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CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2008

Introduction

On 20 July 2008, the Civil Law (Miscellaneous Provisions) Act 2008 (the “Act”) came into force¹ following calls for change in areas of the law which it was widely regarded required updating. The Act brings modernisation to areas such as Landlord & Tenant law, Censorship rules, and the Juries Act. The Act also addresses the following issues which impact upon litigation practice and procedure:

- Modernising the law on the service of court documents;
- Authorisation of all District Court justices to sign orders and warrants;
- Provision for the use of videoconferencing in civil proceedings in certain circumstances;
- Maintaining anonymity relating to medical conditions of individuals involved in civil proceedings;
- Provision for a blind or partially sighted party or lawyer to have an assistant in court, notwithstanding the “in camera” rule;
- Changes to the laws relating to access to certain documents even though the proceedings are held otherwise than in public; and
- Changes to the law relating to swearing of statutory declarations.

Service of District and Circuit Court Documents by Post

Section 16 of the 2008 Act replaces section 7 of the Courts Act 1964, relating to the service of Circuit and District Court documents. It is now permissible to serve Circuit and District Court documents personally, notwithstanding that a summons server has been appointed to that area. Section 16 also provides for service by post, as was previously permitted under Section 7 and by other such means as may be prescribed by rules of court. Previously, section 7 provided that personal service would only apply “whenever and so long as no summons server stands assigned to that area”.

Section 16 goes on to provide that an order for substituted service can be sought in the event that “personal service...cannot be promptly effected...or the circumstances, prescribed by rules of court ...occur”. This section also provides that

¹ Except for Part 2 which will come into force on 1 August 2008 except for sections 18, 20, 21 and 22 which will come into force on 1 January 2009 Part 6 and Sections 34 and 39 will also come into force on 1 January 2009.

such orders may be made by the County Registrar for the county in which the proceedings have been instituted.

Service of Superior Court Documents by Post

Section 24 of the 2008 Act provides that methods of service for superior court documents can be prescribed by rules of court in addition to personal service and service by post.

Evidentiary weight of District Court orders or warrants

Section 23 of the 2008 Act provides that when an order recording a decision of a District Court judge or a warrant issued by a District Court judge is signed by any judge of the District Court assigned to the District Court district in which the order was made/warrant was issued, or any District Court clerk as assigned to the district court area in which the order was made/warrant was issued, that shall be evidence in any legal proceedings of the decision/matters to which the warrant or order relates, until the contrary is shown.

However, where an accused is being sent forward for trial such order/warrant cannot be signed by a District Court clerk. Also, a District Court clerk is not authorised to sign search warrants.

This is a change from the pre-existing practice specified in sections 13A and 14 of the Civil Liability Act 1971 (as inserted by section 20 of the Criminal Justice (Miscellaneous Provisions) Act 1997) whereby such orders had to bear the signature of the District Court judge who made the order, or be affixed with the seal of the District Court in respect of the District Court Area where the order is made, or a copy thereof certified in accordance with the rules of court.

Section 23 of the 2008 Act is stated to be in substitution for sections 13A and 14 of the 1971 Act. Section 13A dealt with the use of seals by District Courts and specified the appearance and use of same. These matters are not dealt with in Section 23, and in matters relating to the evidentiary weight of District Court orders and warrants, this new substituting section makes no reference to the use of District Court seals.

Videoconferencing in Civil Proceedings

Section 26 of the 2008 Act provides that a Court may, of its own motion or on application of any of the parties, make a direction that a party to the

proceedings or a witness may give evidence, from a location outside the Court, within or outside the State, by means of a live television link.

Where a party to proceedings or a witness gives testimony in such a manner they will be deemed to be present at the hearing concerned.

Section 26(2) provides that a Court will not give a direction:

- Unless there are facilities available which allow the party/witness to see and hear the proceedings and to be seen and heard by those present at the hearing;
- If 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.

Where the Court does not give a direction it must give its reasons for so doing.

This section applies to civil proceedings that are brought on, after, or are pending on the 1 August 2008.

Anonymity in Civil Proceedings in relation to Medical Condition of relevant person

Section 27 of the 2008 Act provides that an application may be made to the court by any party to the proceedings, at any stage of proceedings, for an order prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would likely to, identify a relevant person (either a party or a witness to the proceedings) as a person having a medical condition.

The Court may only grant such order if satisfied that:

- The relevant person concerned has a medical condition;
- His/her identification as a person with that condition would be likely to cause undue stress to him or her; and
- The order would not be prejudicial to the interests of justice.

