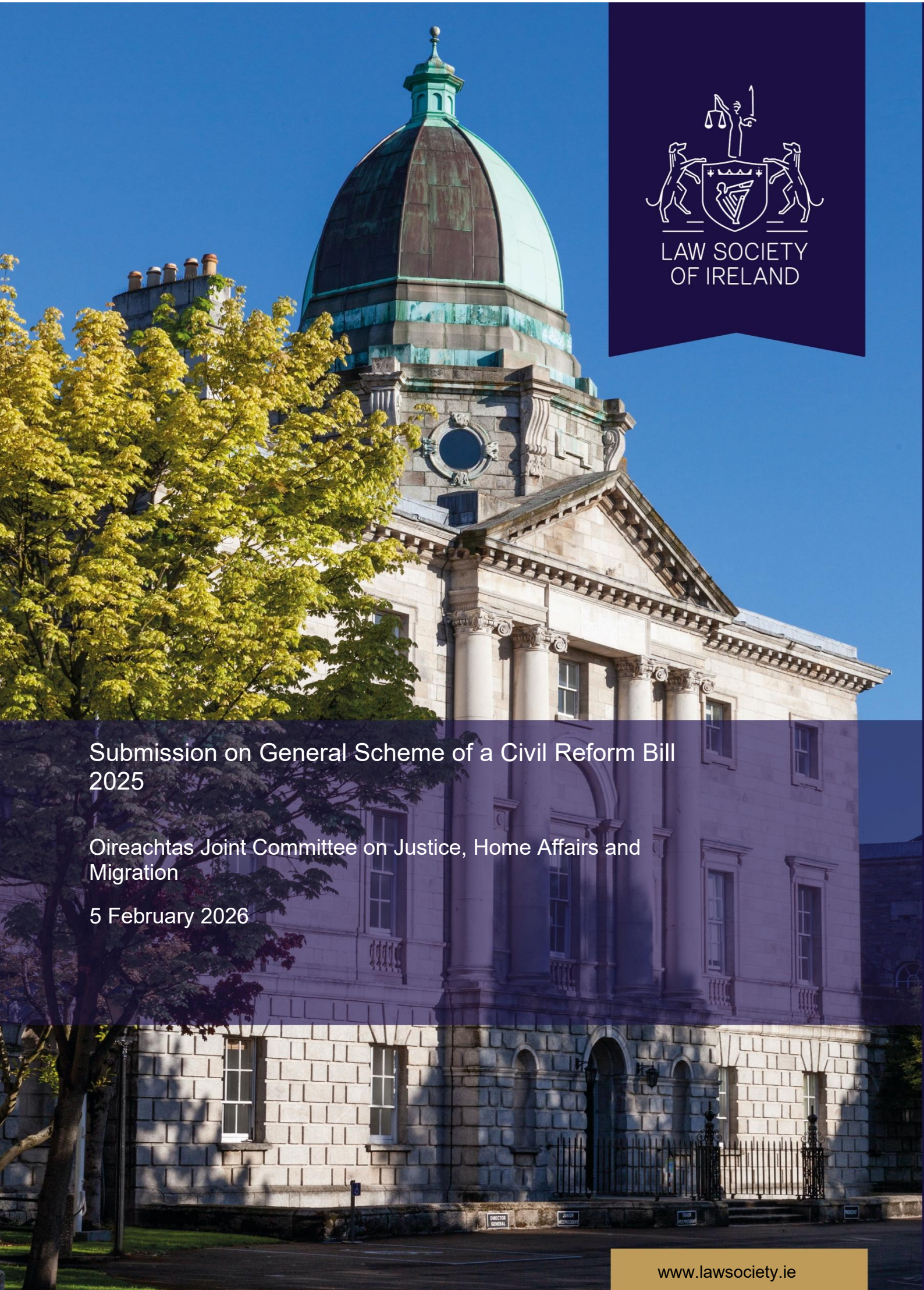


LAW SOCIETY OF IRELAND

Submission on General Scheme of a Civil Reform Bill 2025

Oireachtas Joint Committee on Justice, Home Affairs and Migration

5 February 2026

Submission on the General Scheme of the Civil Reform Bill 2025

About the Law Society

1. The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland.

2. The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the Solicitors Acts 1954 to 2015. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

3. The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

Introduction

4. The Law Society welcomes the opportunity to set out the views of practitioners to assist the Joint Committee in conducting the pre-legislative scrutiny on the General Scheme of a Civil Reform Bill 2025 (the **General Scheme**). Strengthened by the varied experiences of its members and collective knowledge the Law Society proposes, at this stage of the process, to identify structural, procedural and institutional issues which affect the practice and procedure in the courts that may benefit from clarification, refinement, or constraint before the Bill is finalised.

5. The Minister has stated that the General Scheme will "reform the Judicial Review mechanism and streamline other key courts processes"[1]. It is presented as one of the instruments implementing the recommendations of the Report on the *Review of the Administration of Civil Justice of October 2020* (the **Kelly Report**)[2]. The General scheme contains numerous substantial reforms of fundamental aspects of the civil justice system.

6. The submission will present the comments and recommendations of the Law Society on a head-by-head basis, however, the Law Society would preface our comments on specific aspects of the General Scheme by recommending a general approach to the reforms proposed. The various reforms proposed by the General Scheme will have multifaceted deep consequences for the justice system, its users, and on resourcing.

7. Owing to the significance of many of the reforms proposed in the General Scheme, the Law Society calls for the adoption of a phased approach to the commencement and implementation of key aspects of the General Scheme.

[1] Minister Jim O'Callaghan publishes Civil Reform Bill to overhaul Judicial Review and streamline courts processes, Department of Justice, Home Affairs and Migration, press release of 06 January 2026.
[2] Report on the Review of the administration of Civil Justice of October 2020

8. In the General Scheme, provision should also be made for the periodic review of the impact and effectiveness of the legislation against the stated objectives of the legislation.

Part 1 – Review of operation of the effectiveness of reforms

9. The General Scheme of the Civil Reform Bill 2025, if passed, would amount to a major overhaul and restructuring of civil procedure, Judicial Review, and the allocation of court jurisdiction.

