a) 4 shall be judges of the District Court nominated by the Minister,
- (b) one shall be a practising barrister nominated by the Council of the Bar of Ireland, and
- (c) 2 shall be practising solicitors nominated by the Council of the Law Society of Ireland.

(5) Every nominated member of the Committee shall hold office as such member until—

- (a) the fifth anniversary of the date of his or her nomination, or
- (b) he or she—
 - (i) dies,

- (ii) resigns as such member, or
- (iii) ceases to be a judge of the District Court, a practising barrister, or a practising solicitor, as the case may be,
- (iv) whichever is the earlier.

(6) A nominated member of the Committee whose membership thereof expires pursuant to subsection (5)(a) shall be eligible for re-nomination.

(7) The quorum of the Committee shall be 4 members.

(8) The Committee may act notwithstanding one or more vacancies in its membership.

(9) Each of the ex-officio members of the Committee specified in paragraphs (a) to (c) of subsection (3) may appoint in writing a person to act in his or her place as a member of the Committee except that the person so appointed must be—

- (a) an ordinary judge of the District Court if the ex officio member is the President of the District Court,
- (b) a member of the staff of the Courts Service if the ex officio member is the Chief Executive Officer of the Courts Service,
- (c) an officer of the Attorney General if the ex-officio member is the Attorney General.

(10) The Chief Executive of the Courts Service, in consultation with the chairperson of the Committee, shall appoint in writing a member of the staff of the Courts Service to be the secretary of the Committee.

(11) A person who made an appointment under subsection (9) or (10) may revoke the appointment at any time.

Explanatory Note

Subsection (1) Section 71 of the 1936 Act. Subsections (2)-(11) inserted by section 48 of the Civil Law (Miscellaneous Provisions) Bill 2006. The Schedule to the 2006 Bill proposes to repeal section 44 of

the Supplemental Provisions Act 1961 which had contained the ex-officio members of the Rules Committee of the District Court.

Jurisdiction to be exercised pursuant to rules of court

329.- The jurisdiction which is by virtue of this Act vested in or exercisable by the District Court shall be exercised as regards pleading, practice and procedure generally, including liability to costs, in the manner provided by rules of court made under section 91 of the Act of 1924, as applied by section 48 of this Act or any of the Acts repealed by the Act.

Explanatory Note

Section 34 of the Supplemental Provisions Act 1961

Rule making authority for the District Court

330.- Subject and without prejudice to the provisions of this Act in regard to the fees chargeable in court offices, the rule-making authority for the purposes of section 91 of the Principal Act 1924 shall be the District Court Rules Committee with the concurrence of the Minister for Justice.

Explanatory Note

Section 72 of the 1936 Act.

Rules for carrying this Part of the Act into effect

331.- [The District Court Rules Committee, with the concurrence of the Minister for Justice] may at any time and from time to time after the passing and before or after the commencement of this Act make rules to be styled “District Court Rules” for carrying into effect this Part of this Act (except the hearing by the Circuit Court of Appeals from the District Court and the hearing by the High Court of cases stated by the District Court), and may annul or alter such rules and make new rules. In particular rules may be made for all or any of the following matters, viz., for regulating the sittings and the vacations and the districts of the [Judges] and the places where proceedings are to be brought and the forms of process, summons, case stated, appeal or otherwise, and the conditions which a party who requires a case stated or an appellant must comply with in civil cases or in criminal cases or in licensing cases as the case may be and the practice and procedure of the District Court generally including questions of costs and the times for taking any step in the District Court, the entering-up of judgment and granting of summary judgment in appropriate cases and the use of the national language of [the State] therein and the fixing and collection of fees and the adaptation or modification of any statute that may be necessary for any of the purposes aforesaid and all subsidiary matters.

Explanatory Note

Section 91 of the 1924 Act, as amended by section 72 of the Courts of Justice Act 1936.

Section 91 was re-enacted by section 48 of the Supplemental Provisions Act 1961. Section 91 also expressly excludes from the competence of the District Court rule-making authority the power to make rules for the hearing by the High Court of cases stated. Walsh J in Thomson v. Curry [1970] IR 61 stated that as section 91 expressly excluded competence of the District Court Rules Committee in hearings of cases stated to the High Court, it followed that this exclusion includes the making of rules for the transmission of the case stated to the High Court or other matters subsequent in time to the receipt of the appellant of the case stated.

See Delany The Courts Acts 1924-1997 (2nd ed Roundhall, 2000) pp. 54-58.

Regulation 3 of European Communities (Rules of Court) Regulations 1972

332.- The powers conferred by section 91 in respect of rules of court shall include corresponding powers in respect of rules of court for enabling section 2 of the European Communities Act 1972 to have full effect.

Explanatory Note

Regulation 3 of the European Communities (Rules of Court) Regulations 1972 (SI No. 320 of 1972). Section 2 is as follows:

2.—From the 1st day of January, 1973, the treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those treaties.

