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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)

February 2026

About FLAC

FLAC (Free Legal Advice Centres) is an independent legal, human rights and equality organisation which works in a number of different ways to promote access to justice:

- **In 2024, our Telephone Information and Referral Line received over 53,000 calls. FLAC also provides Phone Legal Advice Clinics.**
- **Our independent law centre provides targeted legal services for the Traveller and Roma communities, and also undertakes public interest litigation (i.e. cases which may have an impact beyond the individual).**
- **FLAC operates PILA (the Public Interest Law Alliance) which facilitates NGOs in obtaining legal assistance from private lawyers via its pro bono referral scheme.**
- **FLAC makes policy recommendations in relation to areas of law that most impact on people living poverty and disadvantage, including equality and anti-discrimination law, social welfare law, credit and debt law, housing law, human rights law, and access to justice. This includes policy reports and submissions to national and international bodies, including Oireachtas Committees and human rights monitoring bodies.**

FLAC's perspective on judicial review is based on our considerable experience representing clients in judicial review cases through our Independent Law Centre and its Roma Legal Clinic and Traveller Legal Service. These cases mostly concern access to the most basic and essential public services such as social welfare, emergency accommodation and social housing, as well as other critical areas such as education and citizenship.

FLAC's judicial review casework and our previously policy/law reform work in relation to judicial review is outlined in section 1.3. of this submission.

Given the complexity and breadth of the General Scheme, it was not possible to consider every issue arising under each head in a comprehensive way. The General Scheme is a dense and complex document which was not accompanied by any explanatory memorandum or supporting material. This submission provides FLAC's preliminary analysis of what we have identified as the most significant issues to arise from the General Scheme.

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Introduction

1. FLAC is very grateful for the opportunity to make a submission to Joint Committee on Justice, Home Affairs and Migration ('the Justice Committee') about the General Scheme of the Civil Reform Bill 2025 ('the General Scheme'). We wish to support the work of the Justice Committee and its members in this regard to the greatest extent possible. We would be pleased to provide any further information that may be of use and to appear before the committee to address the matters raised in this submission.

Executive Summary[1]

2. Access to the courts is a vital part of access to justice and FLAC would welcome any reforms of the courts that would improve accessibility and efficiency and which would reduce delays, especially in areas like judicial review, as well as any proposals that would make court rules, forms and procedures more accessible. Regrettably, Part 3 of the General Scheme would have a negative impact on access to, and accessibility of, the courts by reducing access to judicial review – access to which is already beyond the reach of many citizens.

3. The fundamental importance of access to judicial review cannot be overstated. Judicial review is a core component of the rule of law and access to justice. No other remedy holds the state and public bodies to account for unlawful behaviour to the same extent. It means that no government department or public body is above the law and is an essential part of our democracy. Judicial review is how ordinary citizens can hold the State to account in circumstances where the Government or public bodies act outside of the law or in a way that is contrary to their fundamental rights. It has been described as a "*corrective to Government misconduct.*" The Irish Supreme Court has described judicial review as "…***the great remedy available to citizens****, on application to the High Court, when any body or tribunal (be it a court or otherwise), having legal authority to affect their rights and having a duty to act judicially in accordance with the law and the Constitution, acts in excess of legal authority or contrary to its duty.****"***

4. There are already very significant barriers to ordinary citizens taking judicial review cases. These include the lack of legal aid, the legal resources readily available to the State to defend itself and significant procedural impediments.

5. 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 and rationale for each draft provision. The General Scheme is unintelligible to non-legal readers

[1] This Executive Summary draws from the three sections of this submission and is followed by a set of recommendations.

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 which would reduce access to judicial review. As is discussed in section 1.6. of this submission, there has been no meaningful consultation about these proposals despite commitments made that there would be.

6. No explanation has been provided as to why the General Scheme goes significantly beyond the recommendations concerning judicial review which were included in the report to emerge from the Review of the Administration of Civil Justice (and FLAC would disagree with the evidence basis for a number of those proposals) or the report of the Law Reform Commission on judicial review. There has been no adequate empirical analysis of judicial review cases before the courts, their outcomes and the link between the number of judicial reviews and the low quality of decision making by public bodies in a number of areas. In circumstances where there is a dearth of research in the area of judicial review, we would ask what the evidence and policy basis for the proposals are?

7. FLAC has grave concerns that the proposed changes to judicial review which - with the introduction of several new mandatory criteria which must be met before the court can grant relief, the introduction of a 'significant benefit' test before a case can be given permission to proceed, restrictive new costs rules, shortened time limits, restrictions on who has standing to take a case, new limits on the right to appeal, and transfer of jurisdiction to the Circuit Court for many cases - constitute a radical curtailment of access to judicial review. These proposed changes are likely to have a disproportionately negative impact on citizens trying to establish and vindicate their rights to very basic services like social welfare and emergency accommodation. It is most likely that it will be extremely difficult, if not impossible for citizens, to challenge unlawful actions in any case that is complex or involves a new point of law or public interest that is without precedent. It is very unlikely that cases like *O'Meara* (in which the O'Meara family, who were represented by FLAC, successfully challenged their exclusion from access to a Widower's Pension payment) would be able to get permission to apply for judicial review under the proposed new regime.

8. The General Scheme is likely to have an impact on all constitutional challenges (including those brought by plenary summons rather than through the judicial review process) and it is not clear that these impacts have been properly considered or thought through.

9. It is open to doubt whether the proposed reforms are consistent with the constitutional right of access to the courts and the rights in European Union law to good administration and effective remedies. The Government should seek the advice of the Irish Human Rights and Equality

Commission regarding the General Scheme's compliance with human rights and equality standards, including those arising from the Constitution and European law.

10. Under the new regime which is proposed, it is likely that unlawful decisions of public bodies will go unchallenged and any incentive for public bodies to correct unlawful action will be removed or diminished. These proposals are likely to reduce effective governance, oversight and accountability, and access to justice. The General Scheme proposes a highly regressive piece of legislation which is likely to undermine the rule of law in Ireland, the guardrails on executive power, and the basic democratic principles that Government and public bodies should be accountable to the public and that they are required to act within the law.

11. An opportunity has been missed to comprehensively update court rules, forms and procedures, and to make them accessible (including for people with disabilities). The current proposals should not be proceeded with. The Government needs to go back to the drawing board and engage in consultation and engagement with stakeholders.

The Rule of Law

12. The rule of law is a fundamental democratic principle which means that the laws which are enacted by the Oireachtas are upheld and respected by everyone, including the State and public bodies. In our constitutional system, the oversight provided by the courts, including through judicial review, ensures that this is the case. There is a strong public interest in the Court determining whether the Government has acted legally. Reducing access to judicial review in the drastic manner proposed further insulates the State from accountability or challenge. It could result in a situation where unlawful actions are tolerated and the laws enacted by democratically elected public representative can be ignored.

The Rights of Access to the Court, to an Effective Remedy and Good Administration

13. The changes proposed in Part 3 of the General Scheme would greatly reduce citizen's access to the courts which is a core component of the right of access to justice, and their entitlement to an effective remedy when their rights are breached. These rights are protected by article 6 of the European Convention on Human Rights, articles 41 (the right to good administration) and 47 (the right to an effective remedy) of the European Union Charter of Fundamental rights, article 19 of the Treaty on European Union, article 14 of the International Covenant on Civil and Political Rights, and article 9 the Aarhus Convention.

Poor Quality Decision-Making

14. At the recent conference on civil legal aid held by FLAC in conjunction with the Law School at Trinity College Dublin, Professor Áine Ryall (Co-Director of the Centre for Law and the Environment at University College Cork and Chair of the Aarhus Convention Compliance

Committee) described the recent emergence of a strong anti-rights, anti-Aarhus and anti-rule of law narrative in Ireland. This narrative has sought to frame judicial reviews as a barrier to the resolution of the housing/homelessness crisis and addressing Ireland's infrastructure deficits. It overlooks the two central reasons for most judicial review cases and the strikingly high success rate of those cases, namely:

- poor-quality administrative decision-making, and
- the lack of accessible and independent appeals mechanisms in respect of those decisions in certain areas.

15. There are analyses which suggest that higher numbers of judicial reviews in particular areas are linked to problems with decision-making. The General Scheme is part of a trend of changes in the law which ignore the root cause of the number of judicial reviews (i.e. poor decision-making) and the absence of alternative remedies, and instead just attempt to make it more difficult to seek judicial review.

Fundamentally Flawed Policy Development Process

16. A large number of major changes which would impact judicial review are currently under consideration by Government. The process for advancing these proposals is spread across different Departments, public bodies, General Schemes and consultation processes. It is confusing and wholly unsatisfactory and lacking in transparency that the present proposed changes to the judicial review process were first set out in an Infrastructure Plan. The public cannot be expected to know that proposals in that plan will significantly impact general (i.e. non-planning) judicial reviews. General judicial review cases concerning access to social welfare, emergency accommodation and supports for children with additional educational needs have nothing to do with "*accelerating*" the delivery of infrastructure. The reality is that the proposals will 'deliver' significant barriers to justice and 'accelerate' the decline of the rule of law in this jurisdiction.

17. The current slate of changes are being pursued at break-neck speed before the last set of major changes to judicial review (contained in the provisions of the Planning and Development Act 2024 which were commenced in August 2025) have bedded in. It does not seem possible that the impact of those changes can yet be understood. This current batch of changes are being pursued before any effort has been made to improve the very poor quality of decision-making by public bodies (which is the main reason for the number of judicial reviews taken in Ireland) and while the work of the Law Reform Commission in relation to 'non-court adjudicative bodies' is still only at the very early consultation stage.

18. The policy development and consultation processes which have led to (and in relation to) the current slate of proposed changes to judicial review have consistently been inadequate. In our recent submission to the consultation on the introduction of a scale of fees for environmental judicial reviews, FLAC highlighted that that process was "*fundamentally flawed and should be abandoned.*"

Complexity of what is Involved

19. The law concerning judicial review is vast and complex. It includes rules of court and hundreds of judgments interpreting those rules, legislation, the Constitution, European law and international law. There are separate rules and legislation dealing with judicial reviews in specific areas such as planning/environmental and immigration/international protection. Constitutional challenges can also be brought by way of plenary proceedings. A policy development process in relation to judicial review should be underpinned by a clear statement of and analysis of all of these sources of law. It does not appear that any such analysis has ever taken place nor has any such statement ever been produced or published.

Recommendations

- **Changes to the judicial review process should only be advanced where they have emerged from a transparent and evidence-based policy development process, including an inclusive and accessible consultation process.**
- **The current slate of proposed changes to the judicial review process (included in the Accelerating Infrastructure Report and Action Plan, and the General Scheme of the Civil Reform Bill) have not emerged from such a process and should be abandoned by Government. Likewise, the proposal to introduce a scale of fees for environmental judicial reviews should be abandoned.**
- **Any transparent and evidence-based policy development process concerning judicial review should:**
    - **Involve preparation and publication of clear statements of the relevant national, international and European legal obligations (including access to justice obligations) which apply to the State and how they will be met on foot of any proposed changes to the judicial review process.**
    - **Involve the publication of a specific policy rationale and evidence basis for any and each proposed change.**
    - **Involve a detailed empirical analysis of the available data on the number of judicial reviews and their outcomes, and a study of the link between the number**

of judicial reviews (and their outcomes) and the quality of decision-making by public bodies.

- **Include a comprehensive and inclusive consultation process on all aspects of any proposed changes to the judicial review process (and not just the proposal to introduce a scale of fees). Views should be sought from a wide range of stakeholders who will be affected by the proposals, statutory bodies (including the Irish Human Rights and Equality Commission), and representatives from civil society and NGOs (including Independent Law Centres such as FLAC, Mercy Law Resource Centre, the Immigrant Council and Community Law and Mediation).**
- **Give effect to State Bodies' obligations arising from the Public Sector Equality and Human Rights Duty under section 42 of the Irish Human Rights and Equality Commission Act 2014.This includes consulting with the representatives of groups protected by the equality legislation.**
- **Involve the provision of support to impacted communities (and civil society groups representing them) to allow them to engage fully with the consultation process. This must involve the publication of clear and accessible consultation material in a timely manner.**
- **Take place within a reasonable timeframe which allows all stakeholders to respond to the proposals fully.**
- **Properly consider alternative proposals for reform of judicial review, such as the potential removal of the requirement to 'seek leave' to pursue a judicial review case (which as previously been recommended by FLAC, judges of the Court of Appeal, and leading administrative law academics).**

- **The Government should identify what steps it intends to take to drastically improve the quality of administrative and quasi-judicial decision-making by State bodies, thus mitigating the need for judicial review at the outset. The work of the Law Reform Commission in this area will be vitally important and needs to be expedited.**
- **The Courts should be properly-resourced to deal with judicial review cases to allow them to be heard more quickly and to reduce the very significant delays of up to a year in hearing them.**
- **Legislation should be brought forward to diversify the Court Rules Committees and to ensure that their membership includes representatives of the Independent Law Centres, organisations that support victims of domestic, gender-based and sexual**

violence, Disabled Persons's Organisations and court users (and potential users). These diversified committees should lead a structured and participatory process for the reform, simplification and disability-proofing of court rules, forms and procedures which involves relevant civil society organisations. The other civil reforms outlined in Part 4 of the General Scheme should be paused and re-examined as part of that process. Diversified Court Rules Committees should also be centrally involved in the preparation of a publicly-available Equal Treatment Bench Book which provides guidance to judges, lawyers and court users on ensuring equal treatment in the courts and tribunals.