10. A significant number of the proposals aim to adjust long-standing practices by placing greater emphasis on proportionality, proactive case management, and the earlier identification of key issues, while also redistributing functions among different courts and processes.

11. The Law Society recommends that the reforms be introduced on a phased basis, to allow for a period of time for those reforms to be embedded and their effectiveness to be assessed.

Recommendation:

12. The Law Society recommends that the following new provision be inserted in Part 1 of the General Scheme, perhaps inserted after Head 1:

> "Review of operational effectiveness of provisions of this Act
> 2. The Minister shall cause a review of the operational effectiveness of the provisions of this Act to be carried out before the 3rd anniversary of the date of enactment of this Act, and a further review to be carried out before the 5th anniversary of the date of enactment of this Act.".

Part 2 – Production of documents

13. The proposed abolition of existing discovery procedures and their replacement with a mandatory, front-loaded production regime represents a fundamental shift in civil litigation practice. While the stated objectives of efficiency, proportionality and early issue identification are clear, there is a concern that the proposed model may, in practice, generate disproportionate expense and legal costs at the commencement of proceedings. The cost implications of this measure is likely to be of concern for all litigants but particularly so in respect of individuals and small businesses who may not have the resources readily available to meet this up-front cost.

Proposed New Head - Interpretation of Part 2

14. Part 2 make use of the words 'produce', 'produced' and 'production' in relation to what would constitute qualified of discovery under the current rules. However, these terms are not defined anywhere in the General Scheme. This raises questions about current distinction between making discovery and inspection (or production) of

documents. It appears that only one term is used in Part 2, and until its meaning is clarified, the scope of obligations at various stages is not clear.

Recommendation:

15. The Law Society recommends that, either as a new Head at the beginning of in Part 2, or within Head 2, the words "produce", "produced" and "production" be defined.

Head 5 – Production of Documents in Civil Proceedings

16. The Law Society welcomes the proposal to introduce a production of documents regime to replace the discovery process. The Kelly Report describes the current regime as "failing all parties involved in litigation" and notes that:

> "… the discovery regime in its current form allows for the deployment of discovery as a weapon by the economically stronger party to effectively prevent or impede the less well-resourced party in the prosecution of their action or in the defence of proceedings."[3]

17. Under Head 5, a claimant is required to produce, within 28 days of service of the claim notice, all documents on which they intend to rely, all documents relevant and material to the outcome of the proceedings (including documents which the respondent would reasonably be likely to rely upon), and any documents necessary for the administration of justice.

18. In many cases, this will require a claimant to incur the cost of assembling and analysing their documentary case at an early stage, before it is known whether the proceedings will be defended, the nature of any defence to be advanced, or whether the matter may be resolved without trial.

19. In practical terms, there is a concern that it will place claimants in a position where they must effectively prepare their case for proof at a very early stage, incurring legal and expert costs that may ultimately prove unnecessary. This concern is particularly acute in Circuit Court litigation, where claims frequently resolve following the delivery of a defence, or where the issues in dispute narrow once pleadings close. The front-loading of documentary obligations may therefore have the unintended effect of increasing, rather than reducing, overall litigation costs in a substantial category of cases.

20. While Head 5 provides for judicial oversight and makes reference to proportionality and cost as being relevant considerations when considering the production of a document, the absence of a mechanism in the General Scheme for facilitating production of documents on a phased basis, or the making of issue-based production of documents creates a risk that proportionality will be assessed only after significant cost has already been incurred. This raises a question as to whether the balance between early disclosure and cost containment is appropriately calibrated, particularly for smaller cases.

Recommendation:

21. The Law Society recognises that the discovery process can be a significant contributing factor to delays and costs and is in need of reform. The Law

[3] Kelly Report, p. 186

Society recommends that consideration be given to the proportionality of the reform and its impact on smaller litigation.

Head 5(5) - Claim Form

22. Head 5(5) refers to service of the "claim form". The term *claim form* is not defined in the General Scheme, however, we note that Head 25 defines "claim notice".

Recommendation:

23. The Genera Scheme should clarify - whether through the inclusion of new definitions in Head 2 or otherwise - as to whether the terms "claim notice" and "claim form" have the same meaning, or each are a reference to a different instrument.

Head 5(7) - Exclusionary consequences

24. The General Scheme introduces strict timelines for document production, coupled with exclusionary consequences for non-compliance unless leave of the court is obtained. This is a significant departure from the current procedure and practice. Current civil procedure prioritises judicial discretion over automatic exclusion, particularly in the District Court and Circuit Court.

25. The District Court and Circuit Court serves a wide spectrum of litigants, including individuals, vulnerable parties, those with limited resources, as well as lay litigants. The inherent jurisdiction of the court enables these parties to seek to vindicate their rights in court.

Recommendation:

26. Head 5(7) of the General Scheme should be re-drafted so that the proposed exclusionary consequences, are imposed only where necessary in the interests of justice, rather than operating as an automatic response to procedural non-compliance[4].

Head 6 – Production of Documents by Non-Parties

27. Head 6(1) provides for the possibility of a judge directing the production of documents by a third party. It provides:

> "(1) The Court may at any time make an order directing the production of documents by non-parties …".

28. It is unclear from the wording of Head 6(1) whether the order of the court will be on its own initiative or at the request of one or more parties. This should be clarified and we would suggest that the wording of Head 6(1) should be aligned with that which features in Head 6(3).

Recommendation:

29. The Law Society recommends for Head 6(1) to be amended to include the additional words that are underlined in the text below:

[4] For further insights on the treatment of exclusionary rule in UK, see Civil Procedure Rules 1998, r 1.1; *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926; *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795; Adrian Zuckerman, *Zuckerman on Civil Procedure: Principles of Practice* (5th edn, Sweet & Maxwell 2025) Chapter 1.

"(1) The Court may, at the request of a party or on its own initiative, at any time make an order directing the production of documents by non-parties …".

Head 7 – Transitional Provisions

30. Head 7 sets out some limited transitional provisions. We note that Head 7 does not provide clarity on whether Part 2 (the new production of documents regime) does or does not apply in circumstances where an action has been initiated prior to the commencement of Part 2 of the Act but no order for discovery has been granted.

Recommendation:

31. The Law Society recommends a further sub-head be inserted into Head 7 so as to clarify whether Part 2 does or does not apply in circumstances where an action has been initiated prior to the commencement of Part 2 of the Act but no order for discovery has been granted.

