



[Click here for
Explanatory Memorandum](#)

**AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA
ILGHNÉITHEACHA) 2010**
CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2010

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation, construction and commencement.
2. Interpretation.

PART 2

CIVIL LEGAL AID

3. Amendment of section 26 of Civil Legal Aid Act 1995.

PART 3

GOOD SAMARITANS, ETC.

4. Liability for negligence of good samaritans, volunteers and volunteer organisations.

PART 4

PRIVATE SECURITY SERVICES

5. Interpretation (*Part 4*).
6. Amendment of section 2 of Act of 2004.
7. Amendment of section 14 of Act of 2004.
8. Amendment of section 18 of Act of 2004.
9. Amendment of section 21 of Act of 2004.
10. Amendment of section 22 of Act of 2004.
11. Amendment of section 23 of Act of 2004.

[No. 44 of 2010]

12. Temporary licence under Act of 2004.
13. Amendment of section 51 of Act of 2004.

PART 5
INTOXICATING LIQUOR

14. Codes of practice.

PART 6
EQUALITY

15. Interpretation (*Part 6*).
16. Amendment of section 78(7)(b) of Act of 1998.
17. Amendment of section 79 of Act of 1998.
18. Amendment of section 82 of Act of 1998.
19. Amendment of section 25 of Equal Status Act 2000.

PART 7
BANKRUPTCY

20. Amendment of section 61(3)(h) of Bankruptcy Act 1988.
21. Amendment of section 85 of Bankruptcy Act 1988.

PART 8
AMENDMENT OF FAMILY LAW (MAINTENANCE OF SPOUSES AND
CHILDREN) ACT 1976

22. Amendment of Family Law (Maintenance of Spouses and Children) Act 1976.

PART 9
MISCELLANEOUS

23. Amendment of section 2(2) of Solicitors (Amendment) Act 1994.
24. Amendment of section 27(1) of Land and Conveyancing Law Reform Act 2009.
25. Amendment of section 1 of Statutory Declarations Act 1938.
26. Amendment of Domestic Violence Act 1996.

ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Bankruptcy Acts 1988 to 2001	
Charities Act 2009	2009, No. 6
Child Trafficking and Pornography Act 1998	1998, No. 22
Civil Law (Miscellaneous Provisions) Act 2008	2008, No. 14
Civil Legal Aid Act 1995	1995, No. 32
Civil Liability Act 1961	1961, No. 41
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010	2010, No. 24
Courts (No. 2) Act 1986	1986, No. 26
Courts and Court Officers Act 2002	2002, No. 15
Criminal Law (Human Trafficking) Act 2008	2008, No. 8
Domestic Violence Act 1996	1996, No. 1
Domestic Violence Acts 1996 to 2002	
Employment Equality Act 1998	1998, No. 21
Employment Equality Acts 1998 to 2008	
Enforcement of Court Orders Acts 1926 to 2009	
Equal Status Act 2000	2000, No. 8
Equal Status Acts 2000 to 2008	
Family Law (Maintenance of Spouses and Children) Act 1976	1976, No. 11
Land and Conveyancing Law Reform Act 2009	2009, No. 27
Licensing Acts 1833 to 2010	
Private Security Services Act 2004	2004, No. 12
Road Traffic Act 1961	1961, No. 24
Solicitors (Amendment) Act 1994	1994, No. 27
Solicitors Acts 1954 to 2008	
Statutory Declarations Act 1938	1938, No. 37



AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA
ILGHNÉITHEACHA) 2010
CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2010

BILL

5

entitled

AN ACT TO AMEND THE LAW RELATING TO CIVIL LIABILITY FOR ACTS OF GOOD SAMARITANS, VOLUNTEERS AND VOLUNTEER ORGANISATIONS; TO AMEND THE CIVIL LEGAL AID ACT 1995; TO AMEND THE PRIVATE SECURITY SERVICES ACT 2004; TO AMEND THE LAW RELATING TO THE SALE OF INTOXICATING LIQUOR; TO AMEND THE EMPLOYMENT EQUALITY ACT 1998; TO AMEND THE EQUAL STATUS ACT 2000; TO AMEND THE BANKRUPTCY ACT 1988; TO AMEND THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976, THE SOLICITORS (AMENDMENT) ACT 1994, THE LAND AND CONVEYANCING LAW REFORM ACT 2009, THE STATUTORY DECLARATIONS ACT 1938 AND THE DOMESTIC VIOLENCE ACT 1996; AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

25 1.—(1) This Act may be cited as the Civil Law (Miscellaneous Provisions) Act 2010.

Short title, collective citation, construction and commencement.

(2) The Private Security Services Act 2004 and *Part 4* may be cited together as the Private Security Services Acts 2004 and 2010.

30 (3) The Licensing Acts 1833 to 2010 and *section 14* may be cited together as the Licensing Acts 1833 to 2010 and shall be construed together as one.

(4) The Employment Equality Acts 1998 to 2008 and *sections 15 to 18* may be cited together as the Employment Equality Acts 1998 to 2010.

(5) The Equal Status Acts 2000 to 2008 and *section 19* may be cited together as the Equal Status Acts 2000 to 2010.

(6) The Bankruptcy Acts 1988 to 2001 and *Part 7* may be cited together as the Bankruptcy Acts 1988 to 2010.

(7) The Solicitors Acts 1954 to 2008 and *section 23* may be cited together as the Solicitors Acts 1954 to 2010. 5

(8) The Domestic Violence Acts 1996 to 2002 and *section 26* may be cited together as the Domestic Violence Acts 1996 to 2010.

(9) This Act, other than *Parts 2, 3, 5, 7, 8 and 9* (other than *section 26*), shall come into operation on such day or days as the Minister may by order appoint, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions. 10

Interpretation.

2.—In this Act, unless the context otherwise requires “Minister” means the Minister for Justice and Law Reform. 15

PART 2

CIVIL LEGAL AID

Amendment of section 26 of Civil Legal Aid Act 1995.

3.—Section 26 of the Civil Legal Aid Act 1995 is amended—

(a) by the insertion of the following subsection after subsection (3A) (inserted by section 78(b) of the Civil Law (Miscellaneous Provisions) Act 2008): 20

“(3B) Notwithstanding any other provision of this Act, the Board shall grant legal advice to a person who is an alleged victim of a human trafficking offence in relation to— 25

(a) any matter connected with the commission of the human trafficking offence (whether or not a prosecution for that offence has been instituted),

(b) any matter connected with the commission of any other offence of which the person is alleged to be a victim, being an offence (whether or not a human trafficking offence) that is alleged to have been committed in the course of, or otherwise in connection with, the commission of the human trafficking offence, or 30 35

(c) without prejudice to the generality of paragraph (a) or (b), the prosecution of the human trafficking offence or of the other offence referred to in paragraph (b).” 40

and

(b) by the insertion of the following subsection after subsection (7):

“(8) In this section, ‘human trafficking offence’ means—

- (a) an offence under section 2, 4, 5, 6, 7 or 11 of the Criminal Law (Human Trafficking) Act 2008,
- (b) an offence under section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998.”.

