

THE BAR
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An Leabharlann Dlí

Submission to the Joint Committee on Justice, Home Affairs and Migration

THE GENERAL SCHEME OF THE IRISH NATIONALITY AND CITIZENSHIP (AMENDMENT) BILL 2026

October 2026

I. INTRODUCTION

The Council of The Bar of Ireland (the "Council") is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral Bar.

On 21st September 2026, the Minister for Justice, Home Affairs and Migration, published the General Scheme of the Nationality and Citizenship (Amendment) Bill 2026 (the "General Scheme"). The General Scheme is organised into 10 heads, and the Government press release accompanying the legislation indicated that the Government's purpose in drafting the legislation is to "ensure Ireland's naturalisation legislation is strengthened and aligned with that of other European countries."

The Government's press release further described the purpose of the legislation as follows:

"The suite of amendments contained in the General Scheme reflects the Government's policy that Irish citizenship by naturalisation is an earned privilege and the culmination of sustained lawful residence, economic self-sufficiency, social integration, civic participation and compliance with immigration law, rather than merely the passage of time."

II. HEADS OF THE BILL

HEADS 1, 2 & 3

Heads 1, 2, and 3 are the General Scheme's long title, short title, and definitions. These are standard legislative provisions, and the Council has no comment in relation to them.

HEAD 4

Head 4 is titled "Amendment to Section 6B of the Act of 1956". It replaces section 6B(4) so that, for the purposes of section 6A, a period of residence in the State is not reckonable where it would not be reckoned under section 16A(1), as amended by Head 9. Subhead 4(2) provides that this does not apply to a person born before commencement. The explanatory notes to Head 4 outline that the Head is intended to ensure consistency between section 6B(4) and section 16A(1).

HEAD 5

Head 5 proposes a series of amendments to criteria upon which a grant of a certificate of naturalisation may be granted. Presently, section 15 of the 1956 Act proscribes the criteria in which a Minister may grant such a certificate:

> *(1) Upon receipt of an application for a certificate of naturalisation, the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant—*
>
> *(a) is of full age;*
>
> *(b) is of good character;*
>
> *(c) has had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;*
>
> *(d) intends in good faith to continue to reside in the State after naturalisation; and*
>
> *(e) has, in accordance with subsection (1A) or, as the case may be, subsection (1B), and in the prescribed manner—*
>
> *(i) made a declaration of fidelity to the nation and loyalty to the State, and*
>
> *(ii) undertaken to faithfully observe the laws of the State and respect its democratic values.*

The proposed new section 15 would introduce new requirements for naturalisation eligibility, including

> *"(c) has had a period of two year's continuous residence in the State immediately before the date of the application and, during the ten years immediately preceding that period, has had a total residence in the State amounting to six years;"*
>
> *"(f) subject to subsections (3), has sufficient resources for himself or herself not to become an unreasonable burden on the State;*
> *(g) has not committed any offences listed in the first schedule to this Act at any point before or after an application for naturalisation;*
> *(h) has demonstrated a proficiency of the Irish language or the English language, or Irish sign language to such a standard and verified in such a manner as may be prescribed by the Minister;*
> *(i) has demonstrated a knowledge and understanding of Irish civics [civics, society and politics] to such a standard and verified in such a manner as may be prescribed by the Minister;*
> *(j) has continued to reside in the state and adhere to the conditions specified in (b), (f) and (g), pending the Minister's decision in respect of the application."*

The above proposed amendments represent a number of significant new criteria to be satisfied to obtain citizenship, in comparison to what currently stands. These are:

- Extension of the period of continuous residency in the years prior to the application for citizenship from 1 year to 2 years
- Extension of the total period of residence in the State to 6 years in the previous 10 years, instead of four years in the previous 8 years.
- Financial self-sufficiency
- Language proficiency requirements in English or Irish
- Civic knowledge requirements
- Requirement to have not committed an offence

Years of residency requirements

Since the commencement of the Principal Act in 1956, the State has required applicants to demonstrate one year's **continuous residency**, with the definition of "continuous residency" established. There are limits on the Minister's discretion. The proposed amendment to 2 years of continuous residency, in the period immediately before the application is a significant departure. This represents a 100% increase in

the accepted period of continuous residency prior to application for citizenship. The period of one year prior to application has been regarded as sufficient since 1956.