Part 3 – Judicial Review

32. Part 3 of the General Scheme proposes a substantial reconfiguration of Judicial Review in Ireland. While the stated objectives appear to include procedural efficiency, proportionality and improved case management, the combined effect of the provisions warrants closer examination from an institutional and constitutional perspective.

33. Judicial Review in Ireland is not rooted in statute but rather has evolved over time and is principally derived from rules of court. The introduction of Order 84 of the Rules of the Superior Courts (the **RSC**) serves as the basis for the current two-stage process comprising an initial application for leave stage, followed by a plenary hearing.

34. Some of the most consequential reforms proposed by the General Scheme concern the conferral of original Judicial Review jurisdiction to the Circuit Court (Head 9), the increase of threshold for leave to appeal (Head 12) and the change to the rules of costs (Head 8). Each of these reforms need to be scrutinised carefully.

Head 8 – Judicial Review

35. Head 8 seeks to provides a statutory basis for the current practice in Judicial Review. Largely influenced by Order 84 RSC, and corresponding case law, Head 8 also introduces a new approach to rules of costs for Judicial Review.

36. Head 8(7) states that:

> "Notwithstanding any other provision in any enactment, costs may only be awarded to an applicant where the final decision of the court provides a significant benefit to the applicant."

37. The requirement that the award of costs be made conditional upon the decision of the court providing "a significant benefit" to the applicant represents a significant departure from the current rules applied by the courts. The general rule that applies in a determination of an award of costs is described as "costs follow the event" - meaning that, in general[5], the successful party will be awarded costs against the losing party[6]. The policy rationale for the proposal to depart form the normally applied rule on the award of costs is unclear. The Law Society is strongly opposed to the terms of Head 8(7).

38. The General Scheme seeks to recalibrate Judicial Review by introducing a statutory requirement that the grant of relief, and the award of costs, be contingent upon the applicant obtaining a "significant benefit". While considerations of materiality and proportionality are a feature in Judicial Review, this formulation places greater emphasis on individual outcomes than has traditionally been the case.

39. Judicial Review as currently structured focus on the process of decision-making rather than the extent of personal advantage secured by the applicant. Conditioning relief and costs on demonstrable benefit to an applicant risks narrowing the availability of Judicial Review in cases where unlawful conduct warrants correction but produces limited demonstrable gain to the individual applicant. This proposed change in approach may not be easily reconciled with the public interest dimension of Judicial Review.

40. In practical terms, limiting costs awards (under Head 8(7)) to cases in which there is "a significant benefit to the applicant", may operate as a deterrent to meritorious Judicial Review litigation that aimed at addressing unlawful administrative practices that have systemic consequences and where there is a public interest dimension.

41. While the desire to limit costs may be a legitimate policy objective, the use of legislative device to ensure the non-awarding of costs alters the traditional balance between access to Judicial Review and public law accountability, in particular when the relief sought is a simple declaration. In reality the effect of Head 8(7) appears intended to serve as a filtering mechanism aimed at reducing the number of Judicial Reviews that are brought, irrespective of the merits or public interest dimension of such Judicial Reviews.

42. The Law Society notes that despite the exclusion of Judicial Review issued pursuant to Part 9 of the Planning and Development Act 2024 from most of the provisions of the proposed new Judicial Review regime, Head 8(7) remains applicable[7]. It is not clear how the costs rule provided by Head 8(7) will interact with any Regulations that

[5] One exception to this rule relates to Judicial Reviews brought pursuant to Part 9 of the Development and Planning Act 2024.
[6] Under the current system, in the absence of agreement between the parties, the legal costs payable to a winning applicant may be determined by the Legal Costs Adjudicator (section 154 of the Legal Services Regulation Act 2015). The role of the Legal Costs Adjudicator is to determine what amounts to a fair and reasonable charge for costs reasonably incurred (section 155 of the same act).
[7] Head 13 provides that "Head 10,11 and 12 does not apply to Judicial Review proceedings under Part 9 of the Planning and Development Act 2024".

may be made by the Minister under Part 9 of the Planning and Development Act 2024[8].

43. In addition, environmental Judicial Review proceedings that are not issued under Part 9 of the Planning and Development Act 2024 seem to be fully included within the proposed reform. We can therefore infer that the costs rule that is proposed under Head 8(7) will apply to non-Part 9 environmental Judicial Review proceedings. If that is what is intended under the General Scheme, we are concerned that this is likely to be in breach of the State's obligations under the Aarhus Convention[9]. Indeed, Article 9 of the Aarhus Convention requires that review procedures must be fair, equitable, timely and not prohibitively expensive. The proposal in the General Scheme to limit the circumstances in which an award of costs will be made to only those circumstances where the decision of the court provides a "significant benefit to the applicant" is in direct contradiction with both the spirit and the letter of the Aarhus Convention. The non-awarding of costs (pursuant to Head 8(7)) to a successful applicant raises the very real prospect of those proceedings being "prohibitively expensive" under the Aarhus Convention.

44. A similar rule was introduced in UK where costs are to be withheld by the court when it is highly likely that there would have been no substantial difference to the outcome for the claimant had the allegedly unlawful conduct not occurred[10]. The recent case law developed on this topic by the UK Court of Appeal[11] should be reviewed by the Joint Committee in so far as it provides useful consideration on the implications of the introduction of a requirement for "significant benefit to the applicant".

Recommendation:

45. The Law Society is strongly opposed to the terms of Head 8(7) of the General Scheme and recommends its deletion.

Head 9 – Jurisdiction

46. Head 9 is one of the more significant reforms proposed in the General Scheme. It seeks to confer Judicial Review jurisdiction on the Circuit Court with the requirement that defined categories of cases be initiated at that level.

