

COURT PROCEEDINGS (DELAYS) BILL 2023

Regulatory Impact Analysis

January 2023

Summary of Regulatory Impact Analysis (RIA)			
Department/Office: Department of Justice, Criminal Justice Legislation		Title of Legislation: Court Proceedings (Delays) Bill 2023	
Stage: Publication of bill		Date: January 2023	
Related Publications: Court Proceedings (Delays) Bill 2023			
Available to view or download at: https://www.gov.ie/en/publication/a86ff-proposed-legislation/			
Contact for enquiries: Criminal Justice Legislation		Telephone: 01 6028202	
Policy options considered: <ol style="list-style-type: none">1. Do nothing2. Court-based model3. Independent Assessor model Preferred option: Option 3			
OPTIONS			
OPTION:	COSTS:	BENEFITS:	IMPACTS:
1. Do nothing	No direct costs to the Exchequer. Costs would continue to arise where the Courts award damages where a claim is made for the breach of the right to a trial with reasonable expedition, guaranteed as part of the right to trial in due course of law under Article	The Courts would continue to perform their function where claims are made for the breach of the Constitutional right to a trial in due course of law under Article 38(1) without the need to establish a new framework for assessing claims for a breach of Article 6.1 rights under the ECHR.	This option does not satisfy the ruling of the Grand Chamber of the European Court of Human Rights (ECtHR) of 10 September 2021. Ireland will continue to suffer reputational damage until the matter is fully remedied. The Court held in the case of <i>McFarlane v Ireland</i> [2010], that Ireland was in breach of the right to have a hearing within a reasonable time under Article 6.1 of the <i>European Convention of Human Rights</i> (ECHR) and the

	38(1) of the Constitution of Ireland.		right to an effective remedy under Article 13 of the ECHR.
2. Court-based model	<p>Significant legal costs will arise associated with litigating delay claims before courts of first instance and in particular appellate courts.</p> <p>-Average claimant’s legal costs for a Circuit Court case: ██████████ ██████████ ██████████</p> <p>-Average appeal (to High Court) claimant’s costs: ██████████</p> <p>-Average claimant’s legal costs of High Court case: ██████████ ██████████ ██████████ ██████████</p> <p>Costs of cases going to Court will substantially exceed the levels of damages awarded in the European Court.</p>	<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.</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>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>3. Independent Assessor model</p>	<p>- Basic salaries and fees per annum: [REDACTED]</p> <p>-Legal costs at assessment stage for successful applicant per claim: [REDACTED]</p> <p>-Total Cost at assessment stage per claim received:</p> <p>10 claims: [REDACTED]</p> <p>75 claims: [REDACTED]</p> <p>150 claims: [REDACTED]</p> <p>-Total Court Costs per claim received:</p> <p>10 cases at asst. stage plus one to court: [REDACTED]</p> <p>75 cases at asst. stage plus 7.5 to court: [REDACTED]</p> <p>150 cases at asst. stage plus 15 to court: [REDACTED]</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>	<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>
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PREFERRED OPTION: Option 3

1. BACKGROUND AND POLICY CONTEXT:

In September 2010, the European Court of Human Rights (ECtHR) found against Ireland in the case of *McFarlane v Ireland*. The Court held, by twelve votes to five, that the applicant's right to a fair trial in a reasonable time period, provided for under Article 6.1 of the ECHR had been breached due to the overall delay in criminal proceedings against him. The Court also held that the applicant's right to an effective remedy, provided for under Article 13 of the ECHR had also been breached.

The State is obliged to abide by the judgment and to implement an effective remedy for future cases.

Since 2010, Ireland has been answerable to the Committee of Ministers concerning the implementation of the judgment. In June 2017, Ireland was transferred into an enhanced procedure, which meant the Council of Europe became more proactive in its contact with the State in relation to the judgment, demanding a solution without further delay.

To avoid any further reputational damage to the State, action must be taken to provide an adequate remedy.

2. OBJECTIVES OF THE BILL:

2.1 To establish an effective domestic remedy for delays in court proceedings.

2.2 To provide for the appointment of a Chief Assessor and Assessors to assess claims for breach of:

1. Article 6.1 of the ECHR at first instance and to award compensation, if appropriate, or
2. The constitutional right to timely court proceedings

2.3 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.