PART 3

GOOD SAMARITANS, ETC.

10 4.—The Civil Liability Act 1961 is amended by the insertion of the following Part after Part IV:

Liability for negligence of good samaritans, volunteers and volunteer organisations.

“PART IVA

LIABILITY FOR NEGLIGENCE OF GOOD SAMARITANS, VOLUNTEERS AND VOLUNTEER ORGANISATIONS

15

Interpretation (Part IVA).

51A.—(1) In this Part—

‘emergency’ includes circumstances arising in connection with an actual or apprehended accident;

20

‘good samaritan’ means a person who, without expectation of payment or other reward, provides assistance, advice or care to another person in an emergency, but does not include a person who does so as a volunteer;

25

‘negligence’ does not include breach of statutory duty;

‘voluntary work’ means any work or other activity that is carried out for any of the following purposes:

30

(a) a charitable purpose within the meaning of the Charities Act 2009;

35

(b) without prejudice to the generality of paragraph (a), the purpose of providing assistance, advice or care in an emergency or so as to prevent an emergency;

(c) the purpose of sport or recreation;

40

‘volunteer’ means a person who does voluntary work that is authorised by a volunteer organisation and does so without expectation of payment (other than reasonable reimbursement for expenses actually incurred) or other reward;

‘volunteer organisation’ means any body (whether or not incorporated) that is not formed for profit

and that authorises the doing of voluntary work whether or not as the principal purpose of the organisation.

(2) A reference in this Part to the provision of assistance, advice or care to a person includes a reference to any of the following activities: 5

- (a) the administration of first-aid to the person;
- (b) the treatment of the person using an automated external defibrillator; 10
- (c) the transportation of the person from the scene of an emergency to a hospital or other place for the purposes of ensuring the person receives medical care. 15

(3) Nothing in subsection (2) shall operate to limit the nature of activities that may constitute assistance, advice or care for the purposes of this Part.

This Part not applicable to existing causes of action.

51B.—This Part shall not apply to any cause of action that accrued before the commencement of this Part. 20

This Part not applicable to motor accidents in public places.

51C.—(1) This Part shall not apply in relation to the negligent use of a mechanically propelled vehicle in a public place. 25

(2) In this section ‘mechanically propelled vehicle’ has the same meaning as it has in Part VI of the Road Traffic Act 1961.

Protection of good samaritans from liability for negligence.

51D.—(1) A good samaritan shall not be personally liable in negligence for any act done in an emergency when providing— 30

- (a) assistance, advice or care to a person who is—
 - (i) in serious and imminent danger, or apparently in serious and imminent danger, of being injured or further injured, 35
 - (ii) injured or apparently injured, or
 - (iii) suffering, or apparently suffering, from an illness, 40

or

- (b) advice by telephone or by another means of communication to a person (whether or not the person is a person referred to in paragraph (a)) who is at the scene of the emergency. 45

(2) The protection from personal liability conferred on a good samaritan by subsection (1) applies even if the emergency is caused by an act of the good samaritan.

5 (3) The protection from personal liability conferred on a good samaritan by subsection (1) shall not apply to—

(a) any act done by the good samaritan in bad faith or with gross negligence, or

10 (b) any act done by the good samaritan when providing assistance, advice or care in circumstances where the good samaritan has a duty (whether imposed by or under any enactment or any other rule of law) to provide such assistance, advice or care.

15 Protection of volunteers from liability for negligence.

51E.—(1) A volunteer shall not be personally liable in negligence for any act done when carrying out voluntary work.

20 (2) The protection from personal liability conferred on a volunteer by subsection (1) shall not apply to any act done by the volunteer if—

(a) the act was done by the volunteer in bad faith or with gross negligence, or

25 (b) the volunteer knew or ought reasonably to have known that the act was—

(i) outside the scope of the voluntary work authorised by the volunteer organisation concerned, or

30 (ii) contrary to the instructions of the volunteer organisation concerned.

35 (3) An agreement, undertaking or arrangement has no effect to the extent that it provides for a volunteer to give a volunteer organisation an indemnity against, or to make a contribution to a volunteer organisation in relation to, a liability that—

40 (a) the volunteer would incur for his or her negligence but for the operation of subsection (1), and

(b) that the volunteer organisation incurs as a result of its vicarious liability for that negligence.

45 Protection additional to any other protection under other law.

51F.—The protection from personal liability conferred on a good samaritan by section 51D or a volunteer by section 51E is in addition to any protection from personal liability conferred on the good samaritan or volunteer by or under any other enactment or rule of law.

Volunteer organisations and duty of care.

51G.—(1) This section applies to proceedings relating to the liability of a volunteer organisation for negligence arising from activities carried out by or on behalf of the organisation.

(2) In any proceedings to which this section applies, when determining whether the volunteer organisation owed a duty of care to the plaintiff or any other person, a court shall consider whether it would be just and reasonable to find that the organisation owed such a duty having regard to the social utility of the activities concerned.

(3) Nothing in this section shall operate to limit the matters that a court may consider, in proceedings to which this section applies, when determining whether a volunteer organisation owed a duty of care to a plaintiff or other person.”.

PART 4

PRIVATE SECURITY SERVICES

Interpretation (Part 4).

5.—In this Part “Act of 2004” means the Private Security Services Act 2004. 20

Amendment of section 2 of Act of 2004.

6.—Section 2(1) of the Act of 2004 is amended by the substitution of the following for the definition of “installer of security equipment”:

“ ‘installer of security equipment’ means a person who—

(a) for remuneration installs, maintains, repairs or services electronic or other devices designed, constructed or adapted to give warning of or monitor or record unauthorised entry or misconduct on or in the vicinity of premises, 25

(b) for remuneration installs, maintains, repairs or services electronic or other devices designed, constructed or adapted to control or record access by persons or vehicles to or within premises by means of— 30

(i) personal identity verification, including by means of biometrics, 35

(ii) vehicle identification,

(iii) numerical codes,

(iv) alphabetical codes,

(v) access or other card management, or 40

(vi) electronic key management,

or any combination of such means,

and includes a person who in connection with the provision of services referred to in paragraph (a) or (b) gives advice relating to the installation of such equipment or advice relating to the protection of such devices from damage or interference;”.

