An Bille um an Dlí Sibhialta agus an Dlí Coiriúil
(Forálacha Ilghnéitheacha), 2020
Civil Law and Criminal Law
(Miscellaneous Provisions Bill 2020

Meabhrán Mínitheach agus Airgeadais
Explanatory and Financial Memorandum
Introduction

The statutory reforms outlined in the Bill seek to respond to new challenges and address certain legal issues arising in the context of the current Covid-19 pandemic, in particular in the areas of the transport of prisoners to court and between prisons, civil proceedings and coroner law.

The reforms in the Bill relate to the following areas of law:

• Coroner law;
• Courts-related processes and procedures;
• The admissibility of business records into evidence in civil proceedings;
• Criminal procedure law concerning use of video links and committal warrants;
• Remote meetings of State bodies, unincorporated bodies and hearings of designated bodies;
• Execution of documents in counterpart; and
• Power to alter or vary an order.

Provisions of the Bill

Part 1

Preliminary and General

Section 1: Short title, commencement and collective citation

Section 1 provides for the short title and citation of the Act.

Section 2: Definitions

Section 2 is a standard provision which includes the definition of the terms “Minister” and “enactment”.

Section 3: Expenses

Section 3 provides that any expenses incurred by the Minister for Justice and Equality due to the provisions in the Bill may be sanctioned by the Minister for Public Expenditure and Reform to be paid from monies provided by the Oireachtas.
Section 4: Orders

Section 4 is a standard provision that provides for the making of orders under this Bill and sets out the requirements to lay any such orders before the Houses of the Oireachtas and the process for their annulment when necessary.

Section 5: Repeals

Section 5 is a standard provision that provides for the repeal of the following:

- Sections 33 and 34 of the Prisons Act 2007; and

Part 2

Amendments to Coroners Acts 1962

Section 6: Definition

This section is a standard provision. It defines the term ‘Principal Act’, for the purposes of Part 2 of the Bill, as meaning the Coroners Act 1962.

Section 7: Assignment and appointment of temporary coroner in exceptional circumstances

This section inserts a new section 11B in the Principal Act, providing a new power for the Minister for Justice and Equality to assign or appoint a person to a coroner district to act as a temporary coroner, where exceptional circumstances arise due to the number or nature of deaths resulting from a pandemic, catastrophic event, or other occurrence leading to mass fatalities.

In such circumstances, the coroner of a district may request the Minister, in writing, to assign or appoint a person to act temporarily as an additional coroner for the district, for the purpose of increasing the number and progress of inquiries under the Coroners Act into deaths in that district. The request must specify the exceptional circumstances that apply, and the reasons why the coroner considers that a temporary coroner is necessary in that district for the purpose mentioned.

If satisfied that it is necessary, the Minister may:

- assign as a temporary coroner for that district, for a period not exceeding six months (which may be renewed), a person who already stands appointed as a coroner or deputy coroner for another district (with that person’s consent); or
- appoint as a temporary coroner for that district, for a period not exceeding six months (which may be renewed up to a maximum of 3 times), a person under the age of 75,
  - who previously stood appointed as a coroner or deputy coroner for that district or another district, or
  - who does not currently stand appointed as a coroner or deputy coroner in any district, but who is qualified for such appointment under section 14 of the Principal Act.

Where the Minister agrees to such a request:

- the temporary coroner will have all the powers and duties of a coroner for the district (other than the power to appoint a deputy), and
- the requesting coroner will be designated as the senior coroner for the district, and will order the work of the district.
The Minister may renew an appointment or assignment for a further period not exceeding six months, on a fresh justifying request from the coroner of the district, if satisfied that this remains necessary and that exceptional circumstances, as already mentioned, exist at that date.

The temporary coroner’s salary, and expenses incurred, will be the responsibility of the local authority in whose area the coroner district is situated; or that of the Minister for Justice and Equality, in the case of the Dublin coroner district.

Section 8: Arrangements for coroners’ districts other than coroner’s district of Dublin

This section inserts a new section 13B in the Principal Act, providing a new power for the Minister for Justice and Equality to authorise the deputy coroner for a coroner district to act concurrently with the coroner, where exceptional circumstances arise due to the number or nature of deaths resulting from a pandemic, catastrophic event, or other occurrence leading to mass fatalities.