2.4 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.

2.5 To provide for the criteria by which such a claim and compensation should be assessed by the Circuit Court.

2.6 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.

3. DESCRIPTION AND EVALUATION OF POLICY OPTIONS:

3.1 POLICY OPTION 1: DO NOTHING:

In reaching its conclusion, the Grand Chamber in *McFarlane* opined that the overall length of the proceedings from the applicant's arrest in January 1998, which lasted over ten and a half years, was excessive and constituted a breach of the 'reasonable time' requirement under Article 6.1 ECHR. The Irish Government argued that there were four effective remedies available to the applicant throughout that timeframe:

1. An action for damages for a breach of the constitutional right to reasonable expedition;
2. An action for damages under the *European Convention on Human Rights Act 2003* (Ire);
3. An application to have an early hearing date; and
4. An application for prohibition.

While the latter three purported remedies were quickly dispensed with by the majority of the Grand Chamber, there was significant discussion on a potential constitutional action for damages. Although the Grand Chamber recognised the importance of allowing remedies to develop in legal systems such as Ireland, (common law system with a written Constitution), it emphasised that the scope and application of such a remedy must be clearly set out in the case law of the domestic courts. The Grand Chamber ultimately considered that the novelty and complexity of an action for damages for breach of the constitutional right for trial with reasonable expedition undermined the availability and the effectiveness of such remedy.

The case law of the domestic courts relating to the availability of a remedy in damages for the breach of the right to trial with reasonable expedition, guaranteed as part of the right to trial in due course of law under Article 38(1) of the Constitution, has continued to develop since the delivery of the Grand Chamber's judgment in *McFarlane*.

In *Keaney v Ireland* (Application no. 72060/17), the ECtHR considered further developments in the jurisprudence of the domestic courts in Ireland in relation to the availability of a remedy in damages for delay in both civil and criminal proceedings. The Court, in its examination of the relevant domestic law and practice, noted the judgment of the Supreme Court in *Nash v Director of Public Prosecutions* [2017] IR 320, and in particular the finding of that Court that as a matter of general principle damages may be available for the breach of a right to a timely trial, whether under the *European Convention on Human Rights Act 2003* or the Constitution, albeit that the parameters of that right would require to be determined in an appropriate case.

In its Action Plan dated 21 July 2021, Government drew the Committee's attention to the judgment of the Court of Appeal in *O'Callaghan v Ireland and the Attorney General* [2020] IECA 180. The plaintiff in *O'Callaghan* had claimed damages for breach of his constitutional right to trial with reasonable expedition, arising from alleged delay in the hearing of his appeal against his conviction before the Court of Criminal Appeal. The judgment of the Court of Appeal, delivered on 6 July 2020, elaborated on the circumstances in which such a remedy

was available, in light inter alia of relevant jurisprudence of the ECtHR. These circumstances were affirmed on appeal to the Supreme Court.

The judgment of the Supreme Court, delivered on 30 September 2021, contains an extensive discussion of the jurisprudence of the ECtHR concerning the right to a hearing within a reasonable time under Article 6.1 of the Convention and to an effective remedy for the breach of this requirement under Article 13, considering in detail the judgments of the ECtHR concerning Ireland with respect to the issue of systemic delay, noting that this issue has been

“the subject matter of a continuing dialogue between the Irish courts and the ECtHR for more than two decades, but with a greater intensity in the last 10 years”.

The Supreme Court held that there had been systemic delay in the hearing of the plaintiff’s appeal against his conviction, and that this delay was attributable to the State. The Court concluded that the plaintiff was entitled to a declaration that the delay which had occurred in his criminal appeal infringed his constitutional right to trial with due expedition under Article 38.1 of the Constitution, and an award of damages. In a subsequent judgment delivered on 8 October 2021, the plaintiff was awarded his costs arising from the appeal to the Supreme Court.

