Submission to the Joint Committee on Justice, Home Affairs and Migration: General Scheme of the Civil Reform Bill 2025

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Introduction

1. I would like to thank the Committee for its invitation to make a written submission on the General Scheme of the Civil Reform Bill 2025.

2. I am an assistant professor in law at Maynooth University School of Law and Criminology where I research and teach in the areas of environmental, climate change and human rights law. I have a particular interest in environmental human rights and climate litigation, having completed my PhD and published widely in these fields.

3. This brief written submission sets out my concerns about how the proposed reforms in the General Scheme of the Civil Reform Bill 2025, both by itself *and* taken together with reforms to environmental judicial review in Part 9 of the Planning and Development Act 2024, undermine the right of access to justice in environmental matters. I hope that my observations will be of assistance to the Committee in its deliberations.

General remarks

4. The government is under increasing pressure to deliver housing and strategic infrastructure. Against this sensitive political backdrop, environmental judicial reviews have increasingly been blamed for delaying new housing developments and key public infrastructure projects. For example, in the *Accelerating Infrastructure Report and Action Plan* published in December 2025, the Minister for Public Expenditure noted in his foreword:

> ‘What is particularly worrying is that the number of judicial review cases is also rapidly growing. 2024 saw a 43 percent increase compared to 2023, and already 2025 has seen a further 30… This is unsustainable. Absent reform, an ever-increasing tide of judicial reviews could drown our courts system, paralyse infrastructure development and prevent the effective administration of justice. This can be tackled by addressing the incentives, unique to the Irish legal system, that drive an excess reliance on the courts to adjudicate on planning or regulatory matters. It can also be addressed by ensuring that the remedies applied by the courts are fit for purpose and balance the rights of the applicant appropriately against the common good’.[1]

[1] Government of Ireland, *Accelerating Infrastructure Report and Action Plan* (Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 2025).

5. Doubt has been raised by lawyers[2], academics[3] and civil society[4] about whether environmental judicial reviews are in fact the source of such delays. For example, the Law Society recently noted that the *Accelerating Infrastructure Report and Action Plan:*

> 'does not provide an evidential basis for asserting that judicial review is a significant hindrance to the development of housing and critical infrastructure.
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> Data reviewed by the Law Society indicates that there were 191 new Planning and Environment list cases in 2025, down 41 compared to 2024 (a reduction of 19 percent). Of these judicial reviews, 69 were taken by developers/landowners (up 10 percent compared to 2024) while the public or environmental non-governmental organisations took 86 judicial reviews (down 43 percent compared to 2024). *The narrative that judicial reviews are "rapidly growing" appears to be directly contradicted by the numbers.* (emphasis added)[5]

6. Given the radical and sweeping nature of the reforms to judicial review proposed by the General Scheme of the Civil Reform Bill 2025, it is concerning these proposals appear to be underpinned by a flawed and/or irrelevant evidence base. In 2019, in response to the General Scheme of the Housing and Planning Development Bill 2019, an earlier attempt to restrict access to justice in environmental and planning matters, Professor Áine Ryall recommended that:

> 'the Government should commission research to identify the particular stage(s) at which any significant delays are arising in the course of the planning process and the reason(s) behind any such delays. This basic information is essential to underpin robust, evidence-based policymaking and to facilitate targeted intervention to address specific, verified deficiencies in the planning system'.[6]

7. Regrettably, empirically grounded and Aarhus Convention informed-research does not seem to have been completed in the intervening years. In addition to the need for research to identify bottlenecks in the planning system to develop effective and proportionate reform proposals, reform proposals also need to be carefully assessed for compliance with the exacting standards on access to justice in environmental matters required by international, European and constitutional law.