5 **7.**—The Act of 2004 is amended in section 14—

Amendment of
section 14 of Act of
2004.

(a) by the substitution of the following for subsection (1):

10 “(1) For the purposes of this Act the Authority may appoint a person (including a member of the staff of the Authority) to be an inspector for such period and subject to such terms and conditions as the Authority may determine.”,

and

(b) by the insertion, after subsection (2) of the following subsection:

15 “(3) The Authority may designate a member of its staff, who has been appointed as an inspector pursuant to subsection (1), to be Chief Inspector.”.

20 **8.**—Section 18(1) of the Act of 2004 is amended by the substitution of “a consultant, an inspector or an adviser” for “a consultant or an adviser”.

Amendment of
section 18 of Act of
2004.

9.—Section 21 of the Act of 2004 is amended—

Amendment of
section 21 of Act of
2004.

(a) in subsection (3), by the insertion, after paragraph (a), of the following paragraph:

25 “(ab) require the applicant to furnish particulars of every person who, in a case in which the applicant is a company, is the beneficial owner of more than 5 per cent of the share capital of the company,”,

and

30 (b) in subsection (4), by the substitution in paragraph (a) of “the shareholders to whom subsection (3)(ab) refers and the directors, and” for “the directors, and”.

35 **10.**—Section 22 of the Act of 2004 is amended by the substitution, in subsection (3)(b)(i), of “any director, shareholder to whom section 21(3)(ab) refers, manager,” for “any director, manager,”.

Amendment of
section 22 of Act of
2004.

11.—Section 23 of the Act of 2004 is amended—

Amendment of
section 23 of Act of
2004.

(a) in subsection (1), by the deletion of “in the prescribed manner”,

(b) by the substitution for subsection (2) of the following:

40 “(2) An application for the renewal of a licence shall be made in accordance with procedures specified by the Authority.”,

and

(c) by the insertion, after subsection (3), of the following subsection:

“(3A) Where—

- (a) subsection (3) applies, 5
- (b) the applicant has complied with the procedures specified pursuant to subsection (2), and
- (c) a licence is renewed by the Authority,

the licence so renewed shall expire on the day on which it would have expired if it had been renewed with effect from the day next following the day on which the licence would have expired but for the operation of subsection (3).”.

Temporary licence under Act of 2004. **12.**—The Act of 2004 is amended by the insertion, after section 27, of the following section: 15

“Temporary licence. 27A.—(1) Where the Authority has received an application for a licence under section 21 and, having considered the application it is satisfied that—

- (a) the requirements of this Act and any regulations relating to licence applications made pursuant to section 51 have been complied with (otherwise than as respects the competence of the applicant to provide the security service to which the application relates), and 20
- (b) it is appropriate to grant a temporary licence to the applicant to enable the applicant to display the necessary competence to provide security services of a type to which the application for a licence relates, 25

the Authority may grant a temporary licence for a period not exceeding 6 months to enable the applicant to satisfy the Authority that the applicant has the necessary competence to provide security services of a type to which the application relates. 35

(2) Where the Authority has granted a temporary licence under this section and the Authority is satisfied that exceptional circumstances exist, the Authority may extend the term of such licence by a period not exceeding 3 months. 40

(3) The Authority may, in respect of a particular licensee, exercise its power under subsection (2) once only. 45

(4) This section shall not apply in a case where the application relates to the renewal of a licence.

(5) Section 28 shall not apply to a temporary licence issued pursuant to this section.”.

13.—Section 51 of the Act of 2004 is amended—

Amendment of section 51 of Act of 2004.

5 (a) in subsection (2), by the substitution of the following for paragraph (g):

“(g) the fees to be charged by the Authority in respect of applications for licences and other services provided by the Authority.”,

and

10 (b) by the insertion, after subsection (2), of the following subsections:

“(2A) In making regulations pursuant to subsection (2)(g) the Authority may—

15 (a) prescribe different fees in respect of different circumstances or classes of circumstances, or in relation to different classes of licences and in relation to different classes of cases,

20 (b) provide for the waiving, remitting or refunding of fees (in whole or in part) in different circumstances or classes of circumstances or in relation to different classes of licences and in relation to different classes of cases,

(c) provide for exemption from payment of fees in circumstances specified in the regulations.

25 (2B) In making regulations pursuant to subsection (2)(g) the Authority may have regard to—

(a) the expenses incurred by the Authority, or

(b) the expenses which it is anticipated will be incurred by the Authority,

30 in performing its functions under this Act, so that so much of those expenses as the Authority considers appropriate are recovered from fees to be charged pursuant to such regulations.”.

PART 5

INTOXICATING LIQUOR

14.—(1) In this section—

Codes of practice.

“Act of 1986” means the Courts (No. 2) Act 1986;

“code of practice” includes part of a code of practice;

40 “licence” means a licence for the sale of intoxicating liquor, whether granted on production or without production of a certificate of the Circuit Court or the District Court;

“licensee” means the holder of a licence;

“licensed premises” means premises in respect of which a licence is in force and, in relation to a licensee, means the licensed premises of the licensee;

“Minister” means the Minister for Justice and Law Reform. 5

(2) Subject to *subsection (3)*, the Minister may—

(a) prepare and publish a code of practice, or

(b) approve of a code of practice drawn up by any other body,

for the purpose of setting standards for the display, sale, supply, advertising, promotion or marketing of intoxicating liquor (including 10 a class or classes of intoxicating liquor).

(3) Before publishing or approving of a code of practice under this section, the Minister—

(a) may make available in such manner as he or she considers appropriate a draft of the code and allow persons such 15 period as the Minister determines, being not less than 30 days from the date of making such draft available, within which to make representations in writing to him or her in relation to it, and

(b) having considered the representations (if any) received, 20 consent to its publication or approval, with or without modifications.

(4) Where the Minister publishes or approves of a code of practice under this section, he or she shall cause a notice to that effect to be published in *Iris Oifigiúil* and such notice shall specify— 25

(a) the class or classes of intoxicating liquor in respect of which the code is so published or approved, as the case may be,

(b) the date from which the code has effect, and

(c) the place where a copy of the code may be viewed, 30 inspected or purchased.

(5) Subject to *subsection (6)*, the Minister may—

(a) amend or revoke a code of practice published under this section, or

(b) withdraw approval of any code of practice approved of 35 under this section.

