Submission to the Oireachtas Justice Committee on the General Scheme of the Civil Reform Bill

13 February 2026

Irish Refugee Council

Our Recommendations and introduction

The Irish Refugee Council is a charity that provides services and support to refugees and people seeking protection in Ireland. In 2012, the charity opened the Irish Refugee Council Independent Law Centre. This is a designated Law Centre. The Centre has supported the most vulnerable international protection applicants to vindicate their fundamental rights through Judicial Review proceedings, where no other avenues remained open. This has been a vital check on decision-making processes of the Irish State. This has included litigation on international protection decisions, age assessment, the right to reception (including a groundbreaking case that reached the CJEU), the administration of humanitarian admissions schemes, and family reunification issues. Many areas of asylum and immigration law implement complex, and ever evolving, EU laws, and interpret ECHR and international human rights standards.

This submission covers Head 9 of the Civil Reform Bill. The Irish Refugee Council recommend, for the reasons given in this submission, that Head 9 (jurisdiction) of the Civil Reform Bill, which would move immigration-related judicial review from the High Court to the Circuit Court, be deleted and not brought forward to the Bill itself. If this Head is progressed, we recommend deleting Head 10 s13 (a) which would give the power to the President of the Circuit Court to County Registrars.

Our arguments, in summary, are that the transfer of such cases would:

- Be constitutionally dubious:
- Create a two-tier system where migrants are subject to a different and worse form of remedy against State wrongdoing; this is discriminatory
- Compound the existing higher standards for judicial review for immigration cases
- Ignore the high rate of grants of leave to bring judicial review proceedings by the High Court
- Threaten to overwhelm the Circuit Court, leaving it unable to handle administration and number of cases
- Threaten to cut access to declarations of incompatibility with ECHR
- Judicial review is a crucial remedy and a fundamental process whereby someone who has suffered harm because of an *ultra vires* action of a public body may seek a remedy to vindicate their rights. As held in *Meadow v Minister for Justice*[1]: "the purpose of judicial review is to provide a remedy to persons who claim their rights have been prejudiced by an administrative decision which has not been taken in accordance with the law, or the principles of constitutional justice."
- Changing the jurisdiction of immigration-related judicial reviews to the Circuit Court, is in the view of the Irish Refugee Council, an attempt to limit the ability of migrants to vindicate infringements of their rights.
- If Head 9 is progressed it is strongly recommended that the power to pass judicial review leave applications to County Registrars is not progressed. A County Registrar is not a judge and would be completely inappropriate to ask them to consider judicial review.
- The Irish Refugee Council welcomes the submissions of Community Law & Mediation and the Bar Council and endorses their recommendations regarding Head 9.

Dubious Constitutional Compatibility

As noted in *Re Art 26 & The Illegal Immigrants (Trafficking) Bill 1999*:

> *"the State has a legitimate interest in prescribing procedural rules calculated to ensure or promote an early completion of judicial review proceedings of the administrative decisions concerned.*

[1] [2010] IESC 3, Murray C.J.

However, in doing so, the State must respect constitutional rights and in particular that of access to the courts."[2]

a. *Article 34.3.1°*

The High Court is vested with full original jurisdiction under Article 34.3.1° of the Constitution. Integral to the original jurisdiction exercised by the High Court is its jurisdiction in judicial review which the High Court exercises exclusively.[3] This broad jurisdiction can be contrasted with the limited and local jurisdiction of the Circuit Court.[4]

As recently noted by Hogan J in *GM & IM v Attorney General, "what [local and limited] does mean, however, is that the Oireachtas must nonetheless respect the demarcation between the full original jurisdiction conferred on the High Court by Article 34.3.1° on the one hand, and the 'local and limited' nature of the Circuit Court"*.[5] Continuing, Hogan J held, this means in turn that the latter Court "may not be erected into a localised replica of the High Court". It is submitted that the Circuit Court does not have jurisdiction to hear matters that relate to the determination of fundamental rights.

It is clear from *Permanent TSB v Langan* that a "real meaning" must be given to the requirement that the jurisdiction of the Circuit Court is limited and cannot become a "surrogate court of full original jurisdiction." To do otherwise, in the words of Clarke C.J. would be to "disregard the Constitution".[6]

Limitation of judicial reviews to an inferior court with no supervisory jurisdiction over administrative decision makers cannot limit the inherent supervisory jurisdiction of the High Court to hear matters relating to the protection of rights against abuses and unfair procedures. To only invoke the jurisdiction of the High Court in exceptional cases is to violate the requirements of Article 34.3.1°.

b. *Article 34.3.4°*

Head 9 s(5) of the General Scheme provides that "no judicial review shall lie from a decision of the Circuit Court to the High Court in relation to a determination of an application for leave or an application for judicial review". Furthermore, Head 12 provides that that "no appeal shall lie from the decision of the Circuit Court save for where the court certifies that it is a decision involving a point of law of exceptional public importance or desirable in the public interest to be heard".

