UNHCR Comments on the General Scheme of a Civil Reform Bill 2026

The United Nations High Commissioner for Refugees (UNHCR) provides these comments on the General Scheme of a Civil Reform Bill 2025 (hereinafter referred to as General Scheme) pursuant to its mandate. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, seek solutions for them.[1] UNHCR is also responsible for supervising the application of international conventions for the protection of refugees,[2] as reflected in Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of the 1967 Protocol relating to the Status of Refugees,[3] obliging State Parties to cooperate with UNHCR in the exercise of its functions.

The proposed legislative reform will significantly overhaul the judicial review system in Ireland and is likely to have a lasting impact on the way judicial remedies are accessed in the Irish superior courts. UNHCR's current submission is limited to the main changes that are likely to have the most significant effect on asylum seekers, refugees and beneficiaries of subsidiary protection. This submission is made without prejudice to any further comments or recommendations that UNHCR may provide in the future.

1. Judicial Review

Part 3 of the General Scheme proposes several changes to the judicial review procedure which is currently set out in the Superior Court rules and on a statutory basis for international protection and immigration matters in the Illegal Immigrants (Trafficking) Act 2000 as amended.[4] Judicial review is a mechanism by which an application can be made to the High Court to challenge the decision-making processes of administrative bodies, Tribunals and lower courts.

Head 8(5)(a) of the General Scheme is a mandatory provision for judicial review requiring the Court to not grant a remedy unless it is satisfied that the following five criteria are met: i) the respondent has acted unlawfully; (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.

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[1] UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, A/RES/428(V), 14 December 1950: refworld.org/legal/constinstr/unga/1950/72586.
[2] *Ibid*. para. 8(a).
[3] UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, UN Treaty Series, Vol. 189, p. 137: refworld.org/legal/agreements/unga/1951/39821; UNGA, *Protocol Relating to the Status of Refugees*, 31 January 1967, UN Treaty Series, Vol. 606, p. 267: refworld.org/legal/agreements/unga/1967/en/41400, (together '1951 Convention').
[4] Illegal Immigrants (Trafficking) Act 2000, No. 29 of 2000 as amended, available at: https://revisedacts.lawreform.ie/eli/2000/act/29/revised/en/pdf?annotations=true

The current test governing judicial review in asylum and immigration matters requires that 'substantial grounds' [5] exist for granting leave to seek judicial review. This is already a higher threshold than the standard applicable to judicial reviews in other areas of law.[6]

The conditions outlined in Head 8(5)(a) are even more restrictive than the current test, as it would require applicants to satisfy a series of cumulative criteria before a remedy can be granted. The cumulative nature of these conditions may make it significantly more difficult in practice for applicants for international protection and refugees to obtain judicial review of decisions affecting their rights and protection needs, thereby potentially weakening access to an affective remedy before the courts. In particular, the new criterion in subsection (iv) requires the court to balance the 'interests of the applicant' and the 'public interest'. Judicial reviews proceedings in the context of international protection often concern fundamental rights of individuals, including protection against *refoulement* or serious harm. Where claims engage the principle of *non-refoulement*, ensuring effective judicial scrutiny of the decision is itself in the public interest. Moreover, fundamental rights such as the prohibition of torture or inhuman or degrading treatment or punishment are of an absolute character and are not subject to a balancing exercise against considerations of public interest.

According to the European Court of Human Rights, the notion of an effective remedy in asylum law requires "rigorous scrutiny" of an arguable claim because of the irreversible nature of the harm that might occur[7] and the remedy must be effective in practice as well as in law. In cases such as *Jabari v. Turkey*, *M.S.S. v. Belgium and Greece*[8], and *I.M. v. France*,[9] the Court has emphasized that remedies must allow close and independent scrutiny of claims involving a risk of treatment contrary to Article 3 European Convention on Human Rights (ECHR).

Both the International Protection Act 2015 and the proposed International Protection Bill 2026 establish an appeal body to review international protection decisions. The Court of Justice of the European Union has held that such an appeal body, when combined with the High Court's supervisory role, can constitute an effective remedy.[10] However, this assessment assumes that access to judicial review is not limited by restrictive criteria. The proposed amendments, which tighten the conditions for accessing judicial review, may therefore call into question whether the system as a whole still provides an effective remedy.

