



Bill Digest

Civil and Criminal Law (Miscellaneous Provisions) Bill 2020

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Abstract

The *Civil and Criminal Law (Miscellaneous Provisions) Bill 2020* deals with a number of procedural issues some of which are linked to the Covid-19 pandemic and others which have a broader applications.

The Bill will significantly broaden the types of civil and criminal hearings which can be heard electronically. The Bill allows for evidence to be presented electronically. The Bill also provides that the rules of court may provide for a 'statement of truth' to be transmitted with the document in place of the affidavit or statutory declaration instead of an oath.

Finally, it sets out how meetings of designated, unincorporated and State bodies can be held electronically.

Contents

| | |
|--|----|
| Summary | 1 |
| Table of Provisions | 2 |
| Principal provisions of the Bill | 17 |
| Coroners law | 17 |
| Admissibility of business records in civil proceedings | 18 |
| Remote hearing of criminal and civil cases | 20 |
| Repealed legislation | 24 |
| Statements of truth | 25 |

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Summary

The [Civil and Criminal Law \(Miscellaneous Provisions\) Bill 2020](#) (the Bill) deals with a number of procedural issues some of which are linked to the Covid-19 pandemic and others which have a broader applications. The Bill will significantly broaden the types of civil and criminal hearings which can be heard electronically. It will now include appeals from lower courts. The Bill also allows for evidence to be presented electronically in civil proceedings. It provides that where evidence is to be given on affidavit or statutory declaration (including where a document is to be verified in that way) in civil proceedings, that the rules of court may provide for a 'statement of truth' to be transmitted with the document in place of the affidavit or statutory declaration instead of an oath.

The Bill also allows for the appointment of additional coroners. It sets out how meetings of designated, unincorporated and State bodies can be held electronically.

The Bill is made up of four parts and 33 sections. The Digest concentrates on the following sections:

- Coroners law;
- Admissibility of business records in civil proceedings;
- Remote hearing of criminal and civil cases;
- Repealed legislation; and
- Statements of truth.

Table of Provisions

Table 1 below summarises the provisions in this Bill. The Digest does not examine all the provisions of the Bill in detail because of the lack of time between the publication of the Bill and the taking of second stage debate.

| Section | Title | Effect |
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| Part 1 – Preliminary and General | | |
| 1. | Short title, commencement and collective citation | A standard provision setting out the short title of the Act, the collective citation, and commencement information. This Act will come into effect by order of the Minister. Different commencement days may be appointed for different provisions. |
| 2. | Definitions | A standard provision setting out definitions to be used in the general interpretation of the Act. It contains 2 definitions: <ul style="list-style-type: none"> • 'enactment' means any Act or Statutory Instrument or any provision thereof. • 'Minister' means the Minister for Justice and Equality. |
| 3. | Expenses | Expenses incurred in the administration of this Act by the Minister will be paid out of money provided by the Oireachtas. |
| 4. | Orders | Orders made under this Act must be laid before both Houses of the Oireachtas. Such orders may be annulled by resolution of either House within 21 sitting days. This does not apply to commencement orders. |
| 5. | Repeals | This section repeals: <ul style="list-style-type: none"> • Section 33 of the <i>Prisons Act 2007</i> which allows certain applications to court to be heard using video link; • Section 34 of the <i>Prisons Act 2007</i> which deals with the application of section 33 to children in remand centres or children detention schools and other detained persons; and • Section 26 of the <i>Civil Law (Miscellaneous Provisions) Act</i> |

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| | | 2008 which deals with videoconferencing in civil proceedings. |
| Part 2 – Amendments to Coroners Act 1962 | | |
| 6. | Definition (Part 2) | Provides that for the purposes of this Part of the Act, the term 'Principal Act' means the Coroners Act 1962 . |
| 7. | Assignment and appointment of temporary coroner in exceptional circumstances | <p>Inserts a new section 11B into the Principal Act. This new section allows the Minister to appoint temporary coroners in exceptional circumstances, upon the request of a coroner for a coroner's district. These exceptional circumstances must arise due to the nature or number of deaths resulting from a pandemic or other such catastrophic event which leads to mass fatalities. This appointment would be for the purpose of increasing the number and progress of inquiries.</p> <p>The person appointed must either currently be a coroner or deputy coroner for another district or be a person who has previously been appointed as a coroner or deputy coroner. The person must be suitably qualified and must not yet have reached 75 years of age. If they reach that age during their appointment as temporary coroner, the appointment will cease. A person may only be appointed with their consent.</p> <p>The duration of the appointment will be for a maximum of 6 months in the first instance. However, the Minister may renew the appointment, upon request from a coroner, for a further 6 months. The appointment can be renewed a maximum of 3 times. The Minister must only renew the appointment of the temporary coroner where they are satisfied that the exceptional circumstances necessitating the appointment still exist, and the renewal is necessary in order to increase the number and progress of inquiries.</p> |