The General Scheme mistakes the purpose of judicial review, increases the likelihood of *ultra vires* decisions being taken by a less experienced Circuit Court and further reduces the possibility of an effective remedy by limiting the right to review a decision of the Circuit Court.

Migrants have a constitutional right of access to the Court to challenge the validity of any decision and enjoy a constitutional right to fair procedures[7]. The bill introduces a two-tier system, transferring immigration-related decisions to the Circuit Court, with additional hurdles to overcome, based indirectly on whether one is an Irish national or migrant background.

In considering extending powers to the Circuit Court, Collins J in *GM* recently noted that it may be permissible for a broader power to be conferred on the Circuit and District Courts but that would require "careful consideration of the restrictions flowing form Article 34.3.4°." and should respect "the basic structure of these courts."[8]

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[2] [2000] IESC 19, Keane, C.J. [42]
[3] Department of Justice, Review of the Administration of Civil Justice: Review Group Report, (October 2020) https://assets.gov.ie/static/documents/review-of-the-administration-of-civil-justice-review-group-report.pdf
[4] Ibid; *GM & IM v Attorney General* [2026] IESC 2, Hogan J [5]
[5] Ibid at [7]
[6] *Permanent TSB v Langan & Anor* [2017] IESC 71, Clarke C.J [7.10]
[7] *Re Article 26 & The Illegal Immigrants (Trafficking) Bill 1999* [2000] IESC 19, Keane, C.J. [36]
[8] *GM & IM v Attorney General* [2026] IESC 2, Collins J [20]

Head 9 and Head 12 operates to restrict the right to judicial review of matters which pertain to constitutional rights and pose a grave threat to applicants. This is a violation of the inherent jurisdiction of the High Court and the right of appeal under 34.3.4°.

c. Article 40.1

Article 40.1 guarantees equality before the law. Placing some matters before a court with less expertise for matters relating to international protection infringes the constitutional right to equal treatment. The Oireachtas has attempted to single out a particular category of persons for differential treatment. Although not directly discriminatory, the General Scheme has an indirect impact on the ability of international protection applicants to vindicate their rights through the courts.

Altering the inherent jurisdiction of the High Court to hear judicial review cases and limiting the right to seek judicial review of a Circuit Court decision to immigrants is repugnant to Article 40.1.

Barrington J in *Brennan v Attorney General* held that *"the classification [adopted by the Oireachtas] must be for a legitimate legislative purpose... it must be relevant to that purpose, and that each class must be treated fairly"*. It is submitted that the classification does not serve a legislative purpose and constitutes arbitrary and invidious discrimination. There is a public policy objective that any issue as to the validity of administrative decisions should be determined as soon as possible, however, the basis for different treatment of different categories of persons is in violation of article 40.1 and not proportional to its public policy goal.

High rates of success in judicial review applications

The Court Service Annual Reports show that in 2024, in relation to asylum judicial reviews, 97% of applications for leave are successful.[9] This high success rate shows that the High Court has consistently identified "substantial" or "arguable" grounds for challenging decisions of the State. The higher standard of "substantial grounds", the requirement of a two-stage process, and the shorter timeframe of 14 days already exist to protect the interests of the State. Altering jurisdiction is a disproportionate attempt to reduce judicial scrutiny of State actions.

Under Head 8 s(5)(e), a court shall not grant [judicial review] unless it is satisfied that the applicant must show a higher standard of harm.[10] It could be concluded that more cases will fail at the leave stage under the new provisions, given the additional tests that an applicant must meet. Both a change of standard of leave and a change of jurisdiction is unnecessary and arbitrary.

Immigration Judicial Reviews Already Face Higher Test

Notwithstanding the large percentage of successful leave applications, as noted above, immigration-related judicial reviews must demonstrate a higher threshold than other judicial reviews: "substantial grounds" compared to "arguable case".[11]

In *Re the Illegal Immigrants (Trafficking) Bill 1999,* it was held that the justification for the higher threshold is inferred from the legislation, "the need for legal certainty and the swift determination of the

[9] Courts Service, Courts Service Annual Report 2024, (September 2025). courts-service-annual-report-2024.pdf. Refused (24)/Applications received (736).

[10](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.

[11] S.5(2) of the Immigration (Trafficking) Act 2000 provides: *"An application for leave to apply for judicial review under the Order...shall be made within the period of 28 days commencing on the date on which the person was notified... and such leave shall not be granted unless the High Court is satisfied that there are* ***substantial grounds*** *for contending that the decision...is invalid or ought to be quashed"* (emphasis added)

validity of the administrative measure impugned in the proceedings has been present."[12]

Changing jurisdiction is unnecessary and is not justified by the need for swift determination of decisions or legal certainty. Immigration judicial reviews have already been treated differently by the courts and by legislation, applying different time frames and standards of proof. In addition, the High Court, through its list system and experience with immigration-related judicial reviews, has developed especial expertise.