Note: The District Court Rules Committee may, with the concurrence of the Minister for Justice make Rules of Court providing for methods of service of summonses or other documents originating proceedings for any offences under any section of the Whale Fisheries Act 1937 : Section 27 of the Whale Fisheries Act, 1937

Local Registration of Title Rules Committee

333.- (1) There shall be and is hereby constituted a committee to be styled and in this Part of this Act referred to as the Local Registration of Title Rules Committee to fulfil the functions assigned to it by this Part of this Act.

(2) The Local Registration of Title Rules Committee shall consist of two ex-officio members and two nominated members.

(3) The ex-officio members of the said committee shall be—

(a) the Judge of the High Court for the time being assigned to discharge the office of Judicial Commissioner of the Irish Land Commission, who shall be the chairman of the said committee;

(b) the Registrar of Titles, who shall be the secretary of the said committee.

(4) One of the nominated members of the said committee shall be a practising barrister nominated by the Council of the Bar of [Ireland], and the other of the said nominated members shall be a practising solicitor nominated by the Council of the Incorporated Law Society of Ireland.

(5) Every nominated member of the said committee shall, unless he sooner dies, resigns, or ceases to be (as the case may be) a practising barrister or a practising solicitor, hold office as such member for five years from the date of his nomination.

(6) A nominated member of the said committee whose membership thereof expires by effluxion of time shall be eligible for renomination.

(7) The quorum of the said committee shall be three members.

(8) The said committee may act notwithstanding one vacancy in its membership.

Explanatory Note

Section 73 of the 1936 Act.

Note section 74 of the 1936 provided that the Local Registration of Title Rules Committee was to make rules of court, this section was

repealed by the Registration of Title Act 1964. Section 126 of 1964 Act is as follows:

126.—(1) The committee constituted by section 73 of the Courts of Justice Act 1936, shall continue to be styled the Registration of Title Rules Committee.

(2) The Registration of Title Rules Committee, with the concurrence of the Minister for Justice, may make general rules for carrying into effect the objects of this Act, and in particular, without limiting the foregoing power, in respect of all or any of the following matters:

(a) the conduct of the business in the central and local offices, and the powers and duties of the Registrar and local registrars, and of all officers and persons attached to the central office and the local offices;

(b) the relations between the central office and the local offices;

(c) the conduct of transfers and the publication of information relating to transfers;

(d) the making, keeping, and indexing of the registers and the authentication and preservation of documents relating to title;

(e) the procedure to be observed, the precautions to be taken, the notices to be given and the evidence to be adduced in all proceedings in connexion with registration, and the circumstances under which and the persons to whom reference is to be made in respect of the examination of any title to land proposed to be registered;

(f) the procedure to be adopted in connexion with registration on exchange of holdings;

(g) the form in which and conditions under which entries in the register are to be made and may be modified or cancelled; the order in which entries relating to the same land are to be made, and the correction of clerical errors in the registers or registry maps or in any document connected with registration;

(h) the form and contents of any instrument, certificate, memorial, affidavit or other document required or authorised to be used or given under or for the purposes of this Act;

(i) the conditions under which a new land certificate or certificate of charge may be given in place of a certificate lost, defaced or destroyed;

(j) the custody of any instruments from time to time coming into the hands of any officer of the Land Registry;

(k) the inspection of and making of copies of or extracts from any register or document in the custody of the Land Registry;

(l) the costs and fees to be charged by or allowed to solicitors or other persons in or incidental to or consequential on registration, or any other matter required to be done for the purpose of carrying this Act into execution, or otherwise in discharge of the duties imposed by or under this or any other Act on a registering authority, with power to require those costs and fees to be payable by commission, percentage, or otherwise;

(m) the taxation of costs and the persons by and to whom costs are to be taxed and paid;

(n) the entering into security for the costs of appeal under this Act; and

(o) any matter by this Act directed or authorised to be prescribed, or for which general rules are by this Act directed or authorised to be made.

(3) Provision shall be made by general rules for the registration, without cost to the parties interested, of all titles recorded under the Record of Title (Ireland) Act, 1865, and care shall be taken in such rules to protect any rights acquired in pursuance of such recording. Until registration, that Act shall apply thereto as if this Act had not been passed.

(4) (a) Every office under the control of the Registrar as such, or as Registrar of Deeds, shall be open to the public on such days and during such hours as the Minister for Justice may from time to time by order appoint.

(b) The Registry of Deeds Office (Ireland) Holidays Act, 1883, is hereby repealed.

(c) Notwithstanding section 2, this subsection shall come into operation on the passing of this Act.

PART 10

JUDGMENTS

Chapter 1

Applicable to all courts

Amendment of Enforcement of Courts Order Act 1940

334.- (1) In this section “the Act of 1940” means the *Enforcement of Court Orders Act 1940*.

(2) The Act of 1940 is hereby amended by the substitution of the following section for section 3:

(3) “3.—An application under section 15 of the *Enforcement of Court Orders Act 1926* (as amended by the *Courts (No. 2) Act 1986*) may be made at any time not more than six years after the date of the judgment, order or decree in relation to which the application is made.”

(4) The Act of 1940 is hereby amended by the substitution of the following subsection for subsection (1) of section 4:

(5) “(1) An instalment order shall continue in force until the expiration of twelve years from the date of the relevant judgment, order or decree.”

