

**APPROVED**

**[2026] IEHC 500**



**THE HIGH COURT  
JUDICIAL REVIEW**

2026 318 JR

**BETWEEN**

**MINISTER FOR AGRICULTURE, FOOD AND THE MARINE**

**APPLICANT**

**AND**

**JOHN FITZGERALD**

**RESPONDENT**

**JUDGMENT of Mr Justice Garrett Simons delivered on 24 July 2026**

**INTRODUCTION**

1. These judicial review proceedings seek to set aside an order of the District Court. The applicant for judicial review is the Minister for Agriculture, Food and the Marine. The Minister has lodged an appeal to the Circuit Court in parallel to the judicial review proceedings. Having regard to this procedural history, the first issue to be addressed by the High Court is whether the pending appeal to the Circuit Court represents an adequate alternative remedy such that judicial review should be refused.

## LEGISLATIVE FRAMEWORK AND APPELLATE STRUCTURE

2. These judicial review proceedings concern two notices served on behalf of the Minister. The first is an animal health and welfare notice served pursuant to section 42 of the Animal Health and Welfare Act 2013. The second is a compliance notice served pursuant to regulation 16 of the European Union (Food and Feed Hygiene) Regulations 2020. These notices will be referred to collectively as “*the statutory notices*”.
3. Section 42(1)(b) of the Animal Health and Welfare Act 2013 permits an authorised officer to serve an animal health and welfare notice where the officer is of the opinion that an animal, animal product or animal feed, land or premises is, or may be, affected with disease or a disease agent. Section 42(2)(b) requires the notice to inform the person served of the right to appeal to the District Court under section 43.
4. Section 43(1) permits a person on whom an animal health and welfare notice has been served to appeal the notice to the District Court, within seven days of service, on the ground that the notice is “*unreasonable*” having regard to the Act. Section 43(5) empowers the District Court to confirm, modify or annul the notice.
5. Regulation 17 of the European Union (Food and Feed Hygiene) Regulations 2020 (S.I. No. 22 of 2020) makes similar provision for an appeal in respect of a compliance notice served under regulation 16.
6. The domestic legislative framework operates alongside Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 (“*the Official Controls Regulation*”). Article 7 provides that decisions taken

under certain specified provisions of the Regulation, including Article 138(1) and (2), are subject to a right of appeal in accordance with national law. The exercise of that right does not affect the competent authorities' obligation to take prompt action to eliminate or contain specified risks to human, animal or plant health, animal welfare or the environment. Article 12 requires official controls to be performed in accordance with documented procedures containing instructions for the staff who perform those controls. Article 34(5) further requires samples to be taken, handled and labelled in such a way as to ensure their legal, scientific and technical validity.

7. Section 84 of the Courts of Justice Act 1924 provides generally for an appeal from a civil decision of the District Court to the Circuit Court. An appeal to the Circuit Court under section 84 proceeds by way of a rehearing. The Circuit Court determines for itself the factual and legal issues arising on the appeal and is not bound by the findings of fact made by the District Court. The parties may adduce oral evidence and cross-examine the opposing witnesses.
8. The parties each confirmed at the hearing before me that they accept that this general right of appeal is available against a decision by the District Court in respect of statutory notices of the type at issue in these proceedings.
9. The appellate architecture includes two mechanisms by which questions of law may be referred to a Superior Court. Section 52 of the Courts (Supplemental Provisions) Act 1961 permits a question of law arising before the District Court to be referred to the High Court by way of case stated. A District Court judge must state a case if requested by a person heard in the proceedings unless the judge considers the request frivolous, and may also state a case without such a request. Section 16 of the Courts of Justice Act 1947 permits a Circuit Court

judge, on the application of a party, to refer a question of law arising in a matter by way of case stated to the Court of Appeal. This is a discretionary procedure and does not confer an entitlement to a case stated.

## PROCEDURAL HISTORY

10. The underlying dispute between the parties concerns two statutory notices served on behalf of the Minister in respect of a duck egg production business operated by Mr John Fitzgerald at premises referred to in this judgment as “*the farm*”. The first notice was served on 1 August 2024 pursuant to the Animal Health and Welfare Act 2013. The second notice was served on 2 August 2024 pursuant to the European Union (Food and Feed Hygiene) Regulations 2020. The notices were served following a suspected outbreak of Salmonella Hessarek at the farm.
11. For ease of exposition, Mr Fitzgerald will be referred to as “*the farmer*”. The use of this neutral term avoids possible confusion arising from the fact that Mr Fitzgerald’s procedural status differs in the relevant two courts. He had been the appellant before the District Court and is the respondent in these judicial review proceedings.
12. The farmer pursued an appeal against each of the statutory notices to the District Court. The appeals were heard together by Judge Catherine Hayden over two days (17 December 2024 and 28 March 2025). The Department of Agriculture, Food and the Marine (“*the Department*”), which was the respondent to the statutory appeals, adduced evidence from the officials who had carried out the sampling at the farm, from scientific witnesses in respect of the laboratory testing and whole-genome sequencing, and from a senior veterinary witness. The farmer gave evidence himself and called expert evidence.