(6) *Subsection (3)* shall, with all necessary modifications, apply to a code of practice that the Minister intends to amend or revoke, or withdraw his or her approval of, under *subsection (5)* as *subsection (3)* applies to a code of practice that the Minister proposes to publish 40 or approve of under this section.

(7) Where the Minister amends or revokes, or withdraws his or her approval of, a code of practice published or approved of under this section, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil* specifying— 45

- (a) the code to which the amendment, revocation or withdrawal of approval, as the case may be, relates and, if applicable, particulars of the amendment,
- 5 (b) the class or classes of intoxicating liquor in respect of which the code is so amended, revoked or approval is withdrawn, as the case may be, and
- (c) the date from which the amendment, revocation or withdrawal of approval, as the case may be, shall have effect.

10 (8) A document bearing the seal of the Minister and purporting to be a code of practice published or approved of under this section or, where such a code has been amended under this section, the code so amended shall be admissible in any proceedings relating to the renewal under the Act of 1986 of a licence.

15 (9) A failure on the part of a licensee to observe any provision of a code of practice published or approved of under this section (including such a code as amended from time to time under this section) shall not of itself render the licensee liable to any civil or criminal proceedings but such failure shall be considered as relating to the good character of the licensee for the purposes of the renewal
20 under the Act of 1986 of the licence in respect of the licensed premises concerned.

(10) In publishing or approving of a code of practice under this section, the Minister shall have regard to the need to reduce the incidence of the excessive consumption of intoxicating liquor and,
25 without prejudice to the generality of that need, in particular have regard to—

- (a) the need to reduce the risk of a threat to public order arising from the excessive consumption of intoxicating liquor,
- 30 (b) the health-related risks arising from the consumption of alcohol to an excessive extent,
- (c) in the case of advertising, promotion or marketing of intoxicating liquor referred to in *subsection (2)*, whether or not or to what extent such advertising, promotion or marketing is intended or likely to encourage the consumption of intoxicating liquor to an excessive extent.
35

(11) In having regard to the matters referred to in *subsection (10)(c)* the Minister may have regard to the medium used or the nature of the activities associated with or involved with such advertising, promotion or marketing.
40

PART 6

EQUALITY

15.—In this Part “Act of 1998” means the Employment Equality Interpretation Act 1998. (Part 6).

45 **16.**—Section 78(7)(b) of the Act of 1998 is amended by the substitution of “42 days” for “28 days”. Amendment of section 78(7)(b) of Act of 1998.

17.—Section 79 of the Act of 1998 is amended—

(a) by the substitution of the following for subsection (1):

“(1) Where a case which has been referred to the Director under section 77—

(a) does not fall to be dealt with by way of mediation under section 78, or 5

(b) falls to be dealt with under this section by virtue of section 78(7),

the Director shall investigate the case and may, as part of that investigation and if the Director considers it appropriate, hear persons appearing to the Director to be interested.”, 10

(b) by the insertion of the following subsection after subsection (2):

“(2A) (a) Where the Director considers that the case may be dealt with on the basis of written submissions only, the Director shall notify the parties in writing of his or her proposal to do so. 15

(b) A notification under paragraph (a) shall inform the parties of the right to make representations to the Director in accordance with paragraph (c). 20

(c) A person who receives a notification under paragraph (a) may, within 28 days from the issue of the notification, make representations to the Director as to why the case should not be dealt with on the basis of written submissions only. 25

(d) The Director shall, prior to making a decision as to whether to deal with the case on the basis of written submissions only, consider all representations made in accordance with paragraph (c).”, 30

and

(c) by the insertion of the following subsection after subsection (5): 35

“(5A) In the course of an investigation under this section the Director may—

(a) refer to the High Court a point of law arising in the investigation, and 40

(b) adjourn the investigation (if he or she thinks it appropriate to do so) pending the outcome of the reference.”.

18.—Section 82 of the Act of 1998 is amended by the substitution of the following for subsection (4):

Amendment of section 82 of Act of 1998.

5 “(4) The maximum amount which may be ordered by the Director by way of compensation under subsection (1)(c) or (1)(f) shall be—

(a) in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, an amount equal to the greatest of—

10 (i) 104 times the amount of that remuneration, determined on a weekly basis,

15 (ii) 104 times the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of discrimination or victimisation concerned, or

(iii) €40,000,

or

(b) in any other case, €13,000.”.

19.—Section 25 of the Equal Status Act 2000 is amended—

Amendment of section 25 of Equal Status Act 2000.

20 (a) by the substitution of the following for subsection (1):

“(1) Where a case which has been referred to the Director under section 21—

(a) does not fall to be dealt with by way of mediation under section 24, or

25 (b) falls to be dealt with under this section by virtue of section 24(6),

30 the Director shall investigate the case and may, as part of that investigation and if the Director considers it appropriate, hear persons appearing to the Director to be interested.”,

and

(b) by the insertion of the following subsection after subsection (2):

35 “(2A) (a) Where the Director considers that the case may be dealt with on the basis of written submissions only, the Director shall notify the parties in writing of his or her proposal to do so.

40 (b) A notification under paragraph (a) shall inform the parties of the right to make representations to the Director in accordance with paragraph (c).

(c) A person who receives a notification under paragraph (a) may, within 28 days from the issue of the notification, make representations to the Director as to why the case should not be dealt with on the basis of written submissions only. 5

(d) The Director shall, prior to making a decision as to whether to deal with the case on the basis of written submissions only, consider all representations made in accordance with paragraph (c).” 10

PART 7

BANKRUPTCY

Amendment of section 61(3)(h) of Bankruptcy Act 1988.

20.—The Bankruptcy Act 1988 is amended in section 61(3)(h)(amended by section 34 of the Courts and Court Officers Act 2002) by the substitution of “€10,000” for “€7,000”. 15

Amendment of section 85 of Bankruptcy Act 1988.

21.—The Bankruptcy Act 1988 is amended by substituting the following for section 85:

“Discharge and annulment.

85.—(1) Every bankruptcy shall, on the 20th anniversary of the date of the making of the adjudication order in respect of that bankruptcy, unless prior to that date the bankruptcy has been discharged or annulled, stand discharged. 20

(2) Where a bankruptcy is discharged by virtue of subsection (1) any property of the bankrupt which remains vested in the Official Assignee shall, after provision has been made for the payment of— 25

(a) the expenses, fees, costs of the bankruptcy, and 30

(b) preferential payments,

be returned to the bankrupt and shall be deemed to be re-vested in him on and from the date on which the bankruptcy stands discharged.