(6) The Act of 1940 is hereby amended by the insertion of the following subsection after subsection (3) of section 5:

(7) “(4) An order under this section varying an instalment order shall not so operate as to make the instalment order enforceable after the expiration of twelve years from the date of the relevant judgment, order or decree.”

(8) The references in subsections (1) and (7) of section 8 of the Act of 1940 (as amended) to an order shall include a reference to—

- (a) any order as to costs that is made in conjunction with the order primarily referred to, and
- (b) any order as to costs made by a court in a reciprocating jurisdiction within the meaning of the *Maintenance Orders Act 1974*, and made by such court in connection with an order that has become an enforceable maintenance order under that Act.

Explanatory Note

Section 3 of the Courts (No. 2) Act 1986.

Chapter 2

Circuit Court

Registration of Circuit Court judgments in the Central Office

335.- (1) Any judgment of the Circuit Court obtained after the commencement of this Act may be registered in the Central Office in like manner as a similar judgment of the High Court may be registered in that office.

(2) The practice and procedure in use in the Central Office in relation to the registration of judgments of the High Court shall apply and be followed in relation to the registration under this section of judgments of the Circuit Court.

(3) Where a judgment of the Circuit Court for or including costs is registered in the Central Office under this section, the county registrar shall [...] add and include the costs incurred in so registering such judgment to and in the costs payable under such judgment, and accordingly such registration shall extend to the costs so added.

Explanatory Note

Section 2 of the Circuit Court (Registration of Judgments) Act 1937, subsection (3) amended by section 27 of the Courts Act 1981.

Registering circuit actions as *lis pendens* and judgment exceeding £20 over costs

336.- Any action in the Circuit Court may be registered as a *lis pendens* where similar action in the High Court could at present be so registered [...]

Explanatory Note

Section 59 of the 1924 Act as amended by section 5 and Schedule of the Circuit Court (Registration of Judgments) Act 1937.

Registration of Circuit Court Judgments as judgment mortgages

337.- Every judgment of the Circuit Court (whether obtained before or after the commencement of this Act) shall be deemed to be a judgment entered up in a superior court at Dublin within the meaning and for the purposes of section 6 of the *Judgment-Mortgages (Ireland) Act, 1850*, as amended or applied by subsequent enactments, and that Act as so amended or applied shall apply and have effect in relation to every judgment of the Circuit Court accordingly, but with the modification that any such affidavit as is mentioned in the said section 6 made in relation to any such judgment shall be filed in the county registrar's office in which such judgment is entered in lieu of the superior or other court mentioned in the said section.

Explanatory Note

Section 4 of the Circuit Court (Registration of Judgments) Act 1937

Section 6 of the 1850 Act provides for the procedure of entering judgment in the High Court, Circuit Court or the District Court.

Chapter 3

Interest on judgments

Judgment debts to carry interest

338.- And it be enacted, that every Judgment Debt due upon any Judgment not confessed or recovered for any penal Sum for securing Principal and Interest shall carry Interest at the rate of 8 *per Centum per Annum* from the Time of entering up the Judgment, or from the Time of the Commencement of this Act in Cases of Judgments then entered up and not carrying Interest, until the same shall be satisfied, and such Interest may be levied under a Writ of Execution on such Judgment.

Explanatory Note

Section 26 of the Debtors (Ireland) Act 1840.

Amended by section 19 of the 1981 so that “11” was substituted for “four pounds”. This was further amended by SI No 12 of 1989, article 3 which substituted “8” for the “11” inserted by the 1981 Act.

Note also section 20 of 1981 Act (in this Bill) and section 20 of Supplemental Provisions Act 1961 Act. Note also section 23 Courts (No. 1) Act 1981 which states despite sections 26 and 27 of the 1840 Act interest shall not be charged on judgments less than €190.46

Section 26 of the 1840 Act has been applied by a number of statutory instruments. Article 12(2) of the European Communities (Milk Quota) Regulations 1994 (SI No 70 of 1994) allows for any amount due in respect of the Regulations shall bear interest at the rate contained in section 26 of the 1840 Act. Regulation 10 of the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 1999 (SI No 348 of 1999) provide that if any fee payable by a licensee pursuant to Regulation 9 of the Regulations is not paid within 7 days then interest is due at the rate set out in section 26 of the 1840 Act. Regulation 12(8) of the European Communities (Electronic Communications Networks and Services) (Universal and Users' Rights) Regulations 2003 (SI No 308 of 203) provides that any amount payable under this regulation that remains unpaid may be recovered by the Regulator as a simple contract debt and shall include interest at the rate set out in section 26 of the 1840 Act. Finally, regulation 10 of the Wireless telegraphy (multipoint microwave distribution system) Regulations 2003 (SI No 529 of 2003).provide that where any fee or part payable by the licensee pursuant to Regulation 9 of the

Regulations is not paid within 7 days, then interest at the rate set out in section 26 of the 1840 Act is payable on the sum owing.

Rate of interest amended to 8% by section 19 of the Courts Act 1981.

Interest on Judgments Debts

339.- (1) Every judgment debt due upon a judgment of the Circuit Court [or decree of the District Court] obtained on or after the operative date shall be deemed a judgment debt within the meaning of section 26 (which provides that judgment debts are to carry interest) of *the Debtors (Ireland) Act 1840*.

