



DISPUTES AND INVESTIGATIONS

Change is underway: *Breaking down the planned reforms to Ireland's Civil Litigation Regime*

6 MIN READ



On 27 May, the Minister for Justice, Helen McEntee (the Minister), published an Implementation Plan on Civil Justice Efficiencies and Reform Measures (the Plan)¹, flowing from the detailed Review of the Administration of Civil Justice Report led by Mr. Justice Peter Kelly, former President of the High Court, which was published in December 2020² (the 2020 Report).

That report contained over 90 recommendations, which were taken away by government. It underlined the need for significant reform of the administration of justice in Ireland through the operation of the civil Courts.

The Plan sets out in practical terms how certain of the recommendations from 2020 will be implemented on a multi-year, phased basis. The main tools will be through the enactment of primary legislation and introduction of new Rules of Court.

What are the key elements of the Plan?

The Plan identifies seven work streams for implementation in the next three years. It provides for the establishment of an implementation group, which the Plan states has already begun its schedule of meetings and which will meet quarterly. Progress reports will be submitted to government on an annual basis. There will also be stakeholder engagement, to include with the legal professions.

¹ www.gov.ie/en/publication/cb6f0-implementation-plan-on-civil-justice-efficiencies-and-reform-measures

² www.gov.ie/en/publication/8eabe-review-of-the-administration-of-civil-justice-review-group-report

Seven work streams

CIVIL PROCEDURES IN THE COURT

DISCOVERY

JUDICIAL REVIEW

MULTI-PARTY LITIGATION

LITIGATION COSTS

FACILITATING COURT USERS

E-LITIGATION

Here, we take a look at some of the key changes envisaged by the Plan.

Pleadings Reform

Rules of Court will be introduced to require parties to plead their case with much greater precision.

A “claim notice” – a single originating document will be introduced across all courts of first instance to replace the various documents which now exist.

Civil procedure

Legislation and Rules of Court are to be introduced to allow for pre-action protocols in clinical negligence cases. It also looks likely that pre-action protocols will be extended to other specific categories of High Court litigation in due course.

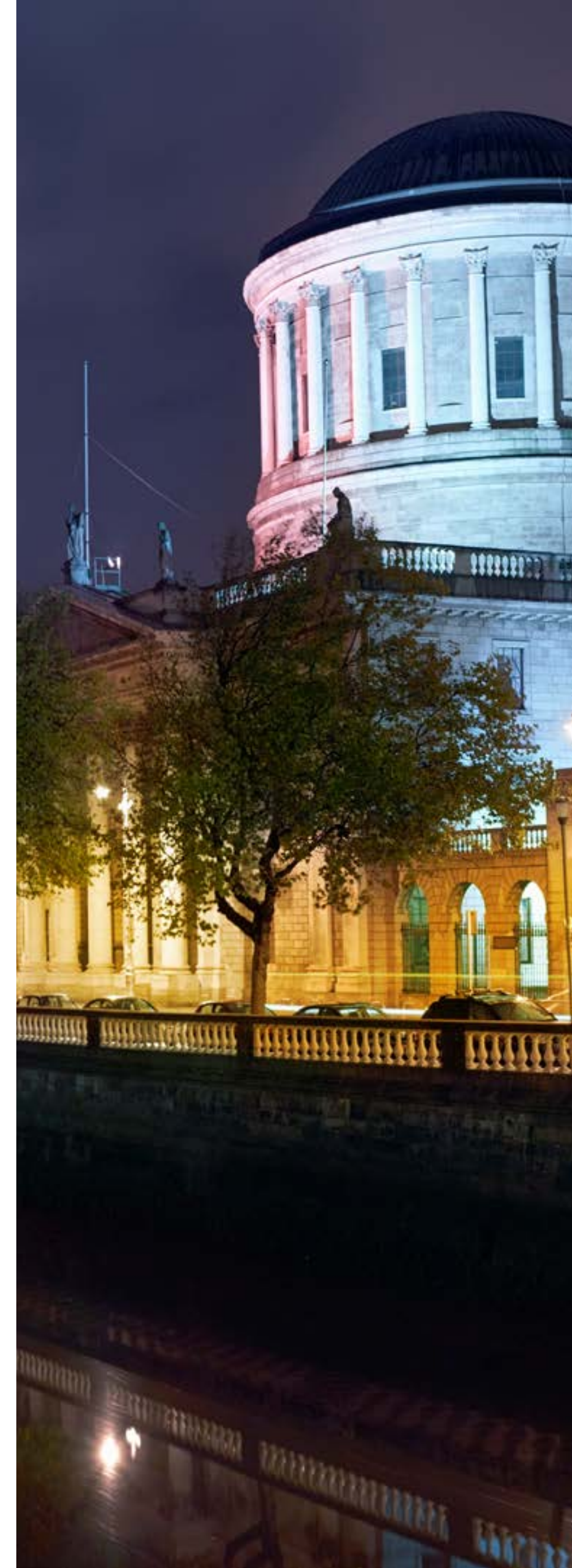
Reforms will be put in place to reduce delays, with specific proposals around extended case management rules in both the Circuit and High Court and full use of the conduct of trials rules in the High Court, which are already in place.