47. This represents a departure from the historic concentration of Judicial Review in the High Court. While the Oireachtas is entitled to regulate jurisdiction, the relocation of first-instance Judicial Review to a lower court alters the institutional context in which questions of public law legality are determined. The removal of certain Judicial Reviews from the remit of the High Court potentially raises a question of compatibility with the constitution. It is uncertain whether Head 9(2) would withstand constitutional scrutiny considering the place of the High Court within Article 34 of the Constitution. It seems arguable that an amendment to the Constitution would be required to allow

[8] The Minister is authorised to adopt regulation governing costs of proceedings issued under Part 9 of the Planning and Development Act 2024, pursuant to section 294 of the same act.
[9] The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) of 28 June 1998.
[10] Section 31(2A), Senior Courts Act 1981 as amended.
[11] See for example *R. (Bradbury) v. Awdurdod Parc Cenedlaethol Bannau Brycheiniog* [2025] EWCA Civ 489; [2025] 4 W.L.R. 58; *R. (Greenfields (IOW) Ltd) v. Isle of Wight Council* [2025] EWCA Civ 488; and *R. (Wickford Development Co Ltd) v Secretary of State for Environment, Food and Rural Affairs* [2025] EWCA Civ 882.

the transfer of certain Judicial Review proceedings to the Circuit Court as currently the Constitution only allows delegation to lower courts of “local and limited jurisdiction”. It does not appear that Judicial Review matters can correctly be described as being matters of ”local” and of “limited jurisdiction”. Judicial Review has for good reason been concentrated in the High Court, reflecting its constitutional status, capacity, and role in developing coherent public law jurisprudence.

48. The impact of this reform is amplified by the breadth of the categories designated for mandatory Circuit Court jurisdiction, including immigration and international protection decisions, Judicial Review of District Court decisions, and decisions of public bodies and enactments to be specified in Schedule 2 of the General Scheme. At present, Schedule 2 has no substantive content and we note the indication therein that it will be finalised following Departmental consultation. Accordingly, the full extent of the proposed decentralisation of Judicial Review cannot yet be assessed, and the implications of Head 9 depend on the contents of Schedule 2. The Law Society would appreciate the opportunity to examine a draft of Schedule 2 when it becomes available.

49. The General Scheme does not address how consistency of jurisprudence, judicial specialisation, or administrative support will be ensured within the Circuit Court. This raises a question as to whether the proposed jurisdictional expansion of the Circuit Court is being adequately matched by additional resources and capacity planning. An assessment of the adequacy of those plans would need to be conducted.

50. It is anticipated that the Circuit Court’s caseload will increase significantly as a direct consequence of Head 9. This is of particular concern when Circuit Court’s resources are already stretched and disposition time of cases are already at levels that are above the European average[12]. For example, the transfer of asylum Judicial Reviews to the Circuit Court would, taking 2024 as an example, increase by at least 736 cases, in one year alone, the workload of the Circuit Court[13].

Jurisprudential weight of Circuit Court’s determinations

51. Circuit Court determinations in Judicial Review will bind the parties before the Court but will not carry the same systemic authority that is traditionally associated with High Court Judicial Review. They will not bind other courts or public bodies and do not operate, even in practice, with *erga omnes*[14] effect. In a system with robust appellate pathways, such limitations are mitigated by appellate correction and consolidation.

52. Under Head 12 however, appeal rights are to be significantly restricted. Save in cases involving points of exceptional public importance or constitutional validity, determinations of Judicial Review, whether in the Circuit Court or the High Court, will be final.

53. The combined effect of decentralised first-instance adjudication and curtailed appeals raises a question as to how coherence and uniformity in public law jurisprudence are to be maintained. There may be a risk of differing interpretations emerging across circuits. Systemic concerns may arise where illegality is corrected *inter partes* but persists more broadly.

[12] Report on *Justice Indicators,* Centre for Justice and Law Reform, February 2026, pp. 64-65.
[13] Incoming new asylum cases in 2024, see Courts Service Annual Report 2024, p. 75.
[14] Towards everyone.

Recommendation:

54. In light of the above objections, the Law Society recommends that Judicial Review proceedings be retained in the High Court and that jurisdiction to determine Judicial reviews not be conferred on the Circuity Court.

55. Therefore, the Law Society recommends that Head 9 be deleted from the General Scheme.

Head 10 – Application for leave to apply

Restriction of the period to bring Judicial Review

56. Currently, under Rule 21(1) of Order 84 RSC an application for leave to apply for Judicial Review must be made within three months from the date when grounds for the application first arose [15]. Head 10 (1)(d) proposes to reduce the time period to eight weeks.

57. The policy rationale for this proposed reduction of time is not clear. This diminution has a strong impact on the right of an individual to secure access to the courts. Three months is already a short period within which an individual must discover the existence of the decision, seek legal advice (potentially requiring the review of a large documentation or seeking expert's opinion) and deciding whether to embark on the first stage of a Judicial Review (ie. to apply for leave).

Recommendation:

58. The Law Society is strongly opposed to the proposal to limit the leave period to 8 weeks and favours the retention of the period of three months (prescribed by Order 84 of the RSC) for the making of an application for leave.

59. Therefore, the Law Society requests that the period of "8 weeks" which features in Head 10(2)(d) be replaced with "12 weeks".

Limitation to judicial discretion of extension of time to apply for leave

60. The provisions of Order 84 RSC regarding application of extension of time to appeal have been mainly reflected in the General Scheme, except for two points of note.

61. Head 10(7)(c) provides that any extension of time to apply for leave would be limited to a maximum of sixteen weeks from the date when the grounds of the application first arose. There is no clear rationale for imposing this limitation upon the discretionary power of the court.

62. Secondly, Head 10(9) proposes to introduce new criterion to be taken into consideration by the court when assessing whether to extend time or not. The General Scheme proposes that the court will be required to consider the prejudice to "effective public administration", in addition to the prejudice to the respondent or third party. The term "effective public administration" has not been defined and therefore does not have a clear meaning in the General Scheme, nor in case law. The use of this term introduces an undesirable degree of vagueness. There is a risk that this

[15] There are shorter periods fixed by statute such as section 5 of the Illegal Immigrants (Trafficking) Act 2000 which prescribes a 28 day period for specific asylum decisions.

criterion could be used as a blanket objection to refuse extension of time to apply for leave.

Recommendation:

63. The Law Society recommends that an adequate definition of the term "effective public administration" be included in the General Scheme, perhaps in Head 2.

Application for leave to apply before the Master of the High Court or the County Registrar

64. Head 10(13) grants the power to the President of the High Court and of the Circuit Court to issue practice direction to provide for an application for leave to be made before the Master of the High Court or the County Registrar respectively.

