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Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees),
Aarhus Convention Team,
Department of the Climate, Energy and the Environment,
Tom Johnson House,
Haddington Road,
Dublin 4

Sent via email: aarhus@dcee.gov.ie

15th January 2026

Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees)

A Chara,

An Taisce wishes to make the following submission on the Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees).

We make this submission without prejudice to our ongoing serious concerns about the inadequacy of this consultation and without prejudice to our related letter of 9th January 2026 (sent by FP Logue Solicitors on behalf of An Taisce and Friends of the Irish Environment and appended to this submission) to Minister Darragh O'Brien calling on him to withdraw the consultation because we consider that it was conducted in such an unfair manner as to be unlawful. The State responded on 14th January 2026 disputing the position set out in our letter. The State's position was not supported in their letter, and it was simply stated that a more substantive response would be issued at a future date.

Regarding the nine consultation questions, we have formatted our submission as a general response to multiple issues arising in the consultation as well as a response to the open-ended question 9. In answer to question 1, we do not support the scale of fees approach proposed, the reasons for which are detailed in our submission below. We therefore also would answer no to questions 2 through 8.

An Taisce is a member of the Environmental Pillar, a coalition of 38 independent environmental NGOs. We also endorse, adopt, and rely upon the Environmental Pillar's submission to this consultation and the matters raised therein.

1. Inadequate Consultation & Other Preliminary Matters

1.1 Serious Problems with the Consultation and Documentation

An Taisce considers that this consultation and the manner in which it has been conducted are wholly inadequate and have seriously breached fair procedures to the point where we believe the consultation is in fact unlawful. We do not consider the consultation to be fit for purpose and would reiterate our call for it be withdrawn. The aforementioned letter from FP Logue Solicitors setting out in detail An Taisce's position on this is appended to this submission, and we rely upon the full content of that letter. We highlight a selection of key points regarding the consultation below.

Effective public participation is a requirement under the Aarhus Convention on the rights to public participation, access to justice, and access to information in environmental matters, to which both Ireland and the EU are parties.

This consultation was opened on 3rd December 2025 with a closing date of 15th January 2026, meaning it directly coincided with the very busy Christmas period. This is a traditional holiday period in Ireland over which time most people have multiple family and social obligations that seriously limit the public's ability to effectively engage in public consultations. Furthermore, for those seeking to engage in a professional or organisational capacity, many workplaces are closed over this traditional holiday period, again limiting the capacity to engage. Multiple requests were made to the Department to extend the deadline, including by the Environmental Pillar, but no extension was granted.

Moreover, additions were made to the consultation documentation on:

- 9th December: a summary document on the steps for applying the proposed scale of fees – this addition was initially not made clear on the consultation page; and
- 23rd December: a link to 2023 report by Fieldfisher commissioned by the Office of the Planning Regulator (OPR) on legal costs in planning and environmental judicial reviews (there is a crucial March 2025 addendum to that report which is available on the OPR's website, but that addendum was not mentioned in the consultation update), and two determinations of the Legal Costs Adjudicator.

The consultation period was not extended after either of these additions, despite the fact that the additions made on the 23rd in particular were quite extensive and provide critical context for the proposals. These additions were also not effectively notified to the public. This means that, when the traditional holiday period is excluded (24 December to 5 January), the public effectively had 10 calendar days before the submission deadline to review the full published set of very complex consultation information.

Moreover, there are still major deficiencies and gaps in the consultation information – significant amounts of information, data, and analyses that would be needed for any consultee to be able to respond fully and effectively on the appropriateness of the proposal is missing. We would highlight in particular that the consultation fails to clearly explain the State's legal obligations or how this proposal is compliant with them. Key factors including information about how much litigation would actually cost applicants consequent on the proposal have also not been disclosed. There is a complete lack of transparency around what groups and individuals have been involved in the formation of the proposals as well as around what data, information, and analyses have been relied upon.

Additionally, the consultation is presented as a fait-accompli and not at the formative stage when public input should be sought to shape the proposals.

Ultimately, there is no way such a complex consultation that a) represents a serious curtailment of public rights and b) has such significant financial implications for taking litigation can be considered to adequately facilitate effective public participation when conducted over the traditional holiday period and with such seriously deficient materials. In our view, it is also seriously concerning that the Department responsible for the Aarhus Convention in Ireland has run a public consultation in this manner.

1.2 Consultation as Gaeilge

Section 10(a) of the Official Languages Act 2003 (as amended) requires that any document setting out a public policy proposal must be published simultaneously in English and in Irish:

> *"10. Notwithstanding any other enactment, the following documents made by or under the authority of a public body (other than a body, organisation or group standing prescribed pursuant to regulations for the purposes of clause (b) of paragraph 1(5) of the First Schedule) shall be published by that body in each of the official languages simultaneously:*
>
> *(a) any document setting out public policy proposals."*

We consider that the subject consultation and its supporting materials fall under the requirements of s.10(a) and submit that those requirements have not been fully met in this case.

The Fieldfisher Report and the two determinations of the Legal Costs Adjudicator were linked to from the English consultation page on 23rd December, however, the Irish consultation page was not similarly updated until 5th January. Moreover, the link to the OPR's webpage with the Fieldfisher Report provided in the Irish consultation page linked to the English version of the OPR's publication page where the Fieldfisher Report and the associated addendum are located. The Gaeilge link on the OPR's publication page takes you to the Irish version OPR home page, not to the Irish publications page. Once you have navigated to the Irish publications page, there do not appear to be versions of the Fieldfisher report or the addendum as Gaeilge.

We would highlight that this report was commissioned by the OPR on foot of a request from the Minister to help inform legislation and regulations. The report and its addendum are clearly relied upon heavily in the formulation of the scale of fees proposal and the subject consultation. Therefore, we consider it to be a crucial document in this public policy proposal and that it should have been provided in Irish per s.10 of the Official Languages Act.

We would also highlight that the Planning and Development Act 2024 is still not available in Irish.

1.3 Conflicts of Interest

Certain public sector parties, such as the Department and Minister for Housing, Local Government and Heritage, are regularly involved in litigation as respondents and will therefore be directly impacted by the proposal on the scale of fees. An Coimisiún Pleanála, also a regular respondent in judicial reviews, falls under the remit of the Department of Housing, Local Government and Heritage. The Department and Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation is also directly impacted by the subject proposal. It appears that both of these Departments were involved in the Inter-Departmental Group (IDG) which helped inform the primary consultation report by Mr. John McDaid (the McDaid Report) and the preparation of the proposed scale of fees, while other stakeholders, such as the public, who act as applicants in judicial reviews,

were excluded from the process. This gives rise to the apprehension of bias, and we consider there to be a conflict of interest.