8. Given that environmental pollution in Ireland disproportionately affects vulnerable and marginalised communities[7], it is also important to consider how further restrictions on

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[2] Bar of Ireland, *Submission to the Public Consultation on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024 (Scale of Fees)* (January 2026) 11-16.
[3] Alison Hough, Report on the Implementation of the Aarhus Convention in Ireland (2023) at 31; Orla Kelleher, 'Beware of the judicial review red herring' (Irish Legal News, 11 November 2025); Andrew Jackson, 'On Environmental Democracy and the Collisons' "Abundance-Verse"' (UCD Environmental Law and Justice blog, 23 November 2025).
[4] Attracta Uí Bhroin, 'Judicial reviews serve the common good' (The Irish Examiner, 13 November).
[5] Law Society, Response to Consultation on the regulation of costs payable in matters prescribed on foot of section 294 of the Planning and Development Act 2024 (Scale of Fees) (January 2026) 3.
[6] Áine Ryall, 'Careful What you Wish For: Amending the Rules Governing Judicial Review in Planning Matters' (2019) 4 IPELJ 151 at 165.
[7] Sadhbh O'Neill et al, *Environmental Justice in Ireland: Key dimensions of environmental and climate injustice experienced by vulnerable and marginalised communities* (DCU and CLM, 2022).

access to environmental justice may exacerbate these already unevenly experienced environmental harms.

9. It is my respectful submission that the General Scheme of the Civil Reform Bill 2025, both by itself *and* taken together with Part 9 of the Planning and Development Act 2024, fail to take adequate account of the State's obligations under the Aarhus Convention[8] and related EU law instruments.

10. There are two major problems with the failure to assess *in advance* whether the overhaul of judicial review is in line with the minimum standards on access to environmental justice.

11. First, the reforms are likely to create further legal uncertainty and will generate complex satellite litigation. In other words, these reforms will likely backfire causing *more* delays within the planning system. It follows that the proposed overhaul to environmental judicial reviews is unlikely to achieve its stated aim of speeding up the completion of housing and infrastructure or dramatically reduce the costs.

12. Second, the Minister has not explained how the significant regression from the current position on access to justice is a proportionate response to perceived delays in the planning system. Nor has the Minister explained how pursuing these reforms can still be said to respect Ireland's international law and EU law obligations in relation to the Aarhus Convention. There is no detailed assessment of the compatibility of the General Scheme of the Civil Reform Bill 2025 with the Aarhus Convention and EU law, as part of an explanatory memorandum. This opaque approach to law reform jars with the wider purposes of the Convention, which is designed to further 'accountability and *transparency* in decision-making and to strengthen public support for decisions on the environment' (emphasis added).[9] **To demonstrate the Government is fully committed to ensuring that any judicial review reforms are compliant with the Aarhus Convention, the Minister should seek urgent advice from the Aarhus Convention Compliance Committee about the compatibility of the Bill with the Aarhus Convention *before* Part 3 (Head 8-13) process further.** This would allow the Government to tease out compliance issues in advance of costly legal challenges to the Bill and foster greater public buy-in from civil society to any such reforms.

13. In the following paragraphs, I will address some of my concerns about the compatibility of the General Scheme of the Civil Reform Bill 2025 with the Aarhus Convention and EU law. I will briefly highlight some of the requirements of the Aarhus Convention and related EU law instruments before illustrating how the Part 3 of the General Scheme of the Civil Reform Bill 2025 on judicial review falls short of these requirements. This is not an exhaustive analysis. As noted above, it is strongly recommended that advice be sought from the Aarhus Convention Compliance Committee to ensure that the Government does not fall foul of its international law obligations.

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[8] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters", adopted 25 June 1998 in Aarhus, Denmark, and entered into force 30 October 2001 (The Aarhus Convention).

[9] Recital 10 of the Preamble to the Aarhus Convention.

The Compatibility of the General Scheme of the Civil Reform Bill 2025 with the Aarhus Convention and related EU law instruments

14. The Aarhus Convention guarantees three related procedural rights: the right to access environmental information, the right to participate in environmental decision-making, and the right of access to justice in environmental matters. Article 1 of the Convention states that the objective of guaranteeing these three procedural environmental rights is 'to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'. As an international human rights treaty, the Aarhus Convention must be interpreted 'in *good faith*, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose' (emphasis added).[10] One of the most important purposes of the Convention for present purposes is its concern that 'effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced'.[11]