(3) A bankrupt shall be entitled to an order discharging him from bankruptcy where provision has been made for the payment of the expenses, fees and costs of the bankruptcy, and the preferential payments, and— 35

(a) he has paid one euro in the euro, with such interest as the Court may allow, or 40

(b) he has obtained the consent in writing of all of his creditors whose debts have been proved and admitted in the bankruptcy, or 45

(c) section 41 (discharge of adjudication order) applies.

5 (4) The giving of consent by a creditor under subsection (3) constitutes a waiver by that creditor of the right to recover the amount concerned proved and admitted in bankruptcy.

10 (5) A bankrupt whose estate has, in the opinion of the Court, been fully realised, shall be entitled to an order discharging him from bankruptcy where provision has been made for the payment of the expenses, fees and costs of the bankruptcy, and the preferential payments, and—

(a) his creditors have received 50 cent or more in the euro, or

15 (b) he or his friends have paid to his creditors such additional sums as will together with the dividend paid make up 50 cent in the euro.

20 (6) Where a bankruptcy has subsisted for at least 6 years a bankrupt may apply to the Court for an order discharging him from bankruptcy where provision has been made for the payment of the expenses, fees and costs of the bankruptcy, and the preferential payments, and where the Court is satisfied that—

(a) the estate of the bankrupt has been fully realised,

(b) all after acquired property has been disclosed, and

30 (c) it is reasonable and proper to grant the application,

the Court shall make an order discharging the bankruptcy.

35 (7) The Court shall not discharge a bankruptcy pursuant to subsection (5) or (6) where it is satisfied that the proceeds of property realised by the Official Assignee at the date of the making of the application for the discharge would be sufficient to pay a dividend to the creditors until such dividend has been paid.

(8) A person shall be entitled to an annulment of his adjudication—

(a) where he has shown cause pursuant to section 16, or

45 (b) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

(9) An order of discharge or annulment shall provide that any property of the bankrupt then

vested in the Official Assignee shall be re-vested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly. 5

(10) A person whose bankruptcy has been discharged or annulled may on application obtain a certificate of discharge or annulment, as the case may be, under the seal of the Court. 10

(11) In this section 'bankrupt' includes personal representatives and assigns."

PART 8

AMENDMENT OF FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976 15

Amendment of Family Law (Maintenance of Spouses and Children) Act 1976.

22.—The Family Law (Maintenance of Spouses and Children) Act 1976 is amended by the insertion, after section 9, but in Part III, of the following new sections:

9A.—(1) Subject to this section it shall be contempt of court for a maintenance debtor to fail to make a payment due under an antecedent order. 20
"Failure to make payments to be contempt of court.

(2) As respects a contempt of court arising pursuant to this section, a judge of the District Court shall, subject to this section, have such powers, including the power to impose a sanction, as are exercisable by a judge of the High Court in relation to contempt of court in proceedings before the High Court. 25

(3) Where a payment under an antecedent order made by the District Court has not been made, the maintenance creditor may apply to the District Court clerk concerned for the issue of a summons directing the maintenance debtor to appear before the District Court. 30

(4) A summons referred to in subsection (3) shall— 35

(a) be issued by the District Court clerk concerned,

(b) contain a statement that failure to make a payment in accordance with the order concerned constitutes a contempt of court and giving details of the consequences of the court finding that a contempt of court has taken place including in particular the possibility of imprisonment, 40 45

(c) state that the maintenance debtor may be arrested if he or she fails to appear

before the District Court as directed in the summons, and

- 5 (d) be served on the maintenance debtor personally, or in such other manner authorised by a judge of the District Court.

10 (5) If the maintenance debtor fails, without reasonable excuse, to appear before the court in answer to the summons, the judge of the District Court, on the application of the maintenance creditor, shall, if satisfied that the debtor was served with the summons, issue a warrant for the arrest of the maintenance debtor.

15 (6) A maintenance debtor arrested pursuant to a warrant issued under subsection (5) shall be brought as soon as practicable before the District Court.

20 (7) Where a maintenance debtor is arrested and brought before the District Court under subsection (6), the judge shall fix a new date for the hearing of the summons and direct that the creditor be informed by the District Court by notice in writing of the date so fixed, and shall explain to the debtor in ordinary language—

- 25 (a) that he or she is required to attend before the court at the date next fixed for the hearing of the summons,

- 30 (b) that failure to attend may in itself constitute a contempt of court and the consequences of such contempt, including in particular the possibility of imprisonment, and that such contempt and the consequences which may follow are in addition to the consequences arising by reason of failure to make a payment under the antecedent order, and

- 40 (c) that he or she is entitled to apply for legal advice and legal aid under the Civil Legal Aid Act 1995.

(8) At the hearing of the summons, before hearing evidence from any party the judge shall explain to the debtor in ordinary language—

- 45 (a) the consequences, and in particular the possibility of imprisonment, which may follow a failure to make a payment in accordance with an antecedent order, and

- 50 (b) unless the maintenance debtor has already been so informed under subsection (7), that he or she is entitled to apply for legal advice and legal aid under the Civil Legal Aid Act 1995.

(9) On the hearing of the summons, having given to the maintenance debtor the explanations referred to in subsection (8), having given the maintenance debtor an opportunity to apply for legal advice and legal aid, and having heard such evidence as may be adduced by the maintenance creditor and the maintenance debtor, if the judge is satisfied that the payment concerned has not been made, and—

(a) that the failure to make the payment concerned is due to—

(i) the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later), or

(ii) some other reason not attributable to any act or omission of the maintenance debtor,

the judge may, where he or she believes that to do so would improve the likelihood of the payment concerned being made within a reasonable period, adjourn the hearing—

(I) to enable the outstanding payment to be made, or

(II) to enable an application to be made for an attachment of earnings order under section 10,

(b) that the failure to make the payment concerned is due to the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later) the judge may, where the antecedent order was made by the District Court, treat the hearing as an application to vary the antecedent order, and having heard evidence as to the financial circumstances of both the maintenance debtor and the maintenance creditor, make an order varying the antecedent order.

(10) Where on the hearing of the summons, having given to the maintenance debtor the explanations referred to in subsection (8), having given the maintenance debtor an opportunity to apply for legal advice and legal aid, and having heard

such evidence as may be adduced by the maintenance creditor and the maintenance debtor, the judge is satisfied that the payment concerned has not been made and that the failure to make the payment concerned is not due to—

- (a) the inability of the maintenance debtor to make the payment concerned by reason of a change in his or her financial circumstances which occurred since the antecedent order or an order varying that order was last made (whichever is the later), or
- (b) some other reason not attributable to any act or omission of the maintenance debtor,

the judge may treat the failure by the maintenance debtor to make the payment concerned as constituting contempt of court and the judge may deal with the matter accordingly.