2. The Current Situation Regarding Legal Costs

First, it is important to note that Ireland has some of the highest legal costs in the EU. While these high costs do need to be reformed, the subject proposal is *not* an appropriate method of doing so in our view.

The standard approach to legal costs here is that the loser pays. Crucially, however, Ireland and the EU are parties to the Aarhus Convention, a key pillar of which is access to justice. Article 9(4) of the Convention provides for the right to "*adequate and effective remedies, including injunctive relief as appropriate*" and that these procedures must be "*fair, equitable, timely and not prohibitively expensive*". Article 47 of the Charter of Fundamental Rights of the European Union provides for the right to an effective remedy, and per the case law, the requirements of Article 9 of the Aarhus Convention are expressions of that right. The right to remedies and fair procedures are also expressed in other aspects of European law, for example, the Treaty of the European Union and the Environmental Impact Assessment Directive. Under both EU law and the Aarhus Convention (see article 9(5)), the Irish State is legally required to remove or reduce financial barriers for environmental cases taken by members of the public.

In 2011, Ireland introduced special cost rules (as laid out in sections 50, 50A and 50B of the Planning and Development Act 2000 (as amended)) and in Part 2 of the Environment (Miscellaneous Provisions) Act 2011 *specifically* to bring Ireland into compliance with its legal obligations under the Aarhus Convention and EU law to ensure that individuals and groups seeking to judicially review certain decisions with environmental implications were not exposed to prohibitively expensive costs. Under these current rules, each side bears its own costs, gives potential litigants certainty that they will not be bankrupted for taking a case. However, individuals or groups taking a judicial review can be awarded some or all of their legal costs if they win their case, or if the Court grants them their costs on public interest grounds.

This has allowed individuals and groups to take cases on a conditional basis, such as no foal no fee where their lawyers are only paid if they win the case. This conditional system, while imperfect, is one of the primary means through which NGOs and the public are able to access justice at present and generally allows applicants to access strong legal representation. It has the added benefit that weaker cases are generally weeded out as lawyers are very unlikely to take a case they do not believe they can win, as they would have little chance of being paid. This, therefore, functions as an important safeguard helping to ensure that the cases that *are* taken are legally robust and credible. However, there is only a small pool of lawyers willing to work on a conditional basis, particularly in an extremely complex area of law such as the environment.

From a practical perspective, even under the current cost rules, taking a judicial review is very difficult and not something anyone undertakes lightly. NGOs are generally under-resourced and therefore cannot afford to pay lawyers so are often reliant on being able to take cases on the no foal no fee or other conditional basis. Even where lawyers are willing to take a case, an enormous amount of work is needed to prepare the legal grounds, get organisational approvals, weigh up the risks and benefits of the case, etc. The bar is even higher for members of the public or community groups who may need to challenge an unlawful decision: there is still very significant financial risk involved in taking a case if you do not win, even under the current cost rules; communities may not have relationships

with lawyers like many NGOs are fortunate to have; and environmental law is a very complex and dynamic area that is difficult even for professionals to keep up with.

Therefore, taking an environmental case is already a huge challenge. The system and scale of fees proposed in the consultation documents will shut out the public, communities, and NGOs from being able to take public interest cases on the environment while the State, developers and other wealthy interests will be essentially unhindered.

Furthermore, we would highlight that it took 13 years of legal wrangling and litigation on the application of those cost rules to reach the state of relative legal certainty we have today. The November 2022 judgement in the Heather Hill case ([2022] IESC 43) finally brought clarity in finding that the existing cost rules in s.50B of the 2000 Act are applicable in full for *all* judicial reviews of decisions which invoke EU environmental law (as listed in s.50B). It is important to note that the s.50B rules also apply across sectors, including forestry, oil and gas, etc., not just in planning. The Heather Hill judgement also affirmed that the current cost rules system fulfils Ireland's legal obligations and that States party to the Aarhus Convention need to take legislative steps to uphold the not prohibitively expensive requirement. The Heather Hill judgement has meant that there are now hardly ever disputes over cost protection issues in cases, which has contributed significantly to planning and environmental cases moving through the Courts efficiently.

The first paragraph of the Supreme Court's judgement in Heather Hill provides an outline of those 13 years of litigation that it took to clarify the costs issue:

> *"1. In a period of a little over a decade, the provisions intended to give effect to the 'not prohibitively expensive' requirements of the Aarhus Convention (which I refer to throughout this judgment as 's. 50B' and 'EMPA') have generated at least thirty-five reserved judgments of the High Court, four decisions of the Court of Appeal, three references to the Court of Justice of the European Union, one judgment of that Court (so far) and, now, this decision of this Court."*

This serves as a serious cautionary tale on the potential ramifications of any changes to the cost rules that could raise further legal issues, including the possibilities of referrals to the European Court of Justice (ECJ), infringement complaints to the European Commission, and communications to the Aarhus Convention Compliance Committee. An Taisce firmly believes that the scale of fees and system proposed in this consultation is unlawful, is completely contrary to our obligations under the Aarhus Convention and EU law, and will ultimately lead to more legal uncertainty, satellite litigation, and delay.

3. Scale of Fees Proposal and Problems with Analysis

The new proposal is to introduce rules limiting the costs that the public could recover if they win to just a fraction of the actual total cost of the legal fee, potentially leaving them with huge shortfalls, possibly more than €100,000, even if they won their case. Complex cases can cost more than €400,000. Therefore, even if an applicant were to win their case, it could *still* cost hundreds of thousands of euros to correct an unlawful decision made by a public body, therefore penalising the applicant for upholding EU law and helping the public body properly execute its functions. This scale of fees would also prevent lawyers taking on cases on a conditional basis, as the costs the applicant can recover would only cover a fraction of the hours billed by the lawyer.

The Not prohibitively expensive legal obligation requires that in each individual case the public should not be prevented from seeking or pursuing a claim for judicial review because of the financial burden

that might result. An Taisce submits that the costs shortfall that an applicant could be faced with as result of the scale of fees proposed is very clearly not compliant with the not prohibitively expensive requirement. The consultation frames the scale of fees proposal as needed for improving delivery of infrastructure, but it ignores the legal obligation to ensure that costs are not prohibitively expensive and therefore a barrier to accessing justice.

Yet while this scale of fees would restrict potential litigation applicants, potential respondents and notice parties, State bodies and developers, for instance, would not be similarly restrained in how much they can pay their lawyers. This introduces a fundamental inequality and is contrary to the requirement for equality of arms. It also raises serious questions about compliance with other EU law obligations. The consultation states that it is aimed at seeking proportionality and certainty in legal costs, and yet it does not at all address the costs paid by respondents, including State bodies, to their legal teams.