Automatic discontinuance

Primary legislation and rules of court will be prepared to provide for automatic discontinuance in cases, which have not been set down or fixed for trial or in which no step has been taken i.e. cases which are dormant. The 2020 Report indicates that this period will be 30 months from commencement of proceedings.

Multi-Party actions

Primary legislation will be prepared to introduce a new system for multi-party actions, similar to the Group Litigation Order mechanism in the UK. The “Group Litigation Order-type procedure”, as described in the Plan will be introduced in both the High Court and the Circuit Court. There will also be a single representative action encompassing multiple claims. All of this will avoid similar claims clogging the courts system and lead to a reduction in the overall costs of the determination of similar fact claims.



Discovery

The existing regime (including the associated case law) for discovery, inspection and production of documents will be abolished and a new rules of court called “production of documents” will regulate the entitlement of parties in civil litigation to documents in advance of trial. The primary legislation which will underpin this will provide for a date on which the existing regime will come to an end.

Judicial review

There are significant and detailed changes proposed to the existing judicial review regime, including that the threshold for granting leave to commence judicial review be increased from having an arguable case, to having “substantial grounds”. There will be new primary legislation for judicial review and rules of court to be introduced to prevent highly speculative challenges. Overall, the timeliness, efficiency and cost effectiveness of the process will be enhanced.

Litigation costs and third party funding

The one major area where a clear plan has not emerged yet is this. The Plan also contemplates the commissioning of an economic analysis of cost control models on litigation costs. Legal advice will then be sought and proposals developed. Third party litigation funding remains on hold pending the outcome of the Law Reform Commission's Report, with 2024 being the indicative date for policy outcome. One notable development though is that third party funding will open up before that in the insolvency arena, for liquidators, receivers and other similar parties to fund proceedings intended to increase the pool of assets available to creditors in certain cases.



Increased investment in the Courts Service infrastructure and technology is expected, which will facilitate better access to the Courts and remote hearings, which is to be welcomed particularly for international litigation.

Whilst the Plan is a standalone publication, intended to cover an initial three year period, the Minister makes it clear in introducing its contents that it should also be viewed in conjunction with a number of other plans and initiatives in this space: the Justice Plan 2022 published by the Minister; the Courts Service Courts Modernisation Programme and a Judicial Planning Working Group. It is an ambitious and complex reform programme.

For more information on this topic, please contact Enda Hurley, partner, co-head of Disputes & Investigations Group, Orla Clayton, Knowledge Lawyer or any member of ALG's [Disputes & Investigations Group](#).

Key contacts



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