In response to the invitation of the Joint Committee on Justice, Home Affairs and Migration, we make the following written submission on the General Scheme of the Civil Reform Bill 2025 (the "Bill").

There is a real cost to all of society from wasteful legal challenges. As explained in the Accelerating Infrastructure Report and Action Plan published on 3 December 2025 by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation:

> "There is the direct cost, a project that is delayed will see its construction costs rise over time. Since infrastructure is financed either by taxpayers or the users of infrastructure, every delay means higher taxes or less funding available for other projects or priorities. Arguably of even greater importance are the indirect impacts of delays. Inadequate electricity, transport, or water infrastructure impedes our ability to deliver housing, all other forms of social infrastructure from schools to hospitals, and the continued growth of our economy, which is necessary to fund infrastructure investment."

That report highlights that the number of legal challenges to decisions in Ireland is "completely disproportionate with other common law jurisdictions, to say nothing of other EU Member States".

We welcome the proposed reforms, which are sensible and necessary.

This submission is made on a "Head by Head" basis, as requested.

1. **Heads 4 and 5 – Production of Documents**

1.1 The requirement for documents to be "material" to the outcome of civil proceedings is sensible. The overhead of civil proceedings for all parties, and the court, is great. The quantum of documents produced is a driver of time and cost. Where documents are not material to the outcome, their production wastes time and cost.

2. **Head 8 – Judicial Review**

2.1 It is noted that Head 8 will apply to judicial review proceedings under Part 9 of the Planning and Development Act 2024 (the "2024 Act").

2.2 Head 8 comprises an enhancement to the reforms already made in the 2024 Act.

2.3 With respect to paragraph (4)(b), where an applicant for judicial review wishes to obtain an order to quash a decision, it should be necessary for them to request that relief in *express* terms. We read paragraph (4)(b) to mean the court is at large, regardless of the request made by the applicant. Where the applicant omits a request for an order to quash from their proceedings, the other interested parties should not be at risk that the court might substitute its own view to quash a decision.

2.4 With respect to paragraph (5)(a)(iv), the requirement for the court to take into account the public interest is sensible. The public interest will often be well served by a declaration

that clarifies the law for future decisions, without quashing a decision that delivers public benefit. Some might argue that the concept of "public interest" is too imprecise. With a view to avoiding that argument, it would assist to anchor the "public interest" by reference to the policies of the government. It would not be difficult for the Minister to make regulations enumerating the plans or programmes that must be considered to comprise such an expression of the public interest. With respect to home building, that would, of course, include Delivering Homes, Building Communities: An Action Plan on Housing Supply and Targeting Homelessness, 2025-2030.

2.5 With respect to paragraph (5)(a)(ii) and (v), the requirement for an applicant to have suffered harm or prejudice, and for the remedy to provide significant benefit to the applicant, will surely discourage technical and trivial challenges. The scarce resources in court should not be wasted on the intellectually curious, or academically interested.

2.6 With home building, our members have observed successful applicants rely on arguments about the protection of intended future residents. See: *Higgins v. An Bord Pleanála* (Balroy House SHD) [2020] IEHC 564; *Atlantic Diamond Limited v. An Bord Pleanála* (EWR Innovation Park SHD) [2021] IEHC 322; *Walsh v. An Bord Pleanála* (St Clare's SHD) [2022] IEHC 172; and, *Jennings v. An Bord Pleanála* (The Grove SHD) [2023] IEHC 14. The applicant's complaint: that there was too little daylight in the kitchen of the proposed home. Plainly, those applicants do not suffer harm or obtain benefit, other than to temporarily prevent development of the lands.

2.7 It would be useful if the Bill proper would make clear that benefit cannot be established by reason solely that a permission is quashed, so that the development – to which the applicant is opposed – is delayed.

2.8 With respect to paragraph (8), it is noted that certain incorporated bodies are excused from satisfying these requirements. That is the effect of the reference to section 286(2) of the 2024 Act.

2.9 This exception appears to have been designed to respect the obligations of the State under Article 9(2) of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, regarding access to justice for non-governmental organisations. However, there is a real risk of abuse, whereby natural persons evade the requirement for prejudice or harm by the ruse of incorporation.

2.10 With respect to paragraph (5)(b), it is welcome that the court must take into account whether a different decision would have been made.