1. Context & Background

20. This section seeks to place the sweeping changes to judicial review in context by setting out the background to the proposals, the other changes to judicial review which are being advanced at present, the fundamental importance of judicial review and FLAC's experience of its practical role and benefits.

1.1. What is Judicial Review?

21. There are a number of ways of defining judicial review and its role. Delany and McGrath state:

> *"The purpose of judicial review is to provide a form of supervision in relation to decisions made and actions taken by lower courts and administrative bodies to ensure that the functions conferred on these authorities are carried out lawfully. Judicial review involves an assessment of the manner in which a decision has been made; it is not an appeal and the jurisdiction exercised is supervisory in nature."*[2]

22. Hall highlights that judicial review plays two major roles:

- First, "…*judicial review is a procedural process whereby an aggrieved person can seek relief if the matter in dispute comes within the public law domain. Essentially, judicial review, in this context, is a speedy procedure whereby the supervisory jurisdiction of the High Court is invoked in relation to decisions taken in the exercise of powers conferred by public law. There is a considerable array of public and statutory bodies which are subject to control by judicial review. These include, where appropriate, Ministers of the Government (the Executive), the District and Circuit Courts, local authorities, statutory tribunals, and semi-State bodies when exercising their statutory powers*."[3]
- Second, judicial review is a power expressly conferred by the Constitution onto the High Court. It is "…*a process whereby laws enacted by the Oireachtas can be reviewed by the High Court and Supreme Court and struck down as invalid if they are inconsistent with the 1937 Constitution*."[4] Applicants often seek to have laws judicially reviewed as part of judicial review cases concerning the actions of public bodies. For example, in the *O'Meara* case, the applicants successfully challenged a decision to refuse them access to a payment under the Widower's Pension scheme on the basis that the legislation excluding them from the scheme was unconstitutional.[5]

23. Morgan states:

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[2] Hilary Delany & Declan McGrath, *Civil Procedure in the Superior Court* (Round Hall, 3rd edn., 2012), p.1004.
[3] Eamonn G. Hall, *Chapter 14: Judicial Review* in *Law Society of Ireland: Civil Litigation* (Oxford University Press, 3rd edn., 2013), pp.305-6.
[4] ibid at p.305.
[5] *O'Meara v Minister for Social Protection* [2024] IESC 1.

"The High Court's power of judicial review is an inherent one which is designed to ensure that all forms of public body - Ministers, tribunals, public inquiries, university visitors, Oireachtas committees - exercising public functions, do not exceed their jurisdiction. In addition, the sweep of judicial review extends to the decision of a lower court (District, Circuit or Special Criminal Court); but not of a Superior Court of record (High Court, Court of Criminal Appeal and the Supreme Court)"[6]

24. Donson and O'Donovan emphasise that *"the practical utility of the [judicial] review mechanism as a corrective to Government misconduct is dependent upon procedural gateways, together with the eventual provision of effective redress*."[7] This is a critically important point. The process for applying for judicial review is set out in detail in the next section of this submission.

1.2. The Fundamental Importance of Judicial Review

25. The fundamental importance of access to judicial review cannot be overstated. Judicial review is a core component of both the rule of law and access to justice. No other remedy holds the State and public bodies to account for unlawful behaviour to the same extent. It means that no Government Department or Public Body is above the law and it is an essential part of our democracy.

26. Lord Reed, in the *Unison*[8] case, provided a powerful statement of the fundamental purpose and value of judicial review which reflects its role in upholding the rule of law:

"At the heart of the concept of the rule of law is the idea that society is governed by law. Parliament exists primarily in order to make laws for society in this country. Democratic procedures exist primarily in order to ensure that the Parliament which makes those laws includes Members of Parliament who are chosen by the people of this country and are accountable to them. Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other."

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[6] David Gwynn Morgan, *Hogan & Morgan's Administrative Law: Student Edition* (Round Hall, 4th edn., 2012), p.560.
[7] Fiona Donson & Darren O'Donavan, *Law and Public Administration in Ireland* (Clarus Press, 2015), p.555.
[8] *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51 at para 69.

27. The Irish Supreme Court have stated judicial review is "…*the great remedy available to citizens, on application to the High Court, when any body or tribunal (be it a court or otherwise), having legal authority to affect their rights and having a duty to act judicially in accordance with the law and the Constitution, acts in excess of legal authority or contrary to its duty*."[9]

Access to the Courts, Good Administration and Effective Remedies

28. Judicial review gives effect to the constitutional right of access to the courts, as well as the rights guaranteed in European law:

- Article 6 of the European Convention on Human Rights guarantees the right to a fair trial. In its landmark decision in *Airey v Ireland*[10], the European Court of Human Rights held that the Convention "*is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective*."
- Article 41 of the European Union Charter of Fundamental rights provides for the "*right to good administration*."[11]
- Article 47 of the European Union Charter of Fundamental rights provides: "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article*."
- Article 19(1) of the Treaty on European Union provides: "*Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law*."

29. The significance of the access to justice and the rule of law from the perspective of EU law and policy was reflected in the remarks of Commissioner Michael McGrath at the FLAC and TCD Law School Conference on Civil Legal Aid Reform in January 2026:

> *"…access to justice is not merely a legal principle; it is a cornerstone of democracy, a pillar of the rule of law, and a foundation for social cohesion. Without it, the promises of equality and fairness enshrined in our laws are hollow. Our commitment must be that justice is not only theoretical, but practical and effective.*

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[9] *State (Abenglen Properties Ltd.) v. Dublin Corporation* [1984] IR 381 at 392.
[10] Application No. 6289/73.
[11] *"1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union… 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States."*

… Article 47 of the EU Charter of Fundamental Rights guarantees the right to an effective remedy and legal aid where necessary, and the Court of Justice has made clear that this support must be real, sufficient, and accessible."[12]

30. Failure to comply with the relevant EU law standards raises financial and reputational risks for the State. These risks will be heightened during Ireland's Presidency of the Council of the European Union when our credibility on issues such as fundamental rights and the rule of law is crucially important.

The Aarhus Convention

31. The right of access to justice is also reflected in international human rights law, including article 14 of the International Covenant on Civil and Political Rights and the Aarhus Convention. The Aarhus Convention is at the heart of ensuring environmental democracy, by laying down a set of basic procedural rights for the public, imposing obligations on public authorities to make these rights effective, increasing transparency, and making governments more accountable to the public. Article 9 of the Aarhus Convention is explicitly concerned with access to justice:

- Article 9(3) states that parties to the Convention (such as Ireland) "*shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment*." The Court of Justice of the European Union has held that "*if the 'effective protection' of EU environmental law is to be delivered, Article 9(3) could not be interpreted by a national court in such a way as to make it impossible in practice or excessively difficult to exercise rights conferred by EU law.*"[13]
- Article 9(4) provides that national judicial procedures "*shall provide adequate and effective remedies, … and be fair, equitable, timely and not prohibitively expensive*." The Aarhus Convention places special emphasis on the role played by NGOs in environmental protection, in particular by enabling them to enforce the law in the public interest.[14] However, the Irish civil legal aid legislation contains a blanket ban on the provision of legal aid in test cases. Further, only individuals can apply for legal aid which

[12] European Commission (2026), *Speech by Commissioner McGrath on the Access to Justice at the FLAC and Trinity College Conference on "Civil Legal Aid: From Review to Reform"*.
[13] Áine Ryall (2019), *The Aarhus Convention: Standards for access to justice in environmental matters* (in Turner, S. J., Shelton, D.L., Razzaque, J., McIntyre, O., May, J. R. eds., *Environmental Rights: The Development of Standards*, Cambridge University Press), pp.116-146.
[14] ibid.

means that it is not available to NGOs, including environmental NGOs, under any circumstances.[15]

1.3. FLAC's Significant Experience of Judicial Review

32. FLAC's perspective on judicial review is based on our considerable experience representing clients in judicial review cases through our Independent Law Centre and its Roma Legal Clinic and Traveller Legal Service. These cases mostly concern access to the most basic and essential public services such as social welfare, emergency accommodation and social housing, as well as other critical areas such as education and citizenship. The vast majority of our clients are experiencing poverty. In most instances, they have very low incomes and no assets or resources.

33. FLAC's experience generally relates to 'general' judicial review i.e. cases outside of the two areas where bespoke and more restrictive procedures apply (namely planning and environmental judicial reviews and international protection, immigration and citizenship judicial reviews).

34. FLAC is keenly aware of how extraordinarily difficult it is to take a judicial review case, the complexity of the legal issues which can arise in those cases, and the existing barriers to seeking judicial review:

- In theory, civil legal aid could be provided in judicial review cases, but this does not happen in practice. The Legal Aid Board is not in a position to provide FLAC's clients with legal assistance in judicial review cases.
- FLAC relies heavily on barristers who will act on a 'no foal-no fee' basis in judicial review cases. This means that the barristers will only be paid if the case is successful and costs are recovered.
- The judicial review process includes procedural requirements that do not arise in other types of proceedings. A person seeking judicial review has to apply for 'leave' (i.e. permission of the court) to bring judicial review proceedings within a strict three-month time-limit and is also required to show that they have exhausted all other alternative remedies. A huge amount of work goes into the leave application which involved written submissions and an oral hearing.

[15] As the Civil Legal Aid Minority Report (which was written by FLAC Chief Executive Eilis Barry and which FLAC has endorsed) highlighted, this is clearly at odds with the Aarhus Convention. In *Friends of the Irish Environment CLG v The Legal Aid Board* [2023] IECA 19., Murray J stated that he accepts "*there is an argument that the complete exclusion of legal persons from the possibility of obtaining legal aid in cases involving issues of EU law might, at least in certain circumstances, present a breach of Article 47(3) of the Charter of Fundamental Rights of the EU*." See further: Department of Justice, Home Affairs & Migration (2025), *Civil Legal Aid Review - Minority Report*, p.12 & 46.

- After filing papers for the leave application (which must be done within the three-month time-limit), FLAC's experience is that the applicant must then wait for six or seven weeks for their 'slot' when the application is heard. After the leave stage, it takes then a year to eighteen months to get the case on for hearing. On occasion, the leave application has to be heard 'on notice' to the other side which means that there may be two hearings in relation to the leave application, and then a third hearing in relation to the case itself.

35. FLAC is also keenly aware of the practical benefits that judicial review has for our clients. It is often the only means through which they can challenge unlawful decisions which have had a negative impact on their lives and rights, including decisions refusing access to basic social welfare payments, social housing supports, emergency homeless accommodation or education. Groups such as Travellers, Roma and people with disabilities, for example, have very little say over the content of our laws or over how public bodies apply the law. Judicial review goes some way in redressing the severe power imbalance experienced by marginalised and disenfranchised groups who may otherwise be unable to challenge wrongdoing by the powerful State bodies which exercise significant levels of control over many aspects of their lives.

36. The practical importance of judicial review for people's lives and rights and in holding power to account is borne out by FLAC's casework:

    - FLAC represented John O'Meara and his children in their recent landmark judicial review case concerning their exclusion from the Widower's Pension Scheme.[16] In the Dáil debates about Bereaved Partner's Pension Bill (i.e. the legislation introduced as a result of the *O'Meara* decision), it was suggested that there are up to 150,000 cohabiting couples/families who could potentially benefit as a result of the *O'Meara* case.[17]

    - In 2019, two sets of judicial review proceedings (and linked Equal Status complaints on the disability ground) concerning access to the July Provision Scheme (which provides for an extended school year for children with additional educational needs) against the Department of Education were settled in favour of FLAC's clients with the families receiving compensation. The terms of the settlement are confidential.[18] Subsequent to those cases, the Department significantly expanded eligibility for the July Provision Scheme.