The proposed scale of fees is attempting to shoehorn a huge range of environmental and planning litigation covering multiple areas and of varying degrees of complexity into a one-size-fits-all solution, all without providing any analysis on this. We do not consider that this approach is at all appropriate or workable.

Ultimately, in our view, given the proposed scale of costs which applicants would still have to pay even if they win, the scale of fees proposal is unlawful under EU law and the Aarhus Convention.

3.1 Major Gaps in Analysis and Evidence Base

There are also very serious flaws and deficits in the information and analyses provided in the consultation. First, there is no discussion of the State's legal obligations, including under the Aarhus Convention and EU law. There is no discussion on how Ireland is currently meeting, or not meeting, those legal obligations. There is no analysis of the considerable body of relevant case law, including in Ireland, from the European Court of Justice, and from the Aarhus Convention Compliance Committee. There is no analysis on the legal compliance of what is proposed in the consultation, including in relation to Ireland's obligations under Aarhus and EU law, including on the proposal's compliance (or lack thereof) with the not prohibitively expensive obligation and other requirements.

Critically, the consultation and the McDaid Report do not discuss the potential financial shortfalls that successful litigants would be faced with on foot of the implementation this scale of fees proposal or the large scale of those potential financial shortfalls. This is a very serious failure in the consultation documentation, as this is a fundamental point that the public *must* understand when engaging with the consultation. It is acknowledged that the Fieldfisher Report and the addendum does present some discussion of savings to the State resulting from the scale of fees, but neither the Fieldfisher Reports nor the McDaid Report or any other consultation document clearly states that those potential savings for the State mean huge cost exposure for applicants who win their cases.

We would also highlight s.294(3) of the Planning and Development Act 2024, which sets out multiple considerations that the Minister is required to have regard to on the making of the regulations and consenting to them:

> *"(3) Before making regulations under subsection (2), the Minister for the Environment, Climate and Communications shall have regard to—*
>
> > *(a) the need to ensure that proceedings to which this Chapter applies can be taken by applicants in a manner that is not prohibitively expensive,*

(b) the need for equitable and orderly access to the courts for all persons to be ensured in accordance with law,
(c) the need to ensure that court and judicial resources are utilised for the common good and in the interests of justice, and
(d) the cost to the Exchequer of matters provided for in such regulations."

There is nothing in the consultation or any of its associated documents on how these considerations are to be evaluated or what frameworks should be used for such an evaluation, particularly regarding critical points around the common good. The only consideration evaluated in the consultation documentation is legal cost savings for the State, which were calculated on foot of what are acknowledged to be highly problematic and limited projections in the addendum to the Fieldfisher Report.

Ultimately, this proposal represents a very significant infringement on public rights. It is a clear principle of European law under the Charter of Fundamental Rights and as clarified by the European Court that any proposed curtailment of rights must be supported by clear public interest justifications and analysis. There is no analysis, justification, or evidence base provided in any of the documents available in the consultation in this regard. The proportionality of the changes and their impacts also remains unjustified and unassessed against our obligations under Article 51(2) of the Charter of Fundamental Rights as clarified by the European Court.

Further gaps in the information and analysis provided in the consultation are highlighted in the attached letter.

3.2 Reliance on UK Cost Capping Examples

The McDaid Report relies on consultation with practitioners from the UK:

"The presentations made to the Inter-departmental group on the 15th April 2024 by a number of legal practitioners in England / Wales in relation to their experience of cost capping is worth noting and in particular their observations around managing cases to ensure that work was done in a manner that was achievable within the cost cap. Prior to that presentation, a number of those I engaged with made positive comment about the potential of cost capping to meet the State's obligations on foot of the Aarhus Convention and in a manner that was likely to be prudent for the public purse.

I am doubtful of the extent to which there are lessons to be learnt from other EU jurisdictions as most of those jurisdictions are civil law ones with a much stronger focus on judicial enquiry and greater direct investment in the justice system, than the common law approach that we adopt which is essentially, party led."

In the first instance, there is a complete lack transparency around who the "legal practitioners in England/Wales" were, how and why these particular practitioners were selected to speak with Mr. McDaid and to give a presentation to the Inter-Departmental Group (IDG), and what information they gave to the IDG. Furthermore, it is critical to note that while Mr. McDaid consulted with unnamed UK practitioners, it does not appear that he consulted with independent legal practitioners in Ireland at all, much less practicing in areas relevant to the consultation.

Moreover, we consider that there are serious issues around relying on the UK's approach cost capping, none of which appear to be considered or even acknowledged in the McDaid Report. The Report does not attempt to compare English/Welsh law, legal procedures, legal system structure, and other general considerations to those in Ireland to determine if, where, and to what extent the UK examples

are in fact relevant here. We would consider such an assessment to be a basic and necessary first step.

The McDaid report also does not provide crucial context on the legal compliance, or indeed lack thereof, of the UK's cost system. For example, the European Commission had open infringement proceedings against the UK regarding the UK's legal cost rules, and the sole reason that those proceedings were dropped was Brexit. The Aarhus Convention Compliance Committee has also made multiple findings against the UK regarding its costs system and noncompliance with Aarhus requirements. Therefore, the UK clearly has significant legal compliance issues with its costs regime, yet this is not acknowledged or analysed in the McDaid Report, despite its reliance on information from UK practitioners.

We also adopt and rely on the submission made by Leigh Day, which is relevant to these issues.

4. Implications of the Proposal

4.1 Implications for Environmental Public Interest Litigation

An Taisce is firmly of the view that if the scale of fees is introduced it would effectively prevent civil society organisations and groups from taking public interest litigation. An Taisce is an environmental charity, which relies almost wholly on lawyers working for us on a no foal no fee basis when we seek to take a judicial review. A fundamental consideration for us as an organisation before taking any judicial action is first and foremost cost exposure for the organisation, and whether the legal proceedings would be cost protected under the current cost rules. As a charity, An Taisce is not in a position where we can afford to expose ourselves to any uncertainty when it comes to cost exposure, and any perceived financial risk would result in us choosing to not take a judicial review, in the interests of protecting the ongoing function of the organisation, in line with good governance. There are few, if any, civil society organisations in Ireland who can afford to pay what is being proposed in the scale of fees.