The circumstances for determining whether the right to trial with due expedition has been breached as elaborated in the Court of Appeal, and affirmed on appeal by the Supreme Court, are expressly derived from the jurisprudence of the ECtHR. Similarly, the level of the remedy to which an individual may be entitled is expressly linked to the Court’s jurisprudence with respect to just satisfaction under Article 41 of the Convention.

In its Action Plan dated 1 March 2022, Government submitted that the judgment of the Supreme Court in *O’Callaghan* establishes conclusively that a remedy in damages for the breach of the constitutional right to trial with due expedition is available not only in theory but in practice.

As a contracting party to the ECHR, Ireland has an obligation to abide by the judgment of the ECtHR in *McFarlane*. Although the domestic case law has developed post *McFarlane*, a statutory remedy is nonetheless required to establish 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 *McFarlane v Ireland* [2010].

3.1.1 POLICY OPTION 1: DO NOTHING - COSTS:

There are no direct financial costs associated with this option. Costs would continue to arise where the Courts award damages where a claim is made for the breach of the right to a trial with reasonable expedition, guaranteed as part of the right to a trial in due course of law under Article 38(1) of the Constitution of Ireland. However Ireland will face further reputational damage if action is not taken to remedy the matter entirely.

3.2 POLICY OPTION 2: COURTS-BASED MODEL:

In 2013, an Expert Group on ‘Article 13 of the European Convention on Human Rights’ was established and tasked with developing policy and legislative proposals for an effective

domestic remedy. This was necessitated by reason of the findings of the ECtHR in *McFarlane v Ireland* which held that Ireland had failed to provide an effective remedy for delay in proceedings leading to a violation of Article 13 of the ECHR.

A majority of the Expert Group recommended the following:

In criminal cases:

1. The acquitted accused should be entitled to seek a ruling from the trial judge as to whether there has been a breach of Article 6.1 ECHR. If successful, the trial judge should be allowed to issue a declaration coupled with an appropriate amount of compensation (the amount being determined with regard to ECHR case law). The procedure should be summary in nature and either side should have the right of appeal to the appropriate court. The burden of establishing the breach should be on the claimants and the standard of proof should be on the balance of probabilities.
2. Consideration be given to conferring a jurisdiction on a court of trial to hear and determine claims by a convicted person that there has been a breach of Article 6.1. The court should have the power to grant a declaration, a declaration coupled with compensation, or a declaration and an appropriate reduction in sentence.
3. The DPP act as legitimus contradictor in criminal trial applications.

In civil cases:

1. The aggrieved litigant should be allowed to apply to the court before which the litigant's proceedings were brought for redress for any alleged violation of the Article 6.1 ECHR reasonable time requirement. This should be in the form of a summary procedure initiated by a notice of motion at the conclusion of proceedings. The claimant should be entitled to seek a declaration and compensation. Consideration should be given to assign a legitimus contradictor. The burden of proof should be on the claimant and the standard of proof should be on the balance of probabilities.
2. Consideration also be given to providing for a referral by the court on the issue of damages to an independent entity for quantification. This entity could be vested with sufficient powers of inquiry to enable the matter to be determined with minimal procedural complexity consistent with the requirements of due process.

The report itself and further work on the implementation of its recommendations brought to light a number of concerns regarding the operational and cost implications of tasking courts with determining delay claims and awarding damages. These concerns included:

1. Legal costs associated with litigating delay claims before courts of first instance and in particular appellate courts. In civil cases, costs could well outweigh the level of damages obtained in *McFarlane*. In criminal cases, there is potential for significant costs of private counsel for an appeal, where it falls outside of the legal aid system (see table below). In both civil and criminal cases there is the possibility of a costs award to the applicant;
2. Resultant accessibility of the remedies for affected persons;
3. Issues regarding a perceived lack of impartiality where the court of trial (criminal) assesses the facts and the delay complained of may be due to a fault on the part of the judge;

4. Potential for the additional work to add to court backlogs and thus give rise to further delay claims;
5. Policy challenges in allowing for a reduction in sentence as compensation for delay; and
6. Concerns expressed by the Courts Service and the Office of the DPP about taking on the role of legitimus contradictor.