    - FLAC acted for an elderly Roma couple in a successful judicial review case concerning South Dublin County Council's failure to assess their housing application. The judgment

[16] *O'Meara v Minister for Social Protection* [2024] IESC 1.
[17] Houses of the Oireachtas (2025), *Dáil Éireann debate - Thursday, 27 Mar 2025*.
[18] FLAC (2020), FLAC Annual Report 2019, p.36.

in *H v South Dublin County Council* [2020] 2 IR 775 has benefited all subsequent applicants for social housing supports in that it clarifies the obligation on local authorities to deal with an application within the three-month statutory time limit. In his judgment, McGrath J noted that this obligation on local authorities "*arises in the context of the statutory regime addressing, in so far as is possible, the important social objective of assisting the homeless and those without or in need of housing*."[19]

37. FLAC has acted in a very significant number of judicial review cases on behalf of members of the Traveller community in relation to access to social housing supports, including Traveller-specific accommodation, and emergency accommodation. Often these cases are the only means through which institutional and societal discrimination experienced by members of the Traveller community in the context of housing can be challenged. Judicial review has also proven to be one of the only mechanism for challenging systemic issues faced by Travellers in the social housing system, such as inappropriate police interventions in the process of allocating social housing to Travellers.[20]

38. Similar patterns have emerged in FLAC's experience of our Roma Legal Clinic, particularly in advocating on behalf of Roma families who were excluded from accessing social housing supports on the basis of a Department of Housing Circular which purports to provide guidance to local authorities in "*considering whether to accept an application for social housing support from a non-Irish national.*" In 2020 alone, FLAC advocated for five Roma families who were unable to access social housing on the basis of the Circular despite being lawfully resident in the State under EU law. A feature of FLAC's experience of casework involving the Circular is the fact that, while local authorities rigidly applied it at first instance, they did not appear to be prepared to defend decisions made pursuant to it when faced with the fact or threat of judicial review proceedings. In each case in 2020 where FLAC initiated or threatened judicial review proceedings in relation to decisions made on the basis of the Circular, the local authority agreed to assess (or re-assess) housing applications without reference to the Circular. In each instance, the applicants were deemed eligible for social housing supports.[21]

39. FLAC's experience of judicial review has informed our policy and law reform work. This includes a submission in 2019 about High Court Practice Direction 81(which sought to introduce restrictive protocols in immigration/international protection judicial reviews), and a submission to the Courts Service on their most recent Strategic Plan which called for "*an*

[19] The FLAC Casebook (29 June 2021), *A Barrier to EU Nationals accessing Social Housing Supports: The Impact of Housing Circular 41/2012 on Roma families in Ireland*.
[20] FLAC (2021), FLAC Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland, section 7.
[21] The FLAC Casebook (29 June 2021), *A Barrier to EU Nationals accessing Social Housing Supports: The Impact of Housing Circular 41/2012 on Roma families in Ireland*.

inclusive, transparent and participatory review of judicial review practice and procedures (including an examination of the relevant fees) with the involvement of relevant civil society organisations and stakeholders."[22]

1.4. Other Proposed Judicial Review & Civil Justice Reforms

40. The General Scheme is part of a pattern of rapid and repeated changes to the judicial review process. Judicial review in the planning and environmental context was only recently overhauled by Part 9 of the Planning and Development Act 2024 which was commenced in August 2025.[23] It is already proposed to amend that legislation by way of the General Scheme of Planning and Development (Amendment) (No. 2) Bill 2025.[24]

41. In December 2025, the Accelerating Infrastructure Report and Action Plan (the "Infrastructure Plan") was published.[25] That plan contains a slate of further proposed changes to judicial review. These changes would impact all forms of judicial review and extend far beyond cases concerning infrastructure. The responsibility for implementing (and supporting the implementation of) the judicial review proposals in the Infrastructure Plan is spread across five different Government Departments and two State Bodies.[26]

42. A proposal to introduce a scale of fees for environmental judicial reviews is outlined in Action 1.i of the Infrastructure Plan. The Department of Climate, Energy and the Environment has since run a consultation in relation to that proposal.[27]

43. Action 1 of the Infrastructure Plan also proposes to:

> *"ii. Implement the process and procedural enhancements contained in Chapter 1 of Part 9 of the PDA 2024*
>
> *iii. Investigate and implement a series of further reforms to judicial review, including but not limited to:*

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[22] FLAC (2024), *FLAC Submission to the Courts Service on their Strategic Plan for 2024-2027*, p.iv.
[23] S.I. No. 379/2025 - *Planning and Development Act 2024 (Commencement) (No. 3) Order 2025*.
[24] Department of Housing, Local Government and Heritage (2026), *General Scheme of Planning and Development (Amendment) (No. 2) Bill 2025*.
[25] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, *Accelerating Infrastructure Report and Action Plan*, p.72.
[26] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, the Department of Justice, Home Affairs and Migration, the Department of Climate, Energy and the Environment, the Department of Housing, Local Government and Heritage and the Department of Housing, Local Government and Heritage, as well as the Courts Service and the Office of the Attorney General.
[27] Department of Climate, Energy and the Environment (2025), *Consultation on Scale of Fees Under the Planning and Development Act 2024 opens*.

- *Commencing new standing requirements of the Planning and Development Act 2024. Examining further reforms to standing, prioritising parties directly affected by projects;*
- *Whether requiring the assessment of the likelihood of success before granting leave will accelerate cases;*
- *Examining the appropriateness of fee structures, including "no foal, no fee" and an examination of own costs rules, including the use of the UK model capping costs for unsuccessful applicants*
- *Implementing enhancements to ensure all avenues must be exhausted prior to the issuance of quashing orders*
- *Reforms to court procedures to provide for expedited hearings*

iv. Introduce legislation progressing agreed package of further reforms from step iii."[28]

44. Action 7 of the Infrastructure Plan commits to the introduction of a Civil Reform Bill to "*codify law on judicial review by placing it on a statutory basis*."[29] That proposal is advanced in the present General Scheme of the Civil Reform Bill 2025. The General Scheme would alter every aspect of the judicial review process. It also contains a number of major "*civil reforms*" which would also impact judicial review cases.

1.5. Poor Quality Decision-Making: The Reality behind the Number of Judicial Reviews

45. At the recent conference on civil legal aid held by FLAC in conjunction with the Law School at Trinity College Dublin[30], Professor Áine Ryall (Co-Director of the Centre for Law and the Environment at University College Cork and Chair of the Aarhus Convention Compliance Committee) described the recent emergence of a strong anti-rights, anti-Aarhus and anti-rule of law narrative in Ireland.[31] This narrative has sought to frame judicial reviews as a barrier to the resolution of the housing/homelessness crisis and addressing Ireland's infrastructure deficits. It overlooks the two central reasons for most judicial cases and the strikingly high success rate of those cases, namely:

- poor-quality administrative decision-making, and

[28] ibid.
[29] ibid at p.78.
[30] FLAC, *'Civil Legal Aid: From Review to Reform' - A Conference*.
[31] Professor Ryall has been quoted as making similar comments elsewhere: "*There is an enormous anti-Aarhus rhetoric right now and there is even more seriously an enormous anti-judicial review rhetoric and you could say, if you took it to its logical conclusion, an anti-rule of law rhetoric.*" See: Irish Times (28 November 2025), Plan to raise cost of judicial reviews could lead to people representing themselves in court.

- the lack of accessible and independent appeals mechanisms in respect of those decisions in certain areas.

46. The Civil Legal Aid Review minority report expressly highlighted that "*the low quality of decision-making by State bodies and the resulting appeals to quasi-judicial bodies or the courts increases the overall level of legal need*."[32] It references statistics and studies illustrating this phenomenon in the areas of social welfare, social housing, planning and environmental law:

- Social Welfare: There are long-standing issues with the quality of first instance social welfare decision-making,[33] reflected in the high number of social welfare appeals and the consistent trend whereby most appeals result in a favourable outcome for the appellant.[34] In 2022, 52.1% of a total of over 24,000 appeals were decided in favour of the appellant.[35] This figure is in keeping with recent trends.[36] A 2020 report by the Comptroller and Auditor General commented on "*notable*" discrepancies in the extent of the information provided by Deciding Officers to applicants whose claim had been refused. Noting that an audit of appeal decisions showed that most succeeded on the basis of "*significant additional information"* being provided (rather than on the basis of legal arguments), the report highlighted the need for measures *"to ensure claimants are able to supply all necessary information to assess eligibility when they are making a claim*".[37] There can be significant delays in determining appeals (even in circumstances where the appeal relates to a primary payment and the appellant has no other source of income). In 2023, the average time for an appeal to be decided was 16 weeks. This rises to 29.2 weeks where an oral hearing was required.[38]

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[32] Department of Justice, Home Affairs & Migration (2025), Civil Legal Aid Review - Minority Report, pp.52-3.
[33] In 2015, the United Nations Committee on Economic, Social and Cultural Rights expressed its concerns around the quality of first instance social welfare decision-making in Ireland and "*the large number of social welfare appeals owing to the lack of clear understanding and consistent application of the eligibility criteria*". See: UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, at para. 20.
[34] Christopher Bowes (2024), *All Island Social Security Network Conference Paper: A Human Rights and Equality Analysis of Social Welfare Decision-Making in Ireland*, pp.12-13.
[35] Social Welfare Appeals Office (2023), *Annual Report 2022*, at p.20.
[36] The Social Welfare Appeals Office decides on around 20,000 appeals each year. Between 2015 and 2022, almost 60% of appeal led to decisions in favour of the appellant. See: Social Welfare Appeals Office, Annual Reports.
[37] It was also recommended that: "The Department should carry out periodic reviews of successfully appealed cases where no new or additional material information was provided. These reviews could assist the Department in learning from the cases determined by appeals officers and in improving the quality of decisions made by its deciding officers in determining claims". See: Comptroller and Auditor General (2021), *Report on the Accounts of the Public Services 2020*, Chapter 10: "Management of Social Welfare Appeals".
See also: FLAC (2022), *The "Value for Money" Argument for Rights-Based Social Welfare Decision-Making*.
[38] SWAO, *Annual Report 2023*, p.5.

- Social Housing: There is "*limited accountability for (and transparency in) decision-making by local authorities on eligibility for access to social housing supports and emergency homelessness accommodation*".[39] FLAC has documented the weakness of decision-making in this area, including ongoing trends whereby local authorities apply eligibility criteria to applications for housing supports which have no basis in primary legislation and where they conflate the criteria for access to social housing supports with the criteria for access to emergency accommodation. In such instances, *"[j]udicial review is often the only means to challenge decisions of local authorities*".[40]
- Planning: In its 2022 Annual Report, An Bord Pleanála states: "*It is accepted that recent judicial review outcomes have seen a greater number of such cases conceded or lost and this is an outcome of the increasing complexity of those European law issues and novel issues relating to the strategic housing process*."[41]
- Environmental: The 2023 Annual Report of the Office of the Commissioner for Environmental Information shows clear evidence of poor quality decision-making at first instance by public authorities. The Commissioner has described an "*unacceptable situation where some public authorities are clearly failing in their responsibilities when dealing with requests for environmental information"* and stated: "*We issued 136 formal decisions in 2023. I am disappointed to report that in only seven (5.14%) of the cases closed by formal binding decision in 2023, the decision of the public authority was affirmed. In four of the decisions (2.94%), the decision of the public authority was varied and in 125 cases (91.91%) the public authority's decision was annulled.*"[42]

47. Taking the example of decision-making on applications for international protection, Donson and O'Donovan write:

> *"Although politicians blame the high levels of judicial review [in the area of international protection] on overly litigious lawyers, those working in the system highlight the fundamental problems that exist around decision making and the accountability and openness of the system …it seems clear a failing system has had to rely on judicial review as a form of appeal, as is borne out by the relatively high levels of pre-trial settlement by Government."*[43]

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[39] FLAC (2024), *Submission to inform the Oireachtas Joint Committee on Housing, Local Government and Heritage's Pre-Legislative Scrutiny of Part 2 of the General Scheme of the Housing Miscellaneous Provisions) Bill 2024*, p.14.
[40] ibid.
[41] An Bord Pleanála (2023), Annual Report and Accounts 2023, p.28.
[42] Office of the Commissioner for Environmental Information (2024), Annual Review 2023, p.3.
[43] Fiona Donson & Darren O'Donavan, *Law and Public Administration in Ireland* (Clarus Press, 2015), p.596.

48. The quality of administrative and quasi-judicial decision-making by State bodies needs to be drastically improved, along with increased access to accessible and independent appeal mechanisms. The Law Reform Commission is currently undertaking a law reform project on "*non-court adjudicative bodies*."[44] Its recently published consultation paper states that:

> *"…the Commission [is examining] the possibility of standardising, simplifying, and clarifying the decision-making processes of non-court adjudicative bodies. This is intended to improve the quality of decision-making and enable decision-makers to make more structured and better-reasoned decisions. In the Commission's view, a properly tailored reform project can respond to the public interest in a more accessible, transparent and accountable system of administrative justice."*[45]

49. The Law Reform Commission highlights that it is "*[by] addressing these foundational issues [with the quality of first instance decision-making], the administrative state can support fairer outcomes, reduce unnecessary reliance on judicial review, and enhance public confidence in the administrative justice system (emphasis added)*."[46]

50. To date, rather than addressing the root cause of the number of judicial reviews (i.e. poor decision-making), there has instead been repeated attempts to reform the judicial review process to reduce the number of cases. These have generally involved the introduction of specialised rules in the areas of planning/environmental law and immigration/citizenship/asylum law. This includes changes to the threshold for getting permission ('leave') from the court to seek judicial review. Morgan highlights that these changes have been ineffective and futile.[47]

51. Raising the leave threshold does not address the root problem of poor-quality decision-making by public bodies. In fact, making it harder to challenge decisions reduces accountability which in turn reduces the quality of decision-making even further. Putting in place different thresholds and procedures for different types of judicial review has also given rise to an indefensible 'two-

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[44] Law Reform Commission (2019), *Reform of Non-Court Adjudicative Bodies and Appeals to Courts,* Fifth Programme of Law Reform.

[45] Law Reform Commission (2025), *Consultation Paper on Reform of Non-Court Adjudicative Bodies and Appeals to Courts*, p.xv.