This section applies to a coroner district other than the Dublin coroner district. (In that district, section 13A of the Principal Act already empowers the Minister to authorise the Dublin deputy coroner to act concurrently with the coroner, during a period ending in February 2022.)

In such circumstances, the coroner of a district may request the Minister, in writing, to authorise the deputy coroner to act concurrently in that district, for a period not exceeding six months, for the purpose of increasing the number and progress of inquiries under the Coroners Act into deaths in that district. The request must specify the exceptional circumstances that apply, and the reasons why the coroner considers that it is necessary in that district, for the purpose mentioned, to authorise the deputy to act concurrently.

If satisfied that it is necessary, the Minister may authorise the deputy to act concurrently for that period, provided that the deputy consents. During the period of authorisation:

- the deputy acting concurrently will have all the powers and duties of a coroner for the district (other than the power to appoint a deputy), and
- the requesting coroner will be designated as the senior coroner for the district, and will order the work of the district.

The Minister may renew an authorisation under this section for a further period not exceeding six months, on a justifying request from the coroner of the district, if satisfied that this remains necessary and that exceptional circumstances, as already mentioned, exist at that date.

The salary of the deputy coroner acting concurrently, and expenses incurred, will be the responsibility of the local authority in whose area the coroner district is situated; or that of the Minister for Justice and Equality, in the case of the Dublin coroner district.

Section 9: Amendment of section 14 of Principal Act

This section amends section 14 of the Principal Act (‘Qualification for appointment as coroner or deputy coroner’), which provides that a person shall not be appointed as a coroner or deputy coroner under the Principal Act, unless he or she is a barrister, solicitor or registered medical practitioner with at least 5 years’ practising experience. The amendment includes appointment as a temporary coroner, (under proposed new section 11B(1)(b) of the Principal Act) to the appointments for which those qualifications are required.
Part 3

Civil Proceedings

Chapter 1 – Definition (Part 3)

Section 10: Definition

Section 10 provides a definition of the term “civil proceedings” in Part 3 of the Bill.

Chapter 2 - Remote hearing of civil proceedings

Current social distancing rules have disrupted court hearings and this is leading to delays in the administration of justice. Remote hearings provide a mechanism to overcome these difficulties. Chapter 2 makes provision for a court to direct that hearings in civil proceedings proceed by remote hearing. This will ensure that the Courts are enabled to operate as efficiently as possible, especially for the duration of this present crisis.

The provisions of Chapter 2 enables a court to direct that any category or type of civil proceedings (or hearings, or part of hearings within them) be conducted remotely. The conduct of the hearing, including the types of proceedings that shall proceed remotely, the means and methods by which the remote hearing is to take place and the procedures by which parties may object to a remote hearing will be covered in the rules to be made by the Rules Committees. A person participating in a remote hearing must have the electronic means that enables them to participate in the hearing.

A court shall revoke a direction to participate in a remote hearing where, for whatever reason, it would be unfair to any of the parties to do so, or it would otherwise be contrary to the interests of justice to do so. It shall also be an offence to make a recording of a hearing without the permission of the Court.

In addition, a judge may participate in a remote hearing notwithstanding the fact that he/she is not physically within his/her District or Circuit.

Section 11: Remote hearing of civil proceedings

Section 11 makes provision for a court to direct that any category or type of civil proceedings may be conducted remotely. A court may of its own motion or on the application of any of the parties, direct that the proceedings proceed by remote hearing. A direction to proceed by remote hearing may specify the electronic communication technology by which the proceedings are to proceed. The electronic communication technology should enable real time transmission and real time two-way audio-visual or audio communication, enabling a person to participate in the hearing from a location other than the court itself, whether within the State or outside the State. A judge of the District or Circuit Court may conduct hearings remotely and is deemed to be present at a sitting in his District or Circuit notwithstanding the fact that he/she is not physically within his/her District or Circuit.

Rules of court may make provision for the conduct of remote hearings. A court shall revoke a direction to participate in a remote hearing where, for whatever reason, it would be unfair to any of the parties to do so, or it would be contrary to the interests of justice to do so. It shall be an offence to interfere with or obstruct the electronic communications employed in the proceedings or to make any recording of the proceedings without the permission of the Court. A person guilty of this offence shall be liable-

(a) on summary conviction, to a Class A fine or to imprisonment for a term not exceeding twelve months, or both, or
(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.