The proposal to extend the total **residence period** from 4 to 6 years is also a significant departure, and represents a 50% increase in the reckonable period of residency. For the avoidance of doubt, the total residence period is in addition to the two years pre-application continuous residency criterion.

In summary, the Bill has a requirement for minimum period of 8 years residency comprised of 2 years continuous residency and 6 years residency. Prior to the Bill, the total was 5 years.

The Bill therefore proposes a considerable increase in the number of years residency to qualify a person for application to citizenship. Whilst this means a total increase of 60% from 5 years to 8 years, the requirement to have 2 years continuous residency should also be considered as creating another significant, new, weighting that creates an additional burden on the applicant.

Knowledge of Irish civics, society and politics

This is a new requirement. The chief concern on this Head is that the depth or extent of the knowledge required is left entirely unregulated and in the discretion of the Minister. The requirement is vague and uncertain.

Subhead 5(1)(c) inserts new conditions into section 15(1), including at paragraph (i) a requirement that the applicant "has demonstrated a knowledge and understanding of Irish civics [civics, society and politics] to such a standard and verified in such a manner as may be prescribed by the Minister". Subhead 6(5) inserts a corresponding requirement into section 15A(1) at paragraph (k), requiring that the applicant "has demonstrated an understanding of Irish civics". Paragraph (h) of Head 5 and paragraph (j) of Head 6 introduce equivalent requirements as to proficiency in the Irish language, the English language or Irish Sign Language.

The explanatory notes to Heads 5 and 6 outline that the civics requirement is intended to ensure that applicants possess a foundational knowledge of how Irish society, government and the Constitution operate, and to bring Ireland into closer alignment with other EU Member States. Head 8 permits the Minister, in his absolute discretion, to waive the language and civics requirements "in certain circumstances, as prescribed". The explanatory notes to Head 8 outline that the purpose of that power is to ensure that the language requirement does not unduly discriminate against vulnerable applicants.

The Council further notes that the requirement in Head 6 is framed differently from that in Head 5. It is unclear whether spouses and civil partners will be subject to the same test as other applicants, or to a different one.

The Council notes that the standard, content and manner of verification of these requirements are left entirely to further regulation. The Council recognises the State has a legitimate aim to encourage integration among those seeking naturalisation. However, the definition and assessment of civic knowledge by regulation is an area in which caution is warranted. Knowledge-based tests of civic participation have in other jurisdictions and at other times operated as barriers to participation, and barriers to registration as a voter. If such a requirement is to be introduced, the requirement must be clear and unambiguous, and clear criteria set out in primary legislation.

Failure to take into account all-island context of citizenship

In addition, the proposed Bill is unclear as to what is meant by 'Ireland' which is not helpful given the all-island context of citizenship. The Council is concerned that a civics requirement directed substantively to the institutions, society and politics of the State may not reflect the all-island character of Irish citizenship. By way of example, the non-national spouse of an Irish citizen resident in Northern Ireland may be thoroughly familiar with the institutions, constitutional arrangements, politics and society relevant to life in Northern Ireland yet such an applicant could nonetheless fail an assessment centred on the institutions of the State, in which neither the applicant nor his or her Irish citizen spouse resides.

Nothing in the General Scheme indicates that the civics requirement will reflect the all-island character of Irish citizenship, the institutions of the Good Friday Agreement, or North–South arrangements. The General Scheme does not address whether assessment will be available in Northern Ireland. Nor does it provide for the recognition of language or civic knowledge requirements already satisfied for the purposes of UK immigration law. Further, the waiver power in Head 8 is directed, according to its explanatory notes, to vulnerable applicants, and does not appear to contemplate the position of applicants resident in Northern Ireland.

These considerations are of particular significance following the withdrawal of the United Kingdom from the European Union. A non-EEA spouse or civil partner of a dual Irish and British citizen resident in Northern Ireland would not receive EU citizenship from naturalising as a British Citizen. Therefore, naturalisation under section 15A is now, in practice, the principal means by which such a family may share a common citizenship of the European Union.

The Council further notes that an Irish citizen resident in Northern Ireland, including a person from the unionist tradition, is entitled under the Good Friday Agreement to identify as Irish, British, or both. Such a person may not identify with a State-centred conception of Irishness, as he or she is fully entitled not to. That person may nonetheless wish his or her spouse or civil partner to share his or her Irish citizenship. The Council submits that the eligibility of that spouse or civil partner should not turn on familiarity with a conception of Irish identity, defined by regulation and assessed by the Department, which the Irish citizen spouse is himself or herself under no obligation to share.