Some of Ireland's most important environmental outcomes have come about as a result of environmental litigation. If these cost rules were already in place, most of the key environmental cases to date, including An Taisce's case on the Edenderry peat-fired power plant and our current nitrates water quality case, would simply never have gotten off the ground. Our current nitrates water quality case has had six judgments to date, with a legal submission required before each of those. This is a very complex case, and our costs alone would, to date, have already run to the multiple hundreds of thousands of euro. The disparity between what is recommended in the scale of fees for complex cases pales in comparison to the actual costs involved in this case. Under the new rules, this type of case would put An Taisce at risk of bankruptcy, even if we were to win the case and be awarded the highest level of proposed fees. That cost would either have to be borne by An Taisce, or by our lawyers, which raises significant issues about representation. To put it bluntly, if this scale of fees is implemented, An Taisce will no longer be able to engage in public interest environmental litigation because of the costs exposure.

Planning and environmental law is one of the most complex areas of law, and it evolves rapidly, meaning that there are only a limited number of very expert lawyers that have a strong working understanding of this complex legal area. It is difficult to see how members of the legal profession who are capable of taking on the State and well-funded parties like developers in such a complex area of law would be prepared to operate in a space where the rates are so uncompetitive. That is,

lawyers that work on a conditional basis for clients, will either have to absorb a significant cost themselves, via the provision of multiple hours of additional pro bono work on complex environmental litigation cases, or pass the cost on to organisations and individuals who are unlikely to able to afford that. As such, there is likely to be an exodus from this specific legal sector, with lawyers seeking instead to work in areas where they can be adequately renumerated for their work and expertise, rendering environmental law, and in particular the representation of members of the public and ENGOs, less attractive. This is highly problematic, as in addition to making access to justice prohibitively expensive, these changes may result in a lack of adequate representation being available to those that manage to navigate the cost hurdles.

For the few cases that may still be possible, it means that the Government will effectively be able to control the quality of the case you are able to take because the proposed scale of fees will very seriously limit the pool of lawyers you are able to draw from and how much of their time they can afford to devote to the case. The same restrictions of course would not apply to public authorities or developers. Without access to adequate representation, access to justice is denied.

Ireland's environment is already in a dire state, with significant water pollution of our rivers, lakes and estuaries[1], an abysmal failure to protect our Natura 2000 sites[2] and a recent admission by the Minister for the Environment that we will fail to meet our legally binding carbon budgets[3]. We are also subject to multiple ECJ infringement actions for failing to properly implement or transpose various pieces of EU legislation[4]. Our government is consistently failing to address these major issues and pressures, in addition to failing to properly implement and enforce crucial EU laws. As such, action by civil society groups and members of the public plays a crucial role in environmental protection by acting as an essential accountability check in the system, and given the current state of our environment, this has never been more important. The Irish Government has been found wanting when it comes to implementation of EU environmental law, and have been found to have repeatedly failed on multiple fronts. This scale of fees proposal will lead to far worse environmental decision making, as a critical accountability mechanism will no longer be available to the majority of civil society due to prohibitively expensive costs.

It is essential that public authorities are aware that they can be held to account before our courts. Otherwise, public accountability will be severely compromised, and it risks lowering the quality of decision-making. This in turn increases the risk of environmental law breaches and further environmental harm.

4.2 Likelihood of More Delays and Uncertainty

We submit that the scale of fees proposal will actually delay rather than expedite the delivery of the critical infrastructure and housing that we very much need. Very significant legal uncertainty and satellite litigation with arise on foot of this proposal, including the possibility of referrals to the European Court. See again the words of caution from the Heather Hill judgement in section 2 of this submission. The uncertainty and delay this proposal will very likely cause is precisely the opposite of what the Government is purportedly trying to do with regard to speeding up planning and infrastructure delivery.

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[1] EPA (2025) Water Quality in Ireland 2019-2024: https://www.epa.ie/publications/monitoring--assessment/freshwater--marine/water-quality-in-ireland-2019-2024.php

[2] NPWS (2025) Article 17 Reports 2025 | National Parks & Wildlife Service

[3] Ireland will miss emissions-cut target by half, says Minister for Climate Darragh O'Brien – The Irish Times

[4] Commission decides to refer Ireland to the Court of Justice of the European Union and Ireland in breach of EU water protection rules | Irish Legal News

4.3 Implications in Combination with other Changes to Judicial Review

The impacts of the scale of fees proposal cannot be assessed in isolation, however. It is crucial to consider this proposal alongside the full suite of changes to the judicial review rules and the processes through which those changes were introduced. This includes, for example, those made in Part 9 of the 2024 Planning Act, new proposed changes in two new General Schemes, new Rules of the Superior Courts for the Planning and Environmental Court, and new Practice Directions for the Planning and Environmental Court (and future changes to the Practice Directions).

It is also important to state that this consultation, as well as the new General Schemes, are coming on foot of a major orchestration by Government and others of a negative narrative over the last number of months against the use of judicial review by members of the public and eNGOs, blaming those who take them for holding up housing and strategic infrastructure (see attached letter for examples). We would highlight Article 3(8) of the Aarhus Convention, which provides that: "*Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement…*".

4.3.1 Planning and Development Act 2024 and Process Surrounding It

The Planning and Development Act 2024 came on foot of a review of the planning system and legislation (as called for in the Housing for all Strategy). That review and any materials, data, and analysis informing it were never made public, and yet it eventually resulted in the Planning and Development Bill 2023 (now enacted as the Planning and Development Act 2024) overhauling the Planning and Development Act 2000.

Part 9 of the 2024 Act makes highly significant changes to the rules for judicial review, which individually and together have the effect of seriously restricting the public's right to access justice. No evidence, data, rationale, or analyses of any kind were *ever* presented in any of the legislative processes for the new Act to explain and justify the need for the judicial review changes, or to analyse their impact on public rights and Ireland's various legal obligations. We would highlight that no proposals on a scale of fees were included in the draft Planning and Development Bill 2022 that underwent pre-legislative scrutiny and eventually became the draft 2023 Bill that was enacted in 2024. Therefore, the scale of fees proposal never underwent pre-legislative scrutiny by the Oireachtas.

We would also highlight that a scale of fees was not proposed or discussed in the Government's Planning Advisory Forum (PAF), which was set up as a stakeholder forum with the stated aim of informing the review of planning and the eventual new Planning Act. An Taisce was represented on the Forum, and we would rely on the submission made jointly by An Taisce and the Environmental Pillar to the PAF on judicial review.

Overall, the legislative process for the 2023 Bill (now the 2024 Act) was, in An Taisce's view, extremely unsatisfactory – for example, in addition to serious deficiencies in the analyses underpinning the Bill, no public consultation was undertaken, the process was extremely rushed with guillotines used multiple times, and huge numbers of Government amendments railroaded through with no scrutiny.

