

## Courts Bill 2013

### Regulatory Impact Analysis

#### 1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
<b>Department/Office:</b> Department of Justice and Equality	<b>Title of Legislation:</b> Courts Bill 2013
<b>Stage:</b> Publication of Bill	<b>Date:</b> March 2013
<b>Related Publications:</b> Courts Bill 2013 Explanatory Memorandum	
<b>Available to view or download at:</b> <a href="http://www.oireachtas.ie">www.oireachtas.ie</a> (when published)	
<b>Contact for enquiries:</b> Criminal Law Reform Division	<b>Telephone:</b> 01 602 8202
<b>What policy objectives have been pursued?</b>  To extend the limits of the monetary jurisdiction of the District and Circuit Courts in civil matters to reflect changes in the value of money since the limits were last revised in 1991.  To continue to protect the privacy of parties, including children, in family law and child care proceedings while allowing for access by the public to information about the operation of the family law courts.  <b>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</b>  <b>A.</b> Regarding the monetary jurisdiction of the District and Circuit Courts:  1. Do nothing and continue to maintain the monetary jurisdiction limits of the District and Circuit Courts provided for in the Courts Act 1991.  2. Commence sections 13 to 18 of the Courts and Court Officers Act 2002, which provide for monetary jurisdiction limits of €20,000 for the District Court and €100,000 for the Circuit Court.  3. Revise the monetary jurisdiction limits of the courts to amounts that better reflect changes in the value of money since 1991.  <b>B.</b> Regarding the <i>in camera</i> rule:  4. Continue to restrict attendance at family law and child care proceedings to those persons currently permitted under relevant enactments.	

5. Provide in legislation that bona fide representatives of the press may attend family law and child care proceedings, but where necessary in the interests of justice, representatives of the Press may be excluded from the court during particular parts of a hearing or the publication or broadcasting of particular evidence may be restricted or prohibited.
6. Abolish the *in camera* rule and enable the public hearing of family law and child care cases.

**Preferred Option:**

Introduce legislation to implement options 3 and 5.

<b>OPTIONS</b>			
	<b>Costs</b>	<b>Benefits</b>	<b>Impacts</b>
1. Do nothing and continue to maintain the monetary jurisdiction limits of the District and Circuit Courts provided for in the Courts Act 1991.	Proceedings that would be more appropriately taken in lower courts will continue to be taken in the High Court, with higher legal costs for the parties involved.	None	Legal costs for parties to civil proceedings remain higher than necessary.
2. Commence sections 13 to 18 of the Courts and Court Officers Act 2002, which provide for monetary jurisdiction limits of €20,000 for the District Court and €100,000 for the Circuit Court.	Potential for increased costs to unsuccessful parties to litigation resulting from higher awards by courts and for increased insurance costs.	More efficient distribution of cases between the courts resulting in lower legal costs for parties to civil proceedings.	Should positively impact on the management of civil proceedings in terms of time and legal costs generally for parties to litigation. Possible impact on insurance costs arising from significant increase in Circuit Court jurisdiction in personal injuries actions.
3. Revise the monetary jurisdiction limits of the courts to amounts that better reflect changes in the value of money since 1991.	Potential for increased costs to unsuccessful parties to litigation resulting from higher awards by courts and for increased insurance costs.	More efficient distribution of cases between the courts resulting in lower legal costs for parties to civil proceedings. Provides for awards to be made which have similar purchasing power, in	Should positively impact on the management of civil proceedings in terms of time and legal costs generally for parties to litigation. Possible impact on insurance costs reduced by

		real terms, to the monetary limits introduced in 1991.	specifying a monetary jurisdiction limit of €60,000 for Circuit Court personal injuries actions.
4. Continue to restrict attendance at family law and child care proceedings to those persons permitted under relevant enactments.	Continued concern about the secrecy in which such proceedings are dealt with by the courts.	Guarantees confidentiality.	Reinforces the public perception of secrecy surrounding family law matters.
5. Provide in legislation that bona fide representatives of the press may attend family law and child care proceedings, but where necessary, to preserve the anonymity of the parties because of the circumstances of the case or in the interests of justice, the court may restrict or exclude representatives of the Press from attending the court during a hearing or particular parts of a hearing, or the publication or broadcasting of particular evidence may be restricted or prohibited.	None	Confidentiality surrounding the parties to a case can be preserved and the public need for a greater access to information on family and child care proceedings is met.	Greater understanding of particularly sensitive categories of litigation.
6. Abolish the <i>in camera</i> rule and enable the public hearing of family law and child care cases.	Infringement of the privacy of those involved in family and child care proceedings.	Limited, if any.	Could inhibit the taking of family law or child care proceedings due to concerns about disclosure of personal information in open court.