The Council notes that similarly, an Irish citizen resident in Northern Ireland who identifies exclusively as Irish, is likewise entitled to hold and express that identity in a manner that is not defined by reference to the State. Such a person may have little familiarity with the institutions, society or politics of the State, and his or her sense of Irishness may instead be rooted in the community, culture and traditions of Northern Ireland. The Council submits that a civics requirement which presupposes that Irishness is to be understood principally by reference to the State risks implying otherwise, and would be inconsistent with the all-island character of Irish citizenship.

In summary, the Council considers it important that the content of any civics requirement be set out with care, be subject to appropriate oversight by the Oireachtas, and accommodate the plurality of identity that the Good Friday Agreement expressly protects.

Language requirements incomplete

The Council notes the inclusion of the Irish language in Heads 5 and 6. This is a welcome recognition of the status of the Irish language and Irish language speakers, both North and South. However, the language requirement is incomplete. The Council submits that the language requirement should be considered in light of the linguistic diversity of the whole island. The Council notes that the linguistic landscape in Northern Ireland differs from that of the State. British Sign Language ("BSL"), which is distinct from Irish Sign Language ("ISL"), is the predominant sign language used by the Deaf community in Northern Ireland, with both BSL and ISL holding equal legal recognition yet Heads 5 and 6 provide for proficiency in ISL only. Similarly, while English and Irish are recognised as official languages in Northern Ireland, Ulster-Scots holds significant status as a recognised minority language. The Council submits that these differences should be considered in relation to the operation of any language assessment.

Additionally, the explanatory memorandum for Head 5 (1) (i) suggests a common European practice, which simply does not exist in relation to naturalisation (for example, the Netherlands does not permit dual nationality at all, whereas we do). The assertion of the position here seems under-evidenced and ill-founded.

No limitation period for disregarding the commission of an offence

Finally in relation to Head 5, the proposed offence condition would preclude naturalisation where an applicant has committed an offence listed in Schedule 1, whether before or after applying. The Scheme explains that this is intended to discourage abuse of immigration and naturalisation processes. However, the wording makes the listed-offence condition categorical; it does not set out an exception based on the seriousness or age of the offence, the applicant's circumstances, or the relevance of the conduct to the application, or how long ago the offence was committed. In other jurisdictions and in other times, such requirements have led to refusals of citizenship to long term residents in good current standing in the

community, for example, in another jurisdiction the commission of a traffic offence some 20 years earlier has lead to refusals of naturalisation.

The current framing of the offence condition displays a lack of proportionality.

Revocation of citizenship on grounds of public policy, public order or national security

Section 19 of the 1956 Act provides existing grounds to revoke citizenship in serious cases, including fraud or misrepresentation in obtaining the certificate, specified conduct concerning fidelity and loyalty, and certain other circumstances. The Scheme would add a separate ground where revocation is in the interests of "public policy, public order or national security". The breadth of the proposed ground makes proportionality and safeguards important issues for scrutiny: the Scheme does not itself specify how the Minister is to assess the seriousness of the conduct, the connection to the stated public interests, or the impact of revocation on the person concerned. The absence of clear assessment criteria and the ceding of excessive discretion to the Minister rather than the Oireachtas give cause for concern.

Lack of defined criteria and excessive delegation of key criteria to delegated legislation

The Scheme's proposed new requirements concerning resources, social welfare or housing support, language proficiency and civics knowledge, are broad, sweeping, and lack criteria to govern application. A significant amount is left to delegated secondary legislation, whether by ministerial regulations or in the absence thereof, policy decision by those applying them.

Some criteria can be waived in some circumstances. However, the Scheme expressly states, that good character cannot be waived. Those proposed provisions raise questions about the design and scope of any exceptions, and their application to individual circumstances.

Bar Council Proposal

In the circumstances, the Council proposes that:

(a) The Bill clarify whether the civics requirement under section 15A is the same as that under section 15;

(b) Any civics requirement should reflect the all-island character of Irish citizenship, including the institutions established under the Good Friday Agreement and North–South arrangements;

(c) Provision should be made for assessment to be available in Northern Ireland, or otherwise accessible to applicants resident there;

(d) Consideration should be given to recognising language and knowledge requirements already satisfied for the purposes of UK immigration law; and

(e) Regulations prescribing the content and standard of the language and civics requirements should be subject to an affirmative resolution of each House of the Oireachtas with consultation from appropriate North-South bodies.