(11) Where a maintenance debtor to whom subsection (7) applies does not attend court on the date fixed for the hearing of the summons the judge may treat such failure to attend court as constituting contempt of court and the judge may deal with the matter accordingly.

(12) In this section ‘financial circumstances’ means, in relation to a person—

- (a) the amount of the person’s annual income,
- (b) the aggregate value of all property (real and personal) belonging to the person,
- (c) the aggregate of all liabilities of the person including any duty (moral or legal) to provide financially for members of his or her family or other persons,
- (d) the aggregate of all monies owing to the person, the dates upon which they fall due to be paid and the likelihood of their being paid, and
- (e) such other circumstances as the court considers appropriate.

Certificate of outstanding payments.

9B.—Where, pursuant to section 9, a court has made a maintenance order, a variation order or an interim order and directed that payments under the order be made to the District Court clerk, in any proceedings under this Act or under the Enforcement of Court Orders Acts 1926 to 2009, a certificate purporting to be signed by the relevant District Court clerk as to the amount of monies outstanding on foot of such order shall, until the contrary is shown, be evidence of the matters stated in the certificate.”.

PART 9

MISCELLANEOUS

Amendment of section 2(2) of Solicitors (Amendment) Act 1994.

23.—Section 2(2) of the Solicitors (Amendment) Act 1994 is amended by the substitution of “to any complaints made to the Society by the registrar under section 14C of this Act” for “to any complaints made to the Society by the registrar under section 14B of this Act”. 5

Amendment of section 27(1) of Land and Conveyancing Law Reform Act 2009.

24.—Section 27(1) of the Land and Conveyancing Law Reform Act 2009 is amended by the substitution of “may release or contract not to exercise the power by deed or in any other way in which the power can be released” for “may release or contract not to exercise the power by deed or in any other way in which the power could be created”. 10

Amendment of section 1 of Statutory Declarations Act 1938.

25.—Section 1(1) of the Statutory Declarations Act 1938 is amended by the insertion after paragraph (*d*) of the following paragraph: 15

“(e) a judge of the District Court.”.

Amendment of Domestic Violence Act 1996.

26.—The Domestic Violence Act 1996 is amended—

(a) in the definition of “the applicant” in section 2(1)(a):

(i) by the substitution of the following subparagraph for subparagraph (ii): 20

“(ii) is not the spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of the respondent and is not related to the respondent within the prohibited degrees of relationship, but lived with the respondent in an intimate and committed relationship prior to the application for the safety order, or”, 25 30

(ii) in subparagraph (iv), by the substitution of “primarily contractual, or” for “primarily contractual;”, and

(iii) by the insertion of the following subparagraph after subparagraph (iv): 35

“(v) is a parent of a child whose other parent is the respondent;”,

and

(b) in the definition of “the applicant” in section 3(1), by the substitution of the following paragraph for paragraph (*b*): 40

5

10

“(b) is not the spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of the respondent and is not related to the respondent within the prohibited degrees of relationship, but lived with the respondent in an intimate and committed relationship for a period of at least six months in aggregate during the period of nine months immediately prior to the application for the barring order, or”.



**AN BILLE UM AN DLÍ SIBHIALTA (FORÁLACHA
ILGHNÉITHEACHA) 2010
CIVIL LAW (MISCELLANEOUS PROVISIONS) BILL 2010**

EXPLANATORY MEMORANDUM

Background to and purpose of the Bill

The Bill provides for amendments to provisions across the range of civil and regulatory law. The main provisions of the Bill include:—

- amendment of the Civil Legal Aid Act 1995 to allow the Legal Aid Board to give legal advice in relation to criminal matters to alleged victims of human trafficking,
- to amend the law relating to civil liability for acts of good samaritans and volunteer organisations,
- support for codes of practice on the sale of alcohol,
- strengthening of the provisions of the Private Security Services Act 2004 in regard to licensing, enforcement and the collection of fees,
- amendments of the Equality Acts to improve, inter-alia, the procedures of the Equality Tribunal,
- amendments to the Bankruptcy Act 1988 to allow for application for a reduction in the discharge period from 12 years to 6 years and to provide for automatic discharge of bankruptcies existing for 20 years or more,
- amendment of the Family Law (Maintenance of Spouses and Children) Act 1976 to strengthen the existing provisions for the enforcement of family law maintenance orders,
- amendment of the Domestic Violence Act 1996.

Contents of Bill

The Bill contains 9 Parts. The following paragraphs contain a brief description and an outline of the principal reforms proposed in each Part.

Part 1

Preliminary and General

Section 1 (Short title, collective citation, construction and commencement) and *Section 2 (Interpretation)* are standard provisions regarding the interpretation and commencement of the Bill.

Part 2

Civil Legal Aid

This Part proposes important technical amendments to section 26 of the Civil Legal Aid Act 1995 to permit the Legal Aid Board provide legal advice in relation to criminal matters to victims or alleged victims of trafficking in respect of any matters that arise for the person under the Criminal Law (Human Trafficking) Act 2008 or in respect of offences under other legislation committed in the course of, or in connection with, the human trafficking offence, e.g. rape, false imprisonment, breaches of immigration law or of employment legislation.

Section 3 (Amendment of section 26 of Civil Legal Aid Act 1995)

Section 3(a) — Legal Advice provides that the Legal Aid Board will grant legal advice to a person who is an alleged victim of a human trafficking offence in relation to:

- (i) any matter related to the commission of the human trafficking offence and
- (ii) any related offences committed in connection with the human trafficking offence and
- (iii) to any matter related to the prosecution of these offences.

This section gives effect to the relevant provisions in relation to the provision of legal advice in the Council of Europe Convention on Action Against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime and will support, on a legislative basis, Ireland's recent ratification of the Convention and Protocol. The UN Protocol came into effect in Ireland on 16 July 2010. The Instrument of ratification for the Council of Europe Convention was deposited on 15 July 2010 and the Convention comes in to force on 1 November 2010 and fulfils the commitment in the Programme for Government to ratify both the Convention and the Protocol.