## **2. Policy Context and Objectives**

**2.1** The objective of the Bill is to improve the efficiency and effectiveness of the courts system in dealing with certain matters by—

- (a) extending the monetary jurisdiction limits of both the Circuit and District Courts in civil cases.
- (b) changing the *in camera* rule to provide for the attendance by bona fide members of the press in court at family law and child care proceedings to enable greater reporting of such matters in the public interest, while maintaining the protection of the confidentiality of the parties and witnesses, particularly children, involved in the proceedings.

### **2.2 Extension of monetary jurisdiction of the Circuit Court and District Court**

The limits of the monetary jurisdiction of the District and Circuit Courts have remained unchanged since 1991. The current upper limits under sections 2 and 4 of the Courts Act 1991 are €6,348.69 (£5,000) in the District Court and €38,092.14 (£30,000) in the Circuit Court. While the Courts and Court Officers Act 2002 provided for increases in these limits to €20,000 and €100,000 respectively, the increased limits were not brought into effect at the time due to concerns about resource impacts on the Courts Service and the potential impact on the levels of awards which could, among other things, lead to consequential increases in insurance costs. The increased jurisdiction limits provided for in the 2002 Act have not been brought into operation.

In 2005, the Legal Costs Working Group concluded that the existing monetary limits led to cases being heard unnecessarily in higher courts resulting in increased legal costs. Arising from this work, in 2006 the Legal Costs Implementation Advisory Group recommended that the monetary jurisdiction limits of €20,000 in the District Court and €100,000 in the Circuit Court as provided for in the Courts and Court Officers Act 2002 should be brought into operation. Concerns continued to be raised in relation to increased insurance costs, particularly to businesses, arising from personal injuries cases. It should be noted that the State is a defendant in many such cases.

Section 16 of the Courts Act 1991 provided that the Government may by order, increase the limits of the monetary jurisdiction of the Circuit Court and District Court in line with increases in the value of money. The increased limits provided for in the Courts and Court Officers Act 2002, however, well exceeded the increase in the value of money from 1991 to 2002. Accordingly, a model is now proposed which acknowledges the principle of increasing the jurisdiction limits to reflect changes in the value of money set out in the 1991 Act. This proposal sets new monetary jurisdiction limits for both the District and Circuit Courts which broadly reflect the increase in the Consumer Price Index (CPI) since 1991 by increasing the limits to €15,000 in the District Court and €75,000 in the Circuit Court. An exception is provided for personal injuries actions, where the Circuit Court jurisdiction will be limited to €60,000.

### **2.3 Changes to the *in camera* rule**

Family law and child care proceedings are heard *in camera* (otherwise than in public) in order to prevent the parties involved being publicly identified. The rule provides that, in general, only the parties to an action, their legal representatives, the judge and court officials are permitted to be present in court when the case is being heard. In addition, since many of family law cases are decided upon in the lower courts, written judgments are not available. This current situation has given rise to concerns about the transparency of such court proceedings and whether the *in camera* rule as it now applies fully serves the public interest. It has been asserted that basic information as to how family law proceedings are conducted is unavailable due to the application of the *in camera* rule.

Recent policy in the law on the hearing in the courts of family law proceedings in private is reflected in section 40 (Proceedings heard otherwise than in public) of the Civil Liability and Courts Act 2004 and regulations made under that section. The Civil Liability and Courts Act 2004 (Section 40(3)) Regulations 2005 (S.I. No. 337 of 2005) allow certain classes of persons to attend family court sittings, subject to Ministerial approval, in order to draw up and publish reports. Ministerial approval is subject to certain safeguards, including a requirement that the parties to a case or any relevant child would not be identifiable. Under this scheme, several persons engaged in family law research who were nominated by bodies specified in the Schedule to the Regulations have been approved. In addition, the Courts Service introduced the Family Law Reporting Service on a pilot basis in 2006. The purpose of the pilot project was to provide information on the operation of family law in the courts.