13. By written judgment delivered on 9 December 2025, the District Court allowed both appeals and annulled the notices. The court found that the manner in which the samples had been collected fell far short of the Department's standard operating procedures ("SOPs"). It referred to the absence of evidence that a face mask or respirator had been worn, the conflicting accounts as to when "*overboots*" had been donned, the uncertainty as to whether and when gloves had been worn, the absence of evidence of handwashing between duck houses, and the uncertainty as to whether the samplers had read or were familiar with the relevant SOPs. The District Court also recorded the hypothesis advanced on behalf of the farmer as to possible cross-contamination, including contamination associated with the samplers' boots or with environmental material.
14. The District Court did not make a positive finding that cross-contamination had occurred. Rather, it held that the manner in which the officials had obtained the samples gave rise to questions concerning the robustness of the resulting evidence:

"It is clear from the evidence that the manner in which the Respondent obtained its evidence fell far short of its sampling protocol and questions therefore arise as to the robustness of that evidence. Further, having reviewed their witness statements and observed Mr Dunne and Mr O'Gorman giving their evidence, the Court cannot be satisfied with their evidence with regard to when the overboots were donned or that gloves were in fact worn."
15. The findings concerning the use of personal protective equipment, the stage at which gloves and overboots were donned, and the witnesses' familiarity with the SOPs are findings of fact. As explained below, any challenge to the correctness of those findings, or to the weight attached to the underlying evidence, is more appropriately pursued on appeal to the Circuit Court.

16. The District Court also considered the scientific evidence. Salmonella Hessarek was described as rare, and the whole-genome sequencing disclosed a difference of only one allele, out of approximately 2,000, between the isolates obtained from the human cases and those derived from the samples collected at the farm. The District Court described that evidence as persuasive. It nevertheless considered that the weight to be attached to the scientific analysis depended on the reliability of the underlying samples. Having found fundamental procedural defects in the collection of those samples, the court was not satisfied that the sampling evidence was sufficiently reliable.
17. Having made those findings of fact, the District Court went on then to consider their legal significance. The District Court approached the issue by asking whether the relevant requirements of the SOPs were mandatory or directory, applying the principled distinction identified in *State (Elm Developments Ltd) v. An Bord Pleanála* [1981] ILRM 108. The District Court decided that the requirements that authorised officers be appropriately trained and that they comply with the applicable sampling procedures were integral to the statutory scheme and mandatory in character.
18. The District Court concluded that the requisite opinions on which the statutory notices were required to be based had been formed by reference to samples collected through a fundamentally defective process. It held that the notices were “unreasonable” within the meaning of the legislation. The appeals were allowed and the statutory notices annulled.
19. The Minister did not request the District Court to state a case to the High Court on the question of whether the relevant requirements of the SOPs were mandatory or directory.

20. On 17 December 2025, the Minister lodged a notice of appeal to the Circuit Court. Crucially, the Minister did not apply to either the District Court or the Circuit Court for a stay on the District Court order annulling the statutory notices. Nor did the Minister apply to the Circuit Court for an expedited hearing of his appeal.
21. These judicial review proceedings were instituted on 6 March 2026. The Minister made an *ex parte* application for leave to apply for judicial review on 23 March 2026. The High Court (Bradley J.) granted leave and imposed an interim stay on the District Court order annulling the two statutory notices.
22. It follows that, for more than three months after the District Court's decision, there was no stay of the order annulling the statutory notices.
23. The judicial review proceedings came on for hearing before me on 10 July 2026. For the reasons explained below, the parties were directed to address, as a preliminary issue, the existence and adequacy of the Circuit Court appeal. Judgment was reserved on that issue, and argument on the substantive grounds of judicial review was deferred. I also directed the parties, pursuant to Order 99, rule 7 of the Rules of the Superior Courts, to exchange and file estimates of costs. These estimates are discussed at paragraphs 69 to 74 below.

## **JUDICIAL REVIEW AND EXHAUSTION OF REMEDIES**

24. Judicial review is concerned principally with the legality of the decision-making process, rather than with the underlying merits of the resulting decision. The court of judicial review will only examine the evidential or substantive basis of a decision where irrationality or unreasonableness is alleged, and only then for the limited purpose of determining whether the *O'Keeffe/Meadows* threshold has

been met. This is a very high threshold for an applicant to meet. Crucially, the supervisory jurisdiction exercised by the High Court in judicial review proceedings is far more limited than the appellate jurisdiction exercised by the Circuit Court by way of rehearing.

25. The distinction between judicial review and an appeal has been explained as follows by the Supreme Court in *E.R. v. Director of Public Prosecutions* [2019] IESC 86 (at paragraph 17):

“[...] Judicial review is not about the correctness of decision-making, nor is it the substitution by one court of a legal analysis or factual decision for that of the court under scrutiny. On judicial review, where successful, the High Court returns the administrative or judicial decision to the original source and, implicitly in the judgment overturning the impugned decision, requires that it be redone in accordance with jurisdiction or that fundamentally fair procedures be followed. If the decision-maker has no jurisdiction, that may be the end of the matter but the High Court never acts as if a Circuit Court case were being reconsidered through a rehearing, which is a circumstance where a court will be entitled to substitute its own decision. Judicial review is about process, jurisdiction and adherence to a basic level of sound procedures. It is not a reanalysis.”

