

Court Proceedings (Delays) Bill 2023

Bill No. 17 of 2023

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Abstract

The *Court Proceedings (Delays) Bill 2023* provides for statutory compensation for breach of the right to a hearing within a reasonable time in both civil and criminal matters. The Bill provides for the appointment of a Chief Court Delays Assessor and Court Delays Assessors to assess such applications.

The Bill also provides for the making of an application to the Circuit Court, in certain circumstances, for such a declaration and compensation, and for related matters.



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Overview

The [Court Proceedings \(Delays\) Bill 2023](#) (previously titled the European Convention on Human Rights (Compensation for delays in court proceedings) Bill) provides a new framework for statutory compensation for breach of the right to a hearing within a reasonable time in both civil and criminal matters.

In September 2018, the Government agreed to publish the Bill and to approve its drafting on a priority basis. The Bill and an [Explanatory Memorandum](#) were published on 27 February 2023.

The General Scheme of the Bill underwent pre-legislative scrutiny by the Joint Committee on Justice. The Joint Committee held a discussion on the Bill with a selection of relevant stakeholders, including the Bar Council of Ireland and FLAC.¹ The stakeholders' written submissions are included in the Joint Committee's Report, which was published in May 2019.² The Joint Committee's report set out 13 recommendations in relation to the Bill. The extent to which these recommendations have been implemented is considered by this Digest.

A Regulatory Impact Analysis (RIA) was produced in January 2023 and was made publicly available in May 2023.³

The Bill was primarily drafted in response to a "long line of cases"⁴ decided by the European Court of Human Rights (ECtHR), which held that Ireland was in breach of its obligations under Article 6 and Article 13 of the European Convention on Human Rights (ECHR; the Convention) as the State provided no effective remedy for a breach of the right to trial within a reasonable time. Article 6 guarantees that hearings must be provided "within a reasonable time", and Article 13 provides for the right to an effective remedy. The most significant of these judgments was the decision of the Strasbourg Court in [McFarlane v Ireland](#), which will be considered in detail in the Digest.

It has been 20 years since the ECtHR first established that Ireland was in violation of the Convention due to the lack of an effective remedy for unreasonable delays in the Irish legal system.⁵ The implementation of the judgment of the ECtHR in *McFarlane* is currently under the supervision of the Committee of Ministers of the Council of Europe. In 2017, the Irish Government accepted that there was no effective remedy under Irish law to deal with court delays and that this was incompatible with Article 13 of the Convention.⁶

It has been clearly demonstrated in a range of Irish and ECtHR case law that the current remedies for undue delay are either prohibitively difficult to obtain for a variety of reasons or are very unclear

¹ [Joint Committee on Justice and Equality debate - Wednesday](#), 16 Jan 2019

² Joint Committee on Justice and Equality, '[Report on pre-legislative scrutiny of the General Scheme of the European Convention on Human Rights \(compensation for delays in court proceedings\) Bill](#)', May 2019.

³ '[Court Proceedings \(Delays\) Bill 2023 - Regulatory Impact Analysis](#)', January 2023

⁴ [Keaney v Ireland](#) (Application no. 72060/17) 30 April 2020, Concurring Opinion of Judge O'Leary.

⁵ [1443rd meeting, 20-22 September 2022 \(DH\)](#), Council of the European Union

⁶ *Blehein v. Ireland* (dec.) [Committee], no. 14704/16, 25 April 2017. The Court struck out an application in light of the respondent Government's acceptance, in a unilateral declaration dated 19 January 2017, that "the length of the proceedings and the lack of an effective remedy in that regard was incompatible with the reasonable time requirement contained in Article 6(1) and Article 13 of the Convention"

in their scope and operation. Therefore, a new framework must be implemented if Ireland is to comply with its obligations under the ECHR.

Objectives of the Bill

The Bill has a number of objectives. These include:

- To establish an effective **domestic remedy for delays** in court proceedings.
- To provide for the appointment of a **Chief Assessor and Assessors** to assess claims for breach of:
 - Article 6.1 of the ECHR at first instance and to award compensation, if appropriate, or
 - The constitutional right to timely court proceedings
- To provide for the **procedures to be followed by Assessors**; the criteria by which claims and damages are to be assessed; and criteria for rewards, which will be linked to the concept of just satisfaction under Article 41 of the ECHR.
- To establish a specific **right of action** in the Circuit Court should a claimant (or the Minister) be **dissatisfied with the assessment** of the Assessor.
- To provide for the **criteria** by which such a claim and compensation should be assessed by the Circuit Court.
- **Miscellaneous matters** such as the provision of information to the Assessor, legal costs provisions both before the Circuit Court and at assessment stage, and transitional provisions.⁷

Two proposed models were considered; a Courts-based model, which would allow claims for damages for delay to be brought before the courts, and a new Independent Assessor model, where claims would be decided by duly appointed, legally qualified assessors. The Bill proposes the second of these two options; both are considered in detail in this Digest. On the publication of the Bill, then Minister for Justice Charlie Flanagan TD indicated that the assessor model “will avoid undue formality in the application process and be a more efficient and accessible option for complainants” than a court-based solution.⁸

⁷ [‘Court Proceedings \(Delays\) Bill 2023 - Regulatory Impact Analysis’](#), January 2023, p 4.

⁸ [‘Charlie Flanagan proposes State compensation for court case delays’](#), 13 September, *Irish Examiner*, 2018

Background

Relevant human rights provisions

The primary reason for the new Assessor framework proposed by the Bill is the significant number of judgments of the ECtHR, which, over the last twenty years,⁹ have found Ireland to be in breach of their obligations under the Convention.

The Bill provides for the establishment of a statutory right to the conclusion of proceedings in a reasonable time.¹⁰ Where this right is breached, a person may apply for a declaration and damages. One of the criteria that an Assessor shall consider when deciding if an applicant's right has been breached is:

“the principles laid down in respect of a breach of the right to the conclusion of proceedings within a reasonable time—

- (i) in any declaration, decision, advisory opinion or judgment of the European Court of Human Rights, and
- (ii) in any decision of the High Court, Court of Appeal or Supreme Court.”

The approach of the ECtHR is also of relevance when deciding on an appropriate award of compensation.

European Convention on Human Rights (ECHR)

The two provisions of the ECHR that relate to the Bill's proposed reforms are Articles 6(1) and Article 13. These provide as follows:

Article 6(1) - Right to a fair trial

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public **hearing within a reasonable time** by an independent and impartial tribunal established by law.”

Article 13 - Right to an effective remedy

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an **effective remedy before a national authority** notwithstanding that the violation has been committed by persons acting in an official capacity.”

The issue of delay and an effective remedy are interconnected; in *McFarlane* the ECtHR indicated that an otherwise adequate remedy could be undermined by its excessive duration.¹¹

⁹ [1443rd meeting, 20-22 September 2022 \(DH\)](#), Council of the European Union.

¹⁰ Section 11(1).

¹¹ *McFarlane v Ireland* (App. No. 31333/06), unreported, September 10, 2010 at 125.

The provisions of Article 6 apply to both civil and criminal matters and encompass a wide range of proceedings. The concept of a civil case is interpreted very broadly.¹² This covers “all proceedings the result of which is decisive for private rights and obligations”. One of the most common types of cases before the European Court of Human Rights are claims that civil proceedings have gone on for an unduly protracted period.¹³

Criminal proceedings that do not fall within the ambit of Article 6 under its criminal head “are few and far between”. This is in contrast with civil cases, which may be subject to greater restrictions.¹⁴

Whenever the duration of proceedings appears to be excessive or inordinate, the respondent state must “give satisfactory explanations”; otherwise it will be found in breach of Article 6’s reasonable-time requirement.

The ECtHR has established a number of relevant factors to be taken into consideration¹⁵ in the overall assessment of what constitutes reasonable time:

- **The complexity of the case**; e.g. the complexity of the facts, complexity of the legal issues, the number of witnesses;
- **What is at stake for the applicant?** Regarding the speed required of the authorities, the Court draws a distinction between cases demanding “special or particular diligence” and those necessitating “exceptional diligence”. Criminal proceedings, whose outcome may have a significant impact on the applicant, require particular diligence, while in circumstances where the applicant may be ill, for example, cases require exceptional diligence;
- **The conduct of the relevant authorities, including the courts**; while there may be legitimate reasons for delay by the relevant authorities, excuses such as the workload of the court and a shortage of resources are not sufficient justification for delays in a trial as contracting states are under a duty to “organise their legal systems so as to allow the courts to comply with the requirements of art.6(1)”.¹⁶
- **The conduct of the applicant**; “only delays attributable to the State may justify [the Court’s] finding ... a failure to comply with the requirements of ‘reasonable time’”.¹⁷

Required remedy for a person who has suffered unreasonable delays

In *Kudła v. Poland*,¹⁸ the ECtHR provided guidance on the exact form that this remedy should take. Such remedy

¹² [‘The right to trial in a reasonable time: A practical handbook’](#), Council of Europe, October 2018

¹³ Harris et al, *Law of the European Convention on Human Rights* (2009) at 278.

¹⁴ [‘The right to trial in a reasonable time: A practical handbook’](#), Council of Europe, October 2018, p 13

¹⁵ See Sana Farooq Khan and Barry Connolly, ‘Justice Delayed, Justice Denied – The Case for a Court of Civil Appeal’, *Irish Law Times* 2013, 31(12), 178-181

¹⁶ *Zimmerman and Steiner v Switzerland* (1983) 6 E.H.R.R. 17 at para.29.