[46] Law Reform Commission (2025), *Consultation Paper on Reform of Non-Court Adjudicative Bodies and Appeals to Courts*, p.6.

[47] "*The time has probably come to abolish the leave requirement, as already has been done in procurement cases. Its supposed benefits and protections for public bodies seem doubtful. What, one might ask, is the protection for the public body if, for example, a challenge to some routine administrative decision can be brought by way of judicial review, while the constitutionality of the entire statutory sub-stratum supporting the decision can be brought by a plaintiff who issues a plenary summons without any leave or judicial supervision? In truth, the system could only act as a true filtering device with a great deal more judicial time and effort, notice to the respondents and a higher threshold for leave. This system has, however, already been tried in planning cases and experience has shown that it simply did not work*." See: Hogan, Morgan, Daly, *Administrative Law in Ireland*, (5th Edn., Round Hall, 2020) at para.18-77.

tier' justice system where the accessibility of the court varies depending on the nature of the legal issue concerned.

52. Donson and O'Donovan highlight that, in Ireland, "*we have not seen a steady rise in the number of applications for judicial review of administrative actions. Instead there have been fluctuations*."[48] Those authors emphasise the need for greater consideration of the extent to which "*high levels of judicial review actions in particular areas correlate with poor internal or external appeal systems.*"[49] The fact that the number of judicial reviews 'fluctuate' (rather than steadily increase) is reflected in the analysis of the High Court's "*judicial review caseload*" for the period 2010 to 2019 which is included in the report to emerge from the Review of the Administration of Civil Justice:

> *"The data shows non-immigration related judicial review cases initiated as having reached their highest volumes in 2010 (645) and 2014 (648), with the trend moderating in the three years thereafter, and volume recovering to 546 in 2018 and reducing again to 485 in 2019. Immigration-related judicial review cases initiated saw a significant reduction in volume between 2010 (936) and 2015 (164) – 82% – with a significant and sustained increase (over 220 %) in the following three years to 530 in 2018, before reducing to 368 in 2019."*[50]

53. In the planning/environmental law context, an analysis of the most recent statistics by a leading environmental law practitioner also challenges the prevailing narrative about the prevalence of judicial review and its impact on housing/infrastructure delivery:

> *"Overall the number of cases started this year [2025] in the Planning and Environment Court is set to be down 20% with judicial reviews of An Coimisiún Pleanála decisions showing a small drop of around 6%.*
>
> *Housing remains the most active sector, but this is driven by consistent increase in litigation by developers against refusals which has shown consistent growth since 2022. There has been a sharp drop in the number granted housing units JRed ['judicially reviewed'] this year indicating that the larger projects are not being challenged. For the first year on record the number of refused housing units under review (2072 so far) is set to exceed the number of granted units (1675 to date), which means it is far more likely for an ACP ['An Coimisiún Pleanála'] housing refusal to be JRed than an ACP housing grant."*[51]

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[48] Fiona Donson & Darren O'Donavan, *Law and Public Administration in Ireland* (Clarus Press, 2015), p.595.
[49] ibid at p.594.
[50] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.202.
[51] Dr Fred Logue (2025), *Planning and Environment Litigation Review - Sneak Peak*.

1.6. Consistently Fundamentally Flawed Policy Development & Consultation Processes

54. A large number of major changes which would impact judicial review are currently under consideration by Government. The process for advancing these proposals is spread across different Departments, public bodies, General Schemes and consultation processes. There is no formal process which allows stakeholders and the public to respond to the overall judicial review agendas (nor has that agenda and the rationale behind it ever been fully and clearly articulated).

55. It is highly unusual and unhelpful that changes to the general review process are set out in an Infrastructure Plan. The public cannot be expected to know that proposals in that plan will significantly impact general (i.e. non-planning) judicial reviews. General judicial review cases concerning access to social welfare, emergency accommodation and supports for children with additional educational needs have nothing to do with "*accelerating*" the delivery of infrastructure. The reality is that the proposals will 'deliver' significant barriers to justice and 'accelerate' the decline of the rule of law in this jurisdiction.

56. The current slate of changes are being pursued at break-neck speed before the last set of major changes to judicial review (contained in the provisions of the Planning and Development Act 2024 which were commenced in August 2025) have been properly tested. It does not seem possible that the impact of those changes can yet be understood. This current scheme of changes is being pursued before any effort has been made to improve the very poor quality of decision-making by public bodies (which is the main reason for the number of judicial reviews taken in Ireland) and while the work of the Law Reform Commission in this regard is still only at the very early consultation stage.

57. The policy development and consultation processes which have led to (and in relation to) the current slate of proposed changes to judicial review have consistently been inadequate. In our recent submission to the consultation on the introduction of a scale of fees for environmental judicial reviews, FLAC highlighted that that process was "*fundamentally flawed and should be abandoned*":

> *"The consultation is wholly inadequate given its timing, deficits in the consultation material, the late publication of that material, and because it only relates to one facet of the broader changes to judicial review currently being proposed.*

… The timing of the consultation means that FLAC has not had the ability or opportunity to directly consult important stakeholders, including relevant academics and NGOs."[52]

58. Many of the changes proposed in the current General Scheme are efforts to implement recommendations contained in the report to emerge from the Review of the Administration of Civil Justice chaired by the former President of the High Court, Mr. Justice Peter Kelly (the "Kelly Report").[53] FLAC sought to engage with the Department of Justice about our major concerns in relation to proposals concerning judicial review contained in the Kelly Report since its publication in late 2020.

59. FLAC has concerns about some of the evidence bases for some of the recommendations in the Kelly Report (which are dealt with in the next section of this document) and failures to have regard to the views of senior members of the judiciary who recommended removing the leave requirement in judicial review cases.[54] FLAC repeatedly expressed concerns at the lack of consultation on the Kelly Review recommendations. The membership of the Review group did not include external stakeholders, litigants or other relevant bodies such as the Irish Human Rights and Equality Commission, Independent Law Centres or groups representing disadvantaged communities. There was comparatively limited timeframe to make submissions and limited publicity about the review. The individuals and communities who would be most negatively impacted by the proposed changes were not enabled or encouraged to make submissions.[55]

60. In a letter to the then Minister for Justice sent on 7 December 2020, FLAC sought consultation with a wide range of stakeholders before any recommendations from the Kelly Report would be implemented. However, the Department formed an Implementation Group in relation to the Kelly Report and an implementation plan was approved by Cabinet in May 2022.[56] These processes took place without any consultation with civil society. The implementation group was comprised of civil servants, representatives of the Courts Services and members of the judiciary. The implementation plan envisioned the full implementation of the Kelly Report

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[52] FLAC (2026), *Submission to the Department of Climate, Energy and the Environment's Consultation on the Introduction of a Scale of Fees for Environmental Judicial Reviews*, p.8.
[53] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*.
[54] For example, the Kelly Report did not attach sufficient weight to the views expressed by leading academics and judges of the Court of Appeal for speeding up and simplifying the process by abolishing the 'leave procedure' for judicial review altogether, rather than making it more onerous, time-consuming and costly.
[55] This is evident from the appendix to the Kelly Report containing the list of individuals that made submissions. See: Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, Appendix 1: List of Respondents furnishing Submissions.
[56] Department of Justice (2022), *Implementation Plan on Civil Justice Efficiencies and Reform Measures*.

recommendations regarding judicial review. That plan (and the work of the implementation group) seems to have been abandoned without any explanation.

61. In a letter to FLAC in January 2023, Mr Andrew Munro of the Department of Justice stated that judicial review reforms would not proceed in the absence of further stakeholder consultation.

> *"…in order to progress Judicial Review reform proposals in the coming year, the Department will seek to engage with a diverse range of stakeholders, including civil society, in regard to this important topic. Subject to progress on other aspects of the Kelly Report, it is intended to host some form of symposium/webinar on Judicial Review Reform later this year."*

62. However, no such consultation was ever undertaken. In his letter to FLAC dated 17 October 2025, Mr Munro indicated that consultation would only take place *after* the General Scheme of the Civil Reform Bill has been published.[57] Mr Munro also confirmed that the Civil Reform Bill is concerned with the "*implementation of the Kelly Report*" and stated that it "*will address most of the recommendations of the Kelly Report and expands upon them in some instances*."

No Explanatory Memorandum

63. Unlike most General Schemes or 'Heads of Bill', the General Scheme of the Civil Reform Bill 2025 does not include an explanatory section beneath each head which sets out the purpose and rationale for each draft provision. For some, the rationale must be gleaned from the now six-year-old Kelly Report and for others there is simply no stated rationale. 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.

64. The approach being taken to changing the law on judicial review is inconsistent with the extensive consultations that took place with external stakeholders in other major reviews in the justice sector in recent years such as the Strategic Review on Penal Policy and the Commission on the Future of Policing in Ireland.

Public Sector Equality and Human Rights Duty

65. All Government Department and Public Bodies who are involved in the current 'reform' process regarding judicial review are subject to the Public Sector Equality and Human Rights Duty under section 42 of the Irish Human Rights and Equality Commission Act 2014. This duty requires those departments and bodies to have regard to the need to "*promote equality of opportunity and treatment of… the persons to whom it provides services*" and "*protect the*

[57] "*Once we have obtained Government approval, we expect to publish a general scheme in Q4 2025 and to engage with stakeholders, including FLAC on the General Scheme*."

human rights of… the persons to whom it provides services" in "*the performance of its functions.*" This includes their policy development functions and in carrying out consultations. In this context, compliance with the public sector duty should involve consultation with representatives of groups impacted by the changes (including those protected under the equality legislation). We would seriously question whether this duty has been complied with the context of policy development and consultation regarding judicial review.

66. It is available to the Minister for Justice to seek the views of the Irish Human Rights and Equality Commission ('IHREC') about the Kelly Report recommendations or the contents of the General Scheme and the "*implications for human rights or equality*" of those proposals. IHREC may also draft such a report "*of its own volition*."[58] However, it is regrettable that it does not appear that such a report has been requested or undertaken of IHREC's own volition.

[58] Section 10(2)(c) of the Irish Human Rights and Equality Commission Act 2014.

2. Proposed Changes to Judicial Review in the General Scheme

67. Part 3 of the General Scheme (Heads 8 to 14) deals with Judicial Review. This section examines them on a head-by-head basis.

2.1. Head 8: Putting Judicial Review on a Statutory Footing

The Current Position

68. The rules and procedures which apply to judicial review cases are set out in Order 84 of the Rules of the Superior Court ("RSC"). These rules are written by the Superior Court Rules Committee. The membership of the committee is prescribed by legislation. It is made up of judges, representatives of the legal professions and civil servants (including the Chief Executive Officer of the Courts Service).

69. Additional or alternative rules for judicial reviews cases in particular areas of law are set out in legislation.[59] These areas are referred to as 'statutory' judicial review:

- Part 9 the Planning and Development Act 2024 puts in place separate rules which apply to planning and environmental judicial reviews
- Section 5 of the Illegal Immigrants (Trafficking Act) 2000 sets out alternative rules which apply to judicial reviews in the areas of immigration and international protection.

70. These areas (planning/environmental and international protection/immigration) are dealt with on separate High Court 'lists' and there are specific 'practice directions' (containing further bespoke procedural requirements) which pertain to them. There is considerable amounts of case law on all of the issue dealt with in the General Scheme.

Changes Proposed in the General Scheme

71. Head 8 General Scheme proposes to places the rules and procedures for all judicial review on a statutory footing (and largely replace the Rule of Court which currently apply).

72. Head 8(1) states that "*a person shall not question the validity of an act of a public body, other than by way of statutory appeal or an application under this [Civil Reform] Act, to be known as a judicial review application*."[60]

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[59] See further: Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.196.

[60] Head 8(2) of the General Scheme add: "*References in enactments to applications for judicial review in acc3ordance with rules of court shall be construed as applications for judi1cial review in accordance with this Act.*"

73. Head 8(3) sets out the remedies available to applicants for judicial review i.e. the type of orders the court can make on foot of a successful application for judicial review under the proposed new legislation.

> *"(a) an order to quash a decision,*
>
> *(b) an order to mandate the performance of a duty,*
>
> *(c) an order to prohibit action being taken,*
>
> *(d) a declaration that a decision taken infringed the applicant's rights or is unconstitutional,*
>
> *(e) an order relating to damages,*
>
> *(f) an injunction restraining a public body from carrying out a decision pending the determination of the matter."*

74. Although the General Scheme proposes to provide for all judicial review cases in legislation. It would still leave in place alternative rules which apply in areas such as international protection/immigration and planning/environmental law. These are distinctions are highlighted throughout the rest of this section as they arise under certain Heads.

Policy Basis for this Change:

75. Head 8 (and Part 3 of the General Scheme more generally) give effect to the recommendations contained in the Kelly Report for the rules governing judicial review to be prescribed in primary legislation[61] and for the abolition of the obsolete remedy of *quo warranto*.[62]

Analysis of the Proposed Change

76. In theory, it is not problematic for judicial review to be placed on a statutory basis. However, as will become clear throughout this section, the legislative framework which is proposed is extremely prescriptive and restrictive.