**Chapter 3 - Business records and other documents in civil proceedings**


This Chapter provides that in civil proceedings, any record in the form of a document compiled in the course of business shall be presumed to be admissible as evidence of the truth of the fact or facts asserted in that document.

The remaining sections set out provisions in relation to oral evidence in respect of those documents, the rules around providing copies of documents where the original is not available, the procedure and timeframe for supplying documents to the court, and the power of the court to determine whether it is in the interest of justice to admit documents as evidence, amongst other measures.

**Section 12: Definition (Chapter 3)**

Section 12 provides for a definition of the term “business” in this chapter. Business is defined as any trade, profession or other occupation carried on, whether for profit or otherwise, either within or outside the State. The definition also includes the performance of functions by or on behalf of:

- any person or body remunerated or financed wholly or partly out of moneys provided by the Oireachtas;
- a charity within the meaning of the Charities Act 2009;
- any institution of the European Union;
- any national or local authority in a jurisdiction outside the State; or
- any international organisation.

**Section 13: Business records in document form presumed to be admissible**

Section 13 provides that in civil proceedings, any record in the form of a document shall be presumed to be admissible as evidence of the truth of the fact or facts asserted in that document.

**Section 14: Admissibility of business records: general**

Section 14 provides that information in documents shall be admissible in civil and criminal trials as evidence of any fact in that document, of which direct oral evidence would be admissible if the information in that document was compiled in the ordinary course of business or was supplied by a person who had, or may be reasonably supposed to have had personal knowledge of the matters being dealt with.

The section also specifies what information is inadmissible as evidence, for the presentation of evidence contained in a business record by a person qualified to do so, the admissibility of evidence in business records from outside the State and the admissibility of records from businesses that have ceased trading.

**Section 15: Notice of business records evidence**

Section 15 provides that information in a document shall not be admissible in evidence in a civil trial, without the leave of the court, except where a copy of the document is provided to all parties.
Information must be provided no later than 21 days before the beginning of the trial along with a notice of intention to give the information in evidence and where a party to the proceedings wishes to object to the admissibility of the information, they must do so no later than 7 days before the trial commences.

The section also provides for the manner in which the information must be provided to the parties / corporate bodies to the proceedings, or their legal representatives.

Section 16: Admission and weight of business records evidence

Section 16 provides that information sought to be admitted as evidence under section 14 shall not be admissible, where the court determines it would not be in the interests of justice to admit it, and sets out the factors the court should consider in making such a determination. These factors include:

- whether there is a reasonable inference the information is reliable based on its content, source and the manner in which it was compiled;
- whether there is a reasonable inference the information is authentic based on its nature, source and other circumstances that appear to the court to be relevant;
- in circumstances where the supplier of the information does not attend court to provide oral evidence in the proceedings, and having regard in particular to whether it is likely to be possible to controvert the information that its admission or exclusion will result in unfairness to any other party / parties to the civil proceedings; and
- consideration is given to all the circumstances from which any inference can reasonably be drawn as to the information’s accuracy or otherwise.

Section 17: Evidence as to credibility of supplier of information

Section 17 provides that where information is given in evidence under this Chapter, that information shall be considered as admissible as relevant to the credibility of a person who would have been called as a witness for the purpose of ascertaining their credibility, as evidence of them contradicting themselves or as evidence that would have normally been adduced under cross examination.

Section 18: Copies of business records admissible

Section 18 provides that where information is contained in a document and that document no longer exists, a copy of that document or an authenticated material part of that document, with the approval of the court, may be admitted as evidence.

Subsection (2) provides that it is immaterial as to how many removes there are between a copy of document and an original, or by how any copy / intermediate copy was made.

Section 19: Evidence of resolution of Dáil or Seanad

Section 19 provides that the passing of a resolution by either House of the Oireachtas may be admissible as evidence by the production of a copy of the Journal of the proceedings of that House relating to the resolution and purporting to have been published by the Stationery Office.
Chapter 4 – Miscellaneous

Chapter 4 provides for the rules of court to make provision for electronic filing of documents in civil matters and for a "statement of truth" to be made and transmitted by electronic means in substitution for an affidavit or statutory declaration.

These changes are critical to court process reform and are required in order to bring about necessary changes, which will yield significant benefits to the Courts Service and users of court services.