26. The judgment in *Sweeney v. District Judge Fahy* [2014] IESC 50 is instructive in respect of challenges based on an alleged insufficiency of evidence. Clarke J. distinguished between an absence of evidence establishing a fact which is a necessary precondition to jurisdiction and an insufficiency of evidence concerning the merits of a decision made in the exercise of an existing jurisdiction. The first may render the decision unlawful because the decision-maker has not been shown to possess subject-matter jurisdiction. The second concerns the manner in which an established jurisdiction is exercised. Save in an extreme case, an insufficiency of evidence concerning the merits may render a decision erroneous but does not normally render it amenable to judicial review

where an appeal is capable of correcting the alleged error. This does not exclude the possibility of judicial review after the appellate process has been exhausted if the appellate decision is itself affected by a reviewable error.

27. The leading modern statement of the exhaustion principle is *Amariei v. Chief Appeals Officer* [2026] IESC 22. The default position is that a party should pursue and exhaust an adequate statutory appeal or review before seeking judicial review. The existence of an alternative remedy does not exclude the supervisory jurisdiction of the High Court. It does, however, engage the court's discretion to refuse judicial review.
28. The onus rests on the applicant for judicial review to establish either that the alternative remedy is not adequate or that a particular exigency in the interests of justice requires judicial review to be available. Cases in which judicial review is permitted despite the availability of an adequate alternative remedy are exceptions to the general rule.
29. In assessing adequacy, the court must consider the complaint actually made and the capacity of the alternative remedy to address it. The judgment in *Amariei* identifies several relevant considerations, including giving effect to legislative intent, the comparative advantages of an appeal over judicial review, the safeguarding of judicial resources, and the implications for costs and delay.
30. Statutory appeals to courts, including appeals confined to questions of law, come within the default rule and may confer a broad jurisdiction capable of addressing alleged errors of law, significant procedural errors and certain errors of fact. An appeal by way of rehearing will ordinarily be broader still.
31. A further exception to the exhaustion principle may arise where the challenge concerns the integrity and basic fairness of the first instance proceedings. The

Supreme Court's judgment in *A.B. v. Chief International Protection Officer* [2026] IESC 23 makes clear, however, that the exception is directed to a default of fundamental requirements, a fundamental denial of justice or a fundamental flaw in the decision-making process. An alleged error of law does not fall within the exception merely because it is characterised as a breach of fair procedures.

#### **ALTERNATIVE-REMEDY ISSUE SHOULD BE ADDRESSED FIRST**

32. The Supreme Court in *Amariei* emphasised that the existence of an adequate alternative remedy should ordinarily be addressed at the leave stage. This reflects the nature and purpose of the exhaustion principle. If an applicant is to be required to exhaust an alternative remedy, it is preferable that this be identified at the outset of the proceedings, at a time prior to the parties incurring the cost of preparing for a substantive judicial review hearing and prior to the High Court dedicating its scarce resources to the judicial review proceedings.
33. Whilst it is preferable that the alternative-remedy issue be conclusively determined at the time of the leave application, it does not follow that the question of alternative remedies can never be revisited at the substantive hearing in those cases where leave has been granted. An application for leave to apply for judicial review is normally heard *ex parte*. If the availability or adequacy of an alternative remedy was not addressed at the leave stage, or was addressed without the benefit of full argument, the trial judge is not precluded from considering the issue at the substantive hearing.
34. Any contrary approach would be inconsistent with the discretionary nature of judicial review and with the rationale identified in *Amariei*. It might, for example, require the judge at the substantive hearing to determine the

substantive grounds notwithstanding that an adequate statutory appeal remained available and had not been exhausted. Such an approach would undermine the purposes served by the exhaustion principle, including respect for the legislative allocation of decision-making functions, the safeguarding of scarce judicial resources, and the avoidance of unnecessary costs and delay.

35. The course followed by the Supreme Court in *Amariei* itself is instructive. The High Court in that case had proceeded to determine aspects of the substantive judicial review challenge. The Supreme Court, by contrast, treated the exhaustion issue as capable of disposing of the proceedings and consciously refrained from deciding the underlying merits once it had concluded that an adequate alternative remedy had not been exhausted. The Supreme Court's approach confirms that it is neither necessary nor appropriate to decide the substantive grounds merely because those grounds have been argued, where the proceedings may properly be disposed of by reference to the logically anterior question of the exhaustion of alternative remedies.
36. Having regard to these principles, I adopted the following approach to the alternative-remedy issue in these proceedings. It will be recalled that leave to apply for judicial review had been granted by the High Court (Bradley J.) on 23 March 2026. The Supreme Court delivered judgment in *Amariei* on 25 March 2026, two days later. It follows, therefore, that the alternative-remedy issue was considered at the leave stage *without* the benefit of the Supreme Court's restatement of the governing principles.
37. Accordingly, I invited the parties, at the outset of the hearing on 10 July 2026, to address two related questions: whether an appeal lies from the District Court to the Circuit Court in this case, and, if so, whether that appeal represents an

adequate alternative remedy. Counsel for each party were afforded an opportunity to address those questions, including the breadth of the Circuit Court appeal, the absence of an automatic stay on the annulment of the statutory notices, the availability of interim relief and expedition, and the availability of case-stated procedures.