(f) The Bill should provide that any civics assessment must be objective, proportionate and confined to knowledge reasonably relevant to citizenship, civic participation and the constitutional arrangements of the island, and must not assess adherence to, or identification with, any particular political, constitutional or cultural conception of Irish identity; and

(g) The Bill should provide that residence in Northern Ireland must not place an applicant at a disadvantage in satisfying either the language or civics requirement, including where the applicant's civic knowledge or linguistic experience reflects the institutions, languages and social context of Northern Ireland.

(h) The Bill should contain detailed unambiguous criteria to establish the parameters of all assessment criteria, so that the exercise of Ministerial and public policy discretion is subject to democratic governance and accountability

(i) The Bill should require that detailed Regulations prescribing the content and standard of such assessment criteria and requirements be subject to an affirmative resolution of each House of the Oireachtas.

HEAD 6

Head 6 is titled "Amendment of Section 15A of the Act of 1956" and amends the conditions for the naturalisation of the non-national spouse or civil partner of an Irish citizen.

- Subheads 6(1) and (2) increase the required duration of the marriage or civil partnership from three years to five.
- Subhead 6(3) increases the period of continuous residence immediately preceding the application from one year to two.
- Subhead 6(4) provides that the applicant must have had, during the five years immediately preceding that period, "a total residence in the island of Ireland amounting to three years."
- Subhead 6(5) inserts new conditions concerning offences, language proficiency and civics.

The Council welcomes the retention of residence on the island of Ireland as the basis of the spousal route. This is the main basis on which Irish citizens resident in Northern Ireland pass on Irish citizenship to their spouses and civil partners.

However, the explanatory notes to Head 6 describe the purpose of subheads 6(1) to (4) as being to increase the period of time a non-national spouse or civil partner of an Irish citizen "should be residing in the state" before being eligible to apply for naturalisation. The text of Head 6 and its stated purpose are therefore inconsistent. The Council submits that, even if this inconsistency is no more than a drafting error, it indicates that the position of families resident in Northern Ireland was not in contemplation when Head 6 was drafted. The Council is further concerned that the inconsistency creates a risk that the all-island formulation may be inadvertently departed from in future drafting.

In the circumstances, the Council proposes that the Bill expressly confirm that residence in the island of Ireland, including Northern Ireland, remains reckonable for the purposes of section 15A, and that the explanatory notes to Head 6 be corrected accordingly.

Furthermore, the Council wishes to draw the Committee's attention to a pre-existing difficulty which the General Scheme does not address and, in one respect, compounds.

Failure to address the position of a de facto partner resident in Northern Ireland

For the purposes of this submission, a "de facto partner" refers to a person in a durable, committed relationship akin to marriage or civil partnership with another person, but who has not married or entered a civil partnership with that person. Such relationships are recognised for immigration purposes in both the State and in Northern Ireland on broadly equivalent terms. In the State, this recognition arises principally under the Department's published policy. In Northern Ireland, it arises under the UK Immigration Rules. The Council does not propose to set out the detailed requirements of either regime, which differ in certain respects. It is sufficient for present purposes to note that both jurisdictions recognise the de facto partner of a citizen as a family member capable of obtaining a right of residence on the basis of that relationship.

Section 15A, as amended by Head 6, is confined to the spouse or civil partner of an Irish citizen. The de facto partner of an Irish citizen has no partner-based route to naturalisation. Such a partner must ordinarily apply under section 15. Under section 15(1)(c), as substituted by subhead 5(1)(a), the qualifying period is calculated by reference to residence "in the State" only, and is increased to two years' continuous residence preceded by six years' total residence in the ten years before that.

A de facto partner of an Irish citizen resident in the State may, on foot of an immigration permission granted on the basis of that relationship, accrue reckonable residence towards naturalisation. A de facto partner of an Irish citizen resident in Northern Ireland, however long the relationship and however settled the couple's residence, cannot accrue any reckonable residence at all. The Irish citizen is the same, and the relationship is of the same kind. The difference in outcome turns solely on the part of the island in which the couple reside.