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| | | <p>Where a coroner requests the Minister to appoint a temporary coroner (or to renew an appointment), this request must be in writing and must set out the exceptional circumstances in question and the reasons for which the appointment is necessary.</p> <p>Before making the appointment, the Minister must consult with the relevant local authority (unless the district in question is Dublin). Where the Minister proposes to appoint a person who is currently appointed as deputy coroner for another district, the Minister must consult the coroner in that district.</p> <p>Once a temporary coroner is appointed in a district outside Dublin, the coroner who made the request will be designated the 'senior coroner' for that district for the period of the appointment. The senior coroner will order the work of the district.</p> <p>In the case of Dublin, where a temporary coroner is appointed, and there is no senior coroner already designated, the coroner who made the request will be designated the senior coroner.</p> <p>Where the senior coroner for a district is ill or absent for a time, the deputy coroner may be designated the senior coroner by the Minister for that period.</p> <p>The designation of a senior coroner does not affect the powers and duties of any other coroner.</p> <p>The Minister may revoke the appointment of a temporary coroner at any time.</p> <p>A temporary coroner will be paid such salary as agreed with the Minister. A temporary coroner outside of Dublin will be paid a salary agreed with the relevant local authority.</p> |
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| 8. | Arrangements for coroners' districts other than coroner's district of Dublin | <p>Inserts a new section 13B into the Principal Act.</p> <p>The new section would allow the Minister to appoint a deputy coroner to act for the coroner in their district upon written request from that coroner. This applies only to districts other than Dublin and would only occur in exceptional circumstances such as a pandemic or other event leading to mass fatalities. This appointment would be for a largest period of 6 months, but this can be renewed.</p> <p>The Minister must consult with the relevant local authority prior to making such an appointment. The coroner who requested the appointment will be designated the senior coroner for the district where no senior coroner has already been designated under another section of the Act.</p> <p>An authorisation under this section can be revoked by the Minister at any time.</p> |
| 9. | Amendment of section 14 of Principal Act | This is a technical amendment to ensure that the same qualifications will be required for appointment as a temporary coroner, as those required for appointment as a coroner or deputy coroner. |
| Part 3 – Civil Proceedings | | |
| <i>Chapter 1 – Definition</i> | | |
| 10. | Definition (Part 3) | Defines the term 'civil proceedings' as including any cause, action, suit or matter, other than a criminal proceeding, in any court. |
| <i>Chapter 2 – Remote hearing of civil proceedings</i> | | |
| 11. | Remote hearing of civil proceedings | Allows a court to direct that any type of civil proceedings before it will proceed by remote hearing. This direction may specify the technology by which the hearings will proceed and any other consequential directions the court considers appropriate. |

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| | | <p>Where it appears to the court that conducting proceedings via remote hearing would be unfair to any of the parties involved in a particular case or would otherwise be contrary to the interests of justice, the court must disapply the direction, or revoke the direction.</p> <p>This section also allows for the making of rules of court concerning the means by which remote hearings take place, the conduct of remote hearings, the attendance of witnesses, and the procedures by which a party may object to remote hearings.</p> <p>A court conducting proceedings via remote hearing will have the same powers as if the hearings were conducted in person. Similarly, those taking part in remote hearings have the same immunities and privileges as they would have in person.</p> <p>It will be an offence to attempt to frustrate the participation of a person in remote hearings by interfering with the relevant electronic communications technology used in the proceedings. It will also be an offence to record proceedings without the permission of the court. A person found guilty of either of these offences on summary conviction will be liable to a maximum fine of €5,000 and/or up to 12 months in prison. If convicted on indictment, the person will be liable to a maximum fine of €50,000 and/or up to 3 years in prison.</p> <p>This section applies to proceedings brought on or after the commencement of this section.</p> |
| <i>Chapter 3 – Business records and other documents in civil proceedings</i> | | |
| 12. | Definition (Chapter 3) | A standard provision defining the terms 'business' and 'document' for the purposes |

| | | of this Chapter of the Bill. |
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| 13. | Business records in document form presumed to be admissible | Provides that any document record, compiled in the ordinary course of business, will be presumed to be admissible as evidence of the truth of the facts asserted in it in civil proceedings. |
| 14. | Admissibility of business records: general | <p>This section allows information in a document to be admissible in civil proceedings as evidence of the facts contained in the document if it:</p> <ul style="list-style-type: none"> • was compiled in the ordinary course of business; • was supplied by a person with personal knowledge of the matters in question; and • where the information has been reproduced from non-legible form to legible form, this was done in the course of the ordinary reproduction system concerned. <p>There are certain exceptions to this admissibility, such as where the information is privileged in civil or criminal proceedings.</p> <p>If information is admissible under this section, but it is expressed in a way which would not be understood by the average person without an explanation, such an explanation will also be admissible. This information must either be given orally by a competent person or must be contained in a document signed by such a person.</p> |
| 15. | Notice of business records evidence | <p>In order to be admissible in evidence in civil proceedings, a document must have been served on the other party, or at least 21 days before the trial a copy of the document and a notice of intention to give the information in evidence must be served on the other party.</p> <p>If a party wishes to object to the admission of the information into evidence, they must</p> |

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| | | <p>serve a notice of objection on the other party no later than 7 days before the commencement of the trial.</p> <p>The section sets out the manner in which a person may be served with any document.</p> |
| 16. | Admission and weight of business records evidence | <p>Any document or information (or part thereof) which is admissible under section 14 must not be admitted if the court is of the opinion that it would not be in the interests of justice.</p> <p>The section sets out the matters to which the court must have regard in determining whether it is in the interests of justice that information be admissible.</p> <p>In order to determine the weight to be given to any information admitted under this Chapter, regard will be had to all the surrounding circumstances from which inferences can be drawn about its accuracy.</p> |
| 17. | Evidence as to credibility of supplier of information | <p>Where information is given in evidence under this Chapter:</p> <ul style="list-style-type: none"> • Evidence as to the credibility of the person who supplied the information will be admissible, if such evidence would have been admissible if they were called as a witness. • The court may permit evidence to be given which is relevant to the credibility of the person supplying the information where that evidence could have been put to them in cross-examination. • Evidence which tends to prove that the person supplying the information has made an inconsistent statement with it which contradicts her/himself will be admissible. |
| 18. | Copies of business records | A copy of a business record will be |