(2) Section 26 of the *Debtors (Ireland) Act 1840* and the said section 26, as extended by subsection (1) of this section, shall apply to a judgment debt due to or from a State authority.

Explanatory Note

Section 47 of the Supplemental Provisions Act 1961. Subsection (1) amended by section 19 of the Courts Act 1981.

Variation by order of rate of interest specified in section 26 of Debtors (Ireland) Act 1840

340.- (1) Subject to subsection (2) of this section, the Minister for Justice may, if he is satisfied that the rate of interest per annum for the time being standing specified in section 26 of the *Debtors (Ireland) Act 1840*, ought, having regard to the level of rates of interest generally in the State, to be varied, make an order varying the rate of interest so standing specified and the said section 26 shall have effect in accordance with the terms of any such order.

(2) An order under this section shall not come into operation within 2 years of the commencement either of section 19(1) of this Act or of a previous order made and not annulled under this section.

(3) Every 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 such House within the next twenty-one 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 thereunder.

Explanatory Note

Section 20 of the Courts Act 1981.

Decrees and Orders of Court of Equity to have effect of judgments

341.- And be it enacted: That all Decrees and Orders of the Court of Chancery, [...] at the Equity of Side thereof, and all Rules of any of the Superior Courts of Common Law, and all Orders of the Lord Chancellor or Master of the Rolls, or of the court of Commissioners of Bankruptcy, and all Orders of the Lord Chancellor in Matters of Lunacy, whereby any Sum of Money, or any Costs, Charges or Expense, shall be payable to any Person, shall have the Effect of Judgments in the Superior Courts of Common Law and the Persons to whom any such Monies or Costs, Charges or Expenses shall be payable and shall be deemed Judgments Creditors within the meaning of this Act; and all Powers hereby given to the Judges of the same Courts shall and may be exercised by the Court of Chancery [at the Equity Side thereof with respect to Matters therein depending, and by the Lord Chancellor Master of the Rolls, and the Court of Commissioners of Bankruptcy, and by the Lord Chancellor in Matters of Lunacy and all Remedies hereby given to Persons as whom any Monies or Costs, Charges or Expenses are by such Orders or Rules respectively directed to be paid; and the Date of same, and Amount due on foot thereof; shall be stated in any Petition for a Receiver [...] and this Act, as in the Case of a Petition founded on a judgment entered or recovered in any of such Superior Courts of Law as aforesaid.

Explanatory Note

Section 27 of the Debtors (Ireland) Act 1840. Parts referring to Court of Exchequer repealed by SLR (No 2) 1874.

Section extended to certain orders of the Circuit Court by section 21 Courts Act 1981. See next section.

Note also section 23 of the Courts Act 1981 which states despite sections 26 and 27 of the 1840 Act interest shall not be charged on judgments less than €190.46.

See also section 30 of the 2002 Act.

Extension of section 27 of Debtors (Ireland) Act 1840

342.- Section 27 of the *Debtors (Ireland) Act 1840*, shall apply to —

- (a) decrees and orders of the Circuit Court providing for the payment of costs, charges and expenses, and
- (b) the persons to whom such payments are required to be made, as it applies—
 - (i) to decrees and orders of the Court of Chancery referred to in that section providing for such payments, and
 - (ii) to the persons to whom such latter payments are required to be made.

Explanatory Note

Section 21 of the Courts Act 1981.

Judgments not exceeding £150 [€190.46] not to carry interest

343.- (1) Notwithstanding sections 26 and 27 of the *Debtors (Ireland) Act 1840*, judgments, decrees or orders of any court for the payment of—

- (a) an amount not exceeding £150[€190.46], or
- (b) the costs of such a judgment, decree or order,
- (c) or both shall not carry interest.

(2) The Minister for Justice may make an order varying the amount for the time being standing specified in subsection (1)(a) of this section and the said subsection (1)(a) shall have effect in accordance with the terms of any such order.

(3) Every 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 such House within the next twenty-one 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 thereunder.

Explanatory Note

Section 23 of the Courts Act 1981. See also section 30 of 2002 Act which makes provision with regard to interest on costs, subject to this section.

Interest on costs, charges or expenses of certain judgments, order or decrees

344.- (1) Subject to section 23 of the Act of 1981, interest on the amount of costs, charges or expenses awarded to a party in proceedings in a court, to which section 27 of the *Debtors (Ireland) Act 1840* applies, pursuant to a judgment, order or decree of the court shall-

- (a) not be payable until-
 - (i) if the amount aforesaid is agreed by the parties to the proceedings, the date of such agreement, or
 - (ii) in default of agreement-
 - (I) the date on which a certificate of taxation (which expression includes an interim certificate of taxation) in respect of the amount aforesaid is issued by a taxing master of the High Court or by a county registrar exercising the powers of such a taxing master, as may be appropriate, or
 - (II) if appropriate, in the case of proceedings in the Circuit Court, the date on which a county registrar measures the amount aforesaid in accordance with rules of court.]
- (b) be payable at the rate for the time being standing specified in section 26 of the *Debtors (Ireland) Act 1840*, from the appropriate date aforesaid until that last amount is paid.