¹⁷ *Buchholz v. the Federal Republic of Germany*, 6 May 1981, §4.

¹⁸ [Kudła v. Poland](#) (Application no. 30210/96) 26 October 2000

- must be effective in law, as well as in practice.
- must be capable of preventing any continuation of delays with the litigation, or, alternatively, it must be capable of providing adequate redress for any delays which have already occurred.
- must be provided by a national authority; but such authority need not necessarily be a judicial body, nor necessarily does there need be one remedy to meet all of these requirements.

The jurisprudence can be sub-divided into a criminal limb and a civil limb, but the criteria often overlap.¹⁹

The proposed framework in the Bill accords with these requirements.

Constitutional right to the resolution of proceedings in a reasonable time

The essence of the constitutional and Convention rights is very similar.²⁰ Article 38.1 of the Constitution provides that “No person shall be tried on any criminal charge save in due course of law.” Article 38.1 does not expressly protect the right to a speedy trial in criminal matters. However, the Supreme Court has repeatedly held that the right to a speedy trial is protected by the guarantee of the right to trial in due course of law.²¹

While Article 38.1 is concerned exclusively with criminal trials, it is clear that the constitutional right to fair procedures contained in Article 40.3 includes the right to have civil litigation heard within a reasonable time;²² “... the entitlement to a prompt decision is an aspect of constitutional justice.”²³ The Supreme Court has characterised the right to an expeditious trial as distinct from, though overlapping with, the right to a fair trial.²⁴

A right to damages for a breach of constitutional rights

It is well-established in Irish law that a person whose constitutional rights have been infringed can, in principle, sue for breach of those rights and obtain damages,²⁵ including damages for breach of

¹⁹ [O’Callaghan v Ireland](#) [2021] IESC 68; [2021] 2 ILRM 397.

²⁰ *Ibid.*, para 87.

²¹ *The State (O’Connell) v. Fawsitt* [1986] IR 263.

²² Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* (Bloomsbury, 2018) see e.g., ‘Domhnaill v. Merrick [1984] IR 151, Toal v. Duignan & Ors (No.1) [1991] ILRM 135, *Primor plc v Stokes Kennedy Crowley* [1996] 2 IR 459 at 475 per Hamilton CJ; *Kelly v O’Leary* [2001] 2 IR 526 at 537–540 per Kelly J; *Duignan v Carway* [2001] 4 IR 550 at 561–562 per Fennelly J.

²³ *KM v. Minister for Justice* [2007] IEHC 234

²⁴ *Ibid.*, [6.5.250] *PM v DPP* [2006] IESC 22 [2006] 3 IR 172, per Geoghegan J at [5], pp 175–176. See also *SH v DPP* [2006] IESC 55, [2006] 3 IR 575. Thomas O’Malley characterises the relationship between the rights in this way: ‘[t]he concept of due course of law includes a fair trial, but also covers additional matters such as the requirement that courts act within jurisdiction and abide strictly by the relevant statutory provisions. A trial with reasonable expedition may be counted as another element of the concept of due course of law’, Tom O’Malley, *The Criminal Process* (2009), at 645.

²⁵ See *Simpson v. Governor of Mountjoy Prison & Ors* [2019] IESC 81, *Meskeil v. Córas Iompair Éireann* [1973] IR 121, *Kearney v Minister for Justice* [1986] IR 116.

the constitutional right to a speedy trial.²⁶ However, in practice such an award has rarely been granted in the context of undue delay (see the comments of Judge O’Leary in [Keaney v Ireland](#) discussed below, where the ECtHR noted that the “scope of a damages action, the circumstances in which a complainant is likely to recover damages following delay and questions of quantum **all remain unclear** and in need of development through practice and case-law.”)²⁷

The Supreme Court recently considered and further clarified this issue in [O’Callaghan v Ireland](#).²⁸ The appellant in *O’Callaghan* claimed that his constitutional right under Article 38 of the Constitution had been infringed by delays that took place in his appeal to the Court of Criminal Appeal. The proceedings overall took a little over 4 years across two levels of jurisdiction, rendering it in ECtHR terms a ‘borderline case’.²⁹ The Supreme Court held that there had been systemic deficiencies that were known to the State, which had the effect of delaying the appeal.

The Mr. Justice MacMenamin concluded that the appellant was entitled to a declaration that the delay which occurred in his criminal appeal infringed his constitutional right under Article 38.1 of the Constitution and was entitled to an award of €5,000 in damages. The Supreme Court did note in making this award that the case was unusual, with a number of distinguishing features. However, the judgment did serve to clarify that damages may be awarded for a breach of rights in this context, and the circumstances in which such an award will be made. Regarding the nature and scope of the appropriate remedy in the matter, the Court held:

“Even though this is a marginal case, I am not persuaded that a simple declaration would be sufficient to reflect the justice of the case, particularly bearing in mind the feature of the appellant’s period in custody. Damages which may be awarded by way of compensation must be commensurate with the constitutional wrong as found. They must be limited to that which arises directly as a result of the denial of the Article 38 constitutionally derived right, which had particular consequences in this case.”³⁰

Other human rights instruments

Though the focus of the Bill’s proposed reform is the rights guaranteed by the Constitution and the ECHR, it may also be noted that the right of a suspect or an accused in criminal proceedings to be tried within a ‘reasonable time’ is guaranteed by a number of international human rights

²⁶ In *Nash v Director of Public Prosecutions (No.1)* the Supreme Court held that in principle damages could be awarded for breach of the constitutional right to a speedy trial.

²⁷ (Application no. 72060/17) 30 April 2020, Concurring Opinion of Judge O’Leary at para 20.

²⁸ [O’Callaghan v Ireland](#) [2021] IESC 68; [2021] 2 ILRM 397.

²⁹ *Ibid*, para 33

³⁰ *Ibid*, para 113.

conventions,³¹ including the International Covenant on Civil and Political Rights³² and the EU Charter on Fundamental Rights.³³

Reasons for reform – decisions of the European Court of Human Rights

This Digest will not exhaustively review all ECtHR judgments against Ireland on the issues of delay and a lack of effective remedy. There have been 27 cases against Ireland in the ECtHR since the [McFarlane v Ireland](#) judgment in 2010, of which 14 resulted in a settlement or finding of a breach of rights. Notably, the ECtHR struck out the case of *Blehein v. Ireland*³⁴ following a unilateral declaration by the Irish Government on 19 January 2017 to the effect that it accepted that there was no effective remedy under Irish law to deal with court delays and that this was incompatible with Article 13 of the Convention.

Two cases will be discussed below; *McFarlane* and a recent significant judgment of the ECtHR in [Keaney v Ireland](#).³⁵³⁶

McFarlane v Ireland

In [McFarlane v Ireland](#),³⁷ the applicant had been charged with kidnapping related offences in 1983. The Gardai lost the fingerprint evidence that connected the applicant to the kidnapping, resulting in significant delay in prosecuting the applicant. The applicant applied for prohibition of his trial on the grounds that the loss of the fingerprint evidence meant that there was a real or serious risk of an unfair trial.³⁸ On appeal, the Supreme Court delivered judgment in favour of the prosecution, allowing the trial to proceed.³⁹ When a date was set for his hearing, the applicant again applied for prohibition, this time on the grounds of delay.⁴⁰ The Supreme Court again refused, delivering

³¹ Marc Henzelin and Héloïse Rordorf, '[When Does the Length of Criminal Proceedings Become Unreasonable According to the ECtHR?](#)', *New Journal of European Criminal Law*, Vol. 5, Issue 1, 2014

³² Article 9(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. 14(3)(c) the right to be "tried without undue delay".

³³ Article 47 - Right to an effective remedy and to a fair trial which provides, *inter alia*, "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."

³⁴ *Blehein v. Ireland* (dec.) [Committee], no. 14704/16, 25 April 2017. The Court struck out an application in light of the respondent Government's acceptance, in a unilateral declaration dated 19 January 2017, that "the length of the proceedings and the lack of an effective remedy in that regard was incompatible with the reasonable time requirement contained in Article 6(1) and Article 13 of the Convention"

³⁵ (Application no. 72060/17) 30 April 2020

³⁶ See also e.g. *Healy v. Ireland* for a recent civil case in this context (Application No. 27291/16) 10 January 2018.

³⁷ *McFarlane v Ireland* (Application no. [31333/06](#)) 10 September 2010

³⁸ [2004] IEHC 246

³⁹ [2006] IESC 11

⁴⁰ [2006] IEHC 389

judgment against the applicant in 2006.⁴¹ The applicant then brought a claim to the ECtHR, claiming that his rights under Articles 6(1) and 13 of the ECHR had been breached.

Alleged violation of Article 13 - were existing remedies adequate?