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| | admissible | admissible in evidence regardless of whether the original is still in existence. It does not matter how the copy was produced, or how many removes there are from the original. |
| 19. | Evidence of resolution of Dáil Éireann or Seanad Éireann | Evidence of a resolution of either House of the Oireachtas can be given in civil proceedings by producing a copy of the Journal of the proceedings, published by the Stationery Office. |
| <i>Chapter 4 – Miscellaneous</i> | | |
| 20. | Use of electronic means in civil proceedings | <p>This section provides for the creation of rules of court dealing with the transmission and filing of documents via electronic means and related matters.</p> <p>It states that any references, in any enactment or rule of law to; the furnishing, lodgement or filing, and transmission of a document to/by a court must be construed as including the completion of these actions by electronic means if provided for in any rules of court described above.</p> |
| 21. | Statement of truth | <p>Provides that in civil proceedings where evidence is to be given on affidavit/statutory declaration (including where a document is to be verified in that way), and a document or application needs to be lodged/filed electronically, rules of court may provide for a 'statement of truth' to be transmitted with the document in place of the affidavit/statutory declaration.</p> <p>A statement of truth can be in electronic form. It will contain a statement that the person has an honest belief that the facts stated therein are true. The person can sign the statement by entering their name in an electronic format or otherwise electronically as rules of court may permit.</p> <p>A person who makes a statement in a 'statement of truth' without an honest belief</p> |

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| | | as to the truth of that statement will be guilty of an offence. On summary conviction, a guilty person will be liable to a maximum fine of €5,000 and/or up to 12 months in prison. If convicted on indictment, they could receive a fine of up to €250,000 and/or up to 5 years in prison. |
| Part 4 – Criminal Procedure | | |
| 22. | Interpretation (Part 4) | <p>A standard provision setting out definitions to be used in the interpretation of this Part of the Act. It includes definitions for ‘criminal proceedings’ and ‘live video link’. For the purposes of this Part, the term ‘relevant proceedings’ means proceedings under:</p> <ul style="list-style-type: none"> • The <i>Extradition Act 1965</i>; • Part II of the <i>International War Crimes Tribunals Act 1998</i>; • The <i>European Arrest Warrant Act 2003</i>; and • Part 3 of the <i>International Criminal Court Act 2006</i>. |
| 23. | Certain applications to court in criminal proceedings to be heard using live video link | <p>This section allows ‘relevant applications’ to court in criminal proceedings to be heard via live video link. This would mean that the person in question does not need to appear in person at the hearing and can instead participate from where they are located. ‘Relevant applications’ are:</p> <ul style="list-style-type: none"> • applications for bail/free legal aid; • applications relating to indictment proceedings and sentencing. This does not include applications made at the start of, or during, trial. Or any other application requiring the presence of the person, such as relating to the capacity of the person to stand trial or an application to dismiss charges; • District Court applications held prior to the hearing date of the substantial action, or relating to |

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| | | <p>sentencing or sending the person forward for trial;</p> <ul style="list-style-type: none"> • Circuit Court applications held prior to the hearing date or relating to sentencing, or appeals from the District Court; and • applications in appeal proceedings. <p>A court can direct that all relevant applications of a certain type be heard using video link, once it is satisfied this would not be contrary to the interests of justice.</p> <p>An individual relevant application can be heard via video link where the court is satisfied that:</p> <ul style="list-style-type: none"> • this would not be prejudicial to the person; • the interests of justice do not require them to be present at the hearing; • the video link facilities enable any interpretation or translation necessary; • the person and their legal representative are able to communicate in confidence during the hearing; • it is appropriate to hear the application via video link having regard to the type of application, the complexity of the hearing, the age of the person, and their mental capacity; and • there are no other circumstances which warrant the person's presence in court for the hearing. <p>Where a request is made to a court to hear an application via video link and the court refuses, it must give reasons for that refusal. Similarly, where a court refuses a request to hold a hearing in person rather than via live video link, it must give</p> |
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| | | <p>reasons.</p> <p>This section will apply to criminal proceedings whether they were initiated before, on or after the coming into operation of the section.</p> |
| 24. | Certain applications to court in relevant proceedings to be heard using live video link | <p>This section provides specifically for video link hearing of applications related to relevant proceedings, as defined in section 22.</p> <p>A 'relevant application' for the purposes of this section is any application related to the above except for:</p> <ul style="list-style-type: none"> • the first appearance in court by a relevant person following their arrest; • a hearing regarding the making of an order of surrender where the person is not consenting to that order; or • a hearing to determine whether the person will be committed to a prison or remand institution awaiting extradition or surrender and the person is not consenting to that extradition or surrender. <p>A 'relevant application' will be made by the Minister, the Attorney General, or the person themselves. The person must either be legally represented, have obtained legal advice, or been given the opportunity of having such advice.</p> <p>The procedures relating to the hearing of a relevant application via live video link are the same as those contained in section 23 above.</p> |
| 25. | Evidence through live video link | <p>In applications via video link under either sections 23 or 24 above, a person other than the relevant person may give evidence via video link with the permission of the court.</p> |