38. Having heard the parties on those questions, I reserved judgment. The hearing of the balance of the judicial review proceedings has been deferred to await the determination of these preliminary issues. This approach avoided requiring the parties to incur the time and expense of presenting the remaining grounds prior to a determination as to whether the proceedings should be entertained at all.

#### **STATUTORY RIGHT OF APPEAL TO THE CIRCUIT COURT**

39. Before turning to the application of the principles in *Amariei* to the circumstances of the present proceedings, it is necessary to address the logically anterior question of whether an appeal properly lies to the Circuit Court in this type of case.
40. There had been some initial skirmishing between the parties as to whether the general right of appeal from the District Court to the Circuit Court is available against a decision in respect of statutory notices of the type at issue in these proceedings. The farmer adopted the position in earlier correspondence that the decision of the District Court was final and conclusive. The Minister's position was that a right of appeal does lie to the Circuit Court. The Minister sought to protect his position by pursuing judicial review proceedings in parallel, lest his understanding of the availability of an appeal were subsequently held to be incorrect.

41. I raised this jurisdictional issue with counsel at the outset of the hearing on 10 July 2026. Both sides acknowledged that the District Court's decision in this case is amenable to appeal to the Circuit Court. Their agreement is helpful, but it remains necessary for the High Court to satisfy itself that the asserted right of appeal exists. For the reasons that follow, I am satisfied that the parties' shared position is correct.
42. The starting point for the analysis is section 84 of the Courts of Justice Act 1924. This section provides that, in all cases other than criminal cases, an appeal lies from any decision of a judge of the District Court to the judge of the Circuit Court within whose circuit the relevant District Court district lies. The language of the section is broad. The proceedings before the District Court were civil proceedings and the orders annulling the notices were decisions of a judge of that court. The decisions therefore fall within the ordinary meaning of section 84 of the Courts of Justice Act 1924.
43. There is nothing in either of the legislative provisions governing the notices that displaces that general right of appeal. Section 43 of the Animal Health and Welfare Act 2013 identifies the District Court as the court to which an animal health and welfare notice may first be appealed. It prescribes the threshold for intervention as "*reasonableness*" and empowers the District Court to confirm, modify or annul the notice. It does not provide that the District Court's decision is final or conclusive, nor does it state that no further appeal lies. Regulation 17 of the European Union (Food and Feed Hygiene) Regulations 2020 is similarly silent as to finality and does not purport to exclude the general statutory right of appeal.

44. The fact that the District Court was itself exercising an appellate jurisdiction over the statutory notices does not alter this conclusion. Section 84 of the Courts of Justice Act 1924 applies to any “*decision*” of the District Court in civil proceedings and does not distinguish between decisions according to the procedural capacity in which the District Court acted. The statutory appeals under section 43 of the Animal Health and Welfare Act 2013 and regulation 17 of the European Union (Food and Feed Hygiene) Regulations 2020 identify the District Court as the first judicial forum in which the reasonableness of the statutory notices may be determined. The decisions made by the District Court in the exercise of that jurisdiction are properly characterised as civil decisions of that court. They are consequently subject to the general right of appeal conferred by section 84.
45. Clear language would be required before the specific provisions for appeals to the District Court could be understood as excluding by implication the general right of appeal from that court. No such language appears in either set of legislative provisions. On the contrary, the absence of any provision making the District Court’s decisions final and conclusive is consistent with the continued operation of section 84. The specific appeal provisions and section 84 operate harmoniously: section 43 of the 2013 Act and regulation 17 of the 2020 Regulations provide for the initial statutory appeals, while section 84 provides for a further appeal from each resulting decision of the District Court.
46. I am satisfied, therefore, that an appeal properly lies to the Circuit Court from the District Court’s order annulling the two statutory notices. This conclusion has been reached as a question of statutory interpretation and is not contingent on the fact that the parties each acknowledge the existence of the appeal. A

question of statutory interpretation is ultimately a matter for this court to determine: *Callaghan v. An Bord Pleanála* [2017] IESC 60. The parties' shared position is consistent with the proper interpretation of the relevant legislative provisions.