3.2.1 POLICY OPTION 2: COURTS-BASED MODEL – COSTS:

The Report of the Expert Group suggested that the process of compensation proposed is intended to provide modest exposure to costs for the applicant or the State. Under Article 41, costs and expenses actually incurred are assessed in making an award. In addition the Group suggested the summary nature of the proposed relief should not impose a very large costs burden on the State. Furthermore, the costs to be awarded must be reasonable and have been actually and necessarily incurred to prevent or redress the breach of the Convention.

The Group noted the Committee of Ministers Recommendation on Effective Remedies advises that:

“[R]ules on legal costs for seeking remedies for excessive length of proceedings may be different from those applicable in other types of proceedings and avoid placing an excessive burden on litigants where their action is justified. Costs should not be excessive such as to constitute an unreasonable restriction on the right to lodge such an application”

However, the Report itself and further work on the implementation of its recommendations, brought to light a number of concerns regarding the operational and cost implications of tasking courts with determining delay claims and awarding damages. These concerns included:

1. Potential for the additional work to add to court backlogs and thus give rise to further delay claims;
2. Legal costs associated with litigating delay claims before courts of first instance and in particular appellate courts. In civil cases, costs could well outweigh the level of damages obtained in *McFarlane*. In criminal cases, there is potential for significant costs of private counsel for an appeal, where it falls outside of the legal aid system (see table with estimated costs). With both civil and criminal cases there is the possibility of a cost award to the applicant; and
3. Resultant accessibility of the remedies for affected persons.

Average claimant’s legal costs for a Circuit Court case:	██████████ ██
Average appeal (to High Court) claimant’s costs:	████████████████████
Average claimant’s legal costs of High Court case:	██ ██

3.3 POLICY OPTION 3: INDEPENDENT ASSESSOR MODEL:

In parallel with the elaboration of a constitutional remedy for delays in civil and criminal proceedings in the domestic courts, the Government continued to progress the introduction of a statutory remedy for undue delay in civil and criminal proceedings. In its previous action plans, Ireland advised the Committee of the decision of the Government on 7 September 2018 to publish the General Scheme of the *European Convention on Human Rights (Compensation for Delays in Court Proceedings)* Bill and to approve its drafting on a priority basis. The General Scheme was based on the proposal that an independent assessor would make findings in respect of alleged breaches of Article 6.1 of the ECHR and would award compensation as appropriate, with some oversight by the courts.

In light of the recommendations made by the Joint Oireachtas Committee on Justice and Equality in their Pre-legislative Scrutiny Report of May 2019, and in particular its reservations regarding the model as set out in the General Scheme of the *European Convention on Human Rights (Compensation for Delays in Court Proceedings)* Bill, further consideration was given to the remedy with a view to providing the most effective and efficient means of access and redress for a breach of the 'reasonable time' requirement under Article 6.1 ECHR.

The Scheme was amended to provide for a model whereby a person who alleges that their proceedings have been unduly delayed will, in the first instance, make a claim for compensation to an independent assessor to be established under statute, prior to any action before the courts. This model and the rights emanating from it are contained in the *Court Proceedings (Delays) Bill 2023*.

The *Court Proceedings (Delays) Bill 2023* has two primary functions. First, it aims to implement 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 *McFarlane v Ireland* [2010]. Secondly, it will provide 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.

The Bill provides for the establishment of an independent assessment process, under the aegis of the Department of Justice, to assess claims for breach of the right to the conclusion of proceedings within a reasonable time. The purpose of the assessment process is to avoid claims of this nature proceeding to court in the first instance, which will reduce the costs associated with these claims.

The assessments will be carried out by Assessors appointed by the Minister for Justice, who will be legal professionals of not less than five years' standing. A Chief Assessor will also be appointed to perform certain statutory functions in relation to the assessment process and will also be a legal professional of not less than ten years' standing.

Cases will be assessed within six months of receipt and the Assessors will have the authority to request all necessary documentation required to make an assessment, most of which will

come from the Courts Service who will have the required information on the proceedings that are the subject of the alleged delay.