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| | | <p>This evidence will be video recorded or otherwise recorded as stipulated by the court or in rules of court.</p> |
| <p>26.</p> | <p>Remote hearing of appeal proceedings</p> | <p>This section allows the Court of Appeal or the Supreme Court to direct that a certain category or type of appeal proceedings can be done via remote hearing. They can also direct a particular appeal proceeding be done via remote hearing.</p> <p>The court can deviate from this in any particular case where it appears to the court that proceeding via remote hearing would be unfair to any of the parties or would not be contrary to the interests of justice.</p> <p>The section provides for the creation of rules of court on procedural matters related to the conduct of remote hearings.</p> <p>A court conducting an appeal by remote hearings will have the same power as if the hearing had been conducted in person. Those participating in such hearings have the same immunities and privileges.</p> <p>It will be an offence to attempt to frustrate the participation of a person in remote hearings by interfering with the relevant electronic communications technology used in the proceedings. It will also be an offence to record proceedings without the permission of the court. A person found guilty of either of these offences on summary conviction will be liable to a maximum fine of €5,000 and/or up to 12 months in prison. If convicted on formal accusation, the person will be liable to a maximum fine of €50,000 and/or up to 3 years in prison.</p> <p>This section applies to appeal proceedings brought before, on, or after the commencement of this section.</p> |

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| 27. | Amendment of section 17 of Criminal Justice Administration Act 1914 | <p>Inserts a new subsection 17(3A) into the Criminal Justice Administration Act 1914.</p> <p>Where a person is already in a prison, whether on remand or serving a sentence, if there is an unexecuted warrant committing them to prison (either the prison they are in or another prison) it can be executed as if it committed them to the prison where they are currently detained. The effect of this would be that a person already in custody does not need to be moved to a different prison in order for the warrant to be executed.</p> <p>This section will apply to any unexecuted warrant whether it was made before or after the one which led to the person being detained, or whether it was made before or after this section comes into operation.</p> |
| 28. | Power of court to make arrangements for conduct of criminal proceedings or relevant proceedings | This section allows a court to make provision as it considers appropriate for the just and expeditious conduct of criminal or relevant proceedings. This includes the management case lists. |
| Part 5 – Miscellaneous | | |
| 29. | Remote meetings of State body | <p>This section allows designated State bodies to hold meetings via conference call using electronic means. It also allows State bodies to hold a designated meeting/category of meetings via electronic means. The relevant Minister will make the appropriate designations by order for the purposes of this section.</p> <p>The Minister must only make such designations where they believe it is appropriate to do so given the nature of the body, the nature of the meetings, the need to ensure efficiency in the conduct of meetings, and the public interest.</p> <p>Votes taken, or decisions made, during these meetings will have the same validity as if the meeting had been held in person.</p> |

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| | | <p>It should be noted that this section does not apply to meetings which consist of a hearing at which a person is entitled to be represented and at which they appear/are represented.</p> <p>If more than one Minister is a relevant Minister in relation to the State body, all must be consulted before one makes an order.</p> |
| 30. | Remote meetings of unincorporated body | This section provides for remote meetings of unincorporated bodies during a 3-month interim period, though this period can be extended by the Government in response to the Covid-19 pandemic. |
| 31. | Remote hearings by designated body | <p>This section applies to bodies which have been deemed a ‘designated body’ by their relevant Minister. The Minister will designate a body having had regard to the fact that the body conducts hearings, the nature of those hearings, and the need to ensure efficiency of the hearings.</p> <p>This section allows the designated body to hold these hearings remotely. The body can deviate from this where it believes that a remote hearing would be unfair to the person or would be otherwise contrary to the interests of justice.</p> |
| 32. | Execution of documents in counterpart | This section allows contracts or deeds to be executed in 2 or more identical parts (i.e. ‘counterparts’), with all the counterparts then being treated as a single document upon execution. |
| 33. | Power to alter or vary order | Inserts a new section 26A into the Courts of Justice Act 1953 . This new section allows the Courts Service, with the consent of the President of the District Court, to alter the place and time for the District Court in any district for a period of time. This would be done where the Courts Service is of the opinion that the alteration |

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| | | <p>is necessary to ensure the efficient operation of the business of the court.</p> <p>The Courts Service must publish notice of this alteration on its website. The form of the notice can be specified by order of the Courts Service.</p> |
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Principal provisions of the Bill

There has been no pre-legislative scrutiny of the Bill. Due to the lack of time between publication of this Bill and the taking of the Second Stage debate, this section does not look at every provision in the Bill but looks at the following topics:

- Coroners law;
- The admissibility of business records in civil proceedings;
- Remote hearings of civil and criminal cases;
- Repealed legislation; and
- Statements of truth.

Coroners law

Coroners are independent officers of the State responsible for investigating and reporting on the causes of deaths of persons, principally where the death is unexpected, unexplained or where it occurs in State custody or detention. Coroners are appointed and hold office under the [Coroners Act 1962](#) (as amended).¹

Coroners are generally responsible for investigating and reporting on deaths occurring in individual local authority districts and are appointed by the relevant local authority. The coroner's district of Dublin covers Dublin city and county and the coroner is appointed by the Minister for Justice and Equality.