The consultation does not in any way analyse the impact of the proposed scale of fees in combination with the suite of changes to judicial review as set out in the 2024 Planning Act and elsewhere. Moreover, all of these changes to the judicial review system still have no evidence base. It is our view that the proposed scale of fees will compound the overall serious chilling effect that the changes in the 2024 Planning Act to the judicial review rules will have on access to justice and public interest litigation.

4.3.2 New General Schemes

Two new General Schemes (the General Scheme of the Civil Reform Bill and the General Scheme of the Planning and Development (amendment) (no. 2) Bill 2025) were both previously refenced by the Government in relation to the set of changes they plan around judicial review, however, the two schemes were only actually published just days before this consultation closed.

The General Scheme of the Civil Reform Bill was published on 6th January 2026. An initial brief review of the General Scheme appears to indicate that it proposes very significant changes, particularly in Head 8, to the rules for judicial review with serious implications for the right to accessing adequate remedies in the areas of planning and wider environmental law (in spite of some limited exceptions in Head 13 of the General Scheme for judicial reviews taken under Part 9 of the 2024 Planning Act). There appear to be only very limited exemptions to the restrictive provisions proposed in Head 8 for eNGOs who already have to meet the very high bar of the criteria under s.286(2) of the Planning Act 2024.

The General Scheme of the Planning and Development (amendment) (no. 2) Bill 2025 was published on 14th January 2026. Given that it was published only one day before the close of this consultation, there has been no time for proper scrutiny of the Heads of Bill. A very quick read through of the Heads, however, does seem to indicate that very concerning changes are proposed allowing provisions in Part 9, Chapter 1 of the 2024 Planning Act to apply to matters falling under the 2000 Planning Act which are not already underway.

These new General Schemes will very likely mean further restrictions on judicial review and access to justice. Yet the timing of their release means the implications, including in combination with each other, the proposed scale of fees, the already enacted changes in Part 9 of the 2024 Act, changes to the aforementioned Rules of the Superior Courts and Practice Directions, etc. cannot yet be assessed properly.

5. Conclusion & Recommendations

This scale of fees proposal is a significant attack on civil society and public accountability. For the reasons laid out in this submission and in the attached letter, we firmly believe that the proposed changes are very clearly undemocratic, unfair and unlawful under the Aarhus Convention and EU law.

If adopted, they will undoubtedly lead to additional litigation with the possibility of referrals to the European Court. These changes are purportedly being introduced to expedite and facilitate the provision of very much needed critical infrastructure, but in reality they will only cause more uncertainty and delay. We cannot afford more uncertainly in the face of the crises we face in housing, energy, climate, etc. Furthermore, the proposed changes will lead to environmental harm and lower standards of environmental protection by completely hamstringing public interest environmental litigation at time when our imperilled environment can least afford it.

We therefore strongly recommend the following:

- Drop the current proposal, withdraw the consultation, and maintain the current system of cost rules, as clarified by the Heather Hill judgement;
- Go back to the drawing board, not just on the proposal laid out in the consultation, but also to conduct a full and transparent review, subject to full and effective public participation, of the legislation, systems, processes, etc. related to planning and judicial review (both planning

judicial reviews and other environmental judicial reviews). The review should then inform evidence-based proposals based on detailed analyses, data, and justifications where the impacts and proportionality of any future proposals are also fully assessed.
    - Pause all additional amendments to planning legislation as well as any further changes to the judicial review rules to allow for such a review to take place.
- Focus on improving the quality of public authorities' decision making, the quality of planning decisions, the quality of planning applications, and the quality of plan making. This is fundamental to ensuring that decisions are made robustly and lawfully and therefore do not need to end up in court in the first place.

We appreciate the Department's consideration of our submission and of course would be very happy to engage further on any of the issues therein.

Is muidne le meas,

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An Taisce – The National Trust for Ireland

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An Taisce – The National Trust for Ireland

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FPLOGUE SOLICITORS

Our Reference: FPL/178/
Your Reference:

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By email

Mr Darragh O'Brien TD
Minister for Climate, Energy and the Environment
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Our client: **(1) Friends of the Irish Environment CLG and (2) An Taisce – The National Trust for Ireland**

RE: **Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees)**

A Cháirde

We act for Friends of the Irish Environment CLG and An Taisce – The National Trust for Ireland. Our clients are two of Ireland's pre-eminent environmental non-governmental organisations (**eNGO**). We write this letter on behalf of our clients in their capacity as organisations which are members of the public with access to justice rights derived from the Aarhus Convention (the **Convention**) as well as in their representative capacity as eNGOs.

We write to call on you to immediately withdraw the Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees) (the **Consultation**) because, for the reasons set out in outline below, the Consultation has been conducted in a way that breaches fair procedures which are so unfair that the Consultation is unlawful.

Scope of the Consultation

As the Minister knows the Consultation concerns the regulation of legal costs in certain types of environmental litigation which comes within the scope of Chapter 2 of Part 9 of the Planning and Development Act 2024 (the **2024 Act**). This legislation envisages a system of "costs capping" where the costs recoverable by a successful applicant would be capped at a fixed monetary amount depending on the stage reached in the litigation and the complexity of the case. This would replace the current system of "one-way costs shifting" under Section 50B of the Planning and Development Act 2000 (the **2020 Act**) where a successful litigant is entitled to recover costs to the extent that he or she obtains relief, with those costs determined by the independent Legal Costs Adjudicator if required.

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As recognised in the Convention an active public is a critical element of environmental protection. Every person has the right to live in a healthy environment and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.

Access to justice under Article 9 of the Convention has been recognised as a critical right to vindicate those rights and allow the public to perform their duties.

Article 9(4) of the Convention provides an overarching standard for access to justice under Articles 9(1), (2) and (3) which includes requirements that procedures be fair, equitable and timely and non prohibitively expensive (**NPE**). The case law indicates that these requirements are expressions of the right to an effective remedy under Article 47 of the Charter of Fundamental Rights.

It is therefore clear that the Consultation concerns matters of significance for environmental protection and the fundamental human rights of the public, including their associations, organisations and groups. This is recognised in the consultation documents which acknowledge that it "*will attract strong and divergent views"*. In holding the Consultation you stated that it was "*inviting all of society to express their views"*

The Consultation

Notice of the Consultation was given on 3 December 2025 with a press release[1] and the publication of material on the website of the Department of Climate, Energy and Environment[2]. The material published on 3 December 2025 consisted of:

1. A short Consultation Document including a list of guiding questions; and
2. A Report on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024" authored by Mr John McDaid and dated 1 December 2025 (the **McDaid Report**)

Public submissions were invited before 5.30 pm on Thursday 15 January 2026.