Section 20: Use of electronic means in civil proceedings

Section 20 makes provision for electronic filing of documents in civil matters. This section facilitates the making of court rules by the relevant rules committee for the lodgement or filing of a document with, and the making of an application to, a court by electronic means. Rules of Court may also make provision for documents to be issued by or on behalf of a court or court office by electronic means. The documents concerned may include the issue of a summons, civil bill, claim notice or other originating document, as well as any judgment, decree or other order or determination of a court. The use of electronic means will be available as an alternative to, rather than replacement for, existing mechanisms.

Rules of court may specify the conditions under which documents are submitted by electronic means. Matters relating to the authentication of documents transmitted in electronic form, the conditions under which such documents shall be admissible in proceedings, and verification of the identity of persons involved in the transmissions will be covered in the rules to be made by the Rules Committees.

Section 21: Statement of Truth

Section 21 provides that court rules committees be authorised to make court rules providing for a “statement of truth” as an alternative to an affidavit or statutory declaration. A statement of truth which may be transmitted electronically must contain a statement that the person making it believes that the facts set out in it are true and shall comply with any other requirements prescribed by rules of court.

A person who makes or causes a false statement to be made in a statement of truth shall be guilty of an offence. A person guilty of this offence shall be liable-

(a) on summary conviction, to a Class A fine or to imprisonment for a term not exceeding twelve months, or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.

Part 4

Criminal Procedure

Part 4 of the Bill deals with certain aspects of criminal procedure. These provisions are urgently needed to assist the courts with the efficient conduct of criminal trials, including, for example in circumstances where physical attendance may be difficult or impossible for public health reasons.

Section 22: Interpretation (Part 4)

Section 22 deals with the interpretation and meaning of terms used later in Part 4 of the Bill. It is a standard provision.
Section 23: Certain applications to court in criminal proceedings to be heard using live video link

Section 23 is designed to allow for wider use of video links between accused persons and the courts. These are currently governed by sections 33 and 34 of the Prisons Act 2007, and are confined to persons in custody. The types of hearings permitted are being extended here, including to permit arraignments, returns for trial, sentencing hearings and certain hearings in relation to surrender proceedings. The Bill further extends these provisions to cover persons not in custody, allowing any accused person to attend by video link, for the same application types, where the court so directs. There is also provision that some hearings may be heard by video link by default. Since persons in custody come within the terms of these new provisions, the old sections 33 and 34 are being repealed (at section 5).

Section 24: Certain applications to court in relevant proceedings to be heard using live video link

Section 24 provides the same arrangements for surrender proceedings as are possible for criminal proceedings under section 23.

Section 25: Evidence through live video link

Section 25 provides that, for the various application-types permitted in this Bill, and without prejudice to sections 13 and 29 of the Criminal Evidence Act 1992, any person other than the accused may, with the leave of the court give evidence over a live video link. This applies to witnesses both inside and outside the State. There is a requirement that the video link evidence be recorded.

Section 26: Remote hearing of appeal proceedings

Section 26 provides that appeals to the Supreme Court and the Court of Appeal in criminal proceedings may be heard remotely, with some or all of the participants attending over live video link. It is broader than the other video link provisions, which relate to the accused, or persons giving evidence. It will permit all of the participants to attend remotely, provided that the court satisfied this is not unfair to any of the parties, and is in the interests of justice. The section also provides for a new offence of interfering with the remote means for such a hearing.

Section 27: Amendment of section 17 of the Criminal Justice Administration Act 1914

Section 27 amends section 17 of the Criminal Justice Administration Act 1914, which deals with the committal of persons to prison. This amendment is designed to remove the need to transport prisoners between one prison and another, merely to execute a warrant.

This section inserts a new subsection 3A after section 3 of the 1914 Act, to provide that where a prisoner is already in a prison, and there are other warrants committing them to prison, those warrants can be executed at the prison where the person is already detained, so that they don’t need to be transported to the other prisons named on the warrants, purely to have the warrants executed.

Section 28: Power of court to make arrangements for conduct of criminal proceedings or relevant proceedings

Section 28 provides a general power for a court to make arrangements to ensure the just and expeditious conduct of criminal proceedings, surrender proceedings and appeal proceedings. This is intended to assist in situations where a court needs, for example, to facilitate social distancing, by allowing those participating to spread out over two rooms.
Part 5

Miscellaneous

Part 5 of the Bill concerns the introduction of new provisions and reform of the law in relation to the following miscellaneous issues:

• Remote meetings of a State body;
• Remote meetings of unincorporated bodies;
• Remote hearings of designated bodies;
• Execution of documents in counterpart; and
• Power to vary or alter an order.