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[5] Section 5 Illegal Immigrants (Trafficking) Act 2000.
[6] 'Arguable case' is the general standard for judicial review in other areas of law.
[7] *Jabari v Turkey*, no. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: https://www.refworld.org/jurisprudence/caselaw/echr/2000/en/69982
[8] *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights (ECtHR), 21 January 2011, https://www.refworld.org/jurisprudence/caselaw/echr/2011/77079
[9] I.M. v France, Application no. 9152/09
[10] *H.I.D. and another v Refugee Applications Commissioner and others,* C-175/1, European Union: Court of Justice of the European Union (CJEU), 31 January 2013, https://www.refworld.org/jurisprudence/caselaw/ecj/2013/90379

For a remedy to be effective, national procedures must guarantee full judicial protection as required by Article 47 of the EU Charter of Fundamental Rights (Charter) and Article 13 ECHR, particularly when read together with Article 4 of the Charter and Article 3 ECHR in cases involving potential *refoulement*.

In this context, while certain areas of immigration law may require balancing of individual versus public interest, such balancing cannot undermine the absolute nature of the prohibition of *refoulement,* including where risks arise under Article 3 of the ECHR and Article 4 of the Charter.

In addition, the requirement that the granting of relief provide a "significant benefit" to the applicant may unduly limit remedies in cases where judicial clarification of the law or correction of a procedural deficiency is necessary to ensure effective judicial protection, safeguarding the integrity of the international protection system and to prevent future violations.

Recommendation:

- Delete Head 8(5)(a) and (b) of the General Scheme and retain the existing 'substantial grounds' leave threshold for asylum, other international protection and refoulement-related judicial reviews.

2. Court jurisdiction for asylum matters

Head 9(2) provides that jurisdiction for judicial review will now lie with the Circuit Court as opposed to the High Court for present court proceedings in asylum, immigration and citizenship cases. UNHCR is concerned with the potential impact of this amendment. Over the years the High Court has built up significant expertise in asylum law, particularly with the establishment of the asylum list administered by High Court judges. Judicial specialization in asylum and migration matters is widely recognized as good practice in light of the specificities of these types of judicial reviews and the complexities that arise in this area which often concern individual human rights and are subject to evolving EU case law and legislation.

Having specialized judiciary with competency over this area of law will be particularly important with the transposition of the EU Pact on Asylum and Migration and related transitional measures in the move to the new asylum system in Ireland. This is particularly so in light of the fact that certain appeals to the new appeal body proposed in the International Protection Bill 2026 will not have suspensive effect.

In addition, a practical question arises as to the capacity of the Circuit Court. The court has no experience of examining asylum cases and would require significant additional resources to take on this caseload to prevent delays in accessing justice.[11] In addition, formal written judgments are not

[11] The Circuit Court has lengthy processing times and a high caseload per judge as indicated in the Law Society of Ireland , Centre for Justice and Law Reform, Justice Indicators, January 2026, available at: Justice

normally provided by the Circuit Court, which would require a change in practice. The availability of reasoned written judgments is particularly important in international protection cases, both to ensure transparency and foreseeability for applicants and to contribute to consistent application of asylum and human rights law.

In light of the above, UNHCR encourages careful consideration of whether maintaining the High Court as the primary forum for judicial review in international protection matters or establishing a clearly identified specialized jurisdiction within the superior courts, would better safeguard access to an effective remedy and the development of coherent jurisprudence in this field.

Jurisdiction for leave to apply for judicial review

Head 10(13) of the General Scheme permits the President of the High Court and of the Circuit Court to issue practice directions enabling applications for leave to seek judicial review to be made before the Master of the High Court or the County Registrar. This represents a significant departure from current practice, under which a High Court judge considers such applications. As County Registrars and Masters are not members of the judiciary, transferring leave decisions to them would materially change the character of independent judicial scrutiny at this preliminary stage. UNHCR recommends that only judges retain the power to consider judicial review applications given their independence, expertise, and authority. This is particularly important where applications concern risks of *refoulement* or other serious human rights violations, for which access to a prompt and fully independent judicial assessment is essential.

Recommendations:

- Delete Head 9 of the General Scheme and replace it with a provision explicitly retaining High Court jurisdiction for judicial review proceedings in asylum, immigration and citizenship cases.
- Amend Head 10(13) to ensure that applications for leave to seek judicial review are considered and determined by High Court judge, rather than by Masters or County Registrars, thereby safeguarding judicial independence, expertise, and the integrity of the review process.

In conclusion, the cumulative effect of the General Scheme, as drafted, will risk restricting access to an effective remedy for persons seeking refuge in Ireland. Reforms to the judicial review framework should be made in such a manner as to uphold fundamental rights, access to the courts and ensure access to justice and effective remedies for asylum seekers and beneficiaries of

Indicators ; For example See also the Courts Service Annual Report 2024, available at: courts-service-annual-report-2024.pdf

international protection in line with Ireland's obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, European Union law and international human rights law.

UNHCR hopes that these observations will be given due consideration by the Oireachtas Joint Committee on Justice, Home Affairs and Migration with a view to ensuring that the national legal framework is in line with international and human rights standards.