The State, in their submissions, claimed that there were four effective domestic remedies available to the applicant. These are, to date, the remedies available to an applicant seeking a remedy for undue delay in Ireland. These options included:

1. An action for damages for a breach of his constitutional right to reasonable expedition
2. An application for damages under the European Convention on Human Rights Act 2003
3. An application for an early hearing date
4. An application for a prohibition order by reason of prejudice and real risk of unfair trial due to delay

The ECtHR dismissed remedies 2, 3 and 4.⁴² However, a potential action for damages for a breach of an applicant's constitutional right to reasonable expedition was considered in detail by the Court. It was held that there was no evidence that the proposed remedy would have provided a quicker remedy than ordinary civil suits and "it thus could have lasted for several years through two jurisdictions".⁴³ The Court noted the existing court delays in Ireland, and in light of this, the ECtHR "could not base an assessment of effectiveness of the proposed remedy on an assumption that all actions for damages for delay could be accorded priority."⁴⁴ There were no streamlined procedures in existence that would ensure a timely resolution of the applications.⁴⁵

The Strasbourg Court also indicated that there was "significant uncertainty as to the availability of the proposed constitutional remedy", noting that damages for delay in proceedings had never been sought in Ireland (this issue has been clarified somewhat by the recent Irish decision of *O'Callaghan*, above).

Finally, the ECtHR noted that there was likely to be an exception to the right to damages for a breach of a constitutional right when the delay was caused by the failure of an individual judge to deliver judgment within a reasonable time, given the important and established principle of judicial immunity.⁴⁶

Alleged violation of Article 6 – were the applicant's proceedings concluded in a reasonable time?

The ECtHR also considered whether there was unreasonable delay in prosecuting the applicant. The Court reiterated the principle discussed above, that the reasonableness of the length of

⁴¹ [2008] IESC 7. However, on 26 June 2008, and following a ruling by the SCC that the principal evidence in the case (the alleged admission of the applicant during police questioning) was inadmissible, the prosecution indicated that they did not propose to adduce further evidence and the charges were dismissed.

⁴² *McFarlane v Ireland* (Application no. 31333/06) 10 September 2010, paras 125-127.

⁴³ *Ibid*, para 123.

⁴⁴ *Ibid*, para 123.

⁴⁵ *Ibid*, para 122.

⁴⁶ *Ibid*, para 121.

proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant.⁴⁷

While the Court considered that the conduct of the applicant contributed somewhat to the delay, that did not explain the overall length of the proceedings against him.⁴⁸ The complexity of the case also did not fully account for the delay.⁴⁹

Ultimately, the Court held that “the overall length of the criminal proceedings against the applicant was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.”⁵⁰

Context

It was noted by the Irish Supreme Court in *O’Callaghan* that the ECtHR judgment in *McFarlane v. Ireland* must be seen against a backdrop where, in the period of 2009 to 2012, the court had found violations in 1,478 cases, in all Member States of the Council of Europe, as part of its “war on unreasonable delays” initiated in 1996.⁵¹

Keaney v Ireland

In *Keaney v Ireland*⁵² the ECtHR again held that there is no effective remedy under Irish law for complaints about excessive delay in the resolution of proceedings. The case concerned various claims by the applicant arising from a failed business venture. The proceedings, in which the applicant was unsuccessful, were resolved after 11 years. The Court unanimously held that there had been violations of Articles 6(1) and 13 of the Convention, again concluding that no effective domestic remedy for excessively lengthy legal proceedings exists in Ireland.

The findings of the ECtHR in relation to violations of articles 6 and 13 of the ECHR won’t be set out in detail here, as many relevant points were addressed in the discussion of the *McFarlane* judgment, above. However, the following points are of significance to the proposed new framework:

- Judge O’Leary, in her concurring opinion, noted that recourse to the courts system, which is suffering from well documented delays, may not be the best option for providing redress for undue delay:

⁴⁷ Ibid, para 140.

⁴⁸ Ibid, para 150.

⁴⁹ Ibid, para 146.

⁵⁰ Ibid, para 156.

⁵¹ [O’Callaghan v Ireland](#) [2021] IESC 68; [2021] 2 ILRM 397 at para 57, citing Henzelin & Rordorf (2014) ‘[When Does the Length of Criminal Proceedings Become Unreasonable According to the European Court of Human Rights?](#)’ *New Journal of European Criminal Law*, Vol. 5, Issue 4 pp. 78–109.)

⁵² [Keaney v Ireland](#) (Application no. 72060/17) 30 April 2020

“where an applicant complains of excessive delay within the general court system, sending that applicant back into the general court system the subject of the delay complaint in order to craft and/or develop his or her own remedy is unlikely for the time being to meet the requirements of [...] Article 13 of the Convention.”⁵³

- Judge O’Leary noted that the judgment of the ECtHR, and the comments made by the Court regarding the ineffectiveness of the constitutional remedy for damages following alleged delay in civil proceedings may have undermined the development of this remedy (which is very rarely utilised in practice). This alone is not considered to be an effective remedy primary due to the issue of delays within the system, as noted above.
- In relation to an action for damages for breach of a constitutional right, Judge O’Leary drew attention to the existing ambiguity surrounding such an application: “It remains the case that the scope of a damages action, the circumstances in which a complainant is likely to recover damages following delay and questions of quantum **all remain unclear** and in need of development through practice and case-law.”⁵⁴
- While numerous “scaffolding” measures have been adopted (e.g. more judges, various procedural changes), these may not be sufficient if the *system* itself remains, “if not delay friendly, delay tolerant”.⁵⁵

Conclusion - current remedies for delay

It has been clearly demonstrated in a range of Irish and ECtHR case law that the current remedies for undue delay⁵⁶ are either prohibitively difficult to obtain for a variety of reasons, or are very unclear in scope and operation.⁵⁷ The submission by the Bar Council of Ireland to the Joint Committee on Justice reviewed the four primary remedies available and noted that “there are significant issues in practice with each one.”⁵⁸ It is therefore clearly necessary that a new system be established to provide an appropriate and timely remedy in cases of undue delay.

⁵³ (Application no. 72060/17) 30 April 2020, Concurring Opinion of Judge O’Leary at para 21

⁵⁴ (Application no. 72060/17) 30 April 2020, Concurring Opinion of Judge O’Leary at para 20.

⁵⁵ *Ibid*, at para 18.

⁵⁶ See Mathew Holmes BL, ‘Pre-Trial Delay’, *Irish Criminal Law Journal* 2023, 33(1), 7-16 for a recent review of remedies for pre-trial delay.

⁵⁷ The available options being:

1. An action for damages for a breach of his constitutional right to reasonable expedition
2. An application for damages under the 2003 Act
3. An application for an early hearing date
4. An application for an order of prohibition by reason of prejudice and real risk of unfair trial due to delay

⁵⁸ The Bar Council of Ireland, ‘[Submission by Council of The Bar of Ireland to the Joint Committee on Justice and Equality on the General Scheme of the European Convention on Human Rights \(Compensation for Delays in Court Proceedings\) Bill](#)’, 14 January, 2019

Supervision by the Council of Europe

As noted above, the ECtHR has repeatedly found that Ireland is not in compliance with its obligations under the Convention. Where the Strasbourg Court makes such a finding, the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) supervises the implementation of the necessary measures by the relevant State.⁵⁹ Under Article 46 of the ECHR, states have a legal obligation to remedy the violations found but enjoy a margin of appreciation as regards the means to be used. Once judgments and decisions become final, states indicate in an “action plan” sent to the Committee of Ministers what measures are planned and/ or taken. Once all of the measures have been completed, an “action report” is submitted.

In June 2017, the implementation of the judgment in *McFarlane*, together with four other cases, fell under the enhanced supervision procedure of the Committee of Ministers.⁶⁰

In 2020, the Committee of Ministers called on Ireland to provide an updated plan setting out their proposed remedies and relevant timeframes for their implementation.⁶¹

In September 2022, the Committee noted;

“[I]t remains a **matter of profound concern** that the remedy has not yet been established. The *McFarlane* case has been pending before the Committee for 12 years, and **almost 19 years have passed since this problem was first identified** by the Court. **Previous legislative initiatives have failed**, and the authorities must act diligently and continue to give the necessary priority to the legislative process to ensure that an effective remedy is established and accessible without any further delay.”⁶²

At this time, the Committee of Ministers invited Ireland to again provide updated information on the issue. In March, 2023, Ireland submitted a [revised action plan](#), outlining the progress that has been made thus far and the proposed remedies, with particular emphasis placed on the provisions of the Bill.⁶³

The 2022 Annual Report of the Committee of Ministers on the execution of judgments of the ECtHR⁶⁴ noted that there have been certain positive developments by Ireland, including “developments in the domestic jurisprudence elaborating a constitutional remedy for delay.”⁶⁵ However, the report indicated the authors’ “profound dismay” that “an effective remedy for excessive length of proceedings” has not yet been established. The recent developments proposed by the Bill were noted, and the Report indicated that:

⁵⁹ [‘The supervision process’](#), Council of Europe

⁶⁰ 1288th meeting of 6-7 June 2017

⁶¹ [Interim Resolution CM/ResDH\(2020\)202](#)

⁶² [1443rd meeting, 20-22 September 2022 \(DH\)](#)

⁶³ [Communication from Ireland concerning the case of McFARLANE v. Ireland \(Application No. 31333/06\)](#), DH-DD(2023)312, 14 March 2023.

⁶⁴ [‘Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights’](#) 16th Annual Report of the Committee of Ministers, 2022

⁶⁵ *Ibid*, p 26.

“The authorities were exhorted to give the necessary priority to this legislative process and to complete it without any further delay.”