The Council further notes that the de facto partner of a British citizen resident in Northern Ireland may, on foot of permission granted under UK immigration law on the basis of that relationship, in due course qualify for settlement and naturalisation as a British citizen on the basis of residence in Northern Ireland. An effective route therefore exists for a British citizen resident in Northern Ireland to share his or her citizenship with a de facto partner, but not for an Irish citizen resident in the same place.

The Council acknowledges that the State may legitimately distinguish between marriage and other relationships, and may attach legal consequences, including immigration advantages, to marriage. The Council's concern is with the interaction of that distinction with the territorial structure of Irish naturalisation law. A person entitled under the Good Friday Agreement to identify and be accepted as Irish may reside permanently in Northern Ireland with a de facto partner. Unless the couple marry or enter a civil partnership, that partner's residence does not ordinarily count towards Irish naturalisation, whereas the same residence may count towards British naturalisation. The Council submits that this places Irish citizens resident in Northern Ireland at a disproportionate disadvantage.

This position predates the General Scheme. However, a Bill that comprehensively revisits the conditions for naturalisation would ordinarily be an appropriate opportunity to address it. Instead, by lengthening the qualifying period under section 15, Head 5 renders the position of de facto partners of Irish citizens in Northern Ireland more difficult still.

Bar Council Proposal

In the circumstances, the Council proposes that provision be made to permit the recognised de facto partner of an Irish citizen to count residence in the island of Ireland, including Northern Ireland, towards naturalisation. The evidential threshold for establishing a genuine and durable relationship could be met by either of the following:

(a) recognition of the relationship under the immigration law applicable in Northern Ireland; or

(b) evidence of a durable relationship to the standard the Department already applies to de facto partners resident in the State.

The Council notes that limb (b) is necessary because a de facto partner who is a British citizen, or who otherwise holds an independent right of residence in the United Kingdom, will not have been required to obtain recognition of the relationship under UK immigration law. Such a proposal would preserve an appropriate evidential threshold, while ensuring that an Irish citizen's residence in Northern Ireland does not, of itself, prevent his or her partner from accruing reckonable residence.

HEAD 7

Income and self-sufficiency

Head 7 proposes to introduce an amendment to enable the Minister to create regulations setting out the elements to be taken into account by the Minister in prescribing the minimum level of income required, relevant social welfare payments and relevant housing supports for the purposes of the assessment in section 15(1)(f) and section 15(3).

Under the proposed Section 15F, an applicant must prove financial self-sufficiency. Rather than setting a fixed figure in primary legislation or criteria for arriving at that figure, the General Scheme empowers the Minister to prescribe a minimum income threshold. This gives the executive fluid control to raise or lower financial requirements based on the prevailing economic climate, bypassing full Oireachtas debate for future adjustments.

Further, section 15F(e) permits the Minister to take account of *"such other matters as the Minister considers appropriate*". This is a concern, as it delegates substantial powers to the Minister, removing Oireachtas oversight. This is a matter for concern for democratic governance and accountability.

HEAD 8

Head 8 proposes to amend section 16 of the Act of 1956 by inserting the following text after subsection (1):

"(1A). The Minister may, in his absolute discretion, waive the condition specified in paragraph (h) and paragraph (i) of subsection (1) of section 15 and paragraph (j) and paragraph (k) of section 15A in certain circumstances, as prescribed.

(1B). The condition of good character in sections 15 (1) (b), 15A (1) (b) and 15B (1) (b) cannot be waived in any circumstances."

Section 1B would remove the ability of the Minister to waive the good character requirements. In light of the principle of proportionality, discretion to waive should be provided to the Minister to cater for exceptional circumstances.

HEAD 9

Inclusion of additional categories of residence which are not reckonable

Head 9 is titled "Section 16A of the Act of 1956" and inserts paragraphs (e) to (k) into section 16A(1). These paragraphs add to the categories of residence that are not reckonable for the purposes of granting

a certificate of naturalisation. They include periods of residence on foot of temporary protection, and certain periods connected with applications under the European Communities (Free Movement of Persons) Regulations 2015. Paragraph (k) empowers the Minister to prescribe further permissions "of a temporary or limited duration".

The explanatory notes to Head 9 outline that the purpose is to ensure that time spent in the State on permissions that are "inherently transitory, temporary or not intended to be durable in nature" is not reckonable.