On 9 December 2025 a further document "Explanation of the various parts proposed in the scale of fees" was uploaded to the consultation website with an explanation "*We have added a document to outline the steps of the application of fees proposed in this consultation in more simple terms*."

On 23 December 2025 further documents were uploaded on the consultation website:

1. FOIE v ABP LCA adjudication
2. Peter Sweetman v EPA LCA decision

and the following text was added:

- *"The Fieldfisher report is available on the Office of the Planning Regulator (OPR) website at https://www.opr.ie/publications/*
- *As the judgements of the legal cost adjudicator are not currently available online, the files (Peter Sweetman v EPA LCA decision and FOIE v ABP LCA adjudication) are attached below."*

The OPR website in fact included two reports from Fieldfisher (the Principal Report and the Addendum Report) and it appears that these were only uploaded on or around the 23 December 2025, in other words they were uploaded as part of the 23 December 2025 update to the

[1] https://www.gov.ie/en/department-of-climate-energy-and-the-environment/press-releases/consultation-on-scale-of-fees-under-the-planning-and-development-act-2024-opens/

[2] https://www.gov.ie/en/department-of-climate-energy-and-the-environment/consultations/consultation-on-the-regulation-of-costs-payable-in-matters-prescribed-on-foot-of-section-295-of-the-planning-and-development-act-2024-scale-of-fees/

consultation website and were not available when public notice of the Consultation was given, these reports are not directly accessible from the consultation website.

The main consultation material is set out in the McDaid report. This report is presented without paragraph or page numbering making referencing quite difficult. This report does not disclose the terms of reference or instructions given to the author. Mr McDaid's experience appears to primarily as a legal aid solicitor and CEO of the Legal Aid Board. It appears that Mr McDaid has little or no direct experience in environmental litigation and certainly in relation to environmental judicial review. It is unclear from the materials published as to how, in the absence of expertise on the part of Mr McDaid, this expertise was provided.

Mr McDaid states that he was "*asked to develop a scale of fees that could be payable to successful applicants in certain environmental law judicial review cases".* The report makes a single proposal for a scale of fees and related matters.

This Report states that it was, in part, informed by discussions at the Inter Departmental Working Group on Legal Costs (the **IDG)**. Earlier drafts had been updated to have regard to the commencement of certain provisions of the 2024 Act and to feedback received. None of this information is detailed in the report or elsewhere, nor is the identity of the persons giving feedback, what feedback was given or the basis for such feedback by reference to the author's terms of reference.

The report also indicates that. *"The introduction of a scale of fees represents one element of a broader reform of the judicial process, as it relates to environmental judicial reviews. This work sits within the wider package being led by the Minister for Public Expenditure, Infrastructure, Public Services Reform and Digitalisation".* But no detail is included in respect of same or to clarify its relevance to the scale of fees and the input of that Minister on the considerations given his leading role on the wider package.

It appears from the report that its author was made aware of further legislation to deal with aspects of the Convention where the scale of fees could apply to other licensing regimes and is likely to be published in the not-too-distant future. It appears from this comment that the scale of fees that may be adopted under the 2024 Act will also be adopted or at the very least strongly influence the regulation of costs in access to justice procedures which are outside the scope of Chapter 2 of Part 9 of the 2024 Act, i.e. those areas currently regulated by the Environment (Miscellaneous Provisions) Act 2011 (**EMPA**) such as enforcement and access to information on the environment and the other sectoral areas currently covered by section 50B of the 2000 Act.

The McDaid report then proceeds to review some of the relevant legislation including a section dealing with aspects of the current legal costs regime that makes no reference at all to section 50B of the 2000 Act, EMPA or the relevant case law, including *Heather Hill v An Bord Pleanála* [2022] IESC 43.

The McDaid report then sets out the approach, a breakdown of the work allegedly involved on behalf of an applicant for judicial review with observations from the report author.

There then follows a section on jurisprudence and research in relation to applicant costs. In terms of jurisprudence only two rulings of the Legal Costs Adjudicator are considered and there is no analysis at all of the considerable body of case law from the Irish, English and European Courts or the Aarhus Convention Compliance Committee (the **ACCC**) all of which is jurisprudence that is directly relevant to the Consultation.

In terms of research the report relies exclusively on a report from Fieldfisher dated November 2023 (the **Principal Report**) which was not put into the public domain until 23 December 2025. The McDaid report summarises the Principal Report in five bullet points.

The McDaid report then proceeds to carry out an assessment and a review of the potential to prescribe monetary amounts by speaking to "*various persons who have familiarity with proceedings or aspects* of the proceedings that are contemplated in section 279 of the [2024] Act". Who these people were, on what basis and criteria they were selected, what questions they were asked and what they said is not recorded or disclosed in the Consultation material.

There then follows some "general comments" and a discussion on costs capping and levels of risk. This section contains the only substantive reference to the effect of section 50B of the 2000 Act and then only part of it namely that under section 50B the losing applicant generally is not at risk of an adverse costs order. The report further opines that "*It may be argued that if the risk in terms of costs is mitigated, there should equally be some element of mitigation of the reward*.", framing costs recovery as a "reward" to the successful applicant.

In relation to costs capping the report indicates:

> *The presentations made to the Inter-departmental group on the 15th April 2024 by a number of legal practitioners in England / Wales in relation to their experience of cost capping is worth noting and in particular their observations around managing cases to ensure that work was done in a manner that was achievable within the cost cap. Prior to that presentation, a number of those I engaged with made positive comment about the potential of cost capping to meet the State's obligations on foot of the Aarhus Convention and in a manner that was likely to be prudent for the public purse.*

The identity of the England and Wales practitioners is not revealed nor is the basis on which they were selected or a copy of their presentation included. Similarly the report does not say who else made positive comments about cost capping, or what issues were identified with it and what comparison was done in considering its feasibility in an Irish context given the material structural differences and highly relevant legal differences between the two regimes.

There then follows a review of a selection of other areas of litigation where legal costs are paid by the State focussing primarily on District Court and criminal matters. It appears that these areas were selected simply because they are areas that a familiar to Mr McDaid and for no other reason. The report in its own terms admits that this survey is limited.

The report proceeds to propose a scale of fees for litigation broken into five stages and three levels of complexity in the range approximately €41,000 to €66,000 VAT inclusive for judicial reviews with a single High Court hearing and no appeal or preliminary reference which, further caps are proposed for appeals, preliminary references and for expert reports. The report does not disclose how these proposed caps relate to the actual costs of litigation, whether on average or at the upper end, bearing in mind that the NPE rule must apply to each individual case, nor does the report explain how the proposal complies with the NPE rule and other aspects of Article 9(4) of the Convention.