65. This is a notable change to the current practice where an application for leave is made and adjudicated by a judge of the High Court. Unlike an independent judge of the High Court the Master of the High Court or the County Registrar are not members of the judiciary. They do not benefit from the same level of independence, control or authority as a judge of the High Court. While they have the power to make certain orders they are limited in their functions and authority.

66. The County Registrar, for example, has a limited jurisdiction. In the High Court case of *Permanent TSB plc v Farrelly*[16], Hyland J. found that the Circuit Court is a court of limited jurisdiction and does not enjoy any inherent jurisdiction. This is less so in the case of the County Registrar. Hyland J. stated:

67. "It is trite law that the Circuit Court is a court of limited and local jurisdiction and does not enjoy an inherent jurisdiction. Still less does the County Registrar enjoy any inherent jurisdiction. The jurisdiction of the County Registrar is delineated by the rules of the Circuit Court, which in turn are made by way of delegated legislation."[17]

68. Hyland J. found that the County Registrar has no discretion to dismiss for want of prosecution. It is a reasonable conclusion to infer that the same consideration would be extended to an application for leave to apply as it is effectively a decision allowing or not allowing the prosecution of a case.

69. Decisions made by the County Registrar or Master of the High Court will bind the parties before them but will not have the same authority as a decision of the High Court. This is a significant concern, particularly in light of the importance of the case law concerning an application for leave to appeal. This concern is heightened by the proposed restriction on appeals under Head 12 of the General Scheme.

70. In addition, we are concerned that the proposal that Master of the High Court or a County Registrar would deal with leave applications is likely to be unworkable from a practical point of view. There were more than 1,950 Judicial Reviews issued in 2025. Immigration cases account for a substantial portion of the list (more than 736 cases in 2024 or 45% of all Judicial Reviews initiated that year). To suggest that a single County Registrar in Dublin could manage this volume of litigation, in addition to all other pre-existing functions is not plausible.

[16] *Permanent TSB plc v Matthew Farrelly* [2023] IEHC 255
[17] Ibid, para. 13.

Recommendation:

71. The Law Society recommends that an application for leave to appeal should be heard only by a member of the judiciary.

72. Therefore, the Law Society recommends that Head 10(13) be amended so as to reflect that leave to apply applications may only be made before a judge of the High Court.

Head 11 – Court's Consideration of Application for Leave to Apply

73. The General Scheme seeks to further recalibrate Judicial Review by introducing a statutory requirement that the grant of leave to apply for Judicial Review be contingent on the applicant establishing a "significant benefit" from the granting of the remedy (Head 11(1)(b)(iii)) and that the applicant has a "reasonable prospect of success" (Head 11(1)(c)).

74. This is a departure from the current threshold[18] which requires that the applicant has sufficient interest into the matters to which the application relates and that they have an arguable case in law[19].

75. The change of the threshold will effectively constitute an increased barrier to access to Judicial Review. It will have a significant impact on the accessibility of the court to individuals. There is no clear policy rationale for this proposed reform.

76. The proportionality and the impact of this proposal should be examined carefully. As indicated above, while this change might not, on the face of it, seem an important one, it is yet one further step that seeks to reposition Judicial Review in such a way as to make it less and less accessible.

Recommendation:

77. The Law Society recommends that the current requirements and threshold for granting leave to apply to be maintained, and therefore that the requirements and threshold set out in Head 11(1) not remain in the General Scheme.

Head 12 – Appeal of Judicial Review Determination.

78. Under the General Scheme, and in particular under Head 12, it is proposed that appeal rights be significantly restricted. Save in cases involving points of exceptional public importance or constitutional validity, determinations of Judicial Review, whether in the Circuit Court or the High Court, will, under the General Scheme, be final. This is a stark change to the current system whereby leave to appeal are granted at a much lower threshold.

79. The proposed restriction on the possibility to bring appeal on simple point of law will deprive unsuccessful applicants of the opportunity to argue that a court or an authority simply erred in applying the law for example. As part of the right to an effective remedy, the appeal process must allow for proper re-consideration of the case. It is questionable whether the proposed restriction on the right of appeal to

[18] It should be noted that some statutory and non-conventional Judicial Review may have a different threshold for the granting of leave to apply.
[19] See *G. v. Director of Public Prosecutions*,[1994] 1 IR 374, para. 377-378.

being only an appeal on a point of law of exceptional public importance fulfils the definition of an effective remedy.

80. The right to appeal will be further barred by the fact that leave to appeal will have to be decided by the judge who made the first instance decision. This is a further step toward disproportionate restrictions of the right to appeal.

81. The Judicial Review provisions of the General Scheme propose a series of interlocking reforms that, taken together, represent a significant reorientation of Judicial Review in Ireland. The decentralisation of original jurisdiction, the restriction of appeals, and the recalibration of remedies and costs move Judicial Review toward a more fragmented and individualised model of adjudication. Whether that model is capable of sustaining the coherence, authority and systemic oversight traditionally associated with Judicial Review is a question that merits careful consideration as the General Scheme progresses towards finalisation and eventual enactment.

Recommendation:

82. The Law Society recommends the retention of the current appeal system and also the retention of the threshold for leave to appeal to be granted.

Part 4 – Civil Procedures in the Courts

83. The General Scheme proposes to embed active judicial case management and to introduce a statutory presumption against the granting of adjournments, including where the parties consent.

Head 16 – Presumption Against Granting of Adjournments

84. While active case management is a well-established feature of modern civil procedure, the introduction of a presumption against adjournments represents a more significant development.

85. International experience demonstrates that active case management can improve efficiency and proportionality where it is supported by clear procedural frameworks, consistent judicial training, and adequate resourcing.

86. The reforms associated with Lord Woolf in England and Wales are frequently cited in this regard. However, those reforms operated within a materially different institutional context, including greater judicial continuity, more developed pre-trial processes and a stronger infrastructure for early issue definition.

87. In Ireland, Circuit Court practice has traditionally relied on a degree of procedural flexibility to manage a high volume of cases of varying complexity, subject matter and party capacity.

88. Adjournments have often functioned as a practical response to systemic factors beyond the control of the parties, including listing pressures, late disclosure, third-party delays and uneven access to legal representation. A statutory presumption against adjournments risks constraining this flexibility without addressing the underlying structural causes of delay.

