

# COVID-19 prompts welcome litigation reforms



Focus on  
**COVID-19**  
Coronavirus

*“Never waste a good crisis”, so the saying goes – the government proposes reforms which are needed not just to respond to COVID-19, but also to further modernise Irish litigation.*

[The Civil Law and Criminal Law \(Miscellaneous Provisions\) Bill 2020](#) deals with a range of issues.

From a civil litigation perspective, it recognises recent innovations adopted by the Irish judiciary and the Courts Service, such as facilitating remote judicial hearings and providing for electronic issuing and filing of court documents. Another welcome reform is the proposal to replace antiquated processes for swearing affidavits with provision for statements of truth in certain circumstances.

Although necessitated by COVID-19, these reforms would be welcome in any event. They are required to ensure that our judicial system continues to evolve to reflect technological, societal, and economic developments and requirements.

## Remote hearings

The provisions for remote hearings would not themselves be a radical change so much as a statutory imprimatur for important initiatives recently initiated by the judiciary and the Courts Service during lockdown. Such reforms, which were effected with the enthusiastic support of the legal profession, facilitated the ongoing administration of justice, while reducing transmission risks.

Nearly 700 judicial hearings have already been conducted remotely during COVID-19, principally by video conferencing. Even after COVID-19, remote hearings are expected to continue. The Bill recognises this development and formally acknowledges the jurisdiction to hold remote

hearings and to determine the related processes and procedures, virtually eliminating any risk of challenge to such innovations by the courts.

The Bill proposes that the Chief Justice and the Presidents of the various Irish courts direct that certain categories or types of proceedings may be heard remotely in their respective courts. Further, parties can apply in any civil matter for their proceedings to be heard remotely, or the Court can make such directions on its own initiative. Parties can oppose such an application, and the Court can decide whether a remote hearing would be fair to all parties or in the interests of justice.

The Bill envisages court rules and practice directions to deal with procedural issues relating to remote hearings, including the attendance and compulsion of witnesses.

Most importantly, the Bill would confirm beyond doubt that such hearings would be on the same footing as proceedings in a physical courtroom - the Court would have the same powers (including to compel witness testimony or the production of documents), participants would have the same rights and obligations, and the remote proceedings would have the same legal effect as if conducted in person.

It would have been difficult to challenge remote hearings in the superior courts in any event - those courts have an inherent jurisdiction to regulate cases before them. However, the legislation also undermines an argument which

could perhaps have been advanced with greater force in other courts. The District and Circuit Courts are created by statute and exercise a purely local jurisdiction. However, that legislation did not provide for remote hearings (since the technology did not exist when those courts were created). Accordingly, it could be argued that there was no jurisdiction for remote hearings in such courts. The Bill will answer such objections by providing that remote hearings in the District and Circuit Courts are deemed to take place in the court where they would otherwise have occurred, and the judges may exercise their usual powers.

### Great recognition of electronic filings and documents

The Bill would also recognise the recent changes in court practice to allow for electronic filing of proceedings and other documents, the delivery of judgments electronically and similar reforms. Once again, although triggered by COVID-19, the Bill is a welcome recognition of innovations which are already occurring at the initiative of the judiciary and the Courts Service and which have long been advocated by the legal profession.

To safeguard the process of court filings, court rules may require:

- authentication of documents which are filed, lodged or issued electronically
- verification of the identity of a person transmitting a document, including by their personal public service number
- confirmation as to whether the electronic transmission is in place of, or is an alternative to, any other method by which a document could be filed, lodged or issued

Where a document is filed or lodged with a court by electronic means, an electronic copy or a printed version of it, shall be treated as the original.

### Statements of truth as a substitute for affidavits

The Bill's proposals to allow written evidence to be given in a "statement of truth" is another welcome reform. Although prompted by COVID-19, the change was overdue in any event.

At present, a witness providing written evidence in civil proceedings must swear an oath before God to confirm the truth of their evidence, and must do so in the physical presence of a person empowered to administer oaths and affirmations. If a witness objects to swearing in this way, they may make a solemn affirmation in the physical presence of the person empowered to administer the affirmation. There have long been calls for reform of this antiquated provision (which necessitated an enquiry as to a witness's personal religious belief which seemed inappropriate in a modern society, and potentially raised privacy issues). These objections in principle were reinforced by the practical difficulties of requiring witnesses to attend in person to swear or affirm the affidavit before the person administering the oath, a procedure which could not easily be dispensed with, even during lockdown.

The Bill allows for the introduction of court rules which will no longer require witnesses to indicate their religious faith (or lack thereof) when executing an affidavit or a statutory declaration in civil proceedings. A non-religious statement of truth may be made and transmitted electronically instead (although individuals can still opt for an affidavit/statutory declaration if they prefer).

The statement of truth could be in electronic form and would contain a statement that the person making the statement has an honest belief that the facts are true. The court rules may provide for it to be signed electronically by the maker of the statement (in an electronic format to be prescribed by those rules). The statement will also have to comply with other requirements in relation to the content, verification, authentication or form of such statements.

These proposals would bring Irish law in line with many other common law jurisdictions, where religious oaths are not required. However, religious oaths or affirmations will still be required when oral evidence is given in court. The Law Society of Ireland continues to advocate replacing the oath-based system in its entirety.

For further information please contact [Liam Kennedy](#), Partner, Dr [Stephen King](#), Senior Associate, [Eimear Digney](#), Solicitor or a member of the A&L Goodbody Litigation & Dispute Resolution team.

*Disclaimer: A&L Goodbody 2020. The contents of this document are limited to general information and not detailed analysis of law or legal advice and are not intended to address specific legal queries arising in any particular set of circumstances.*