Comparison of the proposed Models

The Bill proposes to introduce an Independent Assessor Model to decide claims relating to excessive delay in court proceedings. The operation of this system is considered in detail later in the Digest. The new system provides for the appointment of a Chief Assessor and a number of Assessors, all of whom are legally qualified, to assess whether an applicant’s right to the conclusion of proceedings in a reasonable time has been breached. This assessment will be based on the consideration of a number of factors, as set out in section 11 of the Bill. There is a right of appeal to the Circuit Court.

When considering the introduction of a new assessment procedure, two models were considered; the **Independent Assessor Model**, described above, or a **Courts-based Model**. The Courts-based Model would allow the courts system, rather than independent assessors, to decide if there has been a breach of an applicant’s right to a speedy conclusion of proceedings, and to decide on the appropriate damages to be awarded for this breach.

A Regulatory Impact Analysis (RIA) was produced, which compared the two models.⁶⁶ The assessment concluded that the Independent Assessor Model was the preferable option (see the Table 1 below for details of the comparative analysis undertaken).

In May 2019, the Joint Committee on Justice published a Pre-Legislative Scrutiny Report on the Bill.⁶⁷ The Report was sceptical of the proposed non-Courts based model. The Joint Committee

“**remain[ed] to be persuaded** that the non courts-based model set out in the General Scheme is the most efficient means of providing such a remedy.”

In their submission to the Joint Committee,⁶⁸ the Bar Council of Ireland proposed that the “optimal way”⁶⁹ in which to provide an effective remedy for breaches of the Article 6 right to a fair trial is to introduce a new provision into the [European Convention on Human Rights Act 2003](#), modelled on the existing s. 3A of the 2003 Act. Section 3A provides that a person can recover compensation for any loss, injury or damage suffered by him or her as a result of a judicial act that unlawfully deprived that person of their liberty.⁷⁰

⁶⁶ ‘[Court Proceedings \(Delays\) Bill 2023 - Regulatory Impact Analysis](#)’, January 2023

⁶⁷ Joint Committee on Justice and Equality, ‘[Report on pre-legislative scrutiny of the General Scheme of the European Convention on Human Rights \(compensation for delays in court proceedings\) Bill](#)’, May 2019.

⁶⁸ The Bar Council of Ireland, ‘[Submission by Council of The Bar of Ireland to the Joint Committee on Justice and Equality on the General Scheme of the European Convention on Human Rights \(Compensation for Delays in Court Proceedings\) Bill](#)’, 14 January, 2019

⁶⁹ Ibid, p 10.

⁷⁰ “A person (in this section referred to as an ‘affected person’) in respect of whom a finding has been made by the Court that he or she has been unlawfully deprived of his or her liberty as a result of a judicial act may institute proceedings in the Circuit Court to recover compensation for any loss, injury or damage suffered

The Bar Council indicated that their proposed new legislative provision

“would expressly permit a litigant to bring a claim for damages in the Circuit Court to compensate for delays in the course of civil and criminal proceedings which amount to a violation of Article 6(1) of the Convention. [...]

This approach would utilise the existing court structures to adjudicate on compensation claims for court delays, and would ensure that litigants are provided with a clear and specific statutory cause of action to facilitate making such claims.”⁷¹

The Bar Council’s submission then set out a number of proposed advantages to this system, including:

- The use of existing, trusted and functional systems
- Courts provide the ideal environment for the fair and just determination of Article 6 claims, due to the legal complexity involved in such claims.
- There are a range of ancillary legal issues which arise in the context of court delay claims, and these are best dealt with by the courts system.
- The Bar Council’s proposal would ensure consistency in the law.⁷²

Table 1: Comparative analysis of a Courts-based Model and an Independent Assessor Model

Court-based Model	Independent Assessor Model
Costs	
<p>Significant legal costs will arise associated with litigating delay claims before courts of first instance and in particular appellate courts.</p> <p>Costs of cases going to Court will substantially exceed the levels of damages awarded in the European Court.</p> <p>Precise figures redacted in the published RIA.</p>	<p>Redacted in the published RIA</p>

by him or her as a result of that judicial act and the Circuit Court may award to the person such damages (if any) as it considers appropriate.”

⁷¹ The Bar Council of Ireland, ‘[Submission by Council of The Bar of Ireland to the Joint Committee on Justice and Equality on the General Scheme of the European Convention on Human Rights \(Compensation for Delays in Court Proceedings\) Bill](#)’, 14 January, 2019, p 10.

⁷² The Bar Council of Ireland, ‘[Submission by Council of The Bar of Ireland to the Joint Committee on Justice and Equality on the General Scheme of the European Convention on Human Rights \(Compensation for Delays in Court Proceedings\) Bill](#)’, 14 January, 2019, pp 10-12.

Court-based Model	Independent Assessor Model
Benefits	
<p>The court of trial (criminal) or court before which the proceedings were held (civil) is well placed to assess the facts (due to the involvement of all parties in the process) and the law relevant to the issue of delay. The provision of compensation would accord with the concept of “just satisfaction” as outlined in Section 3 of the ECHR Act 2003.</p>	<p>The model provides for assessments to take place in a non-court based setting and therefore, a lower level of costs would result, while also providing applicants with access to the Courts.</p> <p>The provision of compensation would accord with the concept of “just satisfaction” as outlined in Section 3 of the ECHR Act 2003.</p> <p>The Bill captures all complaints of delay by creating a statutory right which fulfils both the Constitutional obligation and obligations under the ECHR.</p>
Impacts	
<p>Potential for the additional work to add to court backlogs and thus give rise to further delay claims.</p> <p>Issues regarding the accessibility of the remedies for affected persons due to potential costs.</p> <p>Issues regarding a perceived lack of impartiality where the court of trial (criminal) assesses the facts and the delay complained of may be perceived to be the fault on the part of the judge.</p> <p>Possibility of lack of consistency due to the range of Courts/Judges involved in making decisions.</p> <p>Policy challenges in allowing for a reduction in sentence as compensation for delay.</p> <p>Concerns expressed by the Courts Service and the Office of the DPP about taking on the role of legitimus contradictor.</p>	<p>The Independent Assessor model provided for in the Bill establishes an effective remedy for court delays in respect of Ireland's supervision by the Committee of Ministers of the Council of Europe on their implementation of the ECtHR judgment in <i>McFarlane v Ireland</i> [2010].</p> <p>It also provides a remedy in relation to breaches of the constitutional right to trial with reasonable expedition. It does this through the creation of a statutory right to conclusion of proceedings within a reasonable time, which will give a statutory basis to both the constitutional right and the right contained in Article 6.1 of the ECHR.</p> <p>The model in the Bill also provides an applicant or the Minister for Justice with a right to reject an assessment. In such circumstances an authorisation to initiate proceedings in the Circuit Court for determination of the claim will be issued.</p>

Operation of the proposed system

The provisions of the Bill are set out in detail in the “Principal Provisions” section of the Digest. The proposed operation of the new system is set out briefly below.

Statutory right to conclusion of proceedings in a reasonable time

Section 11(1) of the Bill provides that a person who is or was a party to proceedings to which this section applies has the right to the conclusion of those proceedings within a reasonable time.

To which cases does the Bill apply?

The Assessor system applies to all matters that were

- concluded up to six months before the coming into operation of section 11 of the Bill
- initiated before the coming into operation of section 11 and have not yet been concluded or
- are initiated after the coming into operation of section 11.

Entitlement to a declaration and damages

Section 11(3) of the Bill provides that a person whose right under subsection (1) has been breached shall be entitled to

- (a) a declaration⁷³ that there has been a breach of that right, and
- (b) the payment to him or her of compensation for that breach.⁷⁴

Determining whether the right under section 11(1) has been breached

Section 11(4) provides that due account will be given by either the Assessor or the Circuit Court to the following factors

- (a) in relation to the proceedings concerned—
 - (i) their complexity and duration,
 - (ii) the duration of the delay in their conclusion asserted by the person,
 - (iii) the issues at stake for each of the parties and the likely effect on the parties of a delay in the conclusion of the proceedings, and
 - (iv) the conduct of—
 - (I) the person,
 - (II) the other party or parties to the proceedings, and
 - (III) any other person under an obligation to perform a function in relation to those proceedings;

⁷³ Under section 17(4)(a) or section 24(6)(a)(i) of the Bill.

⁷⁴ Where section 17(5)(b) or section 24(6)(b)(ii) of the Bill applies.

(b) the steps (if any) taken by the person to avail of such means or mechanisms as were or are available to him or her to facilitate the conclusion of the proceedings within a reasonable time;

(c) the principles laid down in respect of a breach of the right to the conclusion of proceedings within a reasonable time—

(i) in any declaration, decision, advisory opinion or judgment of the European Court of Human Rights, and

(ii) in any decision of the High Court, Court of Appeal or Supreme Court;

(d) such other information relevant to the proceedings and their conclusion that the Assessor or the Circuit Court, as the case may be, considers appropriate.

Time frame for application

An application may be made either before the relevant proceedings have been concluded, or 6 months within months after the conclusion of the matter.

Application to the Circuit Court

An applicant who has been given authorisation by an Assessor may apply to the Circuit Court for a declaration that their rights under section 11(1) have been breached. This application shall be made within 3 months of receiving an Assessor's authorisation, though this period may be extended at the discretion of the Circuit Court.

Appeal to the High Court on a point of law

An applicant may appeal the decision of the Circuit Court to the High Court on a point of law, and may do so within 21 days of the date of the decision of the Circuit Court. A decision of the High Court in an appeal under this section shall be final and no further appeal shall lie from an order of the High Court.