Caseload may exceed Circuit Court capacity

The courts service annual reports show 736 and 779 incoming Asylum judicial reviews in 2024 and 2023 respectively[13]. Non-Asylum Judicial Review cases amounted to 896 and 627 over the same time period. A transfer of half of the total number of judicial reviews heard before the High Court to the Circuit Court would undoubtedly overload the lower court.

Furthermore, the General Scheme raises the monetary limits of the District and Circuit Court. This will result in more non-asylum cases, such as personal injuries, moving from the High Court to inferior courts.

Although these adjustments aim to redistribute claims across the court system, it could overload a Circuit Court that also has to deal with immigration-related judicial reviews.

Unjustifiable expansion of Circuit Court jurisdiction

Judicial review serves as an essential mechanism that ensures administrative decisions adhere to legal standards and fairness. Safeguarding the rights of immigrants unlawful decisions should not be undertaken by the Circuit Court for the following reasons:

a. time

The High Court's median length of time dealing with judicial review reduced from 217 days in 2023 to 151 days in 2024[14].

The recent Justice Indicators report by the Centre for Justice and Law Reform reported the most recent available disposition times for Circuit Civil matters as 725 days and 740 days for 2019 and 2020 respectively[15]. Given the technical level needed to deal with complex matters of immigration and asylum law, much of which will also now involve EU law, and interpretation of the Charter of Fundamental Rights, moving judicial reviews from the High Court to an already overburdened Circuit Court would create more delays. In the context of a report criticising disposition times as twice as long as other Council of Europe Member states,[16] it would be irresponsible for the Oireachtas to consider creating more delays when a competence has been developed in another, more senior, court.

b. expertise

Immigration judicial reviews are extremely complex, interpreting Irish law in line with constantly evolving EU legislation and caselaw. For this reason, the High Court has established a list system with a small number of judges administering the Asylum list, allowing judges to develop specialist expertise.

With the introduction of the International Protection Bill 2026 by June 2026, the Irish courts will be asked to interpret that Act in line with the regulations and directives that comprise the EU Pact on Migration

[12] [2000] IESC 19, Keane, C.J. [25]
[13] Courts Service, Courts Service Annual Report 2024, (September 2025), page 75. Courts.ie - Annual report 2024
[14] Courts Service, Courts Service Annual Report 2024, (September 2025), page 124 Courts.ie - Annual report 2024
[15] Law Society Centre for Justice and Law Reform, Justice Indicators, (January 2026) Justice Indicators
[16] Ibid, "2020, civil proceedings took an additional 207 days (approximately seven months) to resolve in Ireland (532 days) than they were projected to take on average across the Council of Europe (325 days)."

and Asylum, as well as the EU Charter of Fundamental Rights.

c. available remedies and resources

Remedies available to litigants vary significantly between the High Court and Circuit Court. Although the General Scheme raises the monetary limits available to litigants in the Circuit Court, it is arbitrary and discriminatory to place judicial reviews relating to one category of persons in an inferior court with the possibility of accessing fewer remedies.

S.5(1) of the European Convention on Human Rights Act 2003 provides "In any proceedings, the High Court, or the Supreme Court…can make a declaration that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions." No such remedy is available to the Circuit Court. The issuing of Declaratory relief is an important recognition that rights have been breached. There is a risk that the Circuit Court would not have the resources to consider whether Irish law or practice was in breach of EU law, and issue a Declaration of a Breach, such as the High Court did in *S.Y. v Minister for Children*[17].

d. gravity of issues

Considering the risk international protection applicants potentially face and their vulnerable position in the State due to uncertain immigration status and restrictions on access to employment and movement, it is vital that they can vindicate their rights. An incorrect decision may result in refoulement to a country where a migrant is at risk of persecution, inhuman or degrading treatment or punishment or serious harm.

The International Protection Bill will introduce very significant further restrictions including immigration-related detention, and restrictions on movement. It will remain vital that the Courts supervise the proper implementation of the protective elements of the Pact and have final oversight of these new and stringent limitations of rights.

Judicial review is concerned with the oversight of State power. As the High Court is the constitutionally designated supervisory body, it has sole jurisdictional oversight of State power. Given the gravity of issues where State power is exercised unlawfully, it is irresponsible for the Oireachtas to place such important decisions in the hands of a court with less competence.

Conclusion

As held in *Re Art 26 & The Illegal Immigrants (Trafficking) Bill 1999, "Non-nationals who enter the state and seek asylum face difficulties which are special to them. These and many other factors could combine to make it difficult to pursue application for asylum or refugee status…to seek judicial review of administrative decisions affecting them."*[18]

For reasons set out above, it is submitted that instead of recognising these difficulties, the General Scheme attempts to hinder the ability of immimgrants to access justice and vindicate their rights before the courts. We recommend that it is not taken forward to the Bill.

[17] [2023] IEHC 187
[18] [2000] IESC 19, Keane, C.J [37]