Claims will be assessed by reference to the criteria set down in the jurisprudence of the ECtHR in relation to delay. A successful claimant will be entitled to a declaration that his or her rights have been breached, and, if appropriate, an award of compensation. Compensation will be determined by reference to the jurisprudence of the ECtHR and will be in line with the concept of “just satisfaction” under Article 41 of the ECHR.

An assessor can award reasonable legal costs, with regard to costs incurred by the claimant in the making of an assessment application. This will occur only following a declaration, by the Assessor, that the claimant’s rights have been breached. No legal costs will be payable to unsuccessful claimants. The Minister, under the Bill, may prepare and issue guidelines regarding the levels of legal costs, with reference to both the principles and practices applied by the ECtHR.

Where an assessment is rejected by a claimant, or by the Minister for Justice, the applicant will be issued with an authorisation to initiate proceedings in the Circuit Court, in circumstances where the relevant proceedings concerned have not been concluded, or where the relevant proceedings concerned have been concluded within the previous 6 months. The Circuit Court shall, after hearing the application, make a determination and issue a declaration, as to whether there has been a breach of the aforementioned right. The Circuit Court will also determine whether compensation is payable and the amount payable, with reference to both the principles and practices applied by the ECtHR, in affording just satisfaction to an injured party in accordance with Article 41 of the Convention. Ireland, the Minister for Justice and the Courts Service will be notice parties to these applications before the Circuit Court.

An applicant who accepts an assessment will disbar themselves from any further proceedings concerning the delay and will discontinue any ongoing proceedings. They may also be penalised on costs should they refuse an award made by the Assessor and later obtain the same or a lesser award in Court. These provisions are similar to those that apply to personal injury proceedings and are aimed at encouraging the acceptance of awards prior to the formal litigation stage.

3.3.1 POLICY OPTION 3: INDEPENDENT ASSESSOR MODEL – COSTS:

As a contracting party to the ECHR, Ireland has an obligation to abide by the judgment of the ECtHR in *McFarlane* and to introduce an effective remedy for an excessive length of civil and criminal proceedings. It is accepted that the proposal will involve additional costs for the State. There have been difficulties in identifying the overall costs of this proposal, in part due to the fact that the scheme will establish a simplified process to apply for compensation for delay which could lead to an increase in claims, as well as a lack of available data on the duration of proceedings before the courts currently.

Every effort has been made to keep the costs of this proposal to a minimum, including by appointing assessors to be paid on a case-by-case basis and by providing that civil servants in

the Department of Justice will provide administrative support. The assessments will be paper-based and there will be no need for legal representation at the assessment stage.

Costs of the administration of the assessment function in the Department of Justice:

It is proposed to pay an annual fee to the Chief Assessor as he or she will be responsible for allocating files to assessors, preparing an annual report for the Minister and convening at least one meeting per year with the Assessors. It is proposed that this position should attract an annual fee of [REDACTED] (this is in line with the annual fee for the Chairperson of the former non-statutory Parole Board). The Chief Assessor will also be in a position to assess claims.

It is not proposed to pay an Assessor an annual fee as they will have no functions other than the requirement to assess claims and to attend one annual meeting. They will instead be paid on a case-by-case basis for the assessment of claims. A fee of approximately [REDACTED] per case will apply which is in line with case fees under the Mental Health Review Board and the *Garda Síochána (Compensation) Bill 2021* (review officers).

The general administration of the scheme will be carried out by civil servants of the Department of Justice. It is estimated at this stage that this could be done by one clerical officer and one part-time (1/4 of role) higher executive officer who will be located in the Department of Justice.

Basic salaries and fees:	[REDACTED]
Fees for assessment of claims:	[REDACTED]

Legal costs at the assessment stage:

A reasonable estimate of legal costs per (successful) claim will be approximately [REDACTED]. It is entirely possible that some claimants will not engage legal representation at all, which is, in fact, one of the primary considerations of the creation of the scheme, to negate the requirement for legal representation by using an easily accessible mechanism.

Initial Consultation:	[REDACTED]
Assistance with application documentation:	[REDACTED]
Preparing documentation requested by an Assessor:	[REDACTED]
Consultation following receipt of assessment under section 16:	[REDACTED]
Total Estimated Average Legal Costs:	[REDACTED]

Assessment process:

This estimate is based on a low (in line with Irish trends), medium (in line with European trends) and high (for completeness) number of claims being made per year with 54% of claims being successful (the rate of success in other countries appears to be lower), 7% of successful claims resulting in no award and 14% of successful claims resulting in an awards of costs only.