47. The Minister submitted that the farmer did not unequivocally accept the existence of the right of appeal until the hearing and that the earlier uncertainty had contributed to the institution of the judicial review proceedings. That may explain why the Minister considered it prudent initially to protect his position by invoking both jurisdictions. It does not, however, establish that judicial review should continue once the existence of the appeal has been accepted and determined. The Minister did not seek to withdraw the proceedings following clarification of the farmer's position. He continued to maintain that judicial review was the appropriate remedy. The adequacy of the appeal must therefore be determined by reference to its objective legal and practical characteristics, rather than by reference to the parties' earlier correspondence.

#### **APPLICATION OF *AMARIEI* PRINCIPLES TO THE PRESENT CASE**

48. Having confirmed that the general right of appeal under section 84 of the Courts of Justice Act 1924 is available, I turn to the application of the principles in *Amariei*. The Supreme Court judgment identifies several considerations relevant to assessing whether an alternative remedy is adequate. Those directly engaged here are the comparative advantages of an appeal over judicial review, the legislative intent in allocating caseload, the safeguarding of judicial resources, and the implications for costs and delay.

49. It is proposed to address the adequacy of the Circuit Court appeal under four headings: (i) its comparative breadth and suitability; (ii) the legislative intent; (iii) the availability of interim relief; and (iv) costs and allocation of judicial resources. It will then be necessary to consider separately whether, notwithstanding the adequacy of the appeal, any particular exigency in the interests of justice requires judicial review to be available.

*(i) Breadth and suitability of the Circuit Court appeal*

50. The most important consideration supporting the exhaustion requirement is that the Circuit Court appeal is capable of resolving the entirety of the dispute concerning the statutory notices. By contrast, the only issue properly amenable to determination in the judicial review proceedings is whether the District Court erred in its assessment of the legal significance of the officials' failure to comply with the standard operating procedures when collecting the samples at the farm.
51. The Circuit Court appeal will proceed by way of a rehearing. The Circuit Court will determine for itself the disputed factual issues relevant to the reasonableness of the statutory notices and will not be bound by the District Court's findings of fact. The Circuit Court might find in favour of the Minister on the facts and conclude that the Department's officials did comply with the standard operating procedures. It might also reach different conclusions from the District Court as to the credibility of the witnesses, the manner in which the samples were collected, or the extent to which any deficiencies in the sampling process affected the reliability of the results.
52. The Circuit Court will also be required to reach its own conclusions on the legal issues arising in the appeals. If it finds that the Department's officials failed to comply with the standard operating procedures, it must determine the legal and

evidential consequences of that non-compliance. In particular, it must decide whether non-compliance necessarily invalidates the sampling results or is, instead, a matter to be taken into account in assessing the reliability of the evidence and, ultimately, the reasonableness of the notices. The Circuit Court will not be bound by the legal analysis adopted by the District Court.

53. It should be explained that even if the Circuit Court were to accept the Minister's argument that non-compliance with the standard operating procedures does not necessarily invalidate the sampling results, it does not follow as a corollary that the Minister must succeed on his appeal. The Circuit Court might make a finding of fact to the effect that the methods employed by the Department's officials gave rise to a risk of cross-contamination which could not reasonably be excluded. The Minister might, therefore, succeed on the legal issue concerning the effect of non-compliance but still fail to establish on the evidence that the notices were reasonable.
54. The scope of the judicial review proceedings is much narrower in comparison. The High Court, in the exercise of its supervisory jurisdiction, cannot rehear the evidence, reassess the credibility of witnesses or substitute its own findings of fact for those made by the District Court. The questions whether appropriate personal protective equipment was used, whether overboots and gloves were donned or changed at the appropriate stages, whether hands were washed between the duck houses, whether the officials understood and observed the relevant procedures, and whether any deficiencies undermined the reliability of the samples are factual and evidential matters. These are matters which the Circuit Court can determine on appeal but which are not ordinarily open to redetermination in judicial review proceedings.

55. Judicial review may also produce an incomplete remedy. Even if the High Court were to conclude that the District Court erred in law in treating non-compliance with the standard operating procedures as necessarily invalidating the sampling results, the High Court could not simply substitute its own findings on the disputed evidence and reinstate the notices. It would almost certainly be necessary to remit the matter to the District Court, pursuant to Order 84, rule 27, for reconsideration in accordance with the High Court's judgment. A remittal would introduce a further procedural stage without necessarily resolving the dispute. The District Court would be required to reconsider the significance of the sampling deficiencies and the reliability of the evidence. Its fresh decision would itself be capable of appeal to the Circuit Court at the instance of either party.
56. The judicial review route may lead ultimately to the very appellate process that is available now, but only after another layer of proceedings, additional expense and further delay. Any further delay is of particular concern in circumstances where the suspected outbreak and the original sampling occurred two years ago (July 2024).
57. In summary, the appeal to the Circuit Court is capable of addressing the full substance of the Minister's case and resolving the factual and legal controversy in a single set of proceedings. By contrast, the only issue properly amenable to determination in the judicial review proceedings is whether the District Court erred in its assessment of the legal significance of the officials' failure to comply with the standard operating procedures when collecting the samples at the farm. The comparative breadth and suitability of the Circuit Court appeal strongly support the conclusion that it constitutes an adequate alternative remedy.