2.11 Our members have observed successful grounds of challenge that made no difference to the planning outcome:

(a) in *Southwood Park Residents Association v. An Bord Pleanála* [2019] IEHC 504, planning permission for 221 homes at Blackrock, Dublin, was quashed because

there existed two versions of report about the potential for impact on bats, one of which was available to the public online and another only available in hard copy at the offices of the Board;

(b) in *Balscadden Road SAA Residents Association Limited v. An Bord Pleanála* [2020] IEHC 586, planning permission for 177 homes was quashed because the drawings did not include dimensions for subterranean features;

(c) in *Dublin Cycling Campaign CLG v. An Bord Pleanála* [2020] IEHC 587, planning permission for 741 apartments at Connolly Station, Dublin, was quashed because an area of void space above railway sidings had the potential for use as a car park, and thus rendered the quantum of non-residential uses greater than allowed for strategic housing development;

(d) in *Joyce-Kemper v. An Bord Pleanála* [2020] IEHC 601, planning permission for the Greater Dublin Drainage Scheme[1] was quashed because the Board asked the Environmental Protection Agency for its observations about the wastewater discharge licence required for the development, but not its observations about the Board's assessment of the likely impact of the proposed development on wastewater discharges;

(e) in *Waltham Abbey Residents Association v. An Bord Pleanála* [2021] IEHC 312, planning permission for 123 homes at Ballincolling, Cork, was quashed because the information about how the results of other environmental assessments were taken into account in a screening for environmental impact assessment was not contained in a standalone "statement"; and,

(f) in *Sweetman v. An Bord Pleanála* [2021] IEHC 390, planning permission for a 24-turbine wind farm at Derryadd, Longford, was quashed because the particulars for the proposed turbines referred only to a maximum height, without any minimum.

2.12 However, the requirement to take into account is one that is not difficult to satisfy, and overcome.

2.13 There is much force to suggest that courts should be prohibited from granting relief where the successful ground of challenge would make no difference.

2.14 In England and Wales, section 31(2A) of the Senior Courts Act 1981 was inserted with effect from 13 April 2015, so that their High Court is obliged to *refuse* to grant relief on an application for judicial review "if it appears to the court to be highly likely that the

[1] The scheme comprised the construction and operation of a sewerage scheme and waste water treatment plant at Clonshaugh in North Dublin, as well as a two metre diameter marine outfall pipe through which treated effluent will be discharged into the sea off Silver Strand beach in Portmarnock.

outcome for the applicant would not have been substantially different if the conduct complained of had not occurred".

2.15 The prohibition applies to the judicial review of any administrative action. This "makes no difference" principle has been relied upon to excuse errors about equality in a scheme for access to prisoners,[2] errors about procurement law obligations of equal treatment and transparency,[3] errors about the ecological assessment of a planning application, [4] errors about harm to a conservation area, [5] and errors about conflict between local and central policy.[6]

2.16 Judicial intolerance for errors that "made no difference to the conclusion" has been a feature of planning law judgments in the recent past.

2.17 It has been relevant to the successful defence of the permission for the 19-turbine Carrownagowan wind farm in County Clare,[7] the Ministerial direction removing text from the Fingal county development plan about noise insultation schemes at the airport,[8] the Ennis data centre (the first module),[9] the Western underpass at Dublin airport,[10] the 17-turbine Lyrenacarriga wind farm in County Waterford,[11] and 137 apartments on Sandyford Road, Dublin.[12]

2.18 A decision should not be quashed for error, if the error was harmless and did not materially affect the result. The persuasive logic is that:

> "It would trivialise judicial review and be an exercise in self-indulgence to quash decisions because of things that make no difference, in the absence of a mandatory provision that compels such an approach."[13]

2.19 The High Court has identified the legal source for this principle:

> "there isn't anything revolutionary or even controversial about the proposition that decisions shouldn't be quashed over errors that make no difference,

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[2] Albeit in the alternative: *R (Hawke) v. Secretary of State for Justice* [2015] EWHC 3599 (Admin).

[3] *R (Good Law Project) v. Secretary of State for Health and Social Care* [2021] EWHC 346, where contracts for personal protective equipment in response to the Covid-19 pandemic were in such urgent demand that the court considered it highly likely the contracts would have been awarded regardless.

[4] *R (Bradbury) v. Brecon Beacons National Park Authority* [2025] EWCA Civ 489.

[5] *R (Goring-on-Thames Parish Council) v. South Oxfordshire District Council* [2018] EWCA Civ 860.

[6] *Hoare v. Vale of White Horse DC* [2017] EWHC 1711 (Admin).

[7] *Carrownagowan Concern Group v. An Bord Pleanála* [2024] IEHC 300, 549 and [2025] IESCDET 9.

[8] *Friends of the Irish Environment CLG v. Minister for Housing, Local Government and Heritage* [2024] IEHC 588.

[9] *Doyle v. An Bord Pleanála* [2025] IEHC 158.

[10] *Ryanair DAC v. An Bord Pleanála* [2025] IEHC 194.

[11] *Massey v. An Bord Pleanála* [2025] IEHC 206.

[12] *Concerned Residents of Coolkill Sandyford Downs and Lamb's Brook v. An Bord Pleanála* [2025] IEHC 265.