In concluding the report admits that *"the principal assistance that I found was the cost cap arrangements in England / Wales. The cost cap figures in England / Wales for a successful applicant bear close relationship to the 'standard' scale that I have recommended*." It also should be noted that this is essentially the same as the draft scale of fees provided to Fieldfisher in 2024 for the Addendum Report.

The formative stages of the Consultation subject matter

The 2024 Act was enacted on 17 October 2024. But even before this your predecessor, Minister Ryan, had already established the IDG made up of:

- Department of the Environment, Climate and Communications,
- Department of Housing, Local Government and Heritage,
- Department of Justice,
- Department of Public Expenditure, NDP Deliver and Reform,
- Attorney General's Office,
- Department of the Taoiseach,
- The Courts Service of Ireland,
- National Treasury Management Agency, and a
- An unidentified private consultant.

The IDG first met in November 2023 and subsequently on nine occasions after that. It conducted a private stakeholder consultation in July/August 2024 which informed its discussions. It was envisaged that the IDG would report to Government on its deliberations shortly after 22 January 2025[3].

There is virtually no information in the public domain in relation to the IDG, including its terms of reference, identity of its members, records of its meetings, the nature of and the outcome of its stakeholder consultation or a copy of its report to Government.

In parallel it also seems that following a request from the Minister for Housing, Heritage and Local Government on 30 May 2023, the OPR engaged Fieldfisher LLP to develop a synthesis of evidence on legal costs in Judicial Review proceedings of environmental matters in order to inform proposed changes to the existing rules on costs in environmental litigation under Section 50B of the Planning and Development Act 2000.

This report was provided to the OPR in December 2023 (the **Principal Report**).

The Minister for Housing, Local Government and Heritage by letter to the OPR dated 20 December 2024 requested further analysis of the evidential base in order to support the work of the IDG, as an addendum to the Principal Report. This addendum was produced in May 2025 (the **Addendum Report**).

Neither the Principal Report nor the Addendum Report were published until 23 December 2025 when they were uploaded to the OPR website (www.opr.ie/publications). The Principal Report is referred to in the McDaid report whereas the Addendum Report is not referred to. It therefore appears that the Addendum Report was not used by Mr McDaid's in compiling his report.

In parallel and in the months leading up to the initiation of the public consultation there was a media campaign involving An Taoiseach, government ministers and the chair of the Accelerating Infrastructure Taskforce attacking members of the public for "weaponising" judicial review and blaming judicial review for delays in infrastructure and housing delivery.

For example,

> *"A very small number of people make a lot of noise, run down to the Four Courts to get a judicial review. And [they] are supported by the legal system, who are prepared to take their cases on a 'no fault with no fee' basis," Mr [Seán] O'Driscoll said.*
>
> *"I think that that is wrong."*
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> **Planning objections now a legal industry as 'people run down to Four Courts', official claims, Irish Times 17 June 2025**

> *"Planning objectors are now taking cases on "an industrial scale" and are threatening the common good, the head of a key team of outside experts appointed to speed up infrastructure projects has warned.*
>
> *Objectors are winning legal costs too easily, said Sean O'Driscoll, the former chief executive of Glen Dimplex, who chairs the Economic and Social Research Institute."*
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> **"Planning objectors now threaten the common good, says head of planning taskforce" Irish Times, 2 October 2025**

[3] https://www.oireachtas.ie/en/debates/question/2025-01-22/90/

"The objectives … social and economic, are being completely undermined by few individuals who essentially have a free bet to go down to the High Court and hold back our state" [Minister Jack] Chambers said.

Legislative reform needed to stop the 'weaponisation of judicial reviews', Jack Chambers says, Sunday Business Post, 13 October 2025

Judicial reviews being weaponised by narrow interests – Chambers RTE 1 December 2025

"*Public expenditure minister Jack Chambers warned Darragh O'Brien, the climate minister, in June this year that work in O'Brien's department to cap environmental legal costs was critical to addressing the volume of judicial reviews taken against infrastructure projects*."

"*An effective environmental case lawyer fee cap, it is intended to limit both spurious judicial reviews on environmental grounds and to put a stop to a legal industry built up around judicial reviews.*"

Revealed: How Jack Chambers warned Darragh O'Brien on 'critical' environmental legal fee cap work, Sunday Business Post, 18 November 2025

There will be changes to rules over legal costs to dissuade people from taking judicial reviews, while other reforms to the way judicial reviews work are due to be completed next year.

Judicial reviews blocking vital infrastructure and housing to be restricted, Irish Times 3 December 2025

Fair Procedures and Public Consultation

To be lawful, a consultation process must be fair. The ultimate test of whether a consultation process has been conducted lawfully or not is whether it was conducted in a way which was so unfair as to be unlawful

It is settled law that whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.

The following principles also have emerged from case law:

- The public body doing the consulting must put a consultee into a position properly to consider and respond to the consultation request, without which the consultation process would be defeated. Consultees must be told enough – and in sufficiently clear terms – to enable them to make an intelligent response. A consultation will be unfair and unlawful if the proposer fails to give sufficient reasons for a proposal or so confused that it does not reasonably allow a proper and effective response

- What the duty of fairness requires of the consultation – is fact-specific and can vary greatly from one context to another, depending on the particular provision in question, including its context and purpose.

- For a consultation to be found to be unlawful, "clear unfairness must be shown"

Breach of Fair Procedures

In our clients' opinion, the consultation is clearly so unfair to be unlawful for the following reasons.

Bias, pre-judgment and perception management

Certain government ministers are not neutral stakeholders. The Minister for Housing, Local Government and Heritage and the Minister for Public Expenditure Infrastructure, Public Service Reform and Digitalisation are often respondents to judicial review and directly impacted by the Consultation as parties to judicial review.

Furthermore certain public authorities, primarily An Coimisiún Pleanála, which is under the remit of the Minister for Housing, Heritage and Local Government are directly impacted by the subject matter as is the Minister for Public Expenditure Infrastructure, Public Service Reform and Digitalisation. Indeed this latter Minister, and his appointee as chairperson of the Accelerating Infrastructure Taskforce, have both made numerous public statements attacking judicial review applicants blaming them for "weaponising" the right of access to justice to cause delay to important projects.

As a preliminary matter this gives rise to the apprehension of bias, pre-judgment and unfairness since representatives of these Ministers were involved in the drafting and finalising the McDaid report and other preparatory matters whereas members of the public were not.

