

Legislation providing for significant reforms of civil procedure now in force

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The *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020* (the “Act”) has recently come into operation and has heralded a number of significant changes to existing civil procedure in Ireland. While many of these measures had been in the pipeline for some time, the onset of the COVID-19 pandemic has brought forward their introduction. The Act should be welcomed by court users and practitioners as a necessary step towards the modernisation of practice and procedure in this jurisdiction. The following are the key changes of which civil litigation practitioners should be aware:

1. Remote Hearings

Section 11 of the Act enables courts to direct that civil proceedings (defined as any proceedings other than criminal proceedings) may take place by way of remote hearing. When proceedings are conducted by remote hearing, section 11 provides that courts shall have the same powers to make orders (including in relation to the attendance of witnesses and production of documents) as apply to proceedings which take place in a traditional courtroom setting. Section 11 also provides that persons who are situated outside the State are able to participate in civil proceedings by way of remote hearing. Rules of court may be adopted which would regulate, *inter alia*:

- the means by which remote hearings are to take place;
- the conduct of remote hearings and the attendance of witnesses, including compelling attendance;

Under section 11(7) of the Act, any person who deliberately interferes with or obstructs the electronic communications technology by which a remote hearing takes place or who records the proceedings without the permission of the court shall be guilty of an offence. These offences may be tried summarily or on indictment with a maximum fine of €50,000, three years imprisonment or both.

Safeguards in relation to the use of remote hearings have also been incorporated into the Act and section 11(4) provides that a direction in relation to remote hearings may be set aside where this will cause an unfairness to one of the parties or is otherwise not in the interests of justice.

It is interesting to note that these provisions are not subject to any sunset clause or expiry date. These provisions of the Act and the ability to conduct remote hearings of civil proceedings are likely therefore to become a permanent feature of civil procedure - even after the COVID-19 pandemic has ended.

2. Admissibility of Business Records

Section 13 of the Act provides for the admissibility of business records as part of civil proceedings which may now be relied on as evidence as to the truth of their contents without the necessity for supporting oral evidence. This exception to the rule against hearsay applies also to business records which are generated outside the State, notwithstanding the fact that the individuals who created them would not be compellable to give evidence in the State. Further, under section 18(1), information contained in business records may be offered as evidence even where the record itself no longer exists by furnishing a copy of the record which has been authenticated to the satisfaction of the court.

There is a requirement under section 15 of the Act to give 21 days’ notice to the other parties to the proceedings of an intention to rely on business records in evidence and to serve copies of the documents being relied upon. Section 16 of the Act includes safeguards against the admission of potentially unreliable business records and gives courts a discretion to refuse to admit business records as evidence if this would not be in the interests of justice. In deciding whether to admit business records, courts may have regard to the reliability or authenticity of the information contained in the business records as well as the risk of a party suffering prejudice should the documents be excluded as evidence. Section 17 of the Act also provides that evidence may be called which goes to the credibility of the person who supplied the information contained in the business records admitted as evidence.

3. Electronic Filing of Documents

Under section 20(1) of the Act, rules of court may be adopted to provide for the filing of documentation and the making of applications to court by electronic means. This may include the issue by court offices of an originating summons, civil bill or claim notice as well as judgments and court orders. Section 20(2) provides that documentation or applications lodged by

electronic means may require authentication as well as verification of the identity of the person transmitting the documentation or application. Any such rules of court established may also provide that a copy of the document lodged by electronic means and displayed in readable format or a printed copy shall be treated as the original of the document

concerned. It should be noted that these provisions of the Act serve as enabling provisions and rules of court will be required before the e-filing of court pleadings and other documents can commence. It is likely to be a number of months therefore before such a system comes into operation in any of the Irish court jurisdictions.

4. Statement of Truth

Section 21 of the Act provides for the establishment of rules of court which allow for evidence to be given through the making of a “statement of truth” in place of swearing an affidavit or statutory declaration. The statement of truth may be made in electronic form and must contain a statement that the individual making it has an honest belief that the facts as stated therein are true. The statement may be signed by an individual entering his or her name in an electronic format or otherwise electronically as may be permitted by rules of court. Under section 21(4), any person who makes a statement of truth without an honest belief as to the truth of its contents shall be guilty of an offence and is liable to a fine up to €250,000, five years imprisonment or both.

This is a significant reform however its introduction will await the adoption of rules of court within each of the court jurisdictions before it comes into operation. It is also worth noting that section 21 will apply only in the context of civil proceedings and the Act does not provide for the making of a statement of truth for non-contentious matters such as conveyancing and probate. In addition, giving evidence on oath or by affirmation will still be required where oral evidence is to be given in court proceedings.

Conclusion

The Act introduces a number of important innovations which should assist in bringing greater efficiencies to the Irish civil litigation process, in particular by embracing the potential of modern communications technology. While the changes outlined above are limited to civil proceedings, it is a good start and it is expected that further reforms to other practice areas will shortly follow.

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