(2) Subsection (1) also applies, where appropriate, to party only of the amount referred to in that subsection, and that subsection shall have effect accordingly.

(3) [...]

(4) [...]

Explanatory Note

Section 30 of the 2002 Act. Subsection (1) substituted and subsections (3) and (4) deleted by section 41 of the 2004 Act.

Power of courts to order payments of interest on awards

345.- (1) Where in any proceedings a court orders the payment by any person of a sum of money (which expression includes in this section damages), the judge concerned may, if he thinks fit, also order the payment by the person of interest at the rate per annum standing specified for the time being in section 26 of the *Debtors (Ireland) Act 1840*, on the whole or any part of the sum in respect of the whole or any part of the period between the date when the cause of action accrued and the date of the judgment.

(2) Nothing in subsection (1) of this section—

- (a) shall authorise the giving of interest on interest, or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise, or
- (c) shall affect any damages recoverable for the dishonour of a bill of exchange, or
- (d) shall authorise the giving of interest in respect of a period before the passing of this Act, or
- (e) shall authorise the giving of interest on damages for personal injuries, or in respect of a person's death, in so far as the damages are in respect of—
- (f) any loss occurring after the date of the judgment for the damages, or
- (g) any loss (not being pecuniary loss) occurring between the date when the cause of action to which the damages related accrued and the date of the said judgment.

(3) In this section—

“damages for personal injuries” includes damages for personal injuries arising out of a contract;

“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” includes any disease and any impairment of a person's physical or mental condition;

“proceedings” includes proceedings to which the State or a State authority (within the meaning of the Act of 1961) is a party.

Explanatory Note

Section 22 of the Courts Act 1981.

Registration of Judgments

Registration of District Court decrees as judgment

346.- Every decree of the District Court (whether obtained before or after the commencement of this section) shall be deemed to be a judgment entered up in a superior court at Dublin within the meaning and for the purposes of section 6 of the *Judgment-Mortgage (Ireland) Act 1850* and that Act shall apply and have effect in relation to every decree of the District Court accordingly, but with the modification that any such affidavit as is mentioned in the said section 6 made in relation to any such decree shall be filed in the district court office in which such decree is entered in lieu of the superior or other court mentioned in the said section and any costs entitled to be stated in the said affidavit of filing and registering the said affidavit pursuant to the said section 6 shall not exceed in amount the amount of the decree.

Explanatory Note

Section 24 of the Courts Act 1981. See Law Reform Commission's Consultation Paper on Judgment Mortgages (March 2004) (LRC CP30-2004)

Registration of decrees of District Court in Central Office of High Court

347.- (1) Any decree of the District Court made after the commencement of this section may be registered in the Central Office of the High Court in like manner as a similar judgment of the High Court may be registered in that Office.

(2) The practice and procedure in use in the said Central Office in relation to the registration of judgments of the High Court shall apply to and be followed in relation to the registration under this section of decrees of the District Court.

(3) Where a decree of the District Court for or including costs is registered in the said Central Office under this section, the costs incurred in so registering such decree shall be added to and included in the costs payable under such decree, and accordingly such registration shall extend to the costs so added.

Explanatory Note

Section 25 of the Courts Act 1981.

Registration of Circuit Court judgments in the Central Office

348.- (1) Any judgment of the Circuit Court office obtained after the commencement of this Act may be registered in the Central Office in like manner as a similar judgment of the High Court may be registered in that Office

(2) The practice and procedure in use in the Central Office in relation to the registration of judgments of the High Court shall apply to and be followed in relation to the registration under this section of judgments of the Circuit Court.

(3) Where a judgment of the Circuit Court for or including costs is registered in the Central Office under this section, the county registrar [...] shall, add and include the costs incurred in so registering such judgment to and in the costs payable under such judgment, and accordingly such registration shall extend to the costs so added.

Explanatory Note

*Section 2 of the Circuit Court (Registration of Judgments) Act 1937.
Subsection (3) amended by section 27 of the Courts Act 1981.*

PART 11

SAVERS AND MISCELLANEOUS

Chapter 1

Proceedings generally

Court costume

349.- A barrister or a solicitor when appearing in any court shall not be required to wear a wig of the kind heretofore worn or any other wig of a ceremonial type.

Explanatory Note

Section 49 of the 1995 Act.

Chapter 2

Savers

Saving for Land Registry

350.- Nothing in this Act shall apply to the Central Office established under the *Local Registration of Title (Ireland) Act 1891* nor to any Local Office established under that Act which immediately before the commencement of Part II of this Act is under the management and control of a person who is not the Clerk of the Crown and Peace, and neither the said Central Office nor any such Local Office shall for the purposes of this Act be deemed to be or to have been attached to the High Court or to the former Supreme Court of Judicature or any branch or division thereof.

Explanatory Note

Section 32 of the Court Officers Act 1926.

But the Land Registry was replaced by the Property Registration Authority by the Registration of Title and Deeds Act 2006 (No 12 of 2006), which was established on 4 November 2006.