77. There are also significant ambiguities in Head 8. It is possible to interpret Head 8(1) as prohibiting judicial review-type remedies from being sought in other types of cases, such as 'plenary' actions. This would constitute a very fundamental change to procedures. The courts have often said that plenary proceedings are the most appropriate course to litigate breaches

[61] For example, recommendation 5.7.2. of the Kelly Report. See: Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.211.
[62] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.213.

of rights.[63] There is no clear basis for such a change being made. This needs urgent clarification.

78. The list of remedies in Head 8(3) does not appear to allow applicants to seek declarations that laws or regulations are unconstitutional. Rather, it only envisions declarations about "*[decisions]*" being unconstitutional. The High Court has a broad jurisdiction to review the constitutionality of laws which cannot be limited or fettered by legislation. The new regime proposed could result in applicants having to issue two separate sets of proceedings (i.e. a constitutional challenge separate to the judicial review case). Challenges to legislation would then be dealt with in isolation to decision making processes under that same legislation.

79. The General Scheme does not appear to make orders placing a stay on an administrative action by a public body pending the outcome of a case.

2.2. Head 8(4) & (5): Severe Restrictions on the Court's Discretion to Grant Judicial Review

The Current Position

80. Judicial review is a 'discretionary relief' i.e. it is at the discretion of the judge as to whether orders should be made in favour of the applicant for judicial review.

81. Through case law, it has been established that the court will make orders in favour of the applicant (i.e. it will exercise its discretion) where it is satisfied that (1) there is a legal issue with the decision or action of a public body and (2) granting relief would be just and proper in all the circumstances.[64] The court has identified a range of circumstances where it would not be just and appropriate to grant judicial review such as where there has been an abuse of process by the applicant or where they should have sought relief through a different process (i.e. when an 'alternate remedy' is available).

Changes Proposed in the General Scheme

82. Head 8(4)(a) of the General Scheme state that a court may grant judicial review "*where it considers it just and appropriate, and subject to the provisions of this head (emphasis added)…*" Head 8(5) then sets out five significant new restrictions on the circumstances under which the court may exercise its discretion:

> *"(a) In exercise of its discretion to grant a remedy on foot of a judicial review application, a court shall not grant such a remedy unless it is satisfied that:*
>
> *(i) the respondent has acted unlawfully,*

[63] *O'Donnell and Ors v South Dublin County Council* [2024] 2 ILRM 393 at para. 23.
[64] David Gwynn Morgan, *Hogan & Morgan's Administrative Law: Student Edition* (Round Hall, 4th edn., 2012), p.573.

(ii) the applicant has suffered harm or prejudice,

(iii) any error of law, or procedural error, was material to the decision,

(iv) the interests of justice, taking into account the interests of the applicant and the public interest, require such a remedy to be granted, and

(v) the granting of the remedy provides a significant benefit to the applicant.

(b) In considering whether an error of law or procedure was material to the decision, the Court shall 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."

Policy Basis for this Change

83. There is no clear basis or stated rationale for these proposed restrictions on the courts discretion. It goes significantly beyond the recommendations contained in the Kelly Report and cannot be described as a codification of the law.

Analysis of the Proposed Change

84. It would appear that these criteria are intended to be mandatory and cumulative, and the applicant will have to satisfy all five criteria before relief can be granted. The criteria themselves are vague and open to many interpretations. The requirement to establish a "*significant benefit*" to the applicant before relief is granted is also highly problematic given the inherent public interest in having unlawful decisions quashed. How is it in the public interest to let an unlawful, unreasonable or irrational decision stand? It has to be in the public interest to observe and enforce the law. The reference to the "*interests of justice"* is also of concern as it is hard to see how the interests of justice are served otherwise than by setting aside unlawful decisions. Head 8(5)(b) requires the court to engage in a hypothetical and speculative exercise which will lead to obvious difficulties. The doctrine of mootness already allows the courts to refuse to consider a case or grant relief where there would be no benefit to the applicant.

85. Head 8 would flip the discretion of the court on its head. Instead of a broad presumption that the court may review acts/decisions (subject to exceptions which have been identified through case law), it would put in place significant new vague and unclear pre-conditions which the applicant would have to demonstrate that they satisfy before the court can consider exercising its discretion. It is unclear what purpose this serves. This would place a huge, and in many cases insurmountable, burden on applicants who are seeking a remedy for an unlawful act or decision by a public body which interferes with their rights. It will negatively impact poorer

applicants with less time, resources and legal capability. It would significantly interfere with individual's right to a remedy and may also render judicial review ineffective as a remedy.

2.3. Head 8(7): Restrictions on Awarding Costs in Successful Judicial Reviews

The Current Position

86. Where an applicant is successful in a judicial review case, the respondent (i.e. the relevant public body) will generally have to pay the applicant's costs (i.e. their legal fees for taking the case). This reflects the general rule/principle that 'costs follow the event' which is set out in existing legislation and Rules of Court.[65]

Changes Proposed in the General Scheme

87. Head 8(7) of the General Scheme would restrict the circumstance where the court can award costs in favour of a successful applicant for judicial review. It states: "*Notwithstanding any other provision in any enactment, costs may only be awarded to an applicant [in a judicial review case] where the final decision of the court provides* ***a significant benefit*** *to the applicant (emphasis added)*."

Policy Basis for this Change:

88. There is no clear basis or stated rationale for this proposal. No such recommendation was contained in the Kelly Report.

Analysis of the Proposed Change

89. There is simply no possible justification for this arbitrary change to the rules concerning costs. As a result of this change, certain applicants who have successfully shown that a public body acted unlawfully through a judicial review case would have to pay their own costs for taking that case. This would reduce accessibility of judicial review and its effectiveness as an accountability mechanism. The words "*significant benefit*" are highly subjective and would create huge uncertainty around the circumstances in which a successful applicant may expect to receive their costs. Applicants would have to establish a "*significant benefit*" twice - under subheads 8(5) and 8(7).

90. It is unclear how this sits with the rules established for costs in section 169 of the Legal Services Regulation Act 2015. The proposed change appears to rule out situations where applicants may be awarded their costs regardless of the outcome of the case because of the litigation's broader public importance. It would also potentially rule out the potential of

[65] Section 169(1) of Legal Services Regulation Act 2015 states: "*A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings…*" Order 99, Rule 2 RSC contains further rules regarding costs.

applicants obtaining 'protective costs order' in public interest cases. These matters require urgent consideration.

91. The provision would make it even harder for plaintiffs who cannot afford to pay for lawyers to persuade lawyers to act on a 'no foal, no fee' basis as it reduces the chance of the lawyers getting costs even if the case is successful, thus requiring them to be willing to work, in effect, for free. It will act as a real deterrent to lawyers undertaking this type of work and will again disproportionately negatively impact people living in poverty and disadvantage. The change would likely lead to a greater number of applicants representing themselves as lay litigants (which can have an impact on the court's time and resources). It would also lead to unlawful decisions going unchallenged and situations where illegality will be maintained and sustained. This proposed change would be a significant reduction in access to justice in an area that already has substantial barriers.

2.4. Head 9: Potentially Unconstitutional Extension of Judicial Review Jurisdiction to the Circuit Court

The Current Position

92. Judicial review cases are heard by the High Court which reflects the current provisions of the Constitution (as set out in Article 34.3.1 and Article 26) and reflects a key aspect of the inherent full original jurisdiction of the High Court. There is a High Court judicial review list (in addition to lists dealing with planning/environmental and international protection/immigration judicial review cases).

93. Article 34.3.2° of the Constitution states that "…*the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court, the Court of Appeal or the Supreme Court*."

Changes Proposed in the General Scheme

94. Head 9(1) of the General Scheme proposes that judicial review cases could be heard in the Circuit Court as well as the High Court. It states that the "*Circuit Court and the High Court shall concurrently have jurisdiction to hear and determine [judicial review] proceedings*…"

95. Head 9(2) sets out that certain judicial review cases "*shall be initiated in the Circuit Court (emphasis added)*" i.e. in these areas a judicial review case must be started in the Circuit Court and the applicant cannot opt to begin the case in the High Court. The areas listed include:

    - Cases concerning immigration and international protection (although the list of legislation relevant to these areas is out of date and contains a number of provisions

which have since been repealed such as the Refugee Act 1996). Head 9(3) provides that immigration and international protection cases "*shall be heard by the Dublin Circuit Court*."

- Certain cases concerning "*the imposition of a penalty*."
- "*[P]roceedings where a statutory appeal lies to the District Court or Circuit Court in relation to the act, the subject of the application*…" This would suggest that, for example, judicial review cases concerning decisions of the Workplace Relations Commission under the Equal Status Acts would have to be initiated in the Circuit Court.
- Cases concerning "*decisions of the District Court*…"
- "*[D]ecisions of such public bodies as specified in Schedule 2, and… proceedings in relation to enactments as specified in Schedule 2*." Schedule to the General Scheme is blank. It states: "*This Schedule is currently a placeholder. Relevant Departments will be consulted as part of the drafting process*."

96. Head 9(4) creates an exception and provides that which otherwise must be initiated in the Circuit Court may be heard in the High Court "*where there are substantial grounds for contending that: (a) the application involves a point of law of exceptional public importance, and (b) it is desirable, in the public interest, that it be heard in the High Court*."

97. Head 12(3) suggests that it is envisioned that the Circuit Court will hear cases "*[involving] a question as to the validity of any law having regard to the provisions of the Constitution*" under the new regime proposed by the General Scheme.

Policy Basis for this Change:

98. There is no clear basis or stated rationale for this proposal. It is not reflective at all of the recommendations contained in the Kelly Report.

Analysis of the Proposed Change

99. The suggestion that the Circuit Court could hear cases concerning the constitutionality of laws raises significant questions around compliance with the Constitution. Judicial review emerged from the High Court's supervisory jurisdiction and its role as a guardian of constitutional rights. Even in cases which do not challenge the constitutionality of a specific law, the constitutional rights to fair procedures and constitutional justice often arise in judicial cases. It is unclear if it is appropriate or possible for such cases to be heard by the Circuit Court.

100. There are also real practical difficulties. The Circuit Court is not configured to hear judicial reviews and it would require an investment of significant financial and human resources for a benefit that is unclear.

101. The High Court has developed a cadre of judges with specific expertise in the area of judicial review, and specific lists and procedures for hearing such cases. There is scope for further resourcing and development in this regard. It is unclear why it is suggested to 'start from scratch' in the Circuit Court instead of properly resourcing the High Court to deal with judicial review cases.

102. The proposal that certain cases would generally be heard by the Circuit Court in the first instance is completely arbitrary. It ignores the fact that judicial review cases in the areas listed often raise constitutional issues. There is no clear rationale for different procedures applying to different areas of law.

2.5. Head 10(2)(b): New Restriction on who has 'Standing' to take a Judicial Review Case

The Current Position

103. 'Standing' or *locus standi* refers to the entitlement of a person or group to take a case. The rule concerning standing to take a 'general' judicial review case is set out in Order 84, Rule 20(5) RSC:

> *"The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."*

104. There is a considerable body of case law in relation to this rule and the circumstances in which an applicant may be deemed to have "*sufficient interest*" to take a case. Each case turns on its specific facts/circumstances and the court will assess whether the applicant is best placed to bring a particular challenge. The courts have allowed judicial reviews to proceed in circumstances where there is no one individual who would be particularly or peculiarly impacted by a certain decision and where the applicant would be affected in a more general sense.[66]

Changes Proposed in the General Scheme

105. Head 10(2) of the General Scheme limits who has standing to take a judicial review case to only people directly impacted by a decision/act of a public body. It states: "*An application for leave to apply for judicial review may only be sought… (b) by a person directly affected by the act which is the subject of the application and who has a sufficient interest in the matter… (emphasis added).*"

[66] *Mulcreevy v. Minister for the Environment* [2004] 1 ILRM 419

Policy Basis for this Change:

106. There is no stated rationale for this proposed change. The Kelly Report recommends changing the standing rules in a different way. It states that *"leave should not be granted unless an applicant is able to demonstrate a substantial interest in the subject matter of the decision which is challenged."*[67]

Analysis of the Proposed Change

107. The restrictive new standing rules which are proposed would simply eliminate the possibility of challenging certain unlawful decisions by way of judicial review. In particular, this proposal would insulate decisions which negatively affect a group of people in a general way (rather than a specific person or group in a direct way) from challenge. This may exclude public interest litigation and the prospect of representative actions, and may prevent challenges to legislation that might be shown to have negative human rights implications in a significant number of cases.

108. The courts may be required to turn away cases, where the law needs clarification, where the claimant could bring useful expertise and argument to the attention of the court, even if there is strong public interest in the case being heard in circumstances where there is nobody else who is an appropriate applicant.

109. The proposed change would protect from challenge decisions which are clearly unlawful. This provision ignores the strong public interest in the maintenance of the rule of law.