89. The position is further complicated by the introduction of mandatory penalties for non-compliance with case conduct principles (Head 16(3)). While sanctions may have a legitimate role in case management, their use in this context introduces a quasi-disciplinary element into procedural decision-making. In the absence of detailed guidance, transparent criteria and appropriate safeguards, there is a real risk of inconsistent application and disproportionate impact, particularly in family law, capacity-related proceedings and cases involving vulnerable parties.

90. In the absence of clear evidence that adjournments are a primary driver of delay in the Circuit Court, the necessity and proportionality of a statutory presumption against their grant has not been adequately demonstrated. A more proportionate approach may be to strengthen and support judicial discretion through guidance and resourcing, rather than constraining it by the imposition of a presumption.

Recommendation:

91. The Law Society recommends that rather than introducing a statutory presumption against the granting of adjournments, that consideration be given to other measures (discussed above) to strengthen and support judicial discretion in the adjournment of cases.

Head 17 – Deemed Discontinuance of Civil Actions

92. Head 17 introduces an administrative deemed discontinuance mechanism after a six-month period of inactivity, subject to a limited right of reinstatement. This represents a significant departure from current procedure, under which dismissal or strike-out for delay has ordinarily required a judicial determination grounded in an assessment of culpability, prejudice and proportionality, rather than arising automatically by operation of an administrative rule[20].

93. Comparative experience[21] as reflected in the development of judicial case management across common law jurisdictions, suggests that mechanisms aimed at identifying and removing inactive or dormant cases can contribute to improved administrative efficiency and reduced delay. However, the evidence indicates that such measures are most effective where delay arises from party inaction, tactical default, or procedural gamesmanship, and are less successful in addressing delay attributable to structural, institutional, or systemic factors within the court process itself. In the Circuit Court, delay frequently arises from factors external to the parties, including the preparation of expert reports, responses from institutional or public bodies, capacity-related issues, or the sequencing of related proceedings. In such cases, the absence of formal procedural “steps” does not necessarily equate to culpable delay or abandonment of the claim.

94. By treating inactivity as a proxy for culpable delay, the proposed deemed discontinuance regime risks terminating proceedings that are stalled rather than neglected. In the absence of a sufficiently flexible definition of what constitutes a step in proceedings, and a robust and accessible reinstatement mechanism, the measure may prioritise administrative tidiness over the substantive adjudication of disputes. A system that removes cases from the court list without a judicial assessment of the reasons for delay represents a material recalibration of the balance between

[20] *Kirwan v Connors* [2024] IESC 11.

[21] Evan Bell, *Judicial Case Management* (Judicial Studies Institute Journal 2009)

efficiency and fairness, the necessity and proportionality of which has not been clearly established.

95. The proposition is open to further criticism as Head 17 does not make provision for ruling on costs in circumstances of automatic discontinuing. By providing an automatic discontinuation of a case in which a plaintiff would have ceased to be active without making provision for costs to the benefit of the defendant, the General Scheme is at risk of encouraging practices whereby a plaintiff who is no longer interested in their case (for various reasons) would let it disappear and in this way saddle the defendant with costs they had to incurred defend the case. In contrast, if the plaintiff had prosecuted the case, it is possible that costs might have been awarded to the defendant, or an agreement on costs could have been reached.

Recommendation:

96. The Law Society recommends that Head 17 be amended so as to reflect the following requirements: where a defendant seeks a discontinuance and lodges the application for deemed discontinuance in accordance with Head 17, the costs should be granted to the defendant and to be taxed in default of agreement by order of the court. Where such an application is filed by the plaintiff, any agreement as to costs must be the subject of a court application on motion.

97. The Law Society recommends the adoption of a more flexible definition of what constitutes a step in proceedings, and a robust and accessible reinstatement mechanism.

Head 19 – Pre-Action Protocols

98. The Law Society had been highly supportive of the proposal to introduce pre-action protocols in the context of clinical negligence cases.

99. Active contributor in this area of legal reform for many years, the Law Society commented on the draft pre-action protocol regulations for clinical negligence cases at the invitation of the Department of Justice in 2024[22]. At that time, a number of recommendations to improve the draft Regulations were brought to the Department's attention and the Law Society called for greater specificity and clarity to be introduced to the draft Regulations.

100. In spite of the passing of some time, these Regulations are yet to be published; pre-action protocols have yet to be introduced in clinical negligence cases.

101. The pace of reform in this area in Ireland has been a source of frustration for both defence and plaintiff solicitors. Pre-action protocols have been in operation in the UK for the last 20 years and have become a means by which the UK courts seek to expedite the efficient resolution of clinical negligence claims. They have also been in operation in Northern Ireland since 2004.

Recommendation:

102. The Law Society would encourage the Department to introduce the Regulations on pre-action protocols in clinical negligence cases.

[22] Submission on draft Civil Liability and Courts Act 2004 (Pre-action Protocol) Regulations for clinical negligence cases to the Department of Justice, Law Society of Ireland (27 May 2024).

103. Before introducing pre-action protocols in other areas of litigation (under Head 19), the Law Society for consideration to be given to the best practices emerging from UK and Northern Ireland.

Head 21 – Special Arrangements for Children and Persons with Intellectual Disability Giving Evidence in Civil Proceedings

104. Head 21 provides for special arrangements where a child or a person with mental disability, to the extent that they cannot live independently, is required to give evidence. The threshold for determining whether a person with mental disability can avail of the special arrangements for giving evidence is narrowly focused on their ability to live independently. The assessment of the court as to whether a person should be eligible to avail of special arrangements for giving evidence should not be solely based on their independence, but rather on their ability to participate effectively in the proceedings.

Recommendation:

105. The Law Society recommends that the approach proposed in Head 21 should be reconsidered so as to allow for the court to assess whether an adult with intellectual disability can effectively participate in the proceedings, rather than focusing on determining whether they can live independently.

Head 28 – Rules of Court Committee's Remit to Include Rules of Evidence as Apply to Civil Proceedings

106. Head 28 of the General Scheme proposes to extend the remit of the Rules of Court Committees to include the making of rules of evidence applicable to civil proceedings. This represents a significant development in Irish civil justice and raises questions of principle as to the appropriate locus of authority for determining evidential standards.