An appeal from a refusal or grant of the application may be made, and having heard such an appeal the Court may vary or revoke the order. Such an appeal may only be made on notice to all other parties to the proceedings and to the judge concerned in chambers.

The following persons may be guilty of an offence and liable to €25,000 fine and/or 3 years imprisonment on conviction on indictment if:

- The matter is published in a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- The matter is published otherwise, the person who publishes it;
- The matter is broadcast, any person transmitting or providing the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

It may be a defence for any of the aforementioned persons to argue that at the time of the alleged offence they were not aware, and neither suspected nor had any reason to suspect, that the publication or broadcast concerned related to matters which were the subject matter of an order made under this section.

Where this section is breached by a body corporate, and is done so with the consent or connivance or found to be attributable to any neglect of a director, manager, secretary or other officer of the body corporate, or one who was purporting to act in such a capacity, they shall be guilty of an offence and may be proceeded against and punished as if they were guilty of breaching the original order relating to anonymity of a person’s medical condition.

Where the affairs of a body corporate are managed by its members, they may be found guilty as if they were a director or manager of the body corporate.

This section applies to civil proceedings that are brought on, after or are pending on 1 August 2008.

Right of assistant to accompany blind or partially sighted party, counsel or solicitor to proceedings

Section 28 of the 2008 Act provides that a party to proceedings, a solicitor or counsel, who is blind or partially sighted may request the court to allow it to have an assistant attend to them during the proceedings and give them such assistance as the court may direct. Such assistant must comply with any court directions given and does not have any right of audience by virtue of their position as assistant.

Proceedings held otherwise than in public

Section 31 of the 2008 Act amends section 40 of the Civil Liability and Courts Act 2004 to provide that where a barrister or solicitor (or other such person falling within a class of persons specified in Regulations prepared by the Minister) is preparing a

report of proceedings which would otherwise be *in camera*, they are entitled to attend the proceedings and also have access to any relevant documents.

Section 31 goes on to define “relevant documents” as:

- The petition, summons or other originating document in the proceedings,
- Pleadings and other documents (including the terms of settlement, if any) produced to or lodged with the court, or included in the book of pleadings, in the course of the proceedings, and
- Any order made by the court in the proceedings.

Prior to this enactment, such reporters had no entitlement to access “relevant documents”. “Relevant documents” do not include those expressed to be “without prejudice”, or in terms having a like effect.

Statutory Declarations

Proof of Declarant

Section 49 of the 2008 Act provides that when attesting a statutory declaration, if the attestator does not personally know the declarant, nor can they be identified to the attestator by a person who personally knows them, the attestator can establish the identity of the declarant by means of a “relevant document” containing a photograph of the declarant. This method of establishing the identity of the declarant must be specified in the attestation clause and as must the particulars of the relevant document concerned.

“Relevant Document” is defined as:

- A valid passport;
- A national identity card issued by the authorities of a Member State, the Swiss Confederation or a Contracting Party to the EEA Agreement;
- A document which is equivalent to a passport which establishes the identity and nationality of the declarant;
- A travel document issued by the Minister for Justice, Equality and Law Reform under section 4 of the Refugee Act 1996; or
- A travel document which is issued by the State solely for the purpose of providing the holder with a document which can serve in lieu of a national passport.

Section 52 of the 2008 Act amends the Schedule to the Statutory Declarations Act 1938, which contains the form of statutory declaration, to take account of these changes.

Making of statutory declarations outside the State

A statutory declaration made outside the State will be regarded as valid in the following circumstances:

- If it is made before a person authorised under Section 1 of the Statutory Declarations Act 1938;
- If it is made before a person authorised, under the law of that place, to administer oaths in that place, and duly authenticated in accordance with the laws of that place;
 - If that place is a Member of the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities (the “EC Convention”), then the rules regarding authentication contained in that Convention must be complied with;
 - If that place is a Member of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the

“Hague Convention”) and not the EC Convention than the rules regarding authentication contained in the Hague Convention shall apply;

- If that place is neither a member of the EC Convention nor the Hague Convention, then the declaration must be authenticated in accordance with the rules of that country. A person may require proof of the requirements of that particular law.

Penalty for making False Statutory Declarations

Section 51 of the 2008 Act provides that summary proceedings for making false declarations must be brought within 12 months from the date on which the offence was committed, or at any time within 6 months from the date knowledge of the false declaration comes to the knowledge of the person bringing the proceedings, whichever is later. In any event, no such proceedings shall be commenced later than 3 years from the date on which the offence concerned was committed.

Comment

The changes implemented by this Act will undoubtedly have a significant impact on practitioners.

Contact

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