Section 3(b) — Definition "Human trafficking offence" is defined as the trafficking of a child or adult for the purposes of sexual or labour exploitation or for the removal of body organs or the selling or purchasing of a person or causing or attempting any of these actions, (Sections 2, 3, 4 of the Criminal Law (Human Trafficking) Act 2008 and Section 3 of the Child Trafficking and Pornography Act 1998). The definition also includes an offence of soliciting or importuning a trafficked person for the purposes of prostitution (Section 5 of the Criminal Law (Human Trafficking) Act 2008). A "human trafficking offence" may be committed by a body corporate (Section 6 of the Criminal Law (Human Trafficking) Act 2008) and

is subject to extra territorial jurisdiction, (Section 7 of the Criminal Law (Human Trafficking) Act 2008). The “human trafficking offence” definition also covers provisions relating to the anonymity of victims of trafficking at Section 11 of the Criminal Law (Human Trafficking) Act 2008.

Part 3

Good Samaritans, etc.

This Part addresses recommendations of the Law Reform Commission to place the civil liability of “good samaritans”, volunteers and volunteer organisations on a statutory footing and to provide legal clarity for persons who assist in an accident or emergency and those who engage in voluntary work for the benefit of society.

Section 4 (Liability for negligence of good samaritans, volunteers and volunteer organisations) inserts a new Part IVA (sections 51A to 51G) into the Civil Liability Act 1961 to provide for the civil liability of good samaritans, volunteers and volunteer organisations.

Section 51A provides for the interpretation of key terms in this Part. Subsection (1) includes a definition of a “good samaritan”, as a person who provides assistance, advice or care to another person in an emergency and without expectation of payment or other reward. “Voluntary work” means work done for a charitable purpose; or for the purpose of providing assistance, advice or care during or in prevention of an emergency; or for the purpose of sport or recreation. A “volunteer” is a person who does work authorised by a volunteer organisation, with no expectation of payment other than reimbursement for expenses actually incurred. A “volunteer organisation” is a body formed not for profit, whose purpose includes, but is not confined to, the doing of voluntary work. Subsection (2) provides a definition of “assistance, advice or care” which includes, but is not limited to, the administration of first-aid; the use of an automated external defibrillator (AED); and the transportation of persons from the scene of an emergency to a medical facility.

Section 51B provides that the provisions in this Part will apply only to causes of action accruing after the commencement of the Part.

Section 51C provides that the provisions in this Part are not applicable to the negligent use of a mechanically propelled vehicle in a public place within the meaning of the Road Traffic Act 1961 to the effect that this liability will continue to be covered by motor insurance.

Section 51D provides for the protection of persons acting as good samaritans from personal liability for negligence in giving assistance, advice or care (subsection (1)). Persons who are the cause of an emergency may be considered good samaritans where they offer assistance, advice or care thereafter (subsection (2)). Persons who act in bad faith or with gross negligence, as well as persons with an existing duty of care, are excluded from legal protection from liability (subsection (3)).

Section 51E provides for the protection of persons carrying out voluntary work from personal liability for negligence (subsection (1)). Protection from liability is not available to those who act in bad faith or with gross negligence or to those who act outside the scope of the work authorised by the volunteer organisation or contrary to

the instructions of the volunteer organisation concerned (subsection (2)). A volunteer organisation is prevented from gaining the protection of an indemnity given by a volunteer against a liability it might otherwise incur as a result of the negligent actions of its volunteers (subsection (3)).

Section 51F provides that the protections made available in this Bill are additional to any protections existing in common or statutory law.

Section 51G provides that while the Bill sets out an ordinary standard of care for volunteer organisations, the courts shall take into account the benefits accruing to society as a result of the organisation's work in determining whether it is just and reasonable to find that the organisation owes a duty of care.

Part 4

Private Security Services

This Part proposes a number of technical amendments to the Private Security Services Act 2004 which will improve certain financial, licensing and enforcement functions relating to the Private Security Authority.

Section 5 (Interpretation — Part 4) is a standard provision which states that the Act of 2004 in this Part refers to the Private Security Services Act 2004.

Section 6 (Amendment of section 2 of Act of 2004) amends the current definition of “installer of security equipment” given in section 2(1) of the Act of 2004 so as to encompass the area of access control within the definition and keep it in line with technological advances in the area.

Section 7 (Amendment of section 14 of Act of 2004) allows the Private Security Authority the ability to appoint persons, in addition to its own staff, to be an inspector and so gives the Authority the ability to contract in outside inspectors, if necessary.

Section 8 (Amendment of section 18 of the Act of 2004) amends section 18(1) so as to ensure that all persons appointed by the Private Security Authority, including an inspector who is not a member of the Authority's own staff, will be subject to confidentiality requirements.

Section 9 (Amendment of section 21 of the Act of 2004) provides that, in the case of an applicant who is a company, the Private Security Authority may require the applicant to furnish particulars of every person who is the beneficial owner of more than 5% of the share capital of the company.

Section 10 (Amendment of section 22 of the Act of 2004) amends section 22(b)(i) so that its provisions also apply to any person referred to in Section 9, i.e. the beneficial owner of more than 5% of the share capital of the company.

Section 11 (Amendment of section 23 of the Act of 2004) amends the renewal provisions of the Act so that an application for a renewal of a licence shall be made in accordance with procedures specified by the Private Security Authority. It also provides that licences

issued by way of a renewal come into force from the expiry date of the previous licence, thereby providing continuity of the licence.

Section 12 (Temporary licence under Act of 2004) inserts a new section in to the Act of 2004 to enable the Private Security Authority to issue a temporary licence to an applicant, who is a new entrant to the industry, for a period not exceeding 6 months, during which the applicant can prove s/he has the necessary competence to perform the security services in question. The Authority may, in exceptional circumstances, extend the temporary licence for a further 3 month period, if necessary.

Section 13 (Amendment of section 51 of the Act of 2004) allows the Private Security Authority to recover, through the fees charged, as much of the expenses incurred in running the Authority, as it considers appropriate.

Part 5

Intoxicating Liquor

Section 14 (Codes of practice) provides for statutory support of Codes of Practice in relation to licensing matters with a view to promoting and supporting compliance by licensees. Such a Code may be prepared and published by the Minister or, if the Code has been drawn up by some other body, be approved of and published by the Minister. Failure to comply with the provisions of such a Code by a licensee will constitute a ground on which an objection to renewal of the licence in question may be lodged. The proposal forms part of the Government's strategy to promote compliance with licensing law and to combat alcohol-related harm.

Part 6

Equality

This Part (*sections 15 to 19*) proposes a small number of amendments to the Employment Equality Act 1998 (as amended) and the Equal Status Act 2000 (as amended). These amendments which are largely technical in nature, take into account decisions at both national and EU level and in some cases are designed to align the text of national law more closely with EU Equality Directives. They include amendments intended to improve the efficiency and user friendliness of the Equality Tribunal in handling complaints.