For the purposes of democratic accountability and governance, clear and unambiguous criteria should be set out in primary legislation.

'Residence in the State'

Section 16A(1) applies only to "a period of residence in the State". Each of the new categories inserted by Head 9 is framed by reference to permissions granted, or residence held, in the State. Head 9 makes no provision concerning residence in Northern Ireland, notwithstanding that such residence is reckonable for applicants under section 15A.

Currently, the Act of 1956 already contains express provision for residence in Northern Ireland. Section 6B(5), as inserted by section 4 of the Irish Nationality and Citizenship Act 2004, provides that a period of residence in Northern Ireland is not reckonable for the purposes of section 6A where that residence was not lawful under the law of Northern Ireland, or where it was held subject to a condition that would render residence in the State non-reckonable.

This gives rise to two observations;

First, the Oireachtas has previously legislated expressly for the treatment of residence in Northern Ireland. The Council can identify no reason why the spousal route under section 15A should be left without equivalent statutory consideration.

Second, because section 6B(5)(b) operates by reference to section 6B(4), the replacement of section 6B(4) by Head 4 will, by cross-reference, extend the categories of residence in Northern Ireland that are not reckonable for the purposes of section 6A. That extension will include any further permissions prescribed by the Minister under Head 9, paragraph (k). Neither Head 4 nor its explanatory notes acknowledge this consequence.

The effect is that applicants by those resident in the State will be subject to express statutory rules as to which periods of residence are reckonable while by contrast, applicants resident in Northern Ireland will have no statutory rules for the purposes of section 15A, and will be dependent entirely on how the Department chooses to treat them.

The Council does not accept that the absence of statutory exclusions for residence in Northern Ireland is an advantage to these applicants. Section 15A confers an absolute discretion on the Minister.

In the absence of statutory rules, the treatment of residence in Northern Ireland will be determined exclusively by internal policy. The Council submits that this exposes Northern Ireland applicants to a greater risk of inconsistent or arbitrary treatment with less transparency and accountability than applicants who are resident in the State.

Bar Council Proposals

In the circumstances, the Council proposes that:

(a) The Bill should contain detailed unambiguous criteria to establish the parameters of all assessment criteria, so that the exercise of Ministerial and public policy discretion is subject to democratic governance and accountability;

(b) The Bill should set out rules governing the reckonability of residence in Northern Ireland for the purposes of section 15A, having regard to the model in section 6B(5); and

(c) The effect of Head 4 on section 6B(5) should be expressly considered and addressed in the Explanatory memorandum to the Bill.

III. FURTHER GENERAL OBSERVATIONS

Proportionality

The most significant proposed change is the increase in the residence requirement from 5 years to 8 years. This is a 60% increase on the current requirement.

The Bar Council queries the proportionality of this increase. It also queries the effect of a significant residency increase which is not in line with norms in the majority of EU states, on the international reputation of Ireland as a state with a historic reputation for recognition of human rights. More than 50% of EU member states have residency requirements of 5 years, with shorter periods of 1-5 years for specific categories.

Transitional period

The Bill does not set out any transitional period for those already in the State, or in Northern Ireland.

The Bar Council proposes that provision should be made for a transitional period for those who have already accrued residency rights, or residency periods, as well as for those who have applications being considered at present.

Unconstrained ministerial discretion

Across a number of Heads, the General Scheme introduces significant new conditions for naturalisation whose substance is left largely to regulation or to ministerial discretion. These include the language and civics requirements under Heads 5 and 6, the waiver categories under Head 8, and the further non-reckonable permissions under Head 9, paragraph (k).

The General Scheme also hands the Minister expansive new powers to dictate the economic parameters of citizenship via secondary legislation. For example, under the proposed Section 15F, an applicant must prove financial self-sufficiency. Rather than setting a fixed figure in primary legislation, the General Scheme empowers the Minister to prescribe a minimum income threshold. Section 15F(e) also permits the Minister to take account of "*such other matters as the Minister considers appropriate*". This gives the executive fluid control to raise or lower financial requirements based on the prevailing economic climate, bypassing full Oireachtas debate for future adjustments

In terms of revocation of citizenship, the Scheme seeks to expand and fortify ministerial discretion. The new General Scheme inserts a broad, explicit power allowing the Minister to revoke naturalisation if a person is deemed a "threat to national security." It is being advanced that this broad wording better lends

itself to the variety of circumstances that the Minister may face in a complex international environment. However, the unfettered discretion raises concerns that this intentionally broad drafting minimises statutory constraints, shifting the burden of proof heavily onto the citizen.