Judicial immunity

The Bill provides that no declaration of a breach of an applicant's rights will constitute a finding of liability on the part of any judge or court, and nothing in the Bill shall operate to affect the independence of a judge or any enactment or rule of law relating to immunity from suit of judges. An application to the Circuit Court may only lie against Ireland, the Minister and the Courts Service; no court or judge may be enjoined.⁷⁵

Likely number of applications under the new system

It has proved difficult to determine how many cases will be pursued under the new framework. This is due in part to the fact that the practical bar to pursuing an ECHR claim is higher than will be in

⁷⁵ This issue was noted recently in *Nash v. DPP* [2017] 3 I.R. 320, in the context of damages for delay: "In addition it may be necessary to consider the extent to which it may be possible to award damages in respect of delay caused by a failure within the courts system itself. The immunity traditionally attaching to the courts or judges would require careful consideration. However, in addition to that it may be that there could be cases where, on a proper analysis, any delay within the courts system might properly be attributed to a failure on the part of the State itself to provide adequate resources to enable the courts system to deliver trials which met the constitutional requirement of timeliness." (para. 51)

place under the proposed system. Estimates for the number of potential applications were carried out during the preparation of the Bill using a number of ranges and underlying assumptions.

Delay as an ongoing issue in the Irish Courts

The issue of delay has been an ongoing problem in the Irish Courts. The 2022 [Report of the Judicial Planning Working Group](#) (JPWG) indicated that there are “existing backlogs and excessive waiting times” in the Irish courts,⁷⁶ with particular emphasis on the “significant backlog in criminal cases which has been exacerbated by the impact of the Covid pandemic”.⁷⁷ In some cases, people due to face criminal trial in Irish courts have been waiting 27 months for a hearing date. The current wait time for some murder and rape cases is up to 24 months.⁷⁸ Some other areas that have been impacted by delay include personal injuries cases,⁷⁹ a variety of civil matters, and cases relating to domestic violence.⁸⁰

In Autumn 2021, a joint submission of all Court Presidents further detailed the “significant delay situations” and the need for a more comprehensive approach to judicial staffing.⁸¹ The issue was also noted repeatedly by the then President of the High Court, Mr. Justice Mary Irvine,⁸² and by the current President of the High Court, Mr. Justice David Barniville.

On the concept of delay in court proceedings, the Supreme Court in the recent case *O’Callaghan v Ireland* concluded that:

“Delay can deny even a just judgment of its value. There is a societal interest involved. If people believe that courts cannot vindicate their rights, then they will come to distrust the law itself, and the system within which the rule of law operates [...] What is in issue is not simply an aspirational precept: it is a fundamental principle necessary for the upholding of the letter and the spirit of the Constitution.”⁸³

Detailed figures on the current court wait time across jurisdictions is available in the [Courts Service Annual Report: 2021](#) and in the Judicial Planning Working Group Report. A summary of recent

⁷⁶ [‘Report of the Judicial Planning Working Group’](#), Department of Justice, December 2022, p 81.

⁷⁷ *Ibid*, p 67.

⁷⁸ [‘Defendants in criminal trials could be awarded compensation if trials are unduly delayed’](#), *The Journal*, 09 March 2023.

⁷⁹ [‘Senior judge warns of looming crisis in Circuit Court amid anticipated surge in personal injury cases’](#), *Independent*, December 16 2022.

⁸⁰ “Recent data from the Courts Service shows District Court waiting times for family-law domestic violence applicants vary widely across the country. Domestic violence victims are having to wait up to four months for the courts to hear their safety applications.” [‘Domestic violence victims waiting up to four months for courts to hear safety applications’](#), *Irish Examiner*, 15 February 2023.

⁸¹ OECD (2023), [Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System](#), OECD Publishing, Paris, p 35

⁸² [‘Frustration mounts over court delays as more judges sought’](#), *Irish Times*, November 11, 2021; [‘Judicial appointments to be rushed through after High Court President announced cancellation of murder and rape trials’](#), *Independent*, 01 October 2021.

⁸³ [O’Callaghan v Ireland](#) [2021] IESC 68; [2021] 2 ILRM 397, para 118 *per* MacMenamin J.

figures is also set out in the [most recent communication](#) from Ireland to the Council of Ministers on the implementation of the *McFarlane* judgment.⁸⁴

Recent relevant legislation – addressing delays

Courts Bill 2023

The [Courts Bill 2023](#), which has recently concluded its passage through the Oireachtas,⁸⁵ proposes to increase the number of sitting judges in the Court of Appeal, High Court, Circuit Court and District Court. One of the primary reasons for the proposed increase is to address the issue of delay in court proceedings. Additionally, the lack of judges in Ireland has been the subject of ongoing criticism.

The Bill reflects the recommendations made by two recently published reports that provided independent analysis of the issue:

- [Report of the Judicial Working Group \(JPWG\)](#)
- [OECD Report: Modernising Staffing and Court Management Practices in Ireland](#)

[See L&RS Note, '[Increasing the Number of Judges in Ireland](#)', 17 March 2023]

Criminal Procedure Act 2021

The [Criminal Procedure Act 2021](#) introduced preliminary trial hearings. The Act was commenced in full on 28 February 2022. The principal purpose of the Criminal Procedure Act 2021 is to provide for preliminary trial hearings in respect of the trial of certain criminal offences, where the trial court is satisfied that such a hearing would be conducive to the expeditious and efficient conduct of the proceedings, and not contrary to the interests of justice. Pre-trial hearings streamline court procedures, moving the administrative burden to the start of the trial, and may help to reduce court delays.

It has been noted that:

“Since 28 February 2022, 58 preliminary trial hearings have been held in the Irish Courts, of which 23 related to the Central Criminal Court and 35 to the Circuit Criminal Court. This, along with other measures implemented by the Government, has assisted in the reduction of excessive delays in Court proceedings in Ireland.”⁸⁶ (correct as of March, 2023)

[See Oireachtas Library & Research Service, 2021, [L&RS Bill Digest: Criminal Procedure Bill 2021](#)]

⁸⁴ [Communication from Ireland concerning the case of McFARLANE v. Ireland \(Application No. 31333/06\)](#), DH-DD(2023)312, 14 March 2023.

⁸⁵ [Minister of State announces passing of the Courts Bill 2023 through the Houses of the Oireachtas](#), 17 May 2023

⁸⁶ [Communication from Ireland concerning the case of McFARLANE v. Ireland \(Application No. 31333/06\)](#), DH-DD(2023)312, 14 March 2023.

Consultations

The RIA has indicated that a number of consultations have taken place over a number of years to determine an effective domestic remedy for delays in court proceedings. These consultations are set out below.

The Expert Group on Article 13 of the ECHR, which comprised:

- The Office of the Attorney General
- The Office of the Director of Public Prosecutions
- The Courts Service
- The Department of Justice
- The Department of Foreign Affairs; and
- Senior Counsel (Chairperson).

The Joint Committee on Justice and Equality's Report on pre-legislative scrutiny of the General Scheme of the European Convention on Human Rights (Compensation for delays in court proceedings) Bill heard from:

- The Council of the Bar of Ireland; and
- The Free Legal Aid Centres.

The recommendations contained in this Report were considered extensively by the Department of Justice.

As the Bill was revised, the Department continuously consulted:

- The Chief State Solicitor's Office;
- The Office of the Attorney General;
- The Director of Public Prosecutions;
- The Courts Service;
- The Department of Foreign Affairs; and
- The Department of Public Expenditure and Reform.





Pre-legislative scrutiny of the General Scheme of the Bill

The General Scheme of the Bill underwent pre-legislative scrutiny by the Joint Committee on Justice.⁸⁷ The Joint Committee [held a discussion](#)⁸⁸ on the Bill with a selection of relevant stakeholders, including the Bar Council of Ireland and FLAC. Their written submissions are included in the Joint Committee's Report, which was published in May 2019.

The Joint Committee's Report set out 13 recommendations in relation to the Bill.

The Table below sets out these recommendations, and the extent to which they have been reflected in the Bill, with reference to feedback provided by the Department of Justice regarding the implementation of the Joint Committee's recommendations.


Table 2: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.



L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Error! Reference source not found. to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Recommendation has not been implemented in the Bill, but additional considerations are present.	
Key issue has not been accepted or implemented in the Bill.	


⁸⁷ Joint Committee on Justice and Equality, '[Report on pre-legislative scrutiny of the General Scheme of the European Convention on Human Rights \(compensation for delays in court proceedings\) Bill](#)', May 2019.


⁸⁸ [Joint Committee on Justice and Equality debate - Wednesday](#), 16 Jan 2019


Traffic light dashboard comparing the Bill, as published, with recommendations included in the [Report on Pre-legislative Scrutiny of the General Scheme of the Bill](#) issued by the Joint Committee on Justice in May 2019 (the 'Committee Report on PLS').



Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
<p>1. Nevertheless remains to be persuaded that the non-courts-based model set out in the General Scheme is the most efficient means of providing such a remedy. The Committee recommends that a detailed assessment first be conducted of the likely costs involved in establishing the Assessor model, including the costs of setting up a new body; renting premises; hiring and remunerating appropriate personnel; prescribing procedures; and advertising the existence of such a body to potential claimants.</p>		<p>The 2018 General Scheme of the European Convention on Human Rights (Compensation for delays in court proceedings) Bill which was the subject of the 2019 Joint Committee Report on PLS was amended to take account of both the Joint Committee recommendations and legal advice obtained.</p> <p>The Joint Committee's recommendation to undertake a detailed assessment to establish the most efficient means to provide a remedy was taken on board. A Regulatory Impact Analysis was prepared during the drafting of the Bill which sets out the options considered for the implementation of the judgment in <i>McFarlane</i>. A detailed paper on the cost estimates, and the underlying assumptions on which they are based was also prepared and considered during the drafting process.</p> <p>The Scheme proposed in the Court Proceedings (Delays) Bill 2023 establishes a statutory right (which encompasses an individual's constitutional right, common law right and Article 6 right) to the conclusion of proceedings within a reasonable time and provides for the establishment of an independent assessment process, under the aegis of the Department of Justice.</p> <p>The Bill also provides for a courts-based process where either the applicant or the Minister does not accept, or the applicant is deemed not to have accepted the</p>


Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
		independent Assessors assessment of the application.
<p>2. Has concerns as to whether the streamlined model envisaged in the General Scheme is the most suitable and appropriate for determining whether there has been a breach of Article 6(1) of the European Convention on Human Rights, and the compensation which should be awarded if so. Given the potential legal complexity of such claims, it is questionable as to whether they can be fairly and properly adjudicated upon through an informal process in which an assessor simply considers reports and court files, and there is no provision for the giving of oral evidence or making of legal submissions.</p>		<p>The Scheme proposed in the Court Proceedings (Delays) Bill 2023 addresses the concerns raised by the Joint Committee around the suitability and appropriateness of the model set out in the 2018 General Scheme.</p> <p>Part 3 of the Court Proceedings (Delays) Bill establishes a statutory right (which encompasses an individual's constitutional right, common law right and Article 6 right) to the conclusion of proceedings within a reasonable time.</p> <p>Part 4 of the Bill sets out the assessment application process for breach of that right.</p> <p>Part 4 includes provision for either or both an applicant and the Minister to not accept an assessment and in the case of an applicant, to be deemed not to have accepted an assessment. In such circumstances, the Bill now provides that an authorisation will be issued entitling the applicant or the Minister to make an application to the Circuit Court for a declaration that there has been a breach of their right to the conclusion of proceedings within a reasonable time and for related reliefs.</p> <p><i>Section 27</i> of the Bill also includes an appeal on a point of law from the Circuit Court to the High Court.</p>
<p>3. Notes that there do not appear to be any cost implications for a failed application for compensation.</p>		<p>The Joint Committee's concerns around cost implications for a failed application and the awarding of costs to successful applicants have been taken on board.</p>


Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
<p>This may have the unintended consequence of encouraging litigants to bring claims all too readily, thus causing the assessor model itself to become overburdened and beset by delays.</p> <p>There is also no provision in the General Scheme for the expense of making a successful application to be discharged by the State, meaning that such costs will inevitably be deducted from the compensation award made.</p>		<p>This is reflected in <i>section 23</i> of the Bill which provides for the award of reasonable costs in favour of a successful applicant in relation to the costs incurred by him or her in the making of an assessment application.</p> <p>The section also provides for circumstances where an Assessor can determine that no award of costs be made to a successful applicant.</p> <p><i>Section 24</i> of the Bill provides for the award of costs in the Circuit Court.</p> <p><i>Section 28</i> of the Bill provides an applicant may be penalised on costs should they refuse an award made by the Assessor and later obtain the same or a lesser award in the Circuit Court.</p> <p><i>Section 29</i> of the Bill provides for circumstances where the Court can make an award in respect of costs or expenses incurred by the applicant in the making of the assessment application.</p>
<p>4. Recommends that, in light of these concerns, the Minister for Justice and Equality and his Department give further detailed consideration as to whether it may be preferable to instead provide for a statutory, courts-based model along the lines of section 3 of the European Convention on Human Rights Act 2003.</p>		<p>The Joint Committee's recommendation to undertake further detailed consideration as to whether it may be preferable to provide for a statutory court-based model along the lines of <i>section 3</i> of the European Convention on Human Rights Act 2003 was considered.</p> <p>A Regulatory Impact Analysis was prepared during the drafting of the Bill which sets out the options considered for the implementation of the judgment in <i>McFarlane</i>. The Scheme proposed in the Court Proceedings (Delays) Bill 2023</p>


Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
		<p>now includes a statutory court-based process.</p> <p>Part 3 of the Bill establishes a statutory right (which encompasses an individual's constitutional right, common law right and Article 6 right) to the conclusion of proceedings within a reasonable time.</p> <p>Part 4 of the Bill sets out the assessment application process for breach of that right.</p> <p>Similar to <i>section 3</i> of the European Convention on Human Rights Act 2003, <i>section 24</i> of the Court Proceedings (Delays) Bill 2023 now provides for the making of an application to the Circuit Court where either the applicant or the Minister does not accept, or the applicant is deemed not to have accepted an Assessors assessment of the application. In such circumstances, the Circuit Court will determine whether there has been a breach of the applicant's right to the conclusion of proceedings within a reasonable time and if such a breach has occurred, whether compensation is payable and the amount of any such compensation.</p>
<p>5. Believes that, even within the proposed scheme, it is essential that persons wishing to make applications have access to lawyers and legal advice.</p> <p>There can be numerous reasons as to why delays might occur in the litigation process, some of which may be reasonable, and some not.</p>		<p>The Joint Committee's concerns around accessibility to legal advice were taken on board.</p> <p>This is reflected in <i>section 23</i> of the Court Proceedings (Delays) Bill 2023 which now provides for the award of reasonable costs in favour of a successful applicant in relation to the costs incurred by him or her in the making of an assessment application.</p>


Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
<p>It would be inherently unfair to require litigants to engage with such legal issues and considerations without access to expert advice and assistance.</p>		<p><i>Section 24</i> of the Bill now provides for the award of costs in the Circuit Court.</p> <p><i>Section 29</i> of the Bill now provides where the Court makes an order of costs in favour of an applicant and the applicant was not awarded costs at the assessment stage, the Court can include in the order an award in respect of costs or expenses incurred by the applicant in the making of the assessment application.</p>
<p>6. Recommends that Head 9 be re-drafted to make clear that an applicant may appeal to the High Court not just the quantum of an award made by an assessor, but also the refusal of an award of compensation.</p>		<p>The process in Head 9 whereby an applicant can appeal the quantum of an award made by an assessor to the High Court is no longer a feature of the Bill. The Joint Committee's recommendation regarding the need for clarity in relation to the grounds for an application to the Court from a decision of an Assessor were taken on board.</p> <p>This is reflected in Part 4 of the Court Proceedings (Delays) Bill 2023 which sets out the assessment application process for breach of the statutory right (which encompasses an individual's constitutional right, common law right and Article 6 right) to the conclusion of proceedings within a reasonable time.</p> <p>It includes provision for either or both an applicant and the Minister to not accept an assessment and in the case of an applicant, to be deemed not to have accepted an assessment. In such circumstances, the Bill now provides that an authorisation will be issued entitling the applicant or the Minister to make an application to the Circuit Court for a declaration that there has been a breach</p>


Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
		<p>of their right to the conclusion of proceedings within a reasonable time and for related reliefs.</p> <p><i>Section 27</i> of the Bill also includes an appeal on a point of law from the Circuit Court to the High Court.</p>
<p>7. Believes that the wording in Head 8, that the assessor “shall compensate the applicant only to the extent that he or she has suffered injury, loss or damage because of the breach” risks setting the bar for compensation at too high a level. This would appear to limit compensation to only the most serious cases, where actual injury or loss arising from court delays can be demonstrated. This will very rarely be the case, but there is no reason why people should not nevertheless be compensated for the great inconvenience and frustration caused by unreasonable delays.</p>		<p>The Joint Committee’s concerns that compensation would be limited to only the most serious cases where actual injury or loss arising from court delays can be demonstrated were considered. The wording in Head 8 that the assessor shall compensate the applicant “only to the extent” that he or she has suffered injury, loss or damage because of the breach is no longer a feature of the Bill.</p> <p><i>Section 17</i> of the Court Proceedings (Delays) Bill 2023 provides that an Assessor must “have regard to” any injury, loss or damage suffered by the applicant as a direct result of the breach of the applicant’s right under <i>section 11(1)</i> when determining the level of compensation to be awarded.</p> <p>This ensures due regard is given to and is reflected in the compensation awarded, where the applicant suffered injury, loss or damage because of the breach of the right under <i>section 11(1)</i>, rather than limiting an award to such circumstances only.</p>
<p>8. Recommends that clarity be provided in Head 10 as to whether an individual who is refused an award by an assessor may still bring a</p>		<p>The provisions of the Bill have been restructured in such a way that Head 10 no longer features. The Joint Committee’s concerns in relation to the need for clarity regarding an individual’s right to bring a claim for compensation before the courts</p>

Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
<p>claim for compensation before the courts.</p>		<p>where an Assessor has refused an award were considered.</p> <p>Part 4 of the Court Proceedings (Delays) Bill 2023 now sets out the assessment application process for breach of the statutory right (which encompasses an individual's constitutional right, common law right and Article 6(1) right) to the conclusion of proceedings within a reasonable time.</p> <p>It includes provision for either or both an applicant and the Minister to not accept an assessment and in the case of an applicant, to be deemed not to have accepted an assessment. In such circumstances, the Bill now provides that an authorisation will be issued entitling the applicant or the Minister to make an application to the Circuit Court for a declaration that there has been a breach of their right to the conclusion of proceedings within a reasonable time and for related reliefs.</p> <p><i>Section 27</i> of the Bill now provides for an appeal on a point of law from the Circuit Court to the High Court.</p> <p><i>Section 34</i> of the Bill now provides for a bar on proceedings for further compensation where an assessment becomes binding or where the Circuit Court makes a decision in relation to the application.</p>
<p>9. Recommends that the legislation also incorporate delays before quasi-judicial bodies such as the Workplace Relations Commission, the</p>		<p>The Joint Committee's recommendation to incorporate delays before quasi-judicial bodies into the Bill was considered and deemed unnecessary as <i>section 3</i> of the</p>

Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
Residential Tenancies Board, and so on.		<p>European Convention on Human Rights Act 2003 provides such a remedy.</p> <p>A general right to institute proceedings to recover damages for breach of a Convention right by an ‘organ of the State’ is contained in <i>section 3</i> of the European Convention on Human Rights Act 2003. The definition of “organ of the State” contained in <i>section 1</i> of the 2003 Act includes a tribunal or any other body established by law or through which any of the legislative, executive or judicial powers of the State are exercised, however it expressly excludes a court.</p> <p><i>Section 11</i> of the Court Proceedings (Delays) Bill 2023 provides that a person who is or was a party to proceedings has the right to the conclusion of those proceedings within a reasonable time.</p> <p><i>Section 2</i> of the Bill defines “proceedings” as including any cause, action, suit, matter, appeal or application in or to any court, and includes criminal proceedings.</p>
<p>10. Recommends that the legislation make clear that the entitlement to apply for compensation extends to situations where delays may arise not out of the immediate proceedings themselves, but out of related proceedings – for example, where a delay in criminal proceedings delays the bringing of a civil claim arising out of the same events.</p>		<p>The Joint Committee’s recommendation that the legislation makes clear that the entitlement to apply for compensation extends to situations where delays may arise not out of the immediate proceedings themselves, but out of related proceedings, was considered. The Bill is clear in relation to who can make an application and the proceedings to which an application must relate. While this does not include a delay arising from related proceedings, the Bill provides for the consideration of such circumstances by both an Assessor and where relevant the Circuit Court, where they consider it</p>

Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
		appropriate, when determining whether an applicant's right under <i>section 11(1)</i> has been breached.
<p>11. Recommends that the explicit linking in Head 8 of the making of an award to “the principles and practice applied by the European Court of Human Rights” be removed in favour of a more fluid and flexible approach. For example, Article 47 of the Charter of Fundamental Rights of the European Union should also be an important consideration in deciding whether to grant an award.</p>		<p>The policy intent in Head 8 linking the calculation of any award of compensation to “the principles and practice applied by the European Court of Human Rights” has not been amended however the Joint Committee’s recommendation for a more fluid and flexible approach to the making of an award was taken on board.</p> <p><i>Section 17</i> of the Court Proceedings (Delays) Bill 2023 now provides an Assessor will take account of a number of matters when determining whether compensation is payable to the applicant including matters in relation to the proceedings themselves and the conduct of the parties, the steps taken by the applicant to facilitate the conclusion of proceedings within a reasonable time and the principles laid down in respect of a breach of the right to the conclusion of proceedings within a reasonable time in any declaration, decision, advisory opinion or judgment of the European Court of Human Rights or in any decision of the High Court, Court of Appeal or Supreme Court.</p> <p>The section provides in line with the original policy intent that in calculating the amount of compensation payable (if any), the Assessor will do so by reference to the jurisprudence of the European Court of Human Rights, in line with the concept of “just satisfaction” under Article 41 of the Convention and in particular to any decision in which the facts and circumstances of the case are</p>

Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
		<p>comparable with the proceedings the subject of the application. <i>Section 17</i> now also provides that the Assessor will have regard to any injury, loss or damage suffered by the applicant as a direct result of the breach of the applicant's right when determining the level of compensation to be awarded.</p> <p><i>Section 24</i> provides for similar considerations by the Circuit Court when determining whether compensation is payable to the applicant and in calculating the amount of compensation payable (if any).</p>
<p>12. Believes that the requirement for an award of an assessor to be approved by the High Court is unnecessary given that the High Court is also the forum for the determination of appeals under the proposed legislation.</p>		<p>The 2018 General Scheme of the European Convention on Human Rights (Compensation for delays in court proceedings) Bill which was the subject of the 2019 Joint Committee Report on PLS was amended to take account of both the Joint Committee recommendations and legal advice obtained.</p> <p>The Joint Committee's belief that the requirement for an award of an Assessor to be approved by the High Court is unnecessary given that the High Court is also the forum for the determination of appeals under the proposed legislation was taken on board.</p> <p>The provisions have been restructured in such a way that the requirement for an award of an Assessor to be approved by the High Court no longer features.</p> <p><i>Section 27</i> of the Bill provides for an appeal on a point of law from the Circuit Court to the High Court.</p>

Recommendations as per Committee Report on PLS		Whether addressed (either in whole or in part) in the Bill
<p>13. Believes that clarity is needed as to the rights of an applicant to bring an additional claim or claims for compensation in the event of further delay that may accrue after an award has been made if the proceedings have still not been determined by that time.</p>		<p>The Joint Committee's recommendation that clarity is needed as to the rights of an applicant to bring an additional claim or claims for compensation in the event of further delay that may accrue after an award has been made if the proceedings have still not been determined by that time was considered.</p> <p><i>Section 11</i> of the Court Proceedings (Delays) Bill 2023 establishes a statutory right (which encompasses an individual's constitutional right, common law right and Article 6 right) to the conclusion of proceedings within a reasonable time.</p> <p><i>Section 34</i> of the Bill provides for a bar on proceedings for further compensation where an assessment becomes binding or where the Circuit Court makes a decision in relation to an application. The section also confirms that no proceedings other than those provided for in the Bill may be brought in respect of an alleged breach of the <i>section 11</i> right.</p>

Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill. The Bill is comprised of 6 Parts and 37 sections.

Part 1 – Preliminary and General

The first 5 sections of the Bill provide for the Bill's title and commencement, definitions, the Minister's powers to make regulations pursuant to the Bill, and expenses.

Part 2 – Appointment of Chief Assessor and Assessors.

Section 5 provides for the definition of both the Chief Assessor and Assessors.

The Minister shall appoint a person to be

- “Chief Court Delays Assessor” (referred to as the Chief Assessor), and
- An appropriate number of “Court Delays Assessors” (referred to as Assessors)

The Chief Assessor is to be either a retired Judge or a practising barrister or solicitor of not less than 10 years' standing.

Each Assessor shall be a retired Judge or practicing barrister or solicitor of not less than 5 years' standing.

References in the Bill to “an Assessor” includes a reference to the Chief Assessor.

Section 6 provides that an Assessor shall hold office for 5 years from the date of his or her Appointment.

Section 7 provides that an Assessor may resign at any time by giving notice. The Minister may remove an Assessor from office if the Assessor becomes incapable of performing their functions due to ill health, has committed stated misbehaviour or is otherwise unfit or unable to discharge the functions of their office.

An Assessor shall cease to be qualified for office if they are:

- Convicted on indictment of an offence
- Convicted of an offence relating to fraud or dishonesty
- Convicted to a term of imprisonment
- Removed from the roll of practising barristers or struck off the roll of solicitors

Section 8 provides that an Assessor is not liable in damages for any actions or omissions done or omitted by them in the performance of their functions under the Bill, unless the act or omission concerned was done in bad faith.

Section 9 provides that the Minister may designate their officers to assist Assessors in the performance of their functions, and the officers designated shall perform their functions under the control of the Chief Assessor.

Section 10 provides for the functions of the Chief Assessor. The Chief Assessor shall have “all such powers as are necessary or expedient” to enable the performance of their functions and those of the Assessors.

The Chief Assessor shall submit an annual report to the Minister, and shall provide any other relevant information related to the performance of their functions. They may also convene

meetings with an Assessor/s. The Chief Assessor shall convene a meeting of the Assessors at least once a year for the purpose of reviewing the making of assessments by Assessor.

Part 3 – Right to the conclusion of proceedings within reasonable time

Section 11 provides that a person who is or was a party to proceedings to which this section applies has the right to the conclusion of those proceedings within a reasonable time.

The section applies to proceedings that

- (a) were—
 - (i) **concluded** in the period of **6 months prior** to the date of **coming into operation** of this subsection, or
 - (ii) **initiated before** the date of **coming into operation** of this subsection that have not by that date been **concluded**,
- or
- (b) are **initiated on or after** the date of the **coming into operation** of this subsection.

