Joint Committee on Justice, Home Affairs and Migration

General Scheme of the Civil Reform Bill 2025

Opening Statement of Dr Orla Kelleher, Assistant Professor in Environmental and Climate Change Law

Maynooth University School of Law and Criminology

24 March 2026

1. Thank you, chair. My particular area of expertise is in environmental human rights and climate litigation. I therefore confine my observations to the impacts of the General Scheme of the Civil Reform Bill 2025 on the right of access to justice in environmental matters.[1]

2. It is possible to identify at least three major problems. First, the reforms are likely to create further legal uncertainty, generate complex satellite litigation, and cause *more* delays within the planning system.

3. Second, environmental pollution disproportionately affects already vulnerable and marginalised groups in Ireland.[2] There is a real risk that further restrictions on access to justice could exacerbate this problem.

4. Third, the General Scheme of the Civil Reform Bill 2025, both by itself *and* taken together with Part 9 of the Planning and Development Act 2024, fails to take adequate account of the State's obligations under the Aarhus Convention[3] and related EU law instruments.

5. The Aarhus Convention guarantees three interrelated procedural rights: the right to access environmental information, the right to participate in environmental decision-making, and the right of access to justice in environmental matters. The most relevant provisions, for present purposes, are those on access to justice.[4]

6. Ireland signed the Aarhus Convention in 1998 and ratified it in 2012. The Convention has had its most notable impact on Irish law through the mechanism of EU law.[5] The

---

[1] This opening statement is based on a more detailed invited written submission by Dr Orla Kelleher to the Joint Committee on Justice, Home Affairs and Migration on General Scheme of the Civil Reform Bill 2025 submitted on 12 February 2026.
[2] Sadhbh O'Neill et al, *Environmental Justice in Ireland: Key dimensions of environmental and climate injustice experienced by vulnerable and marginalised communities* (DCU and CLM, 2022).
[3] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", adopted 25 June 1998 in Aarhus, Denmark, and entered into force 30 October 2001 (The Aarhus Convention).
[4] Articles 9(1) and 9(2) provide for a right of access to justice where information rights and participation rights under the Convention are engaged. Article 9(3) provides for a general right of access to justice. Article 9(4) establishes some overarching requirements in relation to access to justice including that 'review procedures must provide equate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive'.
[5] Áine Ryall, 'The Relationship between Irish Law and International Environmental Law: A Study of the Aarhus Convention' (2018) 41(2) *DULJ* 163 at 178.

EU has adopted several legislative measures to implement the Convention[6] and the Court of Justice has consistently adopted a strong interpretation of the access to justice provisions.[7]

7. On the issue of backsliding, the Aarhus Convention Compliance Committee has indicated that the reducing of rights is not generally perceived to be in line with the objectives of the Convention.[8]

8. In the European Commission's *2025 Environmental Implementation Country* Report for Ireland, one priority action identified is '*improv[ing] access to courts in national environmental cases* [for] the public concerned and eliminat[ing] practical barriers, such as length of proceedings and excessive costs'.[9] (emphasis added)

9. The tenor of the reforms proposed in Part 3 of the General Scheme of the Civil Reform Bill 2025 jars with these minimum standards on access to environmental justice.

10. Certain environmental judicial reviews (i.e., those covered by the Planning and Development Act 2024) are partially excluded from the Civil Reform Bill 2025.[10] However, certain provisions still apply. For example, in deciding whether to grant a remedy pursuant to an application for judicial review, a court would have to consider whether the error was *material* to the decision. In deciding this, a court would have to 'take into account whether in the absence of such an error, a different decision would have been made, which would have placed the applicant in a *materially better position'* (Head 8(5)(a)(iii) and (b), emphasis added)

11. As was famously stated by the former Advocate General Sharpston 'fish cannot go to court'.[11] The privileged status of NGOs under the Aarhus Convention flows from a recognition that environmental law is often by necessity enforced by members of the public acting in *the public interest.* Such individuals or NGOs may have no personal stake in the matter. For this reason, it is likely to be very difficult, if not impossible, to prove that in the absence of the error, an applicant themselves would be in a *materially better position*.

12. Other forms of environmental judicial review, like climate litigation, under the Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act) appear to be subject to the full force of Part 3 of the Civil Reform Bill 2025.

---

[6] See Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EC (The Public Participation Directive) which amended several existing regimes including the Environmental Impact Assessment Directive and Integrated Pollution Prevention Control/Industrial Emissions Directive to insert public participation and access to justice provisions.

[7] See for example: Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* EU:C:2011:125; Case C—664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd* EU:C:2017:987; Case C-873/19 *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland* EU:C:2022:857.

[8] ACCC, Communication ACCC/C/2004/4 (Hungary) at [18].

[9] European Commission, *2025 Environmental Implementation Review Country Report – Ireland* SWD(2025) 313 final (7 July 2025) at 53.

[10] Head 13(1) disapplies heads 10, 11, 12 to planning judicial reviews.

[11] *Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg* [2011].

13. The impacts of the Civil Reform Bill are even more regressive for these cases. For example, an applicant would *also* need to prove that they have suffered harm or prejudice (head 8(5)(ii)) and that granting the remedy provides a significant benefit for the applicant (head 8(5)(v)).

14. The suffering harm or prejudice requirement would be exceptionally difficult to prove in a climate case. If the requirement were to be applied strictly, and it were necessary to wait for climate harms to materialise, this could deprive an applicant of their right to an effective remedy. Interestingly, it was on a very similar basis that the European Court of Human Rights found a violation of Article 6 of the ECHR in *KlimaSeniorinnen v Switzerland*.[12]

15. The significant benefit of the remedy for the applicant requirement is likely to be difficult to prove given that the benefit of the Government meeting its climate obligations is likely to accrue to the public at large. Finally, the costs provision in head 8(7) is also likely to fall foul of the ban on prohibitively expensive costs in environmental litigation.

16. These reform proposals are worrying given the importance of what is at stake. Against the backdrop of worsening climate, environmental and pollution crises, curtailing judicial review, one of the most important accountability tools the public has to uphold the rule of law, can be seen as nothing less than a retrograde step.

17. I am happy to elaborate on any of these points or to address any questions you may have. Thank you for your time.

[12] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).