Introduction

1. The Irish Immigration Lawyers Association (IILA) is grateful for the opportunity to make a submission to the Committee on Justice, Home Affairs and Migration to aid in its Pre-Legislative Scrutiny of the General Scheme of the Civil Reform Bill 2025 ("the Bill" hereafter).

2. The IILA is a professional association of qualified immigration solicitors who are registered to practice with the Law Society of Ireland. Founded in 2021, IILA exists in order to promote and improve advice and representation in immigration, citizenship, international protection and EU Free Movement of Persons Law. IILA currently has a membership of over 230 members/associate members, including 55 Irish law firms nationwide, that specialise in the area of Asylum and Immigration Law.

3. IILA makes this submission with the understanding that effective and efficient operation of the Irish Courts is a shared goal. We recognise the extensive findings made in the Report on the Review of the Administration of Civil Justice in Ireland ("the Kelly Report" hereafter), published in October 2020, and the need to implement many of the recommendations therein. However, on publishing the General Scheme, the Minister for Justice, Home Affairs and Migration stated that this Bill "expands upon" the recommendations in the Kelly Report.[1]

4. IILA has significant concerns with some of the provisions contained in the Bill particularly insofar as they will affect our clients, some of the most vulnerable members of society, in their pursuit of justice. We consider that many of the provisions in the Bill are made based upon a lack of legal or evidential basis for the necessity of same, including flawed assumptions about how Judicial Review proceedings operate.

[1] https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-civil-reform-bill-to-overhaul-judicial-review-and-streamline-courts-processes/

5. What must also remain front of mind is that individual pieces of legislation do not exist in a vacuum. The introduction of measures to curtail challenges decisions pertaining to immigration, asylum and citizenship arrives at the same time that Ireland moves to implement the EU Migration Pact by enacting the International Protection Bill 2026. Coupled together these two Bills will have profound effects on vulnerable peoples' ability to access justice.

Head 8: Judicial Review

6. Head 8(1) is exceptionally limiting. There are many cases where plenary proceedings are necessary, but which involve arguments that a public body's actions were invalid and/or that an individual's rights were violated. The courts have frequently held that plenary proceedings are the most appropriate course to litigate breaches involving rights (see *O'Donnell and Ors. v South Dublin County Council* [2024] 2 ILRM 393).

7. Head 8(5)(a) introduces vague language with disproportionately limits the constitutional right to litigate. Firstly, Head 8(5)(a)(ii) introduces an additional defence of the need to prove "a significant benefit" being afforded to an Applicant, tilting the balance against the Applicant (whom, one must remember, is already disadvantaged as they are challenging the State). Head 8(5)(a)(iv) introduces the requirement that for a remedy to be granted in Judicial Review proceedings, the court must be satisfied that such a remedy is in "(iv) the interests of justice, taking into account the interests of the applicant and the public interest…" appearing to codify well established fundamental principles. It is a futile exercise – surely it is always in the public interest that an unlawful decision made by a public body be quashed.

8. The introduction of the "public interest" element also risks being overly politicised, especially in the areas of immigration and asylum.

9. Head 8(7) states that "costs may only be awarded to an applicant where the final decision of the court provides a significant benefit to the applicant" . It appears that an Applicant could be entirely successful in their proceedings and meet the requirements set out at Head 8(5)(a), yet not be entitled to their costs unless the "final decision" affords them the vague "significant benefit".

10. The majority of Judicial Reviews taken in the areas of immigration and asylum are taken on a "no foal no fee" basis, meaning that this provision directly affects clients' access to justice.[2] This provision will render it economically unfeasible for solicitors to represent clients on such a no foal no fee basis, given the degree of skill and experience required. The ability of an individual to challenge an unlawful decision which affects their fundamental rights is a cornerstone to the rule of law and to a well-functioning democracy. Further, no foal no fee representation relieves a burden on the State which would otherwise be unable to provide effective legal aid for challenges of this nature: the Legal Aid Board does not have a judicial review unit for the purpose of dealing with such matters at present, leaving any individual to challenge an immigration decision to do so via private practitioner.

11. The current system allows often acutely vulnerable individuals with extremely limited resources to engage with lawyers who have the requisite skills and expertise to represent them, meaning that they are placed on an even footing with other litigants. Persons affected by administrative decisions made in respect of them must have the right to seek the protection of the courts.

12. We are also concerned that the effective gutting of the no foal no fee arrangement would lead to the increase in lay litigants, placing additional strain on the Courts – seemingly the exact opposite intended outcome sought by this Bill.

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[2] Recent submissions by the Bar of Ireland in respect of the regulation of costs payable on foot of s.294 of the Planning and Development Act 2024 may be of further assistance. (https://www.lawlibrary.ie/app/uploads/securepdfs/2026/01/Submission-to-DCEE-from-The-Bar-of-Ireland54.pdf)

Head 9: Jurisdiction

13. Head 9(2) of the Bill provides that Judicial Review applications regarding challenges to decisions of the Minister of Justice, Home Affairs and Migration pursuant to any statutory power with regard to citizenship, migration and asylum be initiated in the Circuit Court.

14. As above, this Head threatens to further reduce access to justice as skilled legal representatives may not continue in this vital no foal no fee work at the Circuit Corut costs level.

15. We are concerned with the seemingly two-tier system of the administration of justice whereby the matters that are proposed to be determined by the Circuit Court involve non-nationals. The Circuit Court is one of local and limited jurisdiction, and its own decisions are subject to judicial review. It is not structured nor does it have the capacity to deal with the volume or complexity of the points of law arising from judicial reviews to decisions on citizenship, migration and asylum. Aside from serious questions of constitutionality, placing such matters in the jurisdiction of the Circuit Court risks considerable increased inefficiency - the already overburdened Circuit Court lacks the resources and expertise to deal with these matters effectively.

16. Further, given that judges of the Circuit Court tend not to give written judgments, Head 9 risks creating confusion and inconsistency in an already fast evolving and complex area of law. As it stands, the High Court has a specialised list with several judges who have a significant depth of knowledge of Judicial Review. Much of the leading recent jurisprudence from the Supreme Court and indeed references made to the European Court of Justice have come from the areas of immigration and asylum, and a lack of written judgments from specialised members of the judiciary in this area would be harmful.

Head 10: Leave

17. The thrust of the provisions contained in Head 10 are a misguided oversimplification of standing and leave rules and are contrary to well-established case law.

Head 12: Appeal of Judicial Review Determination

18. With regard to Head 12(3), we are concerned that the Circuit Court cannot Constitutionally consider the validity of a law.

Head 19: Pre-Action Protocols

19. In what is seemingly a blatant attempt at restricting access to justice, Head 19 permits the Minister to make regulations in respect of pre-action protocols for the purpose of "reducing the number of cases in which actions in the specified area of litigation are brought". We have significant concerns regarding the constitutionality of this provision.

Conclusion

20. IILA submits that the Bill as it appears now presents several concerning barriers to access to justice, particularly for the vulnerable and often traumatised clients that we represent.

21. These issues will be compounded by the fact that the legal regime underpinning many of the matters that arise in the current High Court Asylum List is due to be completely overhauled. The enactment of the International Protection Bill 2026 which transposes the several European procedures and regulations which form the "EU Migration and Asylum Pact". The International Protection Bill 2026 brings with it significant increased barriers to access to justice and effective remedies which coupled with those contained in this Bill, paint a grave picture for the fundamental rights for some of the most vulnerable members of our society.

22. We urge the Committee to consider the concerns outlined herein and urge that amendments be made to the Bill to ensure that fundamental rights are protected.