Opening Statement of Eilis Barry (FLAC Chief Executive) to the Oireachtas Joint Committee on Justice, Home Affairs and Migration

Pre-Legislative Scrutiny of the General Scheme of the Civil Reform Bill 2025

24 March 2026

FLAC is very grateful for the opportunity to appear before the Committee.

FLAC would welcome any court reforms that would improve accessibility,[1] efficiency effectiveness and reduce delays - especially in areas like judicial review. However, we have serious concerns about the General Scheme of the Civil Reform Bill. While our concerns extend to the whole General Scheme, this statement focuses in particular on the changes to judicial review proposed in Part 3.

These proposals span the rules on time limits, standing, costs, alternative remedies, appeals, jurisdiction, the court's discretion, and the threshold for getting permission to take a case. Separately and cumulatively, they constitute a radical curtailment of access to judicial review, and are likely to have a disproportionately negative impact on people trying to establish and vindicate their rights to very basic public services.

FLAC has acted in many judicial review cases which have resulted in homeless families being able to access social housing or emergency accommodation, children with disabilities being able to access additional educational supports, and people living in poverty being able to access basic social welfare payments. The reason for these cases (and their high success rate) is poor-quality decision-making by public bodies and the lack of an alternative meaningful way to make an appeal.

If the General Scheme is implemented, it is very likely that it will be extremely difficult, if not impossible, for the average person to challenge unlawful actions in any case that is complex or is without precedent – in that it involves a new point of law or public interest. We represented John O'Meara in his successful judicial review about entitlement to the Widowers' Pension. He was highly praised by all parties in the Oireachtas for taking that case, yet it is exactly the type of case which would be

[1] For example, we have long called for outdated court, rules, forms and procedures to be updated through a process led by more diverse court rules committees which include court users.

blocked by the General Scheme.[2] The General Scheme would have created significant barriers in other FLAC cases, such as those taken on behalf of families refused access to the July Provision scheme.[3]

The Fundamental Importance of the Judicial Review can't be overstated.

JR is a core component of access to justice, the rule of law and democracy. It is often the only way for ordinary people to challenge laws, decisions or actions taken by a wide range of public bodies which are contrary to their legal, constitutional or fundamental rights, or which deny them access to essential public services.

JR is fundamentally about accountability - ensuring that government and public bodies do not or ignore the laws which have been passed by the members of the Oireachtas, exceed their authority, or act in an unfair or unlawful way. JR gives effect to the rights of access to justice, the courts, and good administration - which are protected by the Constitution, European law, the Aarhus Convention and human rights law. It is open to doubt as to whether the proposed changes are consistent with these standards.

JR is already highly inaccessible. The many barriers include the absence of legal aid, the need to find lawyers willing to act 'no foal, no fee,' the restrictive three-month time limit, and, in certain cases, difficulties in getting costs even if the case is successful.[4] It can take up to three months just to get permission to take the case, and then over a year for a case to be heard.[5]

[2] The *O'Meara* case raised novel issues which had not been considered by the Irish courts before. It is very difficult to see how such a case could meet the requirement proposed in the General Scheme for applicants to show that they have a "*reasonable prospect of success*" at the very outset of the case.

[3] The new two-month time limit for judicial review cases which is proposed would create a huge barrier in any case involving disability rights and which requires medical and expert evidence.

[4] If a JR case is taken against a lower court or tribunal, it can be very difficult to obtain costs if the case is not disputed.

[5] FLAC's submission to the Committee sets out the existing barriers to taking a JR case in further detail and also sets out our practical experience of representing clients in such cases. See: FLAC (2026), Don't Shoot J.R.! An Access to Justice Analysis of the General Scheme of the Civil Reform Bill 2025: Submission to the Joint Committee on Justice, Home Affairs and Migration (and Executive Summary), section 1.3.