Application of enactments relating to existing courts and judges and officers thereof, and rules of court

351.- (1) (a) Subject to paragraph (b) of this subsection, this section applies to the following enactments—

- (i) any enactment contained in the Courts of Justice Acts 1924 to 1961, the Court Officers Acts 1926 to 1961, or the Criminal Justice Act 1951,
- (ii) any other enactment wherein there is a reference to a court established by the Act of 1924 or to a judge or officer thereof,
- (iii) any instrument (other than rules of court) which is in force immediately before the operative date and was made under any enactment referred to in subparagraph (i) or (ii) of this paragraph.

(b) This section does not apply to—

- (i) any enactment which has been repealed before the operative date or which is repealed by this Act, or
- (ii) subsection (2) of section 19 and sections 77 and 78 of the Act of 1924.

(2) In the application of this section in relation to existing District Court and the District Court a reference to a judge shall be construed as a reference to a justice thereof.

(3) Every enactment to which this section applies shall apply to the courts established by the Principal Act and to the judges and officers thereof as if it were enacted in this Act, with and subject to—

- (a) the modifications specified in subsection (5) of this section,
- (b) such adaptations and other modifications as may be made by the Minister under subsection (6) of this section.

(4) Rules of court made under the enactments to which this section applies and in force immediately before the operative date shall be deemed to have been made under those enactments, applied by subsection (3) of this section, and shall have effect accordingly, but with and subject to the modifications specified in subsection (5) of

this section, and any such rules of court may be altered or annulled as if they had been made under those enactments as so applied.

(5) The following are the modifications referred to in paragraph (a) of subsection (3) and in subsection (4) of this section—

- (a) a reference to the court mentioned in column (2) of Part I of the Seventh Schedule to this Act at a particular reference number shall be construed as a reference to the court mentioned in column (3) of the said Part I at that reference number,
- (b) a reference to a judge of the court mentioned in column (2) of the said Part I at a particular reference number shall be construed as a reference to a judge of the court mentioned in column (3) of the said Part I at that reference number, and
- (c) a reference to the judge mentioned in column (2) of Part II of the Seventh Schedule to this Act at a particular reference number shall be construed as a reference to the judge mentioned in column (3) of the said Part II at that reference number.

(6) (a) The Minister may from time to time by order make such adaptations or modifications (not inconsistent with the modifications effected by subsection (5) of this section) in or of any enactment to which this section applies as are, in his opinion, necessary and proper in order to give effect to the provisions of this Act.

- (b) Every order made by the Minister under paragraph (a) of this subsection shall, where the order so provides, have and be deemed always to have had effect as on and from the operative date.

(7) “This Act” where it occurs in any enactment applied by this section shall, unless the context otherwise requires, be construed as referring to the Act which includes that enactment.

(8) Subsection (1) of section 51 of the Act of 1936, as applied by this section, shall have effect as if “ten years’ standing” were substituted for “six years’ standing”.

(9) Subsection (1) of section 27 of the Act of 1953, as applied by this section, shall have effect as if for the reference therein to section 11 (repealed by this Act) of the Act of 1946 there were substituted a reference to section 40 of this Act.

- (10) (a) Paragraph (a) of subsection (1) of section 2 of the Act of 1961 shall not be taken to refer to a person who, immediately before the passing of the Act of 1961, was a judge of the existing Supreme Court, High Court, [. . .] Circuit Court or [. . .] District Court and is appointed a judge on the operative date.
- (b) The reference in subsections (2), (4) and (5) of section 4 of the Act of 1961 to the Court Officers Acts 1926 to 1951, shall be deemed to include a reference to this Act.
- (c) Section 5 of the Act of 1961 shall have effect as if there were inserted at the end of subsection (2) “or under section 58 of the Courts (Supplemental Provisions) Act 1961.”
- (d) In this subsection “the Act of 1961” means the Courts of Justice and Court Officers (Superannuation) Act 1961.

Explanatory Note

Section 48 of the Supplemental Provisions Act 1961.

Preservation of continuity of administration and enforcement of justice

352.- (1) The continuity of the administration and enforcement of justice shall not be interrupted by the coming into operation of the Principal Act or this Act.

(2) Without prejudice to the generality of subsection (1) of this section—

- (a) any act done or proceedings taken before the operative date in respect of any cause or matter in the court mentioned in column (2) of Part I of the Seventh Schedule to this Act at a particular reference number shall be deemed to have been done or taken respectively in the court mentioned in column (3) of the said Part I at that reference number,
- (b) any act done or proceedings taken before the operative date in respect of any cause or matter before the judge mentioned in column (2) of Part II of the Seventh Schedule to this Act at a particular reference number (being reference number 1 or 2) shall be deemed to have been done in that cause or matter before the judge mentioned in column (3) of the said Part II at that reference number,
- (c) any act done or proceedings taken before the operative date in respect of any cause or matter before the existing Cork Circuit Court Judge exercising jurisdiction in admiralty shall be deemed to have been done or taken in the Cork Local Admiralty Court,
- (d) any act done or proceedings taken before the operative date in respect of any cause or matter before the existing Cork Circuit Court Judge exercising jurisdiction in bankruptcy shall be deemed to have been done or taken in the Cork Local Bankruptcy Court.