***(ii) Legislative intent***

58. The breadth of the Circuit Court's appellate jurisdiction is consistent with the legislative scheme described earlier in this judgment. Neither section 43 of the Animal Health and Welfare Act 2013 nor regulation 17 of the European Union (Food and Feed Hygiene) Regulations 2020 makes the District Court's decision final and conclusive or excludes the general right of appeal under section 84 of the Courts of Justice Act 1924. That structure indicates that a party dissatisfied with the District Court's determination should ordinarily pursue an appeal to the Circuit Court. The appeal is by way of rehearing and there is provision for the referral of a case stated to the Court of Appeal.
59. To allow the Minister to pursue judicial review in the present case would cut against the legislative intent underlying this appellate architecture, namely, that a dispute as to the reasonableness of a statutory notice should be heard and determined by the courts to which the task has been allocated.
60. This conclusion is consistent with Article 7 of Regulation (EU) 2017/625 which leaves the form of the appeal to domestic law. Nothing in Article 7 requires that a person be permitted to bypass an available domestic appeal in favour of judicial review.

***(iii) Availability of interim relief***

61. The making of an appeal to the District Court does not operate as a stay on a statutory notice served under the Animal Health and Welfare Act 2013. Section 43(4) provides that a notice under appeal continues to have effect pending the making of an order by the District Court. If the District Court confirms the notice, it remains in force, and a further appeal by the recipient to the Circuit Court does not of itself have suspensive effect.

62. There is no provision for the notice to continue in force pending an appeal to the Circuit Court where, as in the present case, the District Court has annulled the notice. This is unsurprising. The initial appeal to the District Court is commenced unilaterally by the recipient of the notice and precedes any judicial determination of its reasonableness. To suspend the effect of the notice by dint of the fact that an appeal has been made to the District Court would enable the recipient, without prior judicial scrutiny, to displace a protective measure adopted in the interests of animal or public health. By contrast, where the District Court has annulled the notice, any application to preserve or restore its effect pending a Circuit Court appeal necessarily arises after the parties have been heard and a judicial determination has been made.
63. Counsel for the Minister relied on the absence of an express provision preserving the effect of an annulled notice pending an appeal to the Circuit Court. It was submitted that this demonstrated that the further appeal to the Circuit Court was procedurally distinct from the statutory appeal to the District Court and that the distinction was relevant to the assessment of the *adequacy* of the Circuit Court appeal as an alternative remedy.
64. The absence of an automatic stay must, however, be considered in light of the procedural steps available to the Minister. The Minister could have applied for interim relief pending determination of the Circuit Court appeal and sought an expedited hearing of that appeal. Although the Minister sought the farmer's agreement to a stay in correspondence, he did not make an application to the court or seek an expedited hearing. The District Court's order annulling the statutory notices consequently remained operative for more than three months, until the High Court granted interim relief on 23 March 2026.

65. The judgment in *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49, [2012] 3 IR 152 establishes that the overarching test, whether interim relief is sought pending judicial review or an appeal, is to minimise the overall risk of injustice pending the final determination of the proceedings. In applying that test in judicial review proceedings, the court must also accord appropriate weight to the orderly implementation of measures that are *prima facie* valid. In the present context, that consideration would pertain to the District Court's order annulling the statutory notices, which order had been made following a contested *inter partes* hearing. The order was entitled to take effect unless and until stayed or set aside.
66. The Minister has not demonstrated that it would have been more difficult to obtain a stay of the District Court order in the context of the Circuit Court appeal than in the judicial review proceedings. An application for interim relief in the context of the Circuit Court appeal would have permitted the Minister to rely on the strength of the appeal, the need to preserve its practical effectiveness and the asserted risk to public health. The Minister therefore has no basis for suggesting that the judicial review proceedings offered a more favourable route to interim relief than the pending appeal. Indeed, if and insofar as there might be any material difference between the tests applicable in the two sets of proceedings, the *Okunade* principles might, if anything, require additional weight to be accorded in the judicial review proceedings to the orderly implementation of the *prima facie* valid District Court order.
67. The Minister also relied on the farmer's conduct following the District Court judgment, including the culling of the flock and the correspondence concerning future repopulation and production. Those matters may bear on mootness, the

continuing regulatory relationship between the parties or an application for interim relief. They do not establish that the Circuit Court appeal is inadequate. At the time of the culling and the related conduct, no stay of the District Court's order was in force. More importantly for present purposes, that post-judgment conduct does not prevent the Circuit Court from determining the live factual and legal issues arising in the pending appeals.

68. The course adopted by the Minister may itself have delayed the final resolution of the substantive dispute. Rather than seeking an expedited hearing of the Circuit Court appeal, which was capable of determining all factual and legal issues concerning the statutory notices, the Minister commenced a second set of proceedings directed principally to the lawfulness of the District Court's judgment. The judicial review proceedings have required an *ex parte* leave application and subsequent *inter partes* hearings concerning interim relief, the adequacy of the alternative remedy and the interaction between the two sets of proceedings. Meanwhile, the Circuit Court appeal has remained becalmed.