To be appointed, a coroner must be qualified as a medical practitioner, barrister or solicitor and have practised as such for at least 5 years.

Part 2 of the Bill provides for amendments to the *Coroners Act 1962*. These amendments address issues arising in the context of the Covid-19 pandemic and are aimed at ensuring coroners' law is sufficiently flexible to ensure a continuation of coroner services during periods where exceptional circumstances require measures such as the appointment of a temporary coroner or that a deputy coroner act concurrently with the coroner in a coroner district.

Assignment and appointment of temporary coroner in exceptional circumstances

Section 7 inserts a new section 11B into the *Coroners Act 1962*. This provides for the assignment and appointment of temporary coroners by the Minister for Justice and Equality in exceptional circumstances where a request is made by a coroner. These exceptional circumstances are defined as "circumstances arising due to the number or nature of deaths resulting from a pandemic, catastrophic event or other occurrence leading to mass fatalities."

The Minister must be satisfied that the appointment is necessary to increase the number and progress of inquiries into deaths in that district. The Minister may appoint a temporary coroner for a specified period, of no longer than 6 months. This appointment can be renewed up to 3 times, once the Minister is satisfied the exceptional circumstances exist and the renewal is necessary.

¹ Further information in relation to coroners and the operation of inquests is available at p. 6 of the [Bill Digest: Coroners \(Amendment\) Bill 2018](#).

The Bill provides that person appointed as a temporary coroner shall be under 75 years of age and that any appointment shall terminate upon the temporary coroner reaching 75 years of age. The request from the coroner is required to be in writing and must specify the exceptional circumstances giving rise to the request. A person appointed as a temporary coroner is provided with all the powers of a coroner for that district, save for the power to appoint a deputy coroner.

Arrangements for coroners' districts other than coroner's district of Dublin

Section 8 inserts a new section 13B into the *Coroners Act 1962*. This provides for the Minister for Justice and Equality to authorise a deputy coroner for a coroner district to act for the coroner in exceptional circumstances, upon a request from a coroner from a coroner's district other than the coroner's district of Dublin. These exceptional circumstances are defined as "circumstances arising due to the number or nature of deaths resulting from a pandemic, catastrophic event or other occurrence leading to mass fatalities."

This section is limited to districts outside the coroner's district of Dublin. [Section 13A](#) of the *Coroners Act 1962* already provides the Minister with the power to authorise a deputy coroner to act for a coroner for the purpose of increasing the progress and number of inquiries into deaths in that district.

The new section 13B provides the Minister must be satisfied that the authorisation is necessary to increase the number and progress of inquiries into deaths in that district. The authorisation must be in writing and for a specified period of no longer than 6 months. This authorisation can be renewed once the Minister is satisfied the exceptional circumstances exist and the renewal is necessary.

The request from the coroner is required to be in writing and must specify the exceptional circumstances giving rise to the request. A deputy coroner authorised to act for a coroner in a district is provided with all the powers of a coroner for that district, save for the power to appoint a deputy coroner.

Professional qualifications

Section 9 of the Bill amends section 14 of the *Coroners Act 1962* to provide that temporary coroners are required to have the same professional qualifications as coroners.

Admissibility of business records in civil proceedings

Part 3, Chapter 3 of the Bill provides for the admissibility of business records in civil proceedings. The framework in the Bill sets out the manner in which business records may be adduced in civil proceedings as an exception to the rule against hearsay. It is based on the recommendations of the Law Reform Commission in its *Report on Consolidation and Reform of Aspects of the Law of Evidence*.² Similar provision is made for the admissibility of business records in criminal proceedings in the [Criminal Evidence Act 1992](#).

² LRC 117 – 2016.

The rule against hearsay

The rule against hearsay provides that an out of court statement cannot be reproduced in court as proof of its contents. What this means in a practical context has been articulated by one commentator:

“In its most straightforward application, the rule forbids Jones to testify that Smith had told him that he, Smith, had seen the accused strike the fatal blow, when Jones’s testimony is adduced to prove that the accused struck the blow.”³

The rule acts to protect the integrity of the trial process from unreliable, second-hand information. The evidence is considered unreliable because the maker of the statement cannot be tested by cross-examination, nor was the statement made under oath or affirmation. Importantly, the rule applies as much to documents as it does to oral statements.

Business records

Business records are considered to be a particularly reliable form of documentary evidence,⁴ and therefore there is a strong rationale that they should benefit from an exception to the rule, subject to certain safeguards. The Law Reform Commission has recommended that the exception provided for in criminal proceedings should be extended to civil proceedings. It should be noted that the rule against hearsay has been effectively abolished in civil proceedings in the UK.⁵

A recent Supreme Court case noted that:

“A somewhat strange position has been reached in Ireland where the decision has been abrogated by statute in respect of criminal proceedings (see s. 5 of the *Criminal Evidence Act 1992*), but not in civil proceedings. It is surely desirable that the question should be addressed in the context of civil proceedings generally and modern practices and technology, and not merely where questions under the 1879 Act arise in respect of claims made against financial institutions. In this regard the recommendations contained in the Law Reform Commission’s report on consolidation and reform of aspects of the law of evidence (L.R. C. 117-2016) are pertinent.”⁶

The Bill

The provisions set out in the Bill closely follow the recommended provisions set out by the Law Reform Commission in the draft Bill annexed to its Report on Evidence.⁷ However, in contrast to the Commission’s draft Bill, it applies only to civil proceedings. The Commission proposed a single new legislative framework to govern business records in criminal and civil proceedings. If enacted, the Bill would therefore provide for different admissibility requirements for business records in civil proceedings than in criminal proceedings.