107. The rules of evidence have been grounded in a combination of common law development and primary legislation. While procedural rules have regulated the manner in which evidence is presented, sequenced and managed, the substantive admissibility of evidence has been treated as a matter of legal policy, closely bound up with fair procedures and the reliability of fact-finding. The proposed delegation risks eliding that distinction by conferring on procedural committees the power to shape evidential norms that may materially affect the outcome of civil proceedings.

108. Recent commentary has underscored the dangers inherent in relaxing evidential safeguards in the name of efficiency. In the context of the UK Post Office Horizon scandal, Charles Lysaght[23] has drawn attention to the catastrophic consequences that can arise where documentary and computer-generated records are admitted without adequate scrutiny of their reliability. Writing with particular authority as a former Counsellor to the Law Reform Commission (the **LRC**), he traces how Irish law has progressively moved away from traditional evidential protections, including the effective displacement of the "best evidence" principle, through statutory admissibility regimes that do not require proof of system integrity or reliability. He expressly warns

[23] Charles Lysaght, "British Post Office scandal shattered lives. We need safeguards to stop it happening here", *Irish Times,* 18 January 2024.

that this trend exposes Irish courts to similar risks of untested institutional evidence being treated as determinative.

109. Those concerns align closely with the analysis undertaken by the LRC in its work on documentary and electronic evidence[24]. The LRC accepted that reform of traditional exclusionary rules was necessary to accommodate modern record-keeping practices. However, it emphasised that such reform must be accompanied by safeguards, including authentication requirements, advance notice, and, where appropriate, proof of reliability as a condition of admissibility. Crucially, the LRC treated these matters as questions of substantive evidential policy, suitable for determination through legislation rather than procedural rule-making, precisely because of their impact on the fairness and integrity of adjudication.

110. Against that background, the proposed conferral of a broad evidential rule-making power on Rules of Court Committees gives rise to concern. Such committees are primarily constituted to promote procedural efficiency and consistency. They do not operate with the same policy mandate, consultative depth or democratic accountability as members of, or committees of, the Houses of the Oireachtas, or law reform bodies. There is a real risk that evidential standards, particularly those governing admissibility, authentication and reliability, could be incrementally reshaped through procedural instruments, without the level of scrutiny warranted by their substantive consequences.

111. The lessons drawn from comparative experience, most starkly illustrated by the UK Post Office litigation, suggest that efficiency-driven reform of evidential rules must be approached with caution. Where evidential safeguards are weakened or proceduralised, the risk is not merely theoretical delay or imbalance, but the admission of unreliable material that cannot be effectively challenged.

Recommendation:

112. The Law Society objects to the proposed extension of the remit of the Rules of Court Committees to include the making of rules of evidence applicable to civil proceedings, and therefore recommends the deletion of Head 28.

Head 29 – Limitation of the Term of Lis Pendens

113. The Law Society welcomes the proposed reform of the *lis pendens* regime. The improper use of *lis pendens* can lead to substantial delays in proceedings. The introduction of a judicial control and time limitation of the *lis pendens* will limit the misuse of the procedure.

114. However, we would caution that *lis pendens* can and does serve a legitimate purpose in the context of family law proceedings where the property is not in the joint names of the parties.

[24] Law Reform Commission, *Consultation Paper on Documentary and Electronic Evidence* (LRC CP 57–2009, December 2009).

Part 5 – Jurisdiction of the District Court and Circuit Court

Head 30 and Head 32 – Extension of Monetary Limit of Jurisdiction of Circuit Court & Amendment of the Courts of Justice Act 1936

115. We reaffirm the observations that we have made under Head 9 (above). The General Scheme envisages a substantial repositioning of the Circuit Court. This is to be achieved both through the proposed extension of its monetary jurisdiction, and through the assignment of primary responsibility for significant categories of Judicial Review, including immigration, asylum, and other public law matters.

116. At its simplest, the proposal to increase the jurisdiction of the Circuit Court from €75,000 to €100,000, and to thus transfer all cases worth between €75,000 and €100,000 from the High Court to the Circuit Court[25] is most surprising and is a proposal that can have no basis in any considered policy.

117. In our view, such a change could have grave and unintended negative consequences for litigants and other court users.

118. The Law Society is at a loss to understand how, or why, an increase in the monetary jurisdiction of the Circuit Court is being proposed at all.

119. No change of this nature has been recommended or suggested in any of the many carefully considered reports delivered in recent years including, in particular, the *Expert Group Report to Review the Law of Torts and the Current Systems for the Management of Clinical Negligence Claims*[26] ("the Meenan Report") and the Kelly Report.

120. The only supposed basis for this proposed change is, we understand, attributable to inflation. However, we note that the extent of the proposed change in monetary jurisdiction is far in excess of the rate of inflation over the relevant period.

121. In this context, it must also be borne in mind that when civil jurisdictions were last reviewed, a clear distinction was made in respect of personal injury matters and while the civil jurisdiction of the Circuit Court generally was set at €75,000, the civil jurisdiction of the Circuit Court in personal injury matters was specifically set at €60,000, to have regard to the particular nature of personal injury litigation.

122. This requirement for the distinction in personal injury matters has been strengthened and underpinned by the subsequent introduction of the Personal Injury Guidelines, specifically limiting the levels of awards that may be made by the Courts.

123. While personal injury litigation generally requires particular consideration having regard to how this area of litigation has been treated in legislation, the more specialist subset of personal injuries litigation comprising clinical negligence litigation requires more careful consideration.

[25] For personal injuries cases the threshold will move from €60,000 to €100,000.
[26] January, 2020. Accessible here: https://www.gov.ie/en/department-of-health/publications/expert-group-report-to-review-the-law-of-torts-and-the-current-systems-for-the-management-of-clinical-negligence-claims/

124. In April 2025, a dedicated Clinical Negligence list was established by the President of the High Court pursuant to Practice Direction HC132. In addition to establishing a dedicated Clinical Negligence List in the High Court presided over by a judge who shall assign cases within the list to judges drawn from those assigned to the Personal Injuries List who are experienced in dealing with clinical negligence proceedings, the practice direction provides for interlocutory applications and case management directions in clinical negligence matters.