110. Biehler, having reviewed the current position in relation to *locus standi*, observes that "*[i]t is of fundamental importance to the proper functioning of this system of judicial oversight of the actions of public authorities. Striking an appropriate balance between ensuring that invalid administrative decisions may be challenged and preventing the bringing of vexatious claims by litigants who have no legitimate interest in the measures they seek to impugn is a key concern."* She warns that if the bar for standing is raised too high "*there is a risk that unlawful decisions made by public authorities may go unchecked*" and "*a lack of appropriate judicial scrutiny might lead to abuses of power going unchallenged and undermine the legitimacy of public decision-making*."[68]

[67] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.212.
[68] Hilary Biehler, 'The concept of sufficient interest in judicial review proceedings' [2021] 65 Irish Jurist.

2.6. Head 10(2)(c) & (6): Stricter Rules Around Exhausting Alternative Remedies

The Current Position

111. Applicants for judicial review generally have to show that there is no 'alternate remedy' available to them i.e. that judicial review is their only option and the only way for them to access a remedy.[69]

112. While the courts have some discretion as to whether they allow a case to proceed by way of judicial review (i.e. flexibility in relation to the rules about alternate remedies), recent case law suggests the emergence of a somewhat stricter approach.[70]

Changes Proposed in the General Scheme

113. Head 10(2) of the General Scheme would remove the court's discretion to allow judicial review cases to proceed even where an alternative remedy is available. It states:: "*An application for leave to apply for judicial review may only be sought… (c) save as provided for in subhead (6), where all appeal procedures or any other administrative remedy available in respect of the decision or act concerned have been exhausted (emphasis added)…*"

114. Head 10(6) creates a limited exception to this new rule for very urgent cases.[71]

Policy Basis for this Change:

115. There is no stated rationale or basis for this proposed change. There is no recommendation to this effect in the Kelly Report.

Analysis of the Proposed Change

116. Some flexibility in the rules around alternate remedies is necessary to account for circumstances where the alternative appeal mechanism available does not provide an effective remedy, for example in cases which raise issues of rights under EU law or questions of constitutional rights and the constitutionality of laws. There may also be incurable procedural flaws which cannot be remedied on appeal. In some areas, such as social welfare, there is an endless loop of further reviews/appeals available, but they cannot provide a remedy in cases which concern the interpretation of laws by reference to the Constitution or EU law. The effect of this change would, again, be to completely insulate certain decisions from

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[69] See: *G v. D.P.P* [1994] 1 IR 374. Further, Order 84, Rule 20(6) RSC states: "*Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgement, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired*."

[70] See, for example: *L.A. v The Chief Appeals Officer* [2025] IECA 54.

[71] Head 10(6) states: "*Notwithstanding subhead (2), paragraph (c), it shall be permissible to make an application for leave to apply for an immediate judicial review where there are substantial grounds for contending that: (a) the person directly affected would suffer irreparable harm or prejudice if not allowed make such an application, and (b) the matter is of sufficient urgency to warrant an immediate review*."

challenge and to interfere with the right to an effective remedy. It would cause delays and add to costs by requiring parties to engage in an already flawed process.

2.7. Head 10(2)(d),(3),(7),(8),(9) & 13(3): Restrictive New Time Limits

The Current Position

117. The time limit to take a general judicial review case is three-months from the date of the decision which is being challenged, or from when the grounds for taking the case arose (i.e. from when an act began to affect the applicant and their legal rights).[72] The time limit immigration/international protection cases is generally 28 days.[73] There is an eight week time limit in planning and environmental cases.[74] The 'clock stops' once the relevant papers have been filed in the High Court Central Office seeking a date for the initial 'leave application.'[75]

118. Order 84, Rule 21(3) RSC provides that the court has jurisdiction to extend the time limits if it is satisfied that there is good and sufficient reason for doing so, and the circumstances that resulted in the failure to meet the time limit either (1) were outside the control of, or (2) could not reasonably have been anticipated by the applicant. In considering whether good and sufficient reason exists for extending time, the court may have regard to the effect which such an extension might have on a respondent or third party.

119. Order 84, Rule 21(6) RSC provides that even where an application is brought within the time limit, a court may dismiss the application on the grounds of delay in circumstances where it has caused or is likely to cause prejudice to a respondent or third party.

Changes Proposed in the General Scheme

120. Head 10(2)(d) of the General Scheme would reduce the time limit for 'general' judicial review cases to eight weeks.[76]

121. Head 10(7) limits the courts discretion to extend the time limit to a maximum of 16 weeks.[77] Head 10(8) provides that the court must consider the potential impact that granting an extension could have on the respond, a third party and on "*effective public administration*."

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[72] Order 84, Rule 21(1) RSC.
[73] Section 5(2) of the Illegal Immigrants (Trafficking Act) 2000.
[74] Section 281 of the Planning and Development Act 2024.
[75] Order 84, Rule 21(1A) RSC.
[76] Head 10(2) states: "*An application for leave to apply for judicial review may only be sought… (d) save as provided for in subhead (7), and subject to Head 13, where the application is filed within 8 weeks from the date when grounds for the application first arose (emphasis added)*."
[77] Head 10(7) states: "*Notwithstanding subhead (2), paragraph (d), the Court may, on written application by any party or of its own motion, extend the period within which an application for leave to apply for judicial review may be made, where it is satisfied that: (a) there is good and sufficient reason for doing so, (b) the circumstances that resulted in the failure to file the application for leave within the period mentioned in subhead (2), paragraph (d) either: (i) were outside the control of the applicant, or (ii) could not reasonably have been anticipated by the applicant, and (c) the applicant would suffer serious harm or prejudice if an extension of time was not granted,*

122. Head 10(9) states: "*Nothing in this head shall prevent the Court dismissing an application for judicial review on the ground that an applicant's delay in applying for leave to apply for judicial review has caused, or is likely to cause, prejudice to a respondent or third party or effective public administration (emphasis added).*"

123. Head 13(3)(a) provides for a shorter time limit in respect of certain types of cases which are specified in Schedule 3 to the General Scheme. That schedule provides for a 28-day time limit in immigration/international protection cases. It appears that further types of cases may be added to Schedule 3 at a later stage.

124. Head 13(1) provides that the changes to rules around time limits do not apply to planning/environmental cases (i.e. the 8-week time limit would be retained in that context).

Policy Basis for this Change:

125. There is no stated basis or rationale for these changes. They are not recommended in the Kelly Report. That report recommended the retention of the three-month time limit and the introduction of the new system where the 'clock stops' after papers are filed in the High Court Central Office.[78]

Analysis of the Proposed Changes

126. The proposed new shorter time limits would be introduced alongside other changes which raise the legal, administrative and evidential burden on applicants in the first instance. This is completely contrary to fairness and to basic logic. The proposed new time limits would disproportionately impact applicants who lack immediate access to legal advice and representation. This will not allow for Freedom of Information applications that are often fundamental to understanding the decision making process and underlying rationale. The new time limits would simply result in many unlawful decisions going unchallenged because a case cannot be put together in time. It also raises the risk that applicants would be unable to challenge decisions where they are only notified of the decision after the 16-week maximum time limit has elapsed.

127. There is no clear reason for limiting the High Court's discretion to extend the time limits. It is envisioned that the High Court could refuse to hear a case or to extend the time limit on the basis of the need to preserve "*effective public administration*." This is an extremely nebulous and subjective concept which could be interpreted very broadly and block any number of meritorious cases.

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but may not extend the period beyond 16 weeks from the date when grounds for the application first arose (emphasis added)."

[78] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.212.

128. There is simply no objective justification for having stricter rules and time limits for immigration/international protection cases. Given the delays of up to a year before judicial review cases are heard, there is no logical or benefits to restricting the time limit in the manner proposed.

2.8. Head 10(3): Restrictions on the types of Decisions which can be Judicially Reviewed

The Current Position

129. Judicial reviews must relate to decision, actions or inaction by public bodies. There is no general definition of (or restrictions on) the type of actions or decisions which may be subject to judicial review.

Changes Proposed in the General Scheme

130. The new rules concerning time limits in Head 10 of the General Scheme would also appear to restrict the types of decisions which can be subject to judicial review.

131. Head 10(3)(a) provides that, "where an appeal process exists", the date of decision will be considered the date on which a decision was made on that appeal. This would remove the entitlement to appeal a decision made in the first instance where an appeal could, theoretically, be pursued.

132. Head 10(3)(b) would appear to remove the entitlement of applicants to take judicial review cases in relation to delays in decision-making processes where there is no statutory timeframe which applies to the decision-making process. It states: "*Where the grounds for the application relate to a failure to comply with timeframes for the making of a decision, such timeframes must be provided in Statute (emphasis added)*". There is no timeframe in legislation in relation to decisions about applications for social welfare, social welfare appeals and applications for emergency homelessness accommodation.

Policy Basis for this Change:

133. There is no stated basis or rationale for these changes. They are not recommended in the Kelly Report.

Analysis of the Proposed Changes

134. Again, these proposed changes would prevent challenges to decisions where the supposed 'alternate remedy' or appeal simply does not provide an effective remedy. It would also potentially block judicial reviews which challenge delays in decision-making. This would remove accountability and be completely contrary to the imperative of efficient public services and public decision-making. It would also block people who are subject to unreasonable delays from accessing a remedy. FLAC has often had to threaten judicial review proceedings

in social welfare, social housing and homelessness cases where clients are left waiting for months for decisions on their entitlement to basic public services.

2.9. Head 10(4): Requirement to Set Out "Full Particulars" at the Very Outset of Case

The Current Position

135. Order 84, Rule 20(3) RSC sets out for the level of detail needed in the 'grounding statement' for initiating a judicial review case:

> *"It shall not be sufficient for an applicant to give as any of his grounds… an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground (emphasis added)."*

136. The rules provide that an applicant can apply to amend their grounds at the leave stage[79] and at later stages of 'case management.'[80]

Changes Proposed in the General Scheme

137. Head 10(4) of the General Scheme seems to raise the level of detail/argument required at the very first stage of the judicial review process. It states: "*(4) An application for leave to apply for judicial review shall include: (a) a statement of each relief sought and full particulars of the grounds upon which each such relief is sought (emphasis added)..."*

138. The General Scheme does not contain any provisions which would allow an applicant to amend their statement of grounds at a later stage or empowering the court to allow them to do so.

Policy Basis for this Change:

139. There is no stated basis or rationale for this change. This change is not recommended in the Kelly Report. Rather, that report states: "*The statement of grounds required in an application for leave to apply for judicial review should contain a specific heading for facts alleged and the grounding affidavit should set out those facts in a narrative manner*."[81]

Analysis of the Proposed Change

140. This change would seemingly block applicants from updating their grounds after a case has been initiated. However, judicial review cases sometimes relate to dynamic situations where it may be necessary to update the grounds to reflect changing circumstances. This means a case can proceed rather than being abandoned in favour of a new set of proceedings. The

[79] Order 84, Rule 20(4) RSC.
[80] Order 84, Rule 23(2) RSC.
[81] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.213.

change proposed would also be another increase in the burden on the legal and evidential burden on an applicant in the first instance (where very strict time limits apply).

2.10. Head 10(13): Potentially Unconstitutional Extension of Jurisdiction to the Master of the High Court & County Registrars

The Current Position

141. Applications for leave to seek judicial review are heard by judges of the High Court.

Changes Proposed in the General Scheme

142. Head 10(13) of the General Scheme states:

> *"(a) The President of the High Court and President of the Circuit Court may issue practice directions to provide for leave to apply applications to be made before the Master of the High Court or County Registrars respectively (emphasis added).*
>
> *(b) Such practice directions may relate to all leave to apply applications or only those applications relating to certain matters as the Presidents may decide."*

Policy Basis for this Change:

143. There is no basis for this proposal in the Kelly Report. There is no stated rationale for this change.

Analysis of the Proposed Change

144. Leave applications may involve consideration of the applicants' constitutional rights or whether they have made an arguable case that a law is constitutional. It is therefore constitutionally dubious to suggest that a County Registrar or Master of the High Court could hear such an application. Again, it would be more efficient to simply properly resource the High Court to carry out this function or, indeed, to scrap the leave stage requirement altogether.

2.11. Head 11 & Head 13(1) & (3): Significant Increases in the Threshold for Getting Permission to Seek Judicial Review

The Current Position

145. The 'threshold' (i.e. standard for) granting leave to seek judicial review is that the applicant has shown that they have an 'arguable' case.[82] This is not a determination of what the eventual result of the case might be.[83] Applications for leave are generally heard on an '*ex parte'* basis i.e. the respondent is not notified and is not present for the application.

[82] *G v. D.P.P* [1994] 1 IR 374
[83] *O'Reilly v. Cassidy* [1995] 1 ILRM.