(3) In subsection (2) of this section “the existing Cork Circuit Court Judge” means the judge of the existing Circuit Court for the circuit of the existing Circuit Court consisting of the county and county borough of Cork.

Explanatory Note

Section 49 of the Supplemental Provisions Act 1961.

But Cork Local Bankruptcy Court was abolished by section 6 and Second Schedule to the Bankruptcy Act 1988. The inclusion of this section in the final Courts Bill to emerge from this project would require further consideration as to whether this provision is now obsolete and repealed on that basis.

Solicitors and commissioners for oaths

353.- All persons who, immediately before the operative date, were solicitors of the courts mentioned in column (2) of Part I of the Seventh Schedule to this Act and all persons who, immediately before the operative date, were commissioners to administer oaths shall on the operative date become respectively solicitors of the courts mentioned in column (3) of the said Part I and commissioners to administer oaths.

Explanatory Note

Section 61 of the Supplemental Provisions Act 1961.

Chapter 3

Miscellaneous

Fees under the Local Registration of Title (Ireland) Act 1891

354.- (1) From and after the passing of this Act, the power of fixing fees conferred by section 8 of the *Local Registration of Title (Ireland) Act 1891*, on the Land Judge with the approval of the Lord Chancellor and the consent of the Treasury shall be exercisable only by the Minister for Justice with the consent of the Minister for Finance, and the power of altering such fees conferred by the said section shall be similarly exercisable.

(2) The reference in sub-section (1) of the said section 8 to the Land Judge (where that expression secondly occurs in the said sub-section) shall be construed and have effect as a reference to the Minister for Justice.

Explanatory Note

Section 66 of the 1936 Act. Note that the Local Registration of Title (Ireland) Act 1891 was repealed by sections 2 and 5 and the Schedule of the Registration of Title Act 1964.

Register of Reserved Judgments

355.- (1) The Courts Service shall establish and maintain in the prescribed form and manner a register of every judgment reserved by the Supreme Court, the High Court, the Circuit Court and the District Court in any civil proceedings to be known as the Register of Reserved Judgments (in this section referred to as “the register”).

(2) Such particulars as may be prescribed in respect of any proceedings in which judgment is reserved shall be entered in the register.

(3) Subject to subsection (6), if judgment in the proceedings concerned is not delivered before the expiration of 2 months from the date on which it is reserved, the President of the Court shall, as soon as may be after—

- (a) the said expiration, and
- (b) the expiration of each subsequent period of 2 months (if judgment is not delivered first),

list the proceedings or cause them to be listed before the judge who reserved judgment therein and shall give notice in writing to the parties to the proceedings of each date on which the proceedings are listed in accordance with this section.

(3A) If, apart from this subsection, subsection (3) would operate to require the President of the Court to do anything referred to in that subsection during a period when the court is in vacation, then that subsection shall be construed as requiring that President to do that thing as soon as may be after the expiration of that period.

(4) Where proceedings are listed before a judge in accordance with subsection (3), the judge shall specify the date on which he or she proposes to deliver judgment in the proceedings.

(5) The date specified by a judge under subsection (4) shall, in relation to the proceedings concerned, be entered in the register and where the proceedings concerned have been listed more than once in accordance with subsection (1), there shall be entered in the register on each occasion on which they are so listed the date, for the time being, standing so specified,

(6) Subsection (3) shall not apply if the judge who reserved judgment in the proceedings concerned dies, or if the judge concerned is ill, for the duration of his or her illness or in such other circumstances as may be prescribed.

(7) (a) The register or any part of it shall be kept at a place or places to be prescribed and shall be made available for inspection by any person on payment of such fee (if any) as may be prescribed and at such times as may be prescribed.

(b) A person may, on a request being made by him or her in the prescribed manner and on payment of such fee (if any) as may be prescribed, obtain a copy certified in such manner as may be prescribed of any entry or entries in the register.

(8) The functions of the Courts Service under this section shall be performed by the Chief Executive Officer of the Courts Service, but such of those functions as may be specified by him or her may be performed by such member or members of the staff of the Courts Service as may be authorised in that behalf by him or her.

(9) (a) The Minister for Justice, Equality and Law Reform may by regulations provide for any matter referred to in this section as prescribed or to be prescribed.

(b) [...]

(10) In this section references to a judge shall, in the case of a court constituted of more than one judge, be construed as references to the judge who, among the judges of which the court was constituted, ranks first in order of precedence in accordance with section 9 (inserted by section 9 of the Courts (No. 2) Act 1997) of the Courts of Justice Act 1924

(11) In this section—

‘prescribed’ means prescribed by the Minister for Justice, Equality and Law Reform by regulations under this section;

‘President of the Court’ means—

in relation to the District Court, the President of the District Court,

in relation to the Circuit Court, the President of the Circuit Court,

in relation to the High Court, the President of the High Court,

in relation to the Supreme Court, the Chief Justice;”.

“reserved”, in relation to a judgment in court proceedings, means where a decision in the proceedings or the reasons for such decision or both are not announced by the court immediately upon the conclusion of the hearing of the proceedings but instead are postponed—

- (a) without a date for such announcement being specified at the time, or
- (b) for a period of not less than 14 days after such conclusion.