***(iv) Costs and the allocation of judicial resources***

69. The statutory scheme envisages that challenges to notices of the type at issue will be determined initially by the District Court through a relatively prompt procedure which entails only modest costs. A dissatisfied party may then pursue an appeal by way of rehearing to the Circuit Court. The institution of these judicial review proceedings has escalated the matter to the High Court, with the significantly greater costs attendant upon such proceedings.
70. The estimates filed pursuant to the direction made under Order 99, rule 7 RSC confirm a pronounced disparity between the likely cost of the Circuit Court

appeal and the costs generated by the judicial review proceedings. To facilitate comparison, the figures which follow are stated exclusive of VAT.

71. The Minister estimated the professional fees in the judicial review proceedings at €52,850, comprising counsel's fees of €27,850 and a solicitor's instruction fee of €25,000. No external expert costs are anticipated.
72. The farmer estimated professional and expert fees in the judicial review proceedings at €154,200, together with €300 in stamp duty and commissioner for oaths fees, giving an overall estimate of €154,500. By contrast, the farmer's prospective estimate for the Circuit Court appeal identifies baseline fees for solicitors, counsel and experts in the range of €18,050 to €23,050. Additional consultation fees, counsel's refresher fees and incidental outlays may arise. Even allowing for those unquantified and contingent items, the farmer's estimated costs of the Circuit Court appeal appear substantially lower than the farmer's estimated costs of the High Court proceedings.
73. The estimates were not prepared on an identical basis. The farmer's estimate for the High Court proceedings was a party-and-party estimate prepared after substantial work had been undertaken, whereas the estimate for the Circuit Court appeal was a prospective estimate prepared for the client and was subject to additional contingent items. The Minister's estimate was prepared on a further, different basis. The figures should not, therefore, be treated as establishing a precise ratio between the costs of the two forms of proceedings. They nevertheless indicate a significant disparity in scale.
74. The significance of the estimates lies not in the precise figures, but in what they illustrate. A Circuit Court appeal provides a direct and proportionate means of challenging the District Court's orders. It permits the factual and legal issues to

be considered together without the more elaborate procedures and substantially greater overall expense associated with High Court judicial review. The exhaustion principle would be undermined if a party could routinely bypass or defer the ordinary appeal to the Circuit Court and instead require aspects of the dispute to be litigated through more costly High Court proceedings.

75. The legislative structure of appeals reflects a deliberate allocation of caseload among the courts. The initial statutory appeals are assigned to the District Court, with a further appeal to the Circuit Court available under section 84 of the Courts of Justice Act 1924. It would be inconsistent with that allocation if a party dissatisfied with a District Court decision could invoke the High Court's judicial review jurisdiction without first exhausting the available appeal to the Circuit Court. If such a course were to be generally permitted, then disputes assigned to the District Court and Circuit Court under the statutory and appellate structure would, instead, be redirected to the High Court. This would disrupt the intended distribution of caseload among the courts and require the High Court to determine matters that the ordinary appellate structure is well capable of resolving.
76. As explained earlier, the case stated procedures provide a route by which a discrete question of law may receive an authoritative determination by a Superior Court. This reinforces the conclusion that the allocation of the underlying dispute to the District Court and Circuit Court does not prevent an appropriate question of law from reaching a Superior Court in those instances where this is necessary.

**PARTICULAR EXIGENCY IN THE INTERESTS OF JUSTICE**

77. It remains to consider whether the present case gives rise to a particular exigency in the interests of justice which requires judicial review to be available. As explained in *Amariei*, this exception is confined to rare cases in which the default requirement to exhaust an adequate alternative remedy should not apply.
78. Counsel for the Minister submitted that the legal consequences of non-compliance with the standard operating procedures required an authoritative determination by the High Court. Counsel emphasised that a Circuit Court judgment might be delivered orally and that, even if a written judgment were delivered, it would not carry the same precedential weight as a judgment of the High Court.
79. I accept that a judgment of the High Court may carry greater precedential weight and may be more readily accessible for citation in other proceedings. That consideration does not, without more, justify imposing upon the other parties the additional costs burden which is inherent in High Court proceedings. Still less does it justify the disruption of the legislatively assigned allocation of caseload between the various courts. A litigant cannot bypass an otherwise adequate appeal merely because there is a greater likelihood that a judgment delivered by the High Court will be written and published or because it will carry greater precedential weight.
80. Crucially, the Circuit Court can determine for itself every question of law arising in the appeals, including the legal consequences of any non-compliance with the standard operating procedures. The adequacy of the remedy depends on that court's jurisdiction and remedial powers, not on whether its determination is

delivered orally or in writing or on the precedential weight that it may subsequently carry.