146. In immigration/international protection cases, legislation requires the applicant to show that they have "*substantial grounds*" at the leave stage.[84] The Planning and Development Act 2024 removed the requirement to seek leave in planning/environmental cases.[85]

Changes Proposed in the General Scheme

147. Head 11(1) of the General Scheme would introduce new conditions which would raise the leave threshold and limit the circumstances under which the court may grant leave to seek judicial review. It would require the applicant to show they have a reasonable prospect of success in their cases, that they have arguable ground, and that the issue is not minimal in nature. It states:

> *"In exercise of its discretion to grant leave to apply for judicial review, a court shall not grant leave unless it is satisfied that:*
>
> *(a) the application is in accordance with the provisions set out in Head 10,*
>
> *(b) there are arguable grounds for contending:*
>
> *(i) in the case of a quashing order, that the impugned decision is invalid or otherwise ought to be quashed,*
>
> *(ii) in the case of remedies other than a quashing order, that such remedies should be granted,*
>
> *(iii) the granting of the remedy would provide a significant benefit to the applicant.*
>
> *(c) the claim has a reasonable prospect of success, and*
>
> *(d) the issue is one appropriate for the court and not* de minimis *in nature."*

148. Head 11(2) adds: "*In deciding on the application, the court shall consider all the circumstances of the case, including the conduct of the parties to the matter."*

149. Head 13(1) provides that the changes to the leave threshold do not apply to planning/environmental cases (i.e. there would still be no leave requirement in those cases).

150. Head 13(3)(b) provides that certain specified cases may be subject to additional conditions at the leave stage. Those cases are specified in Schedule 3. At present, Schedule 3 lists immigration/international protection matters but it does not specify what additional conditions will apply.

[84] Section 5(2) of the Illegal Immigrants (Trafficking Act) 2000.
[85] Section 280(4) of the Planning and Development Act 2024.

Policy Basis for this Change:

151. These changes are generally reflective of a number of recommendations contained in the Kelly Report:

> *"5.7.2. Primary legislation should be introduced which will prescribe that leave to commence judicial review proceedings should not be granted unless the court is satisfied that there are substantial grounds for contending:*
>
> *(i) in the case of certiorari, that the impugned decision is invalid or ought to be quashed; and*
>
> *(ii) in the case of reliefs other than certiorari, that such reliefs should be granted.*
>
> *5.7.3. In addition, leave should not be granted unless the court is also satisfied that the claim has a reasonable prospect of success at trial. Consideration should also be given to incorporating the latter criterion into statutory judicial review remedies.*
>
> *…*
>
> *5.7.5. Primary legislation should also prescribe that judicial review may not be sought in respect of an alleged deficiency falling within any of the following categories:*
>
> - *Clerical or typographical errors in the decision, order or determination which is sought to be quashed or in material relied on in making such decision, order or determination;*
> - *Unintentional slips or omissions in the decision, order or determination or in material relied on in making such decision, order or determination; and*
> - *Text, or an omission of text, which has the effect that the decision, determination or order as issued does not on its face accurately express the determination or order which the decision-maker, tribunal or court had intended to make,*
>
> *unless it can be shown that the applicant had previously applied to the decision-maker, tribunal or court for rectification of the deficiency concerned and had wrongly been refused that relief."*

152. The rationale put forward in the Kelly Report for increasing the leave threshold appears to be the false perception that there has been an increase in frivolous and vexatious judicial reviews. This perception is not supported by the available evidence. The Kelly Report correctly notes an increase in the number of judicial review cases which are struck out with no order. However, these figures do not suggest that those cases were frivolous. In fact, they reflect the high numbers of cases which are resolved on the basis of settlement agreements. Such settlements are frequently subject to strict confidentiality agreements at the insistence of the

State. Therefore, cases recorded as 'struck out no order' may be counted as a loss where the proceedings have actually been compromised on the basis of a settlement which is advantageous to the applicant.

Analysis of the Proposed Change

153. Raising the leave threshold just leads to more delays and more appeals. The proposed new leave threshold is so high that it would effectively lead to the whole case being argued twice (once at the leave stage and again at the substantive hearing). It would give rise to a situation where there is no need to apply for leave in planning/environmental cases, a very high level threshold which must be met in other cases, and a potentially even higher threshold and additional procedural barriers in international protection/immigrations cases – with absolutely no rationale for the disparity in the thresholds and procedures which apply. It is very unclear what the relationship will be between the 'arguable grounds' and 'reasonable prospect of success' tests included in the General Scheme and how courts should approach that matter.

154. The change proposed would be another huge increase in the burden on applicants at the earlier stage of a case and may be a barrier to taking case altogether. This means that the change may also interfere with applicants' right to an effective remedy.

155. Raising the leave threshold has been attempted and has backfired in the context of planning/environmental law and immigration/international protection law. This experience has been noted by the authors of the leading Irish textbook on administrative law who have called for the leave stage to be scrapped altogether:

> *"The time has probably come to abolish the leave requirement, as already has been done in procurement cases. Its supposed benefits and protections for public bodies seem doubtful. What, one might ask, is the protection for the public body if, for example, a challenge to some routine administrative decision can be brought by way of judicial review, while the constitutionality of the entire statutory sub-stratum supporting the decision can be brought by a plaintiff who issues a plenary summons without any leave or judicial supervision? In truth, the system could only act as a true filtering device with a great deal more judicial time and effort, notice to the respondents and a higher threshold for leave. This system has, however, already been tried in planning cases and experience has shown that it simply did not work."*[86]

156. In a submission to the review, the judges of the Court of Appeal echoed this argument and also suggested the abolition of the leave requirement in its entirety; proposing a special summary strike-out procedure as an effective filtering mechanism. Their submission highlights

[86] Hogan, Morgan, Daly, *Administrative Law in Ireland*, (5th Edn., Round Hall, 2020) at para.18-77.

that the leave requirement does not increase efficiency and, in its current operation, acts as an unnecessary and undue strain on the time and resources of the courts.[87]

2.12. Head 12 & Head 9(5): Severe Restrictions on Appealing Judicial Review Decisions

The Current Position

157. In 'general' judicial review cases, decisions of the High Court may be appealed to the Court of Appeal. The Supreme Court may hear appeals of decisions of the Court of Appeal or 'leapfrog' appeals from the High Court in exceptional circumstances.[88]

158. There are significant restrictions on appealing decisions of the High Court in planning/environmental[89] and immigration/international protection cases.[90]

Changes Proposed in the General Scheme

159. As discussed above, Head 9 of the General Scheme would extend jurisdiction to hear judicial review cases to the Circuit Court. Head 9(5) states that decisions made by the Circuit Court in judicial review cases cannot themselves be subject to applications for judicial review in the High Court.

160. Head 12(1) states a decision of the Circuit Court in a judicial review case can only be appealed to the Court of Appeal where the Circuit Court gives permission for such an appeal to be made. Similarly, it provides that a decision of the High Court in a judicial review case can only be appealed to the Court of Appeal where the High Court gives permission for such an appeal to be made. Head 12(2) provides that such permission may only be granted by either court where "*(a) its decision involves a point of law of exceptional public importance, and (b) it is desirable, in the public interest, that an appeal should be heard by the Court of Appeal*."

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[87] Ms Justice Mary Irvine (2018), *Review of the Administration of Civil Justice: Observations of the Court of Appeal*.

[88] 35.5.4° of the Constitution.

[89] Section 287 of the Planning and Development Act 2024 states: *"(1) The determination of the High Court of Part 9 judicial review proceedings, and any order made by the High Court in such proceedings, shall be final and no appeal shall lie from the decision of that Court to the Court of Appeal. (2) No appeal to the Supreme Court shall lie from the determination of the High Court in Part 9 judicial review proceedings save on the basis of an application for leave to appeal under Article 34.5.4° of the Constitution. (3) Subsection (2) shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution."*

[90] Section 6 of the Illegal Immigrants (Trafficking Act) 2000 states: *"(a) The determination of the High Court of an application for leave to apply for judicial review to which this section applies, or of an application for such judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. (b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution."*

161. Head 12(3) creates an exception to these rules whereby "*it shall be permissible to appeal a judicial review determination made in the Circuit Court or High Court to the Court of Appeal where the determination involves a question as to the validity of any law having regard to the provisions of the Constitution*."

162. Further, Head 12(4) and (5) provides for a procedure whereby the Supreme Court may hear certain appeals from the Circuit Court and High Court:

> *"(4) An appeal under subhead (2), or (3) may be adopted by the Supreme Court where that court considers that the matter is of sufficient urgency and importance to warrant its exercise of appellate jurisdiction under the Constitution.*
>
> *(5) Where an appeal is adopted by the Supreme Court is accordance with subhead (4) the Court of Appeal shall have no further function in adjudicating an appeal under subhead (2) or (3)."*

Policy Basis for this Change:

163. There is no clear basis or stated rationale for this proposal. It does not reflect or arise from the recommendations contained in the Kelly Report.

Analysis of the Proposed Change

164. The proposed change would severely restrict applicants for judicial review from appealing negative decisions of the High Court in relation to their cases. "*Exceptional public importance*" and 'public interest desirability' constitute extremely high thresholds. The changes would give rise to three separate appeal regimes for general, planning/environmental and immigration/international protection judicial reviews. There are no similar limitations on appealing High Court decisions in relation to statutory appeals or judgments arising from plenary actions. There are also constitutional concerns which will arise in circumstances where Circuit Court judicial review determinations appear to be insulated from any superior court oversight.

3. Other 'Civil Reforms' in the General Scheme

165. Part 2 of the General Scheme proposes to overhaul the rules in relation to discovery of documents in civil proceedings. Part 4 (Heads 15 to 29) of the General Scheme proposes changes to "*Civil Procedure in the Courts*." Part 5 (Heads 30 to 37) proposes increases in the monetary jurisdictions of the District Court and Circuit Court. This section responds to these sections of the General Scheme.

166. We would note these proposed changes suffer from the same lack of consultation as the judicial review changes discussed above.

3.1. Part 2 (Heads 4 to 7): Overhaul of Rules Relating to Discovery

167. FLAC shares some of the concerns expressed by the Bar Council in relation to part 2 of the General Scheme.[91] The object of modernising and reducing the costs of the discovery process is clear and welcome. However, the General Scheme proposes to make the requirements to produce documents more demanding (moving from the standard of "*relevance*" to one of "*materiality*") and proposes to frontload these procedural obligations at the very beginning of proceedings. Subhead 5(1) requires parties to produce all documents that they intend to rely on at trial. This is very onerous, time consuming and costly requitement which may be wholly unnecessary bearing in mind that very many judicial reviews settle early.

168. The Bar Council highlights that:

> "*Subhead 5(1)(b) is not a requirement that was set out within the Kelly Report, and would involve a claimant having to assess what documents the other party or parties would be reasonably likely to rely on at trial, anticipate every defence the other party or parties might wish to run, which could include defences that possibly might not even actually occur to the other side to run. This would appear a very onerous obligation, leading to additional time and costs being expended in the production of document process – the precise issue that the reforms are designed to defeat*."[92]

3.2. Heads 15, 18, 19, 20 & 28: Case Conduct Principles, Rules, Protocols & Practice Directions

The Current Position

169. Forms, practice, rules and procedures in the courts are dictated by a complicated web of primary legislation, statutory instruments, rules of court, practice directions and notices issued by various judges and courts. These documents are updated frequently. As discussed above,

[91] The Bar of Ireland (2026), *Submission on the General Scheme of the Civil Reform Bill 2025*, pp.8-15.
[92] ibid at p.11.

here is a statutory basis for the rules committees which introduce rules of court. There is no statutory basis for court practice directions and notices.

Changes Proposed in the General Scheme

170. Part 4 of the General scheme proposes to add two further sources of regulation over practice and procedures in the court:

- Head 15 proposes the introduction of a new set of statutory "*Case Conduct Principles*" which are focused on requiring parties to narrow the scope of cases as early as possible, to act in an "*expeditious*" way and minimise costs, and to use "*alternative dispute resolution procedures*" where possible.
- Heads 19 that the Minister may introduce "*Pre-Action Protocols*" which would require parties to take certain actions before they can take a case. The focus here is again on achieving settlements before a case is initiated in court. Head 20 proposes penalties in terms of costs and damages awarded for failures to comply with pre-action protocols.

171. Head 18 provides for a statutory basis for the introduction of practice directions by judges.

172. Head 28 proposes that the rules committees would also make rules concerning "*rules of evidence as they apply to civil proceedings*."

Policy Basis for this Change:

173. The proposed changes concerning case conduct principles, practice directions and the rules of evidence are directly recommended in the Kelly Report.[93]

174. While the Kelly Report endorsed the introduction of pre-action protocols in the area of clinical negligence, it stated that the "*most effective means of extending [pre-action protocols] to other areas of litigation would, in the Review Group's view, be to confer on the court rules committees – rather than a Minister – a general power to prescribe [pre-action protocols] for specific categories of dispute identified by those committees*"[94]

Analysis of the Proposed Change

175. It is not at all clear how the proposed new statutory practice directions, new case conduct principles and new pre-action protocols will interact with the rules of court. It also unclear which set of procedures/rules will take precedence. The General Scheme ignores how complicated and inaccessible the rules currently are and the urgent need to address this problem. Instead, it proposes to make practice and procedures in the courts even more opaque and complicated.

[93] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.401.
[94] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.399.

176. The need to simplify and standardise court rules, procedures and forms has been highlighted by a number of major reports and initiatives, including:

- The Law Reform Commission's Report on Consolidation and Reform of the Courts Acts.[95]
- The Kelly Report and the initial implementation plan in relation to that report.
- The Courts Service's long-term Strategic Vision report[96] and the Courts Service Modernisation Programme.