The present proposal is to amend section 40 of the Civil Liability and Courts Act 2004 to allow for the attendance in court of bona fide representatives of the press to report on family law matters. It is proposed that where a court considers it necessary to do so, because of the nature or circumstances of the case or because it is otherwise necessary in the interests of justice, it may exclude or restrict representatives of the Press from attending the court during a hearing or particular parts of a hearing, or restrict or prohibit the publication or broadcasting of evidence given or referred to during the proceedings. Provision will be made to prohibit the publication or broadcasting of any information that would be likely to lead members of the public to identify the parties to family law proceedings or any children to whom the proceedings relate. Contravention of this provision will be an offence. It is also proposed to make corresponding amendments to the Child Care Act 1991 in relation to attendance by members of the Press at child care proceedings. These proposals are in furtherance of the Government commitment to reform and modernise aspects of family law.

### **3. Identification of Policy Options**

The following options were considered:

#### **A. Regarding the monetary jurisdiction of the District and Circuit Courts:**

1. Do nothing and continue to maintain the monetary jurisdiction limits of the District and Circuit Courts provided for in the Courts Act 1991.
2. Commence sections 13 to 18 of the Courts and Court Officers Act 2002, which provide for monetary jurisdiction limits of €20,000 for the District Court and €100,000 for the Circuit Court.

3. Revise the monetary jurisdiction limits of the courts to amounts that better reflect changes in the value of money since 1991.

**B.** Regarding the *in camera* rule:

4. Continue to restrict attendance at family law and child care proceedings to those persons permitted under relevant enactments.
5. Provide in legislation that bona fide representatives of the press may attend family law and child care proceedings, but where necessary in certain circumstances, representatives of the Press may be excluded or restricted from attending the court during a hearing or particular parts of a hearing, or the publication or broadcasting of particular evidence may be restricted or prohibited.
6. Abolish the *in camera* rule and enable the public hearing of family law and child care cases.

**4. Analysis of the costs, benefits and impacts of each option**

**4.1 *Do nothing and continue to maintain the monetary jurisdiction limits of the District and Circuit Courts provided for in the Courts Act 1991***

In terms of costs, this option allows the continuation of a situation where, as reported by the Legal Costs Working Group in 2005, cases are being heard unnecessarily in higher courts with consequential increased legal costs. The costs of Option 1 would be that proceedings that would be more appropriately taken in lower courts will continue to be taken in the High Court, with higher legal costs for the parties involved. The impact of Option 1 would be that legal costs for parties to civil proceedings remain higher than necessary.

**4.2 *Commence sections 13 to 18 of the Courts and Court Officers Act 2002, which provide for monetary jurisdiction limits of €20,000 for the District Court and €100,000 for the Circuit Court***

The main cost of Option 2 arises from the fact that the limits provided for in the 2002 Act exceed the increase in the Consumer Price Index since 1991 and could possibly lead to an increase in the levels of awards arising from civil actions in the District and Circuit Courts. Concerns have been expressed that bringing into operation the increased monetary jurisdiction limits provided in the 2002 Act, especially for Circuit Court personal injury actions, could result in higher insurance costs.

The benefit of Option 2 is that it would facilitate the hearing of a greater number of civil actions in the lower courts, resulting in reduced legal costs for parties to litigation. Cases dealt with by the High Court lead to substantially greater legal costs than those heard by the Circuit Court. The benefits of the lower legal costs connected with dealing with a civil case in the lower courts should result in sizeable savings for parties to litigation, including the State, which is a party to a significant number of civil actions. Furthermore, the changes in jurisdiction levels should facilitate the earlier determination of cases, as fewer cases will be heard by the High Court, while the additional work arising for the Circuit Court from the

increase in its jurisdiction will be balanced by the reduction in the caseload at the lower end of the jurisdiction when it transfers to the District Court.

As regards the impacts of this option, there is potential for increased costs for businesses involved in civil proceedings as the increased jurisdiction limits in the 2002 Act go beyond CPI increases, but such costs should be offset by the lower costs of litigation in the lower courts. This option would have benefits in relation to efficiencies in progressing civil matters through the courts in terms of earlier hearing dates and lower court and legal costs. There may be an impact on insurance costs arising from a significant increase in Circuit Court jurisdiction in personal injuries actions.