³ Zuckerman, *The Principles of Criminal Evidence* (Oxford, 1989) p. 179.

⁴ “Business records are admissible... because in the ordinary way, they are compiled by persons who are disinterested and, in the ordinary course of events, such statements are likely to be accurate; they are therefore admissible as evidence because prima facie they are reliable” *R v Horncastle* [2009] EWCA Crim 964 at [15].

⁵ Section 1 of the *Civil Evidence Act 1995*.

⁶ O’Donnell J at para. 28 of *Bank of Scotland v Beades* [2019] IESC 61.

⁷ See pages 406 – 413 of the Report.

Section 12 provides for a reasonably broad definition of “business” that follows the equivalent provision in the *Criminal Evidence Act 1992*, albeit it provides that a charity is a business for the purposes of the Chapter.

Section 13 provides that, subject to provisions in this Chapter, business records are to be presumed admissible in civil proceedings. Section 14 largely mirrors the equivalent section in the *Criminal Evidence Act 1992* and provides for the conditions of admissibility of business records. It provides that the document must be evidence of a fact that would otherwise be admissible by direct oral evidence, and have been:

- a) Compiled in the ordinary course of business;
- b) was supplied by a person (whether or not he or she so compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with
- c) in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.

Section 14(3) provides that a business record will generally not be admissible if it is privileged or compiled in contemplation of criminal or civil proceedings.

Section 15 provides for the giving of notice to the other side where a party intends to adduce business records in evidence. In order to be admissible, notice of intention to adduce business records must be served on all the other parties 21 days before the commencement of the trial. If not complied with, the party will need the leave of the court to adduce evidence. The section also provides that if another party has an objection, they should raise it within 7 days of the commencement of trial.

Section 16 provides that a judge retains a discretion to exclude evidence that would otherwise be admissible under section 14, if he or she considers that in the interests of justice, it should not be admitted. The section then sets out a number of factors to which a judge should have regard in determining whether or not to exercise his or her discretion to exclude.

Section 17 provides that a party may adduce evidence impugning the credibility of a person who originally supplied the information the subject of the business record. Section 18 provides for the admissibility of copies of business records. Section 18 provides for the admissibility of a resolution of either House of the Oireachtas.

Remote hearing of criminal and civil cases

Background

In March 2020, the Courts Service introduced measures to scale back the work of the Courts. The courts did not close entirely at any point during the Covid-19 lockdown period.⁸ During the initial stages, only urgent cases and those that did not involve a jury, were allowed to proceed or commence.

The Chief Justice and Presidents of the jurisdictions established a working group of judges to look at the practicalities of using virtual meeting room (VMR) technology, driven by PEXIP, to hear

⁸ The Courts Service, '[Guidance for Participants at Remote Supreme Court Hearings](#)', 23 April 2020.

cases.⁹ There was some limited testing of the new technology over the two-week Easter vacation,¹⁰ and remote hearings were then piloted in the Easter term, beginning 20 April 2020. The first remote hearings took place in ‘virtual courtrooms’,¹¹ with judges, practitioners and parties being present in court via remote video technology.¹²

In a statement published on 10 July 2020, Chief Justice Frank Clarke noted plans to further increase the number of remote hearings offered by the Courts Service. Most appeals before both the Supreme Court and the Court of Appeal have to date been conducted remotely, save for a small number where a physical hearing was considered necessary.¹³ This situation will continue for the foreseeable future.¹⁴

The President of the High Court, Ms. Justice Mary Irvine indicated in a statement published on 17 July 2020 that, to preserve courtrooms for those cases that can only be dealt with by way of a physical hearing, steps were underway to ensure that “all proceedings and applications as may justly be determined without oral evidence will be heard remotely.”¹⁵ There is a specific High Court Practice Direction for all claims in which oral evidence will be given.¹⁶ Ms Justice Irvine noted that a significant benefit of transferring work to remote platforms would be that “remote hearings should be ‘Covid-19 proof’ in the event that a second wave of the virus leads to the introduction of new or additional health and safety restrictions.”

The appropriateness of remote hearings

Ms Justice Baker, Judge of the Supreme Court¹⁷ and Mr Justice Birmingham, President of the Court of Appeal¹⁸ have both noted that remote hearings are best suited for appellate courts. Establishing a remote regime has been a more problematic prospect for the Circuit Court and District Court.¹⁹ The Chief Justice of the Supreme Court took a similar view, acknowledging that remote hearings are not suitable for every type of case. He also stated that remote hearings have been particularly useful in the hearing of preliminary applications and in case management. He

⁹ [‘Courts working group for virtual meeting room tech’](#), *Law Society Gazette*, 17 April 2020.

¹⁰ [‘Life in technicolour’](#), *Law Society Gazette*, 8 May 2020.

¹¹ The Courts Service, [‘Virtual Remote Courts Piloted in Ireland this morning’](#), 20 April 2020.

¹² The development was welcomed by then Minister for Justice and Equality, Charlie Flanagan, [‘Minister Flanagan welcomes Supreme Court’s first use of video technology to hear case remotely’](#) 20 April 2020.