177. The Kelly Report made far-reaching recommendations in relation the simplification of court rules and procedures. It endorsed the Bill published by the Law Reform Commission in 2010 for consolidating all existing Courts Acts[97] and which expressly provided that Rules of Court should "*use plain language, and differences among the procedures and terms used in different Courts for similar matters should be avoided if possible.*" [98]

178. The Kelly Report made a number of specific recommendations in relation to the simplification of Court procedures and for *"(a) the harmonisation of the forms and proofs necessary for the commencement of proceedings across the first instance jurisdictions and (b) the standardising and simplification of terms and language used in civil procedure.*"[99] In relation to the "*simplification of terms and language*"[100], it stated that "*a specific programme of simplification should be undertaken by the court rules committees in stages, with priority being assigned to those procedures, and their associated forms, which most frequently impact on potentially vulnerable individuals.*"[101] The Kelly Report also called for the establishment of a "*Steering Group… which should include the Courts Service, the Legal Aid Board, Citizens Information, FLAC, MABS/Abhaile, the Law Society and the Bar Council*" to "*provide input to the court rules committees on opportunities for simplification of procedures and language in rules and forms*".[102]

179. In 2024 FLAC made a submission to the Courts Service on their new strategic plan. It highlighted "*the need for a robust, inclusive and transparent process for reforming and*

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[95] Law Reform Commission (2010), *Consolidation and Reform of the Courts Acts*, para. 2.102.
[96] Courts Service (2019), *Supporting Access to Justice in a modern, digital Ireland: A long-term strategic vision, 2030*.
[97] "The Review Group is of the view that early consideration should be given to incorporating in legislation those provisions of the draft Bill not already legislated". See: Department of Justice (2020), *Review of the Administration of Civil Justice*, p.135.
[98] Law Reform Commission (2010), *Consolidation and Reform of the Courts Acts*, p.215.
[99] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.136.
[100] ibid.
[101] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.138.
[102] ibid at p.418.

simplifying court, rules, forms and procedures."[103] It also emphasised the need to diversify the court rules committees:

> *"Beyond stakeholder participation in the current reform and implementation process, there is a need to diversify the Court Rules Committees beyond members of the judiciary, legal practitioners and civil servants. This is a matter which FLAC highlighted in our initial submission to the Kelly Review and in our recent submission to the Department of Justice on the development of their new Strategy Statement. In the UK, for example, the Civil Procedure Rule Committee includes several 'Lay Advice/Consumer Affairs' members. Legislative reform would be needed to bring this about (as the membership of the Rules Committees are currently strictly prescribed by legislation)."*[104]

180. That submission also called for the introduction of on Equal Treatment Bench Book:

> *"In the UK, the Equal Treatment Bench Book provides detailed guidance on equal treatment in the courts. It covers a wide range of topics including equal treatment for litigants in person (i.e. lay litigants) and those facing social exclusion and poverty. It also discusses litigants who fall within the scope of protected grounds under equality legislation such as, for example, persons with a physical or mental disability and those covered by the race and religion grounds (including specific sections on anti-Semitism, Islamophobia and multicultural communication). The Bench Book is intended for use by the judiciary but it is also an important reference point for the legal profession and members of the public alike."*[105]

3.3. Head 16: New Restrictions on Granting Adjournments

The Current Position

181. Order 36, Rule 34 RSC gives the court a general power to adjourn or postpone a trial for such time and subject to such terms as it sees fit. This discretion is governed by the requirements of fair procedures and only exercisable in the interests of justice.[106]

Changes Proposed in the General Scheme

182. Head 16 proposes a presumption against granting adjournments and requires there to be "*sufficient reason*" for granting adjournments by reference to a number of prescribed factors.

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[103] FLAC (2024), *Submission to the Courts Service on their Strategic Plan 2024-2027*, p.4.
[104] ibid.
[105] ibid at p.5.
[106] See: *Ward v Walsh* (Unreported, Supreme Court, 31st July 1991) & *Carroll v Mangan* (Unreported, High Court, 10th November 1999).

Policy Basis for this Change:

183. This change goes beyond the changes to adjournment rules proposed in the Kelly Report.[107]

Analysis of the Proposed Change

184. The proposed head would limit the discretion of judges to grant adjournments. It is not clear how it sits with the 'case conduct principle' in subhead 15(1)(c) relating to facilitating settlement of whole or part of the proceedings through the use of ADR. Head 16(3) goes further than what was suggested in the Kelly Report in that it requires the court to penalise one or both parties where it considers that the 'case conduct principles' in head 15 have not been adhered to - even though it may not always be possible to comply with the principles. This seems unnecessary and unwarranted. FLAC would highlight that adjournments (even late adjournments) are often needed to facilitate settlement negotiations which may ultimately save time and money for the parties, as well as the court's resources.

185. Further, making the processes of applying for an adjournment more complex and arduous may (perversely) contribute to costs and delays.

3.4. Head 17: Cases 'Discontinued' after Six-Months of Inaction

The Current Position

186. Where a party fails to comply with the time limits for providing pleadings/court documents as set out in the rules of court, the other party may seek to have the case ended by order of the court. Where the defaulting party is a defendant, the plaintiff may ask the court to grant the relief/orders which they are seeking in their case. Where the defaulting party is a plaintiff, the defendant may seek to have the claim against them dismissed.

187. These types of applications include:

- *Judgment in default of appearance*: Where the defendant has failed to enter an appearance, the plaintiff may seek judgment.
- *Judgment in default of defence*: Where the defendant, having entered an appearance, fails to deliver a defence, the plaintiff may seek judgment.
- *Dismissal for want of prosecution*: An order of this type may be obtained by the defendant for a number of reasons, such where the plaintiff has failed to deliver a Statement of Claim.

[107] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.399.

Changes Proposed in the General Scheme

188. Head 17 of the General Scheme proposes a process where parties may apply for a case to be 'deemed discontinued' where the other party takes no step/action to progress the case for a period of over six months.

Policy Basis for this Change:

189. This change goes beyond what was proposed in the Kelly Report.[108]

Analysis of the Proposed Change

190. It is unclear why a new process of 'deemed discontinuance' is necessary in light of the procedures which already exist for discontinuing a case where there has been an unjustifiable delay in progressing it. Overlapping rules in this area could add to complexity and cause confusion. The six-month time limit proposed does not seem to factor in the complexity and volume of work and material involved in certain 'steps' to advance a case. It seems particularly severe and runs a risk of injustice.

3.5 Heads 21 & 22: Accommodations for People with Disabilities in Giving Evidence

The Current Position

191. Part 3 of the Children Act 1997 provides that, in proceedings concerning welfare, special arrangements may be put in place for children and people with disabilities to give evidence.

192. Section 27 of the Children Act 1997 provides that, in cases where it is desirable for a witness to give evidence by video-link, the judge may order that the case is transferred to a court with the necessary facilities to allow for such an arrangement.

Changes Proposed in the General Scheme

193. Head 21 of the General Scheme would expand the scope of Part 3 of the Children Act so that special arrangements for children and people with disabilities to give evidence may be put in place in any case (not just welfare cases).

194. Head 22 is a technical update to section 27 of the Children Act 1997 to take into account the creation of special family courts.

Policy Basis for this Change:

195. The proposal in Head 21 is derived from a recommendation in the Kelly Report.[109]

[108] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.400.
[109] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.420.

Analysis of the Proposed Change

196. FLAC would highlight the requirements of the United Nations Convention on the Rights of Persons with Disabilities. Article 4(3) of that treaty obliges the State to ensure the effective participation of persons with disabilities, through their representative organisations, in the creation and implementation of policies and legislation that impacts their lives. This means that public authorities must consult and actively involve DPOs[110] in a meaningful manner when addressing issues related to people with disabilities. It is unclear whether any such consultation has taken place in relation to these heads or the General Scheme as a whole. There is a significant need to disability-proof civil law procedure.

3.6. Head 23: Requirement to Seek Approval for Settlements concerning Children

The Current Position

197. There are special rules which require the court to approve settlements in cases involving children.[111]

Changes Proposed in the General Scheme

198. Head 23 would expand the scope of the existing provisions to include any "*offer of settlement, compromise or payment in respect of a claim made on behalf of or against a child*." It provides that:

- "*an application shall be made to the appropriate court to decide whether that sum of money should be accepted or not*", and
- "*[n]o settlement, compromise or payment in respect of a claim made on behalf of or against a child will be valid unless it has received the approval of the appropriate court*…"

199. The "*appropriate court*" for approving a settlement relates to the value of the settlement. Where the amount of a settlement is within the monetary value of the District Court, the approval application would be made to that court. Where the amount of a settlement is within the monetary value of the Circuit Court, the approval application would be made to that court. All other approval applications would be heard by the High Court.

[110] Disabled Persons Organisation ('DPO') is defined in General Comment No.7 on the Convention on the Rights of Persons with Disabilities regarding the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.

[111] See: Section 35 of the Personal Injuries Assessment Board Act 2003 & section 63 of the Civil Liability Act 1961.

Policy Basis for this Change:

200. The Kelly Report highlighted that "*no procedure exists for the approval of a settlement of a claim made on behalf of a child where no proceedings have been issued*" but it did not make any recommendations in this regard.[112]

Analysis of the Proposed Change

201. It is not clear whether the new requirements will apply to settlements reached in cases heard by (or in claims which are before) tribunals such as the WRC and RTB. It would be very onerous and expensive for such settlements (which frequently arise in FLAC's experience) to be approved by a court rather than the relevant tribunal.

202. Subhead 23(1) could lead to court time and resources being wasted dealing with "*offers of settlement*" which the plaintiff's lawyers are not recommending.

3.7. Head 25: Vague Proposal for a 'Standard Claim Notice'

The Current Position

203. There are a wide variety of 'originating documents' for beginning various kinds of legal proceedings across the different courts.

Changes Proposed in the General Scheme

204. Head 25(1) of the General Scheme states: "*All references to existing types of originating documents in statute or statutory instruments shall be construed as references to a 'claim notice'*." Head 25(2) provides that "*'originating documents' refers to 'civil bill', 'originating notice of motion', 'originating summons', 'petition'*…"

205. The Head also stated that a "*full list of the 'originating documents' to be replaced is currently being collated*."

Policy Basis for this Change:

206. This change was proposed in the Kelly Report.[113]

Analysis of the Proposed Change

207. As discussed above, FLAC supports the simplification of court, rules, forms and procedures. We have called for an inclusive and participatory simplification process led by reformed and diversified court rules committees.

208. We are concerned at the lack of detail in Head 25 about the contents of the proposed new "*Standard Claim Notice*." The Kelly Report made prescriptive recommendations in this regard.

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[112] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.341.
[113] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, pp.401-2.

This included a requirement that every claim notice must include "*a detailed statement of the claim, including any necessary information to establish compliance with local jurisdictional requirements (in the case of the District Court or Circuit Court proceedings), to show an entitlement to seek specific reliefs forming part of the claim, or to establish compliance with any statutory requirements which may be pre-requisite to the bringing of the claim*."[114]

209. Requiring claimants to provide a huge level of detailed argument and evidence at the very outset of a case would severely disproportionately impact litigants who cannot afford legal advice or representation and who cannot access legal aid.

3.8. Heads 26 & 27: Time Limits for Furnishing Bill of Costs

The Current Position

210. Section 154(1) of the Legal Services Regulation Act 2015 provides that a person who receives a cost order in their favour (i.e. where the court has ordered the other side to pay their costs) must provide the other side with a "*bill of costs*."

Changes Proposed in the General Scheme

211. Head 26 of the General Scheme would amend section 154(1) of the Legal Services Regulation Act 2015 to create a three-month time limit for providing a bill of costs. Head 27 proposes a system where interest will not accrue to costs after the three-month time limit.

Policy Basis for this Change:

212. This change was proposed in the Kelly Report.[115]

Analysis of the Proposed Change

213. Putting together a bill of costs can be complex and lengthy task. It often involves furnishing a file to a cost accountant in order for them to draft the bill of costs. The three-month time limit proposed is very short and inflexible.

3.8. Part 5 (Heads 30 to 37): Increase of Monetary Jurisdictions of District Court & Circuit Court

The Current Position

214. The maximum amount the Circuit Court can award in a case it hears is €75,000. The maximum in the District Court is €15,000.

[114] ibid.
[115] Department of Justice (2020), *Review of the Administration of Civil Justice: Review Group Report*, p.413.

Changes Proposed in the General Scheme

215. Part of the General Scheme would raise the monetary jurisdiction of the Circuit Court to €100,000 and the District Court to €20,000.

Policy Basis for this Change:

216. There is no recommendation for this change in the Kelly Report. Media reporting at the time when the Civil Reform Bill was brought to Cabinet suggests that the changes are intended to "*further facilitate the hearing of an increased number of civil actions in the District and Circuit Courts, leading to lower legal costs for all parties involved as well a reduction in the waiting list of cases before the High Court*."[116]

Analysis of the Proposed Change

217. The proposed changes will increase the volume of cases before both courts. They would need to be resourced to deal with this increase in workload (including by increasing the number of judges) in advance of the implementation of this change.

[116] TheJournal.ie (16 December 2025), *Legal cost reductions could be on the way with jurisdiction changes to Circuit and District Court*.