[13] *Doyle v. An Bord Pleanála* [2025] IEHC 158, § 45(i).

particularly in a context where the evidence to that effect was unchallenged. That is compatible with:

(i) European jurisprudence (Judgment of 7 November 2013, *Gemeinde Altrip and Others v Land Rheinland-Pfalz*, C-72/12, ECLI:EU:C:2013:712);

(ii) domestic jurisprudence (e.g., *Sliabh Luachra Against Ballydesmond Windfarm Committee v. An Bord Pleanála* [2019] IEHC 888, [2019] 12 JIC 2017 (Unreported, High Court, McDonald J., 20th December 2019); *Reid v. An Bord Pleanála (No. 2)* [2021] IEHC 362, [2021] 10 JIC 0606 (Unreported, High Court, 6th October 2021) at §53; *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2022] IEHC 700, [2022] 12 JIC 1609 (Unreported, High Court, 16th December 2022) at §80; *Toole v. Minister for Housing (No. 6)* [2023] IEHC 592, [2023] 10 JIC 3102 (Unreported, High Court, 31st October 2023) at §39; *Heather Hill Management Company CLG v. An Bord Pleanála* [2022] IEHC 146, [2022] 3 JIC 1603 (Unreported, High Court, Holland J., 16th March 2022) at §257 et seq. and §326(d) and (e)); and

(iii) British jurisprudence (*R. (Champion) v. North Norfolk District Council* [2015] UKSC 52, [2015] 1 W.L.R. 3710 (Lord Carnwath) at §§54-59; *R. (Hudson) v. Windsor and Maidenhead Royal Borough Council* [2021] EWCA Civ 592, [2021] 1 W.L.R. 5588 (Coulson L.J.) at §§77-78)." [14]

2.20 Against this background, we recommend that the language in paragraph (5)(b) should be changed to prohibit a court from granting relief where the error was harmless and did not materially affect the result.

3. **Head 9 – Jurisdiction**

3.1 It is noted that Head 9 will apply to judicial review proceedings under Part 9 of the 2024 Act.

3.2 Having regard to the reforms made by the Planning and Environment List of the High Court, it would be premature to change the jurisdiction for judicial review of planning decisions and other consents to the Circuit Court. We doubt there would be any saving in cost or time, but there would be material loss of the special expertise now concentrated in the judges of the Planning and Environment List.

4. **Head 10 – Application for Leave to Apply**

4.1 It is noted that Head 10 does *not apply* to judicial review proceedings under Part 9 of the 2024 Act. It will apply to proceedings to question the validity of many other development consents.

[14] *Carrownagowan Concern Group v. An Bord Pleanála* [2024] IEHC 549, § 52.

4.2 The 2024 Act abolished the "leave stage" in challenges to planning permissions. That was a pragmatic response to settled practice, whereby leave was almost always granted and the default order made clear that this was done "without prejudice to any point that the opposing parties could have made". See Schedule 1 to Practice Direction HC 126. Put simply, the onus was on the responding parties to decide whether to apply to set aside the grant of leave. The 2024 Act respects that process in a different way, as section 283 allows the responding parties to apply to strike out judicial review proceedings.

4.3 This makes it easier for the court to accelerate the case management of the substantive proceedings, and – by default – spares all parties from the cost and delay from multiple contested applications, and related appeals.

4.4 There is much force to suggest that the leave stage is redundant in challenges to planning and environmental decisions, where so few applications are refused leave.

4.5 More generally, having regard to the recent reforms under the 2024 Act, there is much force to suggest that the same – as improved by Head 8 – should apply to all judicial review proceedings that question the validity of any development consent.

4.6 There currently exists subtle, but important, differences between the procedures for legal challenge to decisions of An Coimisiún Pleanála, the Environmental Protection Agency, the Maritime Area Regulatory Authority, the Commission for Regulation of Utilities and other bodies that make decisions relevant to the delivery of important infrastructure nationwide.

4.7 This Bill presents an opportunity to remove unnecessary differences between those procedures, and ensure the reforms delivered under the 2024 Act apply more widely.

4.8 With respect to paragraph (7)(c), it is welcome that legal certainty is respected with an outer limit to the possibility for extension of time to the limitation period for legal challenge. There is no equivalent in section 281(3) of the 2024 Act. We would welcome that same legal certainty for planning decisions also.

5. **Head 11 – Court's Consideration of Application for Leave to Apply**

5.1 Without prejudice to the foregoing, where the leave application is retained, we welcome the requirement for the court to be satisfied that the claim has a reasonable prospect of success.

5.2 Having regard to the reforms at Head 8, it may be clear – at leave stage – that the applicant has suffered no harm or prejudice, or that the granting of the remedy will not provide a significant benefit. The court should not grant leave unless there are arguable grounds for contending that Head 8 will – if the applicant is successful – be satisfied. With respect to paragraph (1)(b)(i), it would help to elaborate that the court's consideration of whether the decision "ought to be quashed" must consider Head 8.

6. **Head 12 – Appeal**

6.1 Under section 287(1) of the 2024 Act, there is no appeal from the High Court to the Court of Appeal. The same would make sense for challenges to the Environmental Protection Agency, the Maritime Area Regulatory Authority, the Commission for Regulation of Utilities and other bodies that make decisions relevant to the delivery of important infrastructure nationwide.

End