¹³ [Guidance recently published](#) by the Court of Appeal states that while the Court will have due regard to any objection to an appeal being heard remotely, it may nevertheless direct that the appeal proceed remotely.

¹⁴ Statement from the Chief Justice, Frank Clarke, [‘Courts planning to safely expand hearings’](#), 10 July 2020.

¹⁵ [‘Statement of the President of the High Court’](#), 17 July 2020. Further, Ms. Justice Irvine stated “It is hoped that by the start of October 2020, all High Court courtrooms will be capable of being used for either physical or remote hearings thus maximising their potential usage.”

¹⁶ [Practice Direction for all claims \(excluding personal injury claims\) in which oral evidence will be given](#), 7 July 2020.

¹⁷ Ms. Justice Marie Baker, [‘Remote Court Hearings and Data Protection’](#), EJTN Judicial Training on Data Protection, 8 June 2020.

¹⁸ [‘Court of Appeal delays caused by Covid-19 not ‘catastrophic’](#), *The Irish Times*, 2 May 2020.

¹⁹ The Courts Service, [‘Virtual Remote Courts Piloted in Ireland this morning’](#), 20 April 2020.

indicated that these are likely to remain a feature of the courts for these purposes, even after all restrictions have been lifted.²⁰

Remote hearings are not well suited to certain matters; for example, those that require evidence to be elicited from witnesses, instances where cross-examination in person would be critical and in matters that require a jury. There are additional difficulties in the use of remote hearings for criminal matters, and in matters involving lay litigants and other vulnerable people.

Legislative limitations and calls for reform

The President of the District Court, Judge Colin Daly, has drawn attention²¹ to legislative limitations that require a judge to be sitting 'in person', stating that the law currently "... requires a judge to be sitting in a place within his or her district, in order to hold that court properly. This requires the judge to travel physically to the court ... but we cannot commence a case without physically attending at a court office".

Judge Daly proposed that the solution to these difficulties may be "... new legislation specific to the electronic filing of documents or the holding of remote courts". He also noted the difficulties associated with enforcing the *in camera* rule²² during remote hearings, and in ensuring that those involved do not record or publish material. It was suggested that legislative reform may address these issues.²³

Oonagh Buckley, Deputy Secretary General, Department for Justice and Equality, also took part in the One Family webinar on reform of the Irish family law system. She responded to the comments of the judge by stating that the Department was conscious of the need for legislative reform in this area and was "working very anxiously on those". She also stated that "separately, there is a civil law amendments bill that is being actively worked on that should underpin and do more of those things for the longer term, relating to things like statements of truth, e-filing and so on, and indeed remote courts, so those will be hugely important to the work of the District Court particularly".²⁴

Civil Proceedings and remote hearings (Chapters 2 and 3 of the Bill)

Section 10 provides a definition of the term "civil proceedings" in Part 3 of the Bill. This 'includes any cause, action, suit or matter, other than a criminal proceeding, in any court.'

Remote hearing of civil proceedings

Section 11 of the Bill proposes that a court may direct that hearings in any type of civil proceedings proceed by remote hearing. It is proposed that the court may do so either on the application of the parties or of its own motion.

²⁰ Statement from the Chief Justice, Frank Clarke, '[Courts planning to safely expand hearings](#)', 10 July 2020.

²¹ One Family, [Webinar on Building a Family Law System for Families](#), as partially reported in, '["Old culture" of settling on court steps is gone forever](#)', *Law Society Gazette*, 3 July 2020.

²² Where a case is heard *in camera*, the public must be excluded; the only persons permitted to be present are the parties directly concerned, their legal representatives and officers of the court.

²³ One Family, [Webinar on Building a Family Law System for Families](#), as partially reported in, '["Old culture" of settling on court steps is gone forever](#)', *Law Society Gazette*, 3 July 2020.

²⁴ Ibid.

The Bill proposes that the court may specify the electronic communication technology by which the proceedings are to proceed. If proceeding with the matter by remote hearing is deemed unfair to the parties or contrary to the interests of justice, the court may revoke the direction to participate in a remote hearing. The rules of court may make provision for the conduct of remote hearings.

It is proposed that 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.

Subsection (7) proposes that 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.

Criminal Procedure and remote hearings

Part 4 of the Bill deals with certain aspects of criminal procedure.

Interpretation

Section 22 provides the interpretation and meaning of terms used in Part 4 of the Bill. The terms defined are:

- criminal proceedings: which means proceedings for an offence and includes any appeal proceedings or subsequent proceedings related to the offence;
- live video link: which means, in relation to a person participating in criminal proceedings or relevant proceedings, a live television link or other audio-visual arrangement which—
 - enables the person to participate in the proceedings and to see and hear the proceedings before the court, and
 - enables all other persons participating in the proceedings who are not in the same location as the person to see and hear the person;
- relevant person: in relation to criminal proceedings or relevant proceedings, means the person the subject of the proceedings concerned
- relevant proceedings: means proceedings under—
 - the *Extradition Act 1965*,
 - Part II of the *International War Crimes Tribunals Act 1998*,
 - the *European Arrest Warrant Act 2003*, or
 - Part 3 of the *International Criminal Court Act 2006*, and includes any appeal proceedings or subsequent proceedings.

Certain applications to court in criminal proceedings to be heard using live video link

Section 23 proposes to broaden the circumstances in which video links may be used in criminal matters. These are currently governed by sections 33 and 34 of the *Prisons Act 2007*, and are confined to persons in custody.