Section 15 (Interpretation (Part 6)) is self-explanatory and is inserted for the purposes of this Part of the Bill.

Section 16 (Amendment of section 78(7)(b) of Act of 1998) provides for the extension of the deadline for application for resumption of the hearing in situations where mediation has failed.

Section 17(a) and (b) (Amendment of section 79 of Act of 1998) and *Section 19 (Amendment of section 25 of Equal Status Act 2000)* provide that the Equality Tribunal may, where appropriate, deal with cases on the basis of written submissions only.

Section 17(c) permits the Equality Tribunal to state a case to the High Court and avoid further litigation by way of appeal.

Section 18 (Amendment of section 82 of Act of 1998) adjusts the maximum amount that may be awarded in Employment Equality

cases to 2 years' remuneration or €40,000, whichever is greater, to provide for greater redress in situations of low-paid employment. This is in line with the EU Equality Directives which require compensation to be effective, proportionate and dissuasive.

Part 7

Bankruptcy

This Part proposes to amend the Bankruptcy Act 1988 to provide, subject to conditions, for the reduction of the application period to the court for discharge from bankruptcy from 12 years to 6 years and to provide for the automatic discharge of bankruptcies on the 20th anniversary of the adjudication order. A technical amendment is made relating to costs.

Section 20 (Amendment of section 61(3)(h) of Bankruptcy Act 1988). Section 61(3)(h) of the Bankruptcy Act, as amended by section 34 of the Courts and Court Officers Act 2002 provides that the Official Assignee in Bankruptcy has the power to agree a sum of costs where the Court so directs or where the Assignee considers that the amount which would be allowed on taxation would not exceed €7,000. The amendment provided in this section proposes to increase the limit concerned from €7,000 to €10,000.

Section 21 (Amendment of Section 85 of Bankruptcy Act 1988) substitutes the existing section 85 (Discharge and Annulment) of the 1988 Act with new text.

Subsection (1) provides for the automatic discharge of bankruptcies on the 20th anniversary of the adjudication order in bankruptcy.

Subsection (2) provides that where a bankruptcy is discharged by virtue of subsection (1) any property of the bankrupt which remains vested in the Official Assignee in Bankruptcy shall be returned to the bankrupt and re-vested in him or her subject to provision having first being made for the payment of expenses, fees and costs of the bankruptcy and any preferential payments.

Subsection (3) is a restatement of the existing law in existing subsection (3) of the 1988 Act which provides that a bankrupt will be entitled to a discharge when provision has been made for the payment of the expenses, fees and costs in the bankruptcy as well as the preferential debts and he or she has paid one euro in the euro with such interest as the Court may allow or has obtained the consent of all the creditors. In the case of a composition after bankruptcy, he or she will be entitled to a discharge when, pursuant to section 41 of the 1988 Act, he or she has lodged with the Official Assignee cash or securities sufficient to meet the composition.

Subsection (4) clarifies the existing law in subsection (3) of the 1988 Act in regard to obtaining the consent of creditors.

Subsection (5) restates the existing subsection (4) of the 1988 Act which provides that a bankrupt will be entitled to a discharge when provision has been made for the payment of the expenses, fees and costs in the bankruptcy as well as the preferential payments and he or she has paid 50 cent in the euro to creditors and where the Court is satisfied that the estate of the bankrupt has been fully realised.

Subsection (6) amends the existing subsection (4) of the 1988 Act by reducing the period for application to the court for discharge from bankruptcy by a person whose estate has, in the opinion of the Court been fully realised, from 12 years to 6 years. The same conditions that currently attach in respect of the 12 year period, would continue to attach to the new 6 year period. In this context, should bankrupt persons be able to pay the expenses of the Official Assignee, costs of the Petitioning Creditor and preferential payments (if any) owed, they could be discharged from bankruptcy and freed from all other bankruptcy debts and from all the restrictions that apply to bankrupt persons.

Subsection (7) clarifies the existing law in the 1988 Act and provides that the Court shall not discharge a bankruptcy under subsections (5) or (6) where it is satisfied that proceeds of property realised by the Official Assignee at the date of the making of the application for discharge would be sufficient to pay a dividend to the creditors until such dividend is paid.

Subsections (8) is a restatement of the law in existing subsection (5) of the 1988 Act which entitles a bankrupt to an annulment of the adjudication where he or she has shown cause under section 16 of the Act of 1988 or in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.

Subsections (9), (10) and (11) are restatements of the existing subsections (6), (7) and (8) of section 85 of the 1988 Act.

Part 8

Amendment of Family Law (Maintenance of Spouses and Children) Act 1976

Section 22 (Amendment of Family Law (Maintenance of Spouses and Children) Act 1976) provides for the insertion of new sections 9A and 9B to Part III of the Act. These sections set out procedures to be followed in the District Court regarding arrears of maintenance. The section grants the court the power to regard as contempt of court failure by a maintenance debtor to comply with a previous court order and to deal with such a breach accordingly, including by means of imprisonment.

Part 9

Miscellaneous

This Part provides for a number of minor technical amendments.

Section 23 (Amendment of section 2 of Solicitors (Amendment) Act 1994) corrects a cross-referencing error in the Civil Law (Miscellaneous Provisions) Act 2008.

Section 24 (Amendment of section 27(1) of Land and Conveyancing Law Reform Act 2009) provides for a technical amendment to the Land and Conveyancing Law Reform Act 2009 to correct an error in the text.

Section 25 (Amendment of section 1 of Statutory Declarations Act 1938) will allow District Court Judges to take and receive statutory declarations which will, in particular, facilitate the service of the Book of Evidence by allowing the Judge to take and receive the statutory declaration in Court as to service and, also, by allowing a

Judge to take and receive the statutory declaration as to service of a notice of appeal on the prosecution where a person convicted in the District Court wishes to appeal and is in a position to do so in Court.

Section 26 (Amendment of Domestic Violence Act 1996) will allow a person to apply for a safety order or a barring order against a person with whom he or she is living, or has lived, in an intimate and committed same-sex or opposite-sex relationship. It will also allow a person to apply for a safety order against a person with whom he or she had a child in common, including where the couple concerned do not live together or have never lived together.

Financial implications

The proposals contained in the Bill are not expected to give rise to any significant costs to the Exchequer.

The proposals in relation to the Private Security Services Act 2004 are not expected to give rise to additional costs to the Exchequer. The Exchequer will also continue to benefit from improved compliance through the provision of tax clearance certificates by the industry.

*Department of Justice and Law Reform,
August, 2010.*