Further, the Scheme does not contain clear and unambiguous criteria which will ensure objective fairness. The General Scheme replaces an undefined "good character" test with a complex web of economic and procedural hurdles where the Minister still holds the keys to exemptions. Consequently, the ministerial discretion remains overly broad. It is less constrained than would be expected in a democratic state.

In summary, the Bar Council is concerned that the Bill, in its present form, confers an impermissibly broad range of discretionary powers upon the Minister, without providing sufficiently clear legislative standards, criteria, or constraints to govern the exercise of those powers. In doing so, it risks contravening Article 15.2.1° of the Constitution, which vests the "sole and exclusive power of making laws for the State" in the Oireachtas and prohibits the delegation of essential legislative choices to the Executive. Conferring very broad power in the context of delegated legislation runs the risk of contravening Art 15.2.1º, and the test for delegated legislation as set out in *Naisiúnta Léictreach Contraitheoir Éireann v. Labour Court* [2021] IESC 36. This test has been recently described by Holland J in Stapleton J v An Board Pleanala [2024] IEHC 3 in the following terms:

"The modern test, set in NECI, is holistic and derives from the words of Art.15.2.1 itself. It prohibits delegated law-making. So, the "primary" question is whether, having regard to all the circumstances, "the Oireachtas has abdicated its function" as "sole legislator". Though no longer a free-standing test, the 'principles and policies' analysis remains an important factor – an "indispensable foundation-stone" – to assist courts in applying that test."

While the Oireachtas may delegate powers to give effect to legislation, it must itself determine the governing "principles and policies" and may not confer an unfettered law-making discretion on a Minister. Such a delegation undermines democratic accountability and offends the constitutional separation of powers reflected in Articles 6, 15 and 28. Such delegation creates a significant risk of arbitrary or inconsistent decision-making contrary to established principles of Irish administrative law.

The Oireachtas must determine the substantive policy framework and cannot abdicate its constitutional legislative function by transferring that responsibility to the Executive under the guise of delegated legislation.

The all-island character of Irish citizenship

Irish citizenship is an all-island status, as grounded in the Constitution and reaffirmed by the Good Friday Agreement. The Council is concerned that the General Scheme appears to have been drafted principally by reference to applicants, and sponsoring Irish citizens, who are resident in the State.

Under the Good Friday Agreement, the British and Irish Governments recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose. The right to hold both British and Irish citizenship is accepted by both Governments. That entitlement belongs equally to persons from the nationalist and unionist traditions, and to those who identify with neither.

It appears that insufficient consideration has been given in respect of Irish citizens resident in Northern Ireland and their families. The Council makes the following observations and proposals:

Head 6 makes reference to residence on "the island of Ireland" as the basis of the spousal route. However, the explanatory notes to Head 6 describe its purpose by reference to residence "in the state". The Council proposes that the all-island basis of the spousal route be expressly confirmed, and the explanatory notes corrected accordingly.

Heads 4 and 9 expand the categories of non-reckonable residence by reference to residence in the State only. They make no provision for residence in Northern Ireland, notwithstanding that the Act of 1956 already contains such provisions in section 6B(5). The Council proposes that the Bill set out the rules governing reckonable residence in Northern Ireland and address the effect of Head 4 on section 6B(5).

Heads 5, 6 and 8 introduce testing requirements around language ability and civic knowledge as a prerequisite for naturalisation. The contents and operation of these assessments are left to regulation. The Council proposes that any civics requirement reflect the all-island character of Irish citizenship and the plurality of identities protected by the Good Friday Agreement. This is to include measure to ensure the assessment be made available in Northern Ireland; that equivalent tests passed for UK immigration purposes in Northern Ireland be recognised; and that the administration of any tests be subject to Oireachtas oversight with appropriate consultation from North-South bodies.

The de facto partner of an Irish citizen resident in Northern Ireland has no means of accruing reckonable residence for naturalisation, a position Head 5 compounds. The Council proposes that provision be made for recognised de facto partners of Irish citizens to count residence on an all-island basis.



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