Section 11(3) of the Bill provides that a person whose right under subsection (1) has been breached shall be entitled to

- (a) a declaration⁸⁹ that there has been a breach of that right, and
- (b) the payment to him or her of compensation for that breach.⁹⁰

Subsection 11(4) provides guidance on determining whether the right under section 11(1) has been breached

Due account will be given by either the Assessor or the Circuit Court to the following factors

- (a) in relation to the proceedings concerned—
 - (i) their complexity and duration,
 - (ii) the duration of the delay in their conclusion asserted by the person,
 - (iii) the issues at stake for each of the parties and the likely effect on the parties of a delay in the conclusion of the proceedings, and
 - (iv) the conduct of—
 - (I) the person,
 - (II) the other party or parties to the proceedings, and
 - (III) any other person under an obligation to perform a function in relation to those proceedings;
- (b) the steps (if any) taken by the person to avail of such means or mechanisms as were or are available to him or her to facilitate the conclusion of the proceedings within a reasonable time;

⁸⁹ Under section 17(4)(a) or section 24(6)(a)(i) of the Bill

⁹⁰ Where section 17(5)(b) or section 24(6)(b)(ii) of the Bill applies.

(c) the principles laid down in respect of a breach of the right to the conclusion of proceedings within a reasonable time—

(i) in any declaration, decision, advisory opinion or judgment of the European Court of Human Rights, and

(ii) in any decision of the High Court, Court of Appeal or Supreme Court;

(d) such other information relevant to the proceedings and their conclusion that the Assessor or the Circuit Court, as the case may be, considers appropriate.

Part 4 – Assessment, Acceptance of Assessment, Authorisation etc.

Section 12 provides that a person who believed that their rights under Section 11(1) have been breached may apply to the Chief Assessor for

- i. an assessment of whether the person's right has been so breached
- ii. a declaration that their right has been so breached and
- iii. where applicable, compensation for this breach.

An application may be made either before the relevant proceedings have been concluded, or within 6 months after the conclusion of the matter.

The Minister may determine the appropriate form of the application.

Section 13 provides that, on receipt of an application, the Chief Assessor shall assign the application to an Assessor for assessment, who shall then examine the assessment application.

Section 14 provides that an applicant may withdraw their application.

Section 15 provides that, when conducting an examination of an assessment application, an Assessor may request further information or clarification from the applicant. If an applicant fails to comply with this request, the Assessor may defer further examination of the application.

If the applicant does not respond to the notice requesting further information, and the Assessor cannot progress without this information, the Assessor shall discontinue their examination of the application. An applicant can subsequently send a new application.

Section 16 provides that an Assessor may, for the purpose of their examination, request the provision of information from third parties (i.e. other persons or public bodies, other than the Revenue Commissioners).

Section 17 provides for the making of an assessment by an Assessor. The Assessor shall make an assessment within 6 months of receipt of an assessment application. If the Assessor will not be able to complete an assessment in this time, they shall notify the applicant and Minister of this, and specify the date before which the Assessor will make the assessment (to be within 3 months of the expiry period).

Having completed the assessment, the Assessor shall make a declaration that there has or has not been a breach of the applicant's rights under section 11(1). If the applicant's rights have been breached, the Assessor shall determine whether compensation is payable, and the amount of this compensation.

When assessing the amount of compensation payable, section 17(6) provides that the Assessor shall have regard to the factors set out in section 11(4), above. They shall also have regard to the

amount of compensation awarded by the ECtHR for comparable breaches of Article 6(1) rights, and to any injury, loss or damage suffered by the applicant as a result of the breach of his rights under section 11(1).

The Assessors final assessment, in writing, shall include a declaration, a determination as to compensation owed, reasons for the declaration and determination, and any other relevant information. If there has been a failure by the applicant to comply with a request made by the Assessor for further information, this will also be noted.

Under **section 18**, a copy of the prepared assessment is to be provided to the applicant and the Minister. The applicant must, within 28 days of receipt of the notice, confirm in writing that they accept or do not accept the assessment. The notice shall contain a direction that the applicant

- (a) obtain legal advice from a person who is independent of him or her as to whether the assessment ought to be accepted, and
- (b) confirm to the Assessor in writing that the authorised person has obtained the legal advice concerned.

Section 19 provides that if no notice of acceptance is sent to the assessor, the applicant is deemed to have accepted the assessment.

Section 20 provides that, if an assessment is not accepted by the applicant, issue an authorisation to the applicant entitling them to make an application to the Circuit Court under section 24. This authorisation shall be granted where:

- (a) the applicant
 - (i) confirms, in accordance with that paragraph, that he or she does not accept the assessment concerned, or
 - (ii) is deemed under section 19(1) to not have accepted the assessment concerned;
- (b) the Minister confirms, in accordance with that paragraph, that he or she does not accept the assessment concerned.

Section 21 provides that an assessment shall become binding on an applicant and the Minister when both have communicated that they accept the assessment concerned. When the assessment becomes binding, the Assessor will notify this fact to the applicant and Minister.

Section 22 provides that the Minister shall pay compensation due to the applicant within 2 month of the date from which the assessment becomes binding.

Section 23 relates to the applicant's costs in an assessment application. The Assessor may award reasonable costs in favour of an applicant in relation to the costs incurred by him or her in the making of an assessment application. The applicant can also be awarded costs incurred by him or her in respect of legal advice obtained.

Regarding the level of costs to be awarded, subsection (3) provides that the Minister may issue guidelines as to the appropriate level of an award. These guidelines shall be published on a website maintained on behalf of the Minister.

It is also possible for an Assessor to not award costs to the applicant, in consideration of the nature of the application.

Costs shall be paid by the Minister not later than 2 months after the date on which the assessment becomes binding.

Part 5 – Application to Circuit Court on foot of authorisation

Section 24 provides that a person who has been given authorisation (the applicant) may apply to the Circuit Court for a declaration that their rights under section 11(1) have been breached. This application shall be made within 3 months of receiving authorisation to do so, though this period may be extended at the discretion of the Circuit Court.

An application may only lie against Ireland, the Minister and the Courts Service; no court or judge may be enjoined.

The Circuit Court, on hearing the application, may make a declaration as to whether or not the applicant's rights under section 11(1) have been breached; whether compensation is payable to the applicant as a result of this breach; and whether costs should be awarded to the applicant.

The Court shall make a declaration as to the relevant breach of rights by reference to the criteria set out in section 11(4).

When determining whether compensation should be awarded, the Court shall take into account the relevant factors set out in section 11(4).

When calculating the amount to be awarded the Court shall do so "by reference the practice of and the levels of compensation awarded by the European Court of Human Rights in decisions in which that Court found that there was a violation of a person's right under Article 6(1) of the Convention". The Court shall also have regard to any injury, damage or loss suffered by the applicant as a result of the breach of their rights under section 11. The monetary jurisdiction of the Circuit Court to award compensation in tort matters shall not apply to a determination under this section.

Section 25 provides that an acceptance by the applicant or the Minister under section 18 shall not be admitted in evidence and shall not constitute an admission of fault by the Minister.

Section 26 provides that an assessment under section 17 shall not be admissible in evidence in applications under sections 24 or 27.

Section 27 provides that an applicant may appeal the decision of the Circuit Court to the High Court on a point of law, and may do so within 21 days of the date of the decision of the Circuit Court. A decision of the High Court in an appeal under this section shall be final and no further appeal shall lie from an order of the High Court.

Section 28 sets out the orders the Circuit Court can make where it determines under section 24(6)(b) that an amount of compensation is payable to the applicant but the amount so determined is not greater than the amount of compensation determined to be payable to the applicant under section 17 in respect of the same relevant proceedings. The Court may either

- (a) make no order as to the payment of costs to the applicant;
- (b) order the applicant to pay all or a portion of the costs of one, or more than one, of the respondents

The section shall not apply if the Circuit Court considers that there is a good reason for not applying the section; or the applicant and Minister have each confirmed that they do not accept the assessment concerned.

Section 29 provides that the Circuit Court may award costs to the applicant when the applicant was not awarded costs in relation to their assessment application, and this award of costs can include an amount that includes costs for the relevant assessment application.

Section 30 provides that where the Circuit Court determines that compensation is payable to the applicant, and no appeal has been made, such amount shall be paid to the applicant by the minister within 3 months of the determination. If the applicant has appealed the matter to the High Court, and the High Court orders that compensation is payable to the applicant, this award shall also be paid within 3 months of the date of the Court's decision.

Part 6 – Miscellaneous

Section 31 provides that where a person is under 18, a relevant person can submit an application on their behalf. This may also be done if a person is over 18 but lacks capacity to make an application.

Section 32 provides that provides that the functions conferred on an Assessor must not interfere with any judicial functions or impugn the performance of a judge in his or her judicial functions or any other person who has been conferred by law with limited functions of a judicial nature, in the performance of those functions

Section 33 provides that the declaration issued by an Assessor shall not constitute a finding of liability on the part of any judge or court. This preserved the principle of judicial immunity.

Section 34 provides that where an assessment has become binding on the applicant, they are barred from taking further proceedings for compensation and must discontinue any other relevant proceedings that they have instituted. This principle also applies to relevant decisions of the Circuit Court.

The right enjoyed by a person under section 11(1) shall, in respect of the proceedings to which that section applies, have effect in the place of the person's common law right to trial with reasonable expedition.

Section 35 provides for the processing of personal data and special categories of personal data. An Assessor may, when necessary for the performance of their functions, process personal data, including special categories of personal data, in accordance with General Data Protection Regulation and the Act of 2018

Section 36 provides that there is no disclosure on grounds of legal professional privilege. Nothing in this Act shall operate to compel a person to disclose any information or document that the person would be entitled to refuse to produce on the grounds of legal professional privilege.

Section 37 provides for transitional provisions.

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