Explanatory Note

Section 46 of the 2002 Act. Subsections (3), (4), (5) and (10) substituted, subsection (3A) inserted, subsection (9b) deleted and definition of President in subsection (11) inserted by section 55 of 2004 Act.

Note section 46 came into force on March 31, 2005 by virtue of SI no. 712 of 2004. Necessary arrangements for Register of Reserved Judgments are made by Ministerial Order.

Functions of the [Courts] Service

356.- The functions of the Service shall be to—

- (a) manage the courts,
- (b) provide support services for the judges,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain court buildings, and
- (e) provide facilities for users of the courts.
- (f) perform such other functions as are imposed on it by any other enactment.

Explanatory Note

Section 5 of the 1998 Act. Subsection (f) inserted by section 44 of the Civil Law (Miscellaneous Provisions) Bill 2006.

Powers of [Courts] Service

357.- (1) Subject to this Act but notwithstanding any other enactment, the Service may do anything necessary or expedient for enabling it to perform its functions.

(2) Without prejudice to the generality of subsection (1), the Service may—

- (a) acquire, hold and dispose of land or an interest in land or rights over or in respect of land, and acquire, hold and dispose of any other property,
- (b) enter into contracts and arrangements,
- (c) arrange staff training and education,
- (d) establish arrangements for consultation with users of the courts,
- (e) at the request of the Minister, or on its own initiative, recommend to the Minister appropriate scales of court fees and charges,
- (f) make proposals to the Minister in relation to the distribution of jurisdiction and business among the courts and matters of procedure,
- (g) provide services to other bodies subject to such conditions, including the payment of fees, as it thinks fit,
- (ga) provide secretarial, clerical and administrative support to the rules committees of the Superior Courts, Circuit Court and District Court.
- (h) with the consent of the Minister, engage consultants and advisers in connection with the performance of its functions,
- (i) operate public bank accounts within the meaning of section 18 of the *Exchequer and Audit Departments Act 1866*, and
- (j) designate court venues.

Explanatory Note
Section 6 of the 1998 Act.

Functions of Minister to become those of [Courts] Service

358.- The following functions exercisable by the Minister, shall on and after the establishment day of the courts service become vested in the courts service:

(1) sections 4(1), (2) and (3) of the *Enforcement of Court Orders Act 1926* (appointment, payment and removal of court messengers all now transferred to Courts Service);

(2) Sections 3(3) (appointment of Master of the High Court, Taxing Master), 18(1) Registrar of the Supreme Court subject to the general control of the Minister in all matters of general administration), 27(1) (appointment of temporary deputies for Master and Taxing-Master, 28(1) (Minister can nominate an officer to act as deputy to principal officer), 34(2)(allows Minister to amalgamate any two or more counties or county boroughs for the purposes of the Circuit Court) and (3) (allows Minister to divide any county into two parts for the purpose of the Circuit Court), 40(1) (appointment of temporary deputy county registrar), 41(1) (Minister may prescribe the places and post office and other banks into which money paid into Circuit Court be deposited), 42 (Minister to decide on staffing levels in circuit court office), 43(1) (Minister to determine terms and conditions of employment of officers), (2) (Minister to assign an officer or servant to a particular circuit, and to decide functions of officers) and (3) (all servants of circuit court terms and conditions decided by Minister), 46(1) appointment of district court clerks) and (2))Minister empowered to remove district court clerks), 48 (assignment of district court clerks), 59(1) (nomination of court stock-brokers, court receivers, etc), (2) (nomination can be revoked) and (3) (unless revoked by Minister, nomination continues in force), 61(2) (Minister can decide which posts are required to provide security under the section), of the 1926 Act;

(3) Sections 33(2) (alteration of number of High Court Circuits, composition, variation of distribution of counties in circuits), 42(2) (power to direct officer serving in Central Office to travel to appeal town for sitting of High Court on Circuit to perform duties of registrar of High Court on Circuit), (3) same as subsection (2), except it is officer of Registrar of Supreme court) and (5) (Minister to direct level of expenses for officers travelling on circuit), section 43 (Minister to appoint servants for judge of High Court on Circuit), [...] and 64(3) (Minister to make certain provisions regarding Dublin Metropolitan Area and Dublin District) of 1936 Act;

(4) Section 6(1) (Appointment of probate officers or examiner), 9(1) (Minister to authorise officer to act in other office, Court service may authorise County Registrar to perform duties of another County Registrar and (2) (Court service to consult with President of High Court /Chief Justice before exercising power pursuant to section 9(1)).

(5) Section 4(1) of 1951 Act (power of Minister to appoint deputy district court clerk);

(6) Sections 26(1) and (2) of 1953 Act (power to vary, create, abolish district and areas, vary business in district, assign name change)

Explanatory Note

Schedule 2 of the 1998 Act. Reference to section 44(2) of the 1936 Act removed by section 45 of 2002 Act. Section 45 of the 2002 Act reappoints the Minister to be responsible for accommodation expenses incurred by judges on Circuit.