The General Scheme proposals radical restrictions which we go through in detail in our submission.[6]

The effect of each change proposed would be to restrict or block access to judicial review - making certain actions by the State effectively immune from challenge. Limiting access to JR will only make the quality of public administration and decision-making worse by removing a key guardrail. It would put in place even more restrictive rules for cases in areas like environmental and immigration law. The barriers created by the General Scheme could even block constitutional challenges against the State taken outside of the judicial review process.[7]

There is a major lack of consultation, transparency, explanation and evidence.[8]

It is inexplicable, wholly unsatisfactory and a major cause of concern that the General Scheme does not include an explanatory section beneath each head which sets out the purpose, rationale and intended effects of each draft provision. The General Scheme is unintelligible to non-legal readers and most of the people who will be impacted by the changes it proposes. No supporting documentation has been published alongside the General Scheme. No evidence-based rationale has been articulated or produced in relation to the changes it sets out.

The General Scheme should not proceed.

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[6] The General Scheme would:

- reduce the time limit to eight-weeks in most cases,
- move many cases from the High Court to the Circuit Court,
- limit access to appeals,
- require people to show that they have "*a reasonable prospect of success*" instead of the current requirement to show arguable grounds, and
- limit the circumstances where people who have successfully shown that the State acted unlawfully are awarded their costs.

See further: FLAC (2026), Don't Shoot J.R.! An Access to Justice Analysis of the General Scheme of the Civil Reform Bill 2025: Submission to the Joint Committee on Justice, Home Affairs and Migration (and Executive Summary), section 2.

[7] The General Scheme may also impact on people's ability to take constitutional challenges about decisions of public bodies by way of 'plenary proceedings.' Plenary cases are a separate process to judicial review – with different rules, procedures and time limits. Unlike JR cases, evidence is usually given orally in plenary cases (rather than by way of sworn affidavits).

[8] See further: FLAC (2026), Don't Shoot J.R.! An Access to Justice Analysis of the General Scheme of the Civil Reform Bill 2025: Submission to the Joint Committee on Justice, Home Affairs and Migration (and Executive Summary), section 1.6.

We have written to the Minister[9] and have asked the following questions which need to be answered as a matter of urgency:

- Why are these changes – which will impact JRs about social welfare, social housing, and education and which have nothing to do with planning and infrastructure – part of the *Accelerating Infrastructure* plan and contained in the Scheme?
- Why do the changes contained in the Scheme go way beyond those which were recommended by the Kelly Review[10] and in LRC reports, and why does it include changes which were not even considered in those reports?
- Has there been any human rights, equality and access to justice impact assessments? If not, when will this happen?
- Why hasn't the Department published a clear and accessible statement of the law pertaining to judicial review and each of the areas where changes are under consideration? When will it do so?
- Why has there been no consultation about these proposals? FLAC has been assured by the Department that there would be consultation about judicial review, but this has never happened. Is it going to happen?
- What consideration has been given to improving the quality of, and reducing delays, in decision-making by public bodies especially in areas like social welfare and social housing?[11]

The courts need to be treated like an essential social service, and adequately resourced so that JRs can be heard promptly. The 'leave requirement' for judicial review should be removed. We need to ensure that the courts are accessible and

[9] We have also sought a meeting with the Minister.
[10] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*.
[11] Such improvements should ensure that people's rights and entitlements are respected at the outset without the need for lengthy and costly application, appeal and litigation processes. Where bad decisions are made, there should be accessible ways to appeal those outcomes. For example, a tribunal dealing with social housing and homelessness which deals with issues like refusal to provide emergency accommodation is needed.

efficient; outdated and unnecessarily complex court, rules, forms and procedures need to be updated across the board.[12]

Conclusion

FLAC has titled our submission an attention-grabbing – ***Don't Shoot J.R.!*** [13] We do not use this slogan to be flippant but to highlight the deeply serious concerns which I have outlined, and which are set out in detail in our written submission.

We are happy to answer any questions.

[12] For example, a working knowledge of legal latin is required to understand the orders which may be sought from the court in a JR case, and hundreds of euros of stamp duty need to be paid just file the papers needed to start a case. The stamp duty payable on the 'originating' statement of grounds is €90, the '*ex parte* docket' is €60, and each affidavit is €20.

[13] FLAC's written submission to the Committee may be accessed here.