Description of costs	Low – 10 cases (5.4 successful and 4.6 unsuccessful)	Medium – 75 cases (40.5 successful and 34.5 unsuccessful)	High – 150 cases (81 successful and 69 unsuccessful)
Basic administration of scheme (fees and salaries):	████████	████████	████████
Cost of carrying out assessments (based on €300 fees):	████████	████████	████████
Awards of compensation (based on average awards):	████████	████████	████████
Legal costs for successful applicants:	████████	████████	████████
Total (if all claims accepted at assessment stage):	████████	████████	████████
Total Cost at assessment stage per claim received:	████████	████████	████████

Court process:

It has not been possible to identify an estimate of cases likely to proceed to the courts following the assessment stage as there are no ready comparators. There are costs risks in the courts for applicant’s who either have an unfounded claim or who have been offered an award under the assessment process. The levels of awards will also act as a disincentive both to applicants and their legal representatives.

The following estimates are based on 10% of applicants, both successful and unsuccessful at the assessment stage proceeding to the Circuit Court and being successful in their claim, and also includes awards and likely legal costs (with awards and legal costs of the assessment stage to be deducted from the above). The likelihood of unsuccessful cases at the assessment stage being successful before the courts is low, given that the courts will be bound to the same criteria as the Assessors.

Low (10 cases)	Medium (75 cases)	High (150 cases)
████████	████████	████████

Overall estimate of costs and costs per claim (assuming 10% proceed to court and are successful)

Number of Claims	Low (10 cases)	Medium (75 cases)	High (150 cases)
Costs per claim:	10 cases at asst. stage plus one to court: [REDACTED]	75 cases at asst. stage plus 7.5 to court: [REDACTED]	150 cases at asst. stage plus 15 to court: [REDACTED]
Total estimated cost (including assessment and court process):	[REDACTED]	[REDACTED]	[REDACTED]

4. CONSULTATION:

As the legislative proposals in relation to this issue, have been on the Government Legislation Programme for a number of years, consultations were carried out with a wide range of stakeholders, most notably the Office of the Attorney General, the Department of Foreign Affairs, the Chief State Solicitor’s Office, the Director of Public Prosecutions and the Courts Service.

There will be a need for further detailed consultation and cooperation in advance of the commencement of the legislation to deal with practical matters arising, costs and the establishment of the role of Chief Assessor and other associated roles.

The legislative proposals have been on the Government Legislation Programme for a number of years, during this time, significant consultation has taken place to determine an effective domestic remedy for delays in court proceedings:

- The Expert Group on Article 13 of the ECHR was made up of:
 - 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.

- 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.

5. REVIEW:

Once the Bill is enacted, an Implementation Group will be established to put in place the necessary structures and processes within the Department. As part of the implementation process, final budgetary requirements will be determined, in consultation with stakeholders and the Department of Public Expenditure and Reform.

The operation of the legislation will be kept under review in the context of its impact in reducing delays in court proceedings. The Courts Service is developing a new case management system which will be delivered in modules, the first of which relates to debt claims, divorce and judicial separation applications. As these and further modules are rolled out, it is anticipated that data on the duration of proceedings before the courts can be generated, which will assist both the Courts Service and the Department in identifying trends and areas of delay in proceedings generally.

6. PUBLICATION:

This Regulatory Impact Analysis (RIA) will be published on the Department's website in tandem with the publication of the Bill.

7. CONCLUSIONS:

In considering the recommendations of the Expert Group and the 2019 pre-legislative scrutiny report of the Joint Committee on Justice and Equality, the Department in consultation with stakeholders felt that while it is desirable for persons to have redress to the courts in terms of certain procedural safeguards and judicial oversight, it may not be the most efficient or cost effective means of access to a remedy in all cases. 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 *McFarlane v Ireland* [2010]. 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. To avoid any reputational damage to the State, action must be taken on this matter immediately.