81. The case stated procedure provides a further answer to the Minister's concern. If a discrete question of law requiring authoritative determination arises, the Circuit Court judge may, on the application of a party, refer it to the Court of Appeal by way of case stated. The case stated procedure ensures that the appellate structure provides a means by which a question of law may reach a Superior Court without transferring the entire dispute into judicial review proceedings.
82. Nor does the possibility that a party might subsequently seek judicial review of the Circuit Court's determination render the appeal inadequate. That possibility depends on assumptions about the outcome of a decision that has not yet been made and whether it might be affected by a reviewable error. It cannot justify bypassing the appellate process in anticipation of such an error. The fact that judicial review may remain available after the appeal has been exhausted does not establish that the remedy should be permitted before the Circuit Court has exercised its appellate jurisdiction.
83. The Minister's desire to obtain a written High Court judgment carrying greater precedential weight does not, therefore, establish that the Circuit Court appeal is inadequate or that a particular exigency in the interests of justice requires judicial review to be available.
84. The Minister also relied on the asserted wider consequences of the District Court's decision for the Department's statutory functions and enforcement practices. The affidavit evidence contained a general assertion that the decision would affect the nature and efficacy of the Department's compliance regime. It

did not, however, identify other proceedings in which the same issue had arisen, instances in which the District Court's reasoning had been followed, specific changes required to the Department's enforcement practices, or any quantifiable interference with its functions. The High Court cannot simply assume that the District Court decision in this case has been followed elsewhere or is materially affecting the operation of the relevant enforcement regimes. In the absence of a more specific evidential foundation, the asserted systemic consequences do not establish a particular exigency requiring intervention by the High Court before the Circuit Court appeal has been exhausted.

85. The Minister did not plead, as a ground for judicial review, that the District Court had acted in breach of fair procedures or of the principle *audi alteram partem*. Although such a contention appeared in the Minister's written submissions and was initially advanced in oral argument, counsel subsequently accepted that the point had not been pleaded and very fairly withdrew the submission. It does not, therefore, arise for determination.
86. For completeness, the contention would not have assisted the Minister even if it had been properly pleaded. The judgment in *A.B.* (cited above) establishes that the default requirement to exhaust an adequate alternative remedy applies notwithstanding an alleged breach of fair procedures, save where the breach amounts to a default of fundamental requirements, a fundamental denial of justice or a fundamental flaw in the decision-making process. No breach of such gravity arose here: the Minister/Department participated fully in the District Court hearing, adduced evidence, cross-examined the farmer and his expert witness, and made legal submissions. Even taken at its height, the alleged failure to invite further submissions on the precise legal analysis ultimately adopted is

a minor procedural error which is well capable of being remedied by way of rehearing before the Circuit Court.

87. Finally, the asserted public health urgency does not amount to a particular exigency requiring judicial review. As explained earlier, the Minister could have applied for a stay and sought an expedited hearing of the Circuit Court appeal. The Minister did neither. It would be incongruous to treat supposed urgency as a reason for advancing judicial review before exhausting the appellate process when the procedural mechanisms available within that process to secure interim relief and an expedited hearing were not invoked.

## **CONCLUSION AND PROPOSED ORDERS**

88. The Minister has not identified any convincing reason why the dispute in relation to the statutory notices should be determined by way of judicial review rather than in the pending Circuit Court appeal. Stripped to its essentials, the Minister's preference for judicial review appears to rest principally on the greater authority that would attach to a judgment of the High Court. That is not a sufficient reason to bypass an adequate appeal. A litigant is not entitled to pursue judicial review proceedings merely because the resulting judgment might carry greater precedential weight than a decision of the court upon which the appellate jurisdiction has been conferred. The exhaustion principle would be deprived of much of its effect if a desire for an authoritative ruling from the High Court were, without more, sufficient to displace the prescribed appellate process.
89. For the reasons explained at paragraphs 39 to 47 above, an appeal lies from the decisions of the District Court to the Circuit Court pursuant to section 84 of the Courts of Justice Act 1924. This right of appeal represents an adequate

alternative remedy to judicial review on the facts of this case. No particular exigency in the interests of justice has been established that would justify a departure from the default rule stated in *Amariei*.

90. Accordingly, the application for judicial review will be dismissed. It has not been necessary to determine the grounds advanced by the Minister, and I express no concluded view on the merits of his challenge to the District Court's legal analysis. All interim orders made in these proceedings, including any interim or interlocutory stay, will be discharged.
91. As to legal costs, my *provisional* view is that the farmer/respondent is entitled to recover his costs of the proceedings from the Minister. The farmer/respondent has been entirely successful in resisting the application for judicial review and is entitled to his costs in accordance with the default position under section 169 of the Legal Services Regulation Act 2015. Those costs will be adjudicated pursuant to Part 10 of the Act if not otherwise agreed by the parties.
92. If either party wishes to contend for another form of final order, including as to costs, that party should contact the registrar and arrange to have the matter relisted before me on 31 July 2026. In the absence of a request for relisting, the orders proposed above will be made.

#### *Appearances*

Conor O'Doherty SC and John Ryan for the Applicant instructed by the Office of the Chief State Solicitor

David Conlan Smyth SC and Seán D. Rafter for the Respondent instructed by Alexander Rafter Solicitors