At the very least it represents a concerted effort by certain stakeholders to inform the public in a certain way and influence public perceptions concerning the Consultation subject matter outside of the formal consultation process and the published materials.

Consultation after the formative stage

The consultation has not taken place during the formative stage of the proposal. As is made clear in the McDaid Report, it is a culmination of more than two years work carried out largely in private, with Mr McDaid was tasked with developing a scale of fees based on this work. He was not tasked with producing a report to inform the formation of prescribed fees and the criteria through which they would be developed. The McDaid does not ask the public to provide input or evidence upon which fee caps could be set nor does it offer options to the public and seek their views on those options. In reality the McDaid Report presents in large part a fait-accompli. For example public comment is only sought on the proposed cap for the preliminary reference stage and none of the other stages. The public is not asked to comment on whether they think the proposal satisfies NPE or is fair – it is not asked to comment on what factors are relevant to a scale of fees.

In addition it appears that the Consultation is intended to inform or possibly to be implemented for other litigation such as enforcement and access to environmental information. The public concerned with these others areas of litigation have been excluded entirely from the consultation.

Adequate information and reasons

Consultees have not been adequately informed or given reasons in sufficiently clear terms or at all of the information needed to make an intelligent response. In relation to this aspect it is notable that the consultation is addressed to the public generally and therefore the materials must be comprehensible to ordinary members of the public, must explain legal concepts in lay persons' terms and must set out clearly and simply what is proposed, what the consequences of the proposal are and how the proposal is claimed to comply with the underlying legal obligations derived from Irish and European law as well as Article 9(4) of the Convention.

In particular:

- The McDaid Report, which is the main consultation document, is confusing and contradictory and very difficult to understand. It does not define key concepts or explain the State's legal obligations. For example the report does not explain simply or at all what is involved in ensuring NPE which is one of the critical considerations.

- The terms of reference of the McDaid Report and the Fieldfisher reports are not in the public domain.

- The McDaid Report uses incorrect and prejudicial framing by describing the costs recovered by a successful applicant as a “reward” and implying that litigation is risk free for applicants, which it is not.

- The evidence grounding the report is not published. The IDG work product is not public including its report to Government in early 2025. Much of the evidence appears to be anecdotal and/or derived from unidentified sources. The Fieldfisher reports were only published belatedly during the Christmas Holidays on a different website (see further below). The Addendum Report, although now published was not taken into account.

- Some interested stakeholders were involved in the preparation of the consultation. It seems that the IDG was involved in the review and editing of the report despite several of its members representing responding parties to litigation and therefore part of the body of consultees to whom the consultation was addressed. This is unfair.

- The McDaid Report does not explain the legal framework currently in place in Ireland to implement Article 9(4) or discuss how it has been implemented and interpreted by the Irish Courts culminating with the judgment in *Heather Hill*.

- The McDaid Report does not set out or describe the State’s legal obligations in relation to NPE and fair and equitable procedures or how they are given legal effect in this jurisdiction. There is a myriad of case law of the Irish, English and European Courts interpreting these provisions as well as many cases in the ACCC which ought to have been identified, summarised and addressed. In fact it appears that most if not all of the relevant jurisprudence has been totally overlooked or ignored.

- A critical parameter, i.e. the costs that successful applicants would have to bear themselves with the proposed costs caps, is not presented. The public is asked to give views on cost caps without knowing how much of the actual costs would be covered in any particular case and how much they would have to bear themselves. Even with the publication of the Fieldfisher reports this information can only be derived by combing through lengthy technical reports. An ordinary member of the public would find it extremely difficult to interrogate the evidence base, such as it is, to figure out the financial consequences of the proposal.

- Despite the McDaid report relying primarily on the England and Wales costs cap, the report does not have a comparative review between English and Irish procedural law, nor does it examine and summarise English case law on their costs caps. Importantly it fails to inform the public that the UK is currently not in compliance with the Convention in relation to costs. Without this members of the public cannot evaluate whether or not it was reasonable to use England and Wales as the principal point of reference, and in fact the McDaid report misleadingly gives the impression that the English system is lawful.

- Critical information was added to the consultation after notification. As set out in more detail above critical information was added to the consultation on 9 and 23 December 2025. It is likely that members of the public who accessed and/or downloaded material before this would be unaware of the new material. There is therefore likely to be a group of consultees who have not been informed with this information.

- Nowhere throughout is the cost implication for the public on own costs for successful applicants clearly spelled out, and the fact that lawyers can and may only be prepared to contract for fees in excess of the scale of fees proposed pursuant to s.297(9) of the 2024 Act, and that the purported savings for the State are not in fact cost savings but merely a transfer of those costs from respondents to applicants.

Adequate time

The public has not been given adequate time to consider the material and respond since information was drip-fed to the public having the effect that the public could only realistically begin to consider the entirety of the material in principle from 23 December 2025 but in practice from 5 January 2026 at the end of the Christmas and New Year holiday period.

The consultation was launched on 3 December 2025 to run over the Christmas holiday period to 15 January 2026. This is a time of the year when the public takes time off to celebrate Christmas and New Year. It is also a time of year when professionals and advisers are not available. Bearing in mind the scale of the consultation and the consequences for the environment and fundamental rights it is unfair for a consultation such as this to traverse the Christmas and New Year holiday periods.

In any event key documents were not uploaded or identified until 23 December 2025 meaning that in reality the consultation could only be considered to have been open in principle from this date which falls within the holiday period that ended on 5 January 2026. Because of the timing of Christmas this year, many people took holidays between 19 December and 5 January 2026, which was the case in this office.

Therefore the consultation is only realistically open for 10 calendar days or eight working days. This is clearly not an adequate amount of time for consultees to inform themselves and to formulate comments in relation to a complex proposal with profound effects on fundamental rights and the environment.

Conclusion

For the reasons set out above the consultation is so unfair as to be unlawful. We have advised our clients that if secondary legislation or other measures are adopted on foot of this consultation they will be quashed on judicial review for breach of fair procedures.

We therefore ask you, in the interests of avoiding litigation and of vindicating the public's right to fair procedures, to withdraw the consultation so that a lawful consultation can be prepared and carried out with the provision of appropriate information, allowing reasonable time frames for its consideration by the public. Should litigation ensue our client will rely on this letter and any response to ground an action for judicial review.

Please note that our clients intend making observations on the substantive issues in advance of the deadline purely on a without prejudice basis in order to protect their position. They therefore reserve their rights in relation to the substance of the consultation subject-matter.

We look forward to hearing from you in early course

Yours faithfully



FP LOGUE LLP

Cc An Taoiseach

Minister Jack Chambers

Minister James Browne

Minister Jim O'Callaghan