The Bill proposes to extend the types of matters in which video links may be used, including to permit arraignments, returns for trial, sentencing hearings and certain hearings in relation to surrender proceedings.

The Bill proposes to further extend 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. It is proposed that some hearings may be heard by video link by default.

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

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

Evidence through live video link

Section 25 of the Bill proposes that, for the various application-types permitted in this Bill, 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.

Subsection (2) provides that the video link evidence be recorded.

Remote hearing of appeal proceedings

Section 26 proposes of the Bill sets out that the Supreme Court and the Court of Appeal in criminal proceedings may, of its own motion or on the application of any of the parties, direct that the proceedings proceed by remote hearing.

Subsection (4) proposes that if proceeding with the matter by remote hearing is deemed unfair to the parties or contrary to the interests of justice, the court may revoke the direction to participate in a remote hearing.

Subsection (7) proposes the creation of a new offence of interfering with or obstructing the electronic communications technology used in a remote hearing under this section. It is also proposed that it shall be an offence to record the proceedings, without the prior permission of the Court.

Subsection (11) proposes that the Chief Justice and the President of the Court of Appeal may issue practice directions in relation to the conduct of applicable proceedings before it.

Amendment of section 17 of the Criminal Justice Administration Act 1914

Section 27 proposes to amend [section 17](#) of the *Criminal Justice Administration Act 1914* by inserting a new subsection 3A. Section 17 deals with the committal of persons to prison. Section 3A is designed to remove the need to transport prisoners between one prison and another merely to execute a warrant.

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

Section 28 of the Bill proposes to provide a general power for a court to make any provision that it considers appropriate to ensure the just and expeditious conduct of criminal proceedings, surrender proceedings and appeal proceedings. This is proposed to facilitate social distancing when necessary.

Repealed legislation

Hearings via video link are already possible for certain groups of people who are being held in custody. As noted above, Section 23 of the Bill broadens the circumstances in which remote

hearings can be used to include people who are not in custody. Therefore, the existing legislation dealing with hearings via video links is being repealed.

Section 5 of the Bill repeals:

- [Section 33](#) of the *Prisons Act 2007* which allows certain applications to court to be heard using video link;
- [Section 34](#) of the *Prisons Act 2007* which deals with the application of [section 33](#) to children in remand centres or children detention schools and other detained persons; and
- [Section 26](#) of the *Civil Law (Miscellaneous Provisions) Act 2008* which deals with videoconferencing in civil proceedings.

Statements of truth

Background

An affidavit is a written statement of evidence, submitted to a court instead of oral testimony. In order to make an affidavit, a witness must swear upon the Bible or another religious text in front of a solicitor or notary public as to the truth of the statement. A person who does not wish to swear a religious oath can make an affirmation instead but in order to do so they must explicitly decline to take the religious oath.

In 1990, the Law Reform Commission published a Report on Oaths and Affirmations.²⁵ In that report, the Commission recommended that the oath should be abolished for witnesses and jurors and for those submitting affidavits in all proceedings, civil and criminal.²⁶ Instead, the Commission recommended that a person be required to make a solemn statutory affirmation.²⁷

Proposed change

Section 21 of the Bill provides for what will be known as a 'statement of truth'. It provides that in civil proceedings where evidence is to be given on affidavit or statutory declaration (including where a document is to be verified in that way), and a document or application needs to be lodged/filed electronically, rules of court may provide for a 'statement of truth' to be transmitted with the document in place of the affidavit or statutory declaration.

A statement of truth can be in electronic form. It will contain a statement that the person has an honest belief that the facts stated therein are true. The person can sign the statement by entering their name in an electronic format or otherwise electronically as rules of court may permit.

A person who makes a statement in a 'statement of truth' without an honest belief as to the truth of that statement will be guilty of an offence. On summary conviction, a guilty person will be liable to a maximum fine of €5,000 and/or up to 12 months in prison. If convicted on indictment, they could receive a fine of up to €250,000 and/or up to 5 years in prison.

²⁵ Available here: https://www.lawreform.ie/_fileupload/Reports/rOaths.pdf

²⁶ As above at page 44.

²⁷ Ibid.

Reaction

The Law Society of Ireland welcomed the proposed changes in the Bill, stating that it was inappropriate to require a person to declare their religious belief, or lack thereof.²⁸ The President of the Law Society, Michele O'Boyle said:

“Among other issues, the Society argues that, not only does it represent significant procedural challenges for practitioners in an increasingly pluralist society, it also can give rise to unfair perceptions on the credibility of the evidence given where individuals decline to take a religious oath[.]”²⁹

However, she also noted that jurors and witnesses giving evidence in court will still be required to swear a religious oath or make an affirmation, and state that the oath-based system should be entirely replaced.

Critics of the proposals argue that a statement of truth could be introduced as an additional option, rather than instead of the oath.³⁰

²⁸ <https://www.lawsociety.ie/News/Media/Press-Releases/law-society-of-ireland-welcomes-cabinet-proposals-on-oaths-and-affirmations/>

²⁹ <https://www.lawsociety.ie/News/Media/Press-Releases/law-society-of-ireland-welcomes-cabinet-proposals-on-oaths-and-affirmations/>

³⁰ <https://www.irishtimes.com/news/politics/proposal-to-end-requirement-for-witnesses-to-swear-before-god-criticised-1.4313065>



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