Section 29: Remote meetings of State body

Section 29 provides for remote meetings of State bodies where some or all of the members of that body are not in the one place. Subsections (1) and (2) provide that any business of that body, e.g. decisions taken, votes made, etc., shall be as good and effectual as if the business of the body was conducted in person. In addition, those subsections also provide that members participating in remote meetings should be able to speak to, and hear each of the other members participating in the meeting via electronic communications technology.

Subsection (3) provides that the relevant Minister may designate a State body, or a meeting or category of meeting held by a state body for the purpose of holding them remotely.

Subsection (4) provides that the relevant Minister shall designate a body under subsection (3) having regard to:

• the nature of the State body concerned;
• the nature of the meetings of the State body concerned;
• the need to ensure efficiency in the conduct of meetings of the State body; and
• the public interest.

Subsection (5) provides that where there is more than one relevant Minister in relation to a body, all Ministers relevant to that body must be consulted before the making of an order under this section.

Section 30: Remote meetings of unincorporated body

Section 30 provides for remote meetings of unincorporated bodies (e.g. clubs, charitable organisations, etc.) during an interim period. Subsection (1) provides that any business of that body, for example decisions taken, votes made, etc., shall not be affected due to the fact that the meeting was held remotely and not in person. Subsection (2) provides that that members participating in remote meetings should be able to speak to, and hear each of the other members participating in the meeting via electronic communications technology.

Subsection (3) provides that the interim period may be extended by order at the request of the Government if it is in the public interest, following consultation with the Minister for Health, having regard to the following criteria:

• the threat to public health presented by Covid-19
• the highly contagious nature of that disease;
• the need, in order to prevent, limit, minimize or slow the spread of Covid-19; and
• to ensure that unnecessary physical contact between persons is avoided.

Section 31: Remote hearings by designated body

Section 31 provides that bodies designated by relevant Ministers may hold hearings remotely subject to certain criteria. These criteria include, in subsection (1), that a person required to attend a hearing in person shall be required to do so by remote means and the designated body shall have power to make any arrangements to conduct hearings by remote means.

Subsection (2) provides that designated bodies will also have power to determine, following representations from the subject of the hearings, whether the holding of a hearing remotely would be unfair to that person or contrary to the interests of justice.

Subsection (3) provides that bodies may be designated for the purposes of holding remote hearings, by the relevant Minister having regard to:

• the provisions of the enactment governing the conduct by the body of hearings;
• the nature of the hearings conducted by the body; and
• the need to ensure efficiency in the conduct hearings under the enactment.

Subsection (4) provides that where there is more than one relevant Minister in relation to a body, all Ministers relevant to that body must be consulted before the making of an order under this section.

Section 32: Execution of documents in counterpart

Section 32, subsections (1) and (2) provide that a document may be signed in counterpart, on the condition that it is executed in two or more parts in like form and neither part is signed by all parties to the document. Subsection (3) provides that on execution, all counterparts are to be treated as a single document.

Subsections (4) and (5) provides that the document shall be delivered to all parties, shall become effective when all parts are delivered to the relevant parties and all necessary steps are completed to give it effect.

Subsection (6) provides that for the purposes of this section, a document means a contract or deed.

Section 33: Power to alter or vary order

Section 33 provides for the amendment of the Courts of Justice Act 1953 to insert a new section 26A into that Act. The amendment provides that each time the Courts Service needs to vary the hours of operation or sitting location, etc. of the District Court, it may complete a notice, to be published on its website, the format of which will be prescribed by order to provide details of any operational changes. Before issuing such a notice, the Courts Service must consult with, and receive the consent of, the President of the District Court.

This approach is less complex and more efficient than the system as is provided for under section 26(1)(f) of the Courts of Justice Act 1953 and is necessary to ensure the efficient operation and continuation of the business of the District Court.
Financial Implications

The provisions of the Bill are not expected to give rise to any significant additional expenditure for the Exchequer. Any additional costs associated with the measures contained in the Bill (e.g. technology to provide for remote hearings) are expected to be offset by efficiency gains (e.g. reduced transporting of prisoners).

*An Roinn Dlí and Cirt agus Comhionannais,*