#### **4.3 *Revise the monetary jurisdiction limits of the courts to amounts that reflect changes in the value of money since 1991, as indicated by the Consumer Price Index***

Option 3 involves the introduction of new monetary jurisdiction limits of €15,000 in the District Court and €75,000 in the Circuit Court, which are broadly in line with CPI increases since 1991. These proposed limits are lower than those provided for in the Courts and Court Officers Act 2002. The cost of this proposal, like Option 2, could possibly lead to an increase in the levels of awards arising from civil actions in the courts concerned, leading to a greater cost burden on unsuccessful parties to litigation. However, to take account of concerns that increasing the monetary jurisdiction limits will result in higher insurance costs, it is proposed to set a limit of €60,000 for Circuit Court personal injury actions.

The benefit of Option 3 is that it would facilitate the hearing of a greater number of civil actions in the lower courts, resulting in reduced legal costs for parties to litigation. Cases dealt with by the High Court lead to substantially greater legal costs than those heard by the Circuit Court. The benefits of the lower legal costs connected with dealing with civil cases in the lower courts should result in sizeable savings for parties to litigation, including the State, which is a party to a significant number of civil actions. Furthermore, the changes in jurisdiction levels should facilitate the earlier determination of cases, as fewer cases will be heard by the High Court, while the additional work arising for the Circuit Court from the increase in its jurisdiction will be balanced by the reduction in the caseload at the lower end of the jurisdiction when it transfers to the District Court.

The proposal, while providing for a significant increase in the existing limits to the amounts that may be awarded by the lower courts, provides for awards with similar purchasing power, in real terms, to the monetary limits introduced by the Courts Act 1991.

The proposed changes to the monetary jurisdiction limits of the District and Circuit Courts should have benefits in relation to efficiencies in progressing civil matters through the courts in terms of earlier hearing dates and lower court and legal costs. The possible impact on insurance costs will be reduced by specifying a monetary jurisdiction limit of €60,000 for Circuit Court personal injuries actions.

#### **4.4 *Continue to restrict attendance at family law and child care proceedings to those persons permitted under relevant enactments***

The *in camera* rule has given rise to concerns that the family law courts are overly secretive and that there is an absence of reliable information on the operation of the law in relation to family law and child care proceedings. This is compounded by the absence of written

judgments in family law and child care cases heard in the Circuit and District Courts. The cost of continuing the restrictions in such cases is to maintain a perception of secrecy about the operation of the family courts. The benefit of maintaining the current situation is that it guarantees absolute confidentiality to the parties and witnesses in the cases. The impact of this option is to continue to reinforce the public perception of secrecy surrounding family law matters.

**4.5** *Provide in legislation that bona fide representatives of the press may attend family law and child care proceedings, but where necessary in certain circumstances, representatives of the Press may be excluded or restricted from attending the court during a hearing or particular parts of a hearing, or the publication or broadcasting of particular evidence may be restricted or prohibited.*

This option seeks to strike a balance between the need to protect the identity and privacy of parties in family law cases, including children, while meeting the need for public understanding and information about the operation of the family courts. No costs will arise from this change. The benefits will be that confidentiality surrounding the parties to a family law or child care case can be preserved and the public need for a greater access to information on the operation of family law and child care proceedings will be met without having open access to the court hearings. The presence of bona fide members of the media, including print, electronic and broadcast media, who would be subject to certain restrictions and prohibitions, including a strict prohibition on the publication of any material which would lead to the identification of the parties or children involved, achieves the necessary balance. The impact of this proposal will be to improve public understanding of these particularly sensitive categories of litigation.

**4.6** *Abolish the in camera rule and enable the public hearing of family law and child care cases*

This option would provide unrestricted access by the public to family law and child care cases and treat such cases in the same way as all other civil litigation. The cost of this option would be high in terms of the infringement of the privacy of those involved in family and child care proceedings. The benefit, if any, is limited. The impact of this option is likely to be negative in that it could inhibit the taking of family law or child care proceedings due to concerns about disclosure in open court of personal information relating to the parties.

## **5. Consultation**

The Department of Justice and Equality has had detailed consultations with the Office of the Attorney General and the Courts Service regarding the proposed Bill and has engaged with other relevant Departments as the Bill has been developed.

## **6. Enforcement and Compliance**

The enforcement of the restrictions on the publishing or broadcasting of certain material relating to family law and child care cases will be a matter for the Garda Síochána, the Director of Public Prosecutions and the courts.

## **7. Review**



The new provisions will be kept under ongoing review.

## **8. Publication**

The Regulatory Impact Analysis will be published on the Department's website.

**Department of Justice and Equality**  
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