125. This dedicated Clinical Negligence List is a very welcome and progressive development in the High Court and follows on from the recommendations of the Meenan Report in 2020.

126. No such dedicated clinical negligence list exists in the Circuit Court, nor is there any panel of judges experienced in dealing with clinical negligence proceedings available for assignment to such cases in the Circuit Court.

127. There are a number of particular features of clinical negligence cases that make them particularly unsuitable for being dealt with in the Circuit Court.

128. Given that Personal Injuries Guidelines apply to awards made in clinical negligence proceedings a very substantial number of clinical negligence proceedings requiring to be brought in the High Court currently fall into the category of cases valued between €60,000 and€100,000 currently heard in the High Court, but which if these proposals were introduced would be transferred to the Circuit Court.

129. The proposal to transfer all of these clinical negligence cases to the Circuit Court as a result of an ill-considered change in jurisdiction levels would have significant negative consequences for these most vulnerable court users who are, in many instances, victims of negligence, and clinical negligence, and in some cases, wrongful death.

130. The proposal in the General Scheme to take a substantial proportion of the clinical negligence cases out of the carefully designed and implemented system created for them in the High Court Clinical Negligence List and simply dropping them into an already overburdened Circuit Court that in structural and resource terms unsuited to dealing with them in an efficient way, is difficult to justify or fathom.

131. The General Scheme does not address how consistency of jurisprudence, judicial specialisation, or administrative support will be ensured within the Circuit Court. At Scheme stage, this raises an institutional question: whether jurisdictional expansion is being adequately matched by capacity planning.

132. The reforms proposed by the General Scheme will lead to an unprecedented increase of the Circuit Court workload. The significant increase in incoming cases will not only arise from the increase of the monetary threshold of the Circuit Court but will also arise from an increase in District Court appeals (as the monetary threshold for District Court cases is also proposed for increase). Also, an entirely new area of litigation will arise with the transfer to the Circuit Court of Judicial Reviews of immigration and international protection decisions, District Court decisions, and decisions of public bodies and enactments to be specified in Schedule 2. When considering the impact of the proposed changes to the Circuit Court, it is important to

note that 45% of incoming Judicial Reviews in 2024 were immigration and international protection decisions[27].

133. A foreseen substantial increase in Circuit Court caseload coupled with the experience of the practitioners at the Circuit Court is worrying. There are currently lengthy delays for hearing of cases in the Circuit Court. By its nature the Circuit Court only sits for relatively short sessions for civil matters. It is reported that it is only with great difficulties that cases can be listed for hearing for more than half a day. It is difficult to imagine how a system that is already stretched to its limits will be able to absorb a significant increase of workload. Of note also is the fact that the proposed changes will require written judgments to be issued by the Circuit Court – a practice that is not currently commonplace at Circuit Court level[28]. This requirement will increase the time and resources required of the judges.

Recommendation:

134. The Law Society recommends the deletion of Head 30. We also recommend the deletion of Head 32.

Head 31 – Extension of Monetary Limit of Jurisdiction of District Court

135. The Law Society is opposed to the proposal in Head 31 to increase the monetary jurisdiction of the District Court. The concerns that we raised in relation to the proposed extension of monetary limit of the jurisdiction of the Circuit Court are also applicable to the proposal to extend the monetary limit of the District Court's jurisdiction.

136. The increase in the value of the cases coming before the District Court will potentially lead to a requirement for longer hearings to dispose of cases. In a situation where it is already challenging to obtain dates for hearings that run for longer than one or two hours, it seems inevitable that the proposal in Head 31 will have a further negative impact on the timely disposal of cases.

137. In addition, it is noted that the District Court costs are regulated by a specific scale of costs. the District Court scale of fees is primarily determined by the amount of damages that are awarded or agreed, regardless of the amount of work that may be required by a solicitor to achieve the desired outcome for the client. This is contrary to the criteria for the assessment of fees pursuant to Schedule 1 of the Legal Services Regulation Act 2015 which requires legal fees to be assessed on specific principles such as costs that have been reasonably incurred and the costs are reasonable in amount.

138. There are reports in recent years of prospective litigants finding it difficult to secure legal representation at District Court level owing to the outdated and poor fee levels in place. It is reported that the fees paid under the District Court scale of fees do not take into account the costs reasonably incurred, complexity or novelty of the issue, the specialised knowledge of the legal practitioner(s) involved, or the time expended on the matter. It is anticipated that these difficulties will only be amplified

[27] There were 1632 incoming Judicial Review in 2024 according to the Courts Service data (see 2025 reports on 2024 activities). 736 concerned matters described as asylum matters.
[28] Written judgement like judgments produced by superior courts such as the High Court are not a common occurrence in the circuit court, and even rarer in the District Court.

by the increased complexity of cases that will arise as a result of the increase of the District Court's monetary jurisdiction.

Recommendation:

139. The Law Society recommends the deletion of Head 31.

Conclusion

140. The General Scheme of the Civil Reform Bill 2025, if enacted, will represent a very substantial reform and reorganisation of civil procedure, Judicial Review, and court jurisdiction.

141. Many of the proposals seek to recalibrate long-established practices by emphasising proportionality, active case management, and earlier clarification of issues, while reallocating functions across courts and procedures. That is why we have called for the phased implementation of the proposed reforms, and for the periodic re-assessment of the operation of those reforms following their implementation.

142. The analysis developed by the Law Society has focused not on the desirability of reform as an objective, but on the internal consistency of the proposed measures and their alignment with existing legal principles and norms. In particular, the interaction between new procedural obligations, judicial discretion, and access to the courts warrants careful attention at drafting and implementation stage, where precision will be critical to avoid uncertainty or unintended effects.

143. The Law Society has noted a number of serious concerns which raise question of constitutionality, proportionality, efficiency of the justice system and issues concerning access to justice. We ask that those particular areas of concern receive close attention when the draft legislation is being finalised.

144. The Law Society appreciates the opportunity to provide submissions on the General Scheme of a Civil Reform Bill 2025 to the Oireachtas Joint Committee on Justice, Home Affairs and Migration. The Law Society remains available to assist with the Joint Committee as it continues its scrutiny of the General Scheme.

145. For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie



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