15. The most relevant provisions of the Aarhus Convention for the purposes of the General Scheme of the Civil Reform Bill 2025 are Articles 3(5) and 3(6) which establish that the Convention is a 'floor not a ceiling' for the protection of environmental procedural rights and Article 9 on access to justice. Articles 3(5) and 3(6), taken together with Article 1, can be understood as a form of 'anti-backsliding' or 'anti-deterioration' clause that prevent State Parties regressing on their Aarhus Convention obligations.[12]

16. Articles 9(1) and 9(2) provide for a right of access to justice where information rights and participation rights under the Convention are engaged. Article 9(3) provides for a general right of access to justice for members of the public to 'challenge acts or omissions by private persons and public authorities which contravene provisions of its national law relating to the environment'. Article 9(4) establishes some overarching requirements in relation to access to justice including that 'review procedures must provide equate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive'.

17. Ireland signed the Aarhus Convention in June 1998 and ratified it in June 2012. However, the Oireachtas has not fully incorporated the Aarhus Convention into Irish domestic law.[13] This is not to say that the Aarhus Convention has not had a significant effect on domestic environmental law. The Aarhus Convention has had its most notable impact on Irish domestic law through the mechanism of the EU law.[14] The EU ratified the Convention in 2005. The CJEU has confirmed that the Convention forms 'an integral part' of the EU legal order.[15] The EU has adopted several legislative measures to implement Articles 9(2) and 9(4) Convention within the Member States.[16] Until now,

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[10] Article 31(1) of the Vienna Convention on the Law of Treaties 1155 UNTS 331
[11] Recital 18 of the Preamble to the Aarhus Convention.
[12] UNECE, *The Aarhus Convention: An Implementation Guide* (2nd edn, United Nations 2014) at 68.
[13] Áine Ryall, 'The Relationship between Irish Law and International Environmental Law: A Study of the Aarhus Convention' (2018) 41(2) *DULJ* 163 at 172.
[14] ibid at 178.
[15] Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* EU:C:2011:125 at [30].
[16] See Directive 2003/4/EC on public access to environmental information and Directive 2003/35/EC (The Public Participation Directive) which amended several existing regimes including the Environmental Impact Assessment Directive and Integrated Pollution Prevention Control/Industrial Emissions Directive to insert public participation and access to justice provisions.

the key provisions transposing these EU legislative measures were sections 50, 50A and 50B of the Planning and Development Act 2000 (as amended).[17] The Environment (Miscellaneous) Provisions Act 2011 aligned certain aspects of Irish law with the Articles 9(3) and 9(4) access to justice provisions. Although the EU has not taken legislative measures to give effect to Article 9(3), the Court of Justice of the European Union (CJEU) has still championed Article 9(3) by reading it in conjunction with Article 47 of the Charter (right to an effective remedy).[18] In *Case C-470/16 NEPPC*, the CJEU reminds Member States that although Article 9(3) and 9(4) do not have direct effect 'it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with them'. In *Case C-873/19 Deutsche Umwelthilfe eV*, for example, the CJEU noted that Member States retain some discretion in adopting standing rules under Article 9(3). However, they are not allowed to impose criteria so strict that it would make it effectively impossible for environmental associations to challenge the acts or omissions that are the subject of Article 9(3) nor can Member States reduce the material scope of Article 9(3).

18. In relation to the ban on prohibitively expensive costs, the leading EU case is *Case C-260/11 R (Edwards) v Environment Agency.* Here, the CJEU confirmed that a member of the public concerned should not be prevented from seeking a review by the courts 'by reason of the financial burden that might arise as a result'.[19] It clarified that in assessing whether an adverse costs order would be prohibitively expensive, a national court cannot act solely on the basis of that claimant's financial situation but must also carry out an objective analysis of the amount of the costs. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime. [20]

19. In addition to CJEU rulings, there is also important guidance from the Aarhus Convention Compliance Committee (ACCC), a quasi-judicial body tasked with overseeing the implementation of the Convention. The ACCC considered the issue of backsliding on Aarhus Convention obligations in ACCC/C/2004/4 (Hungary).[21] Here an NGO alleged that the introduction of legislation to accelerate the permitting procedure for construction of expressways was incompatible with the public participation and access to justice provisions of the Convention. Although the ACCC found that the legislation did not fall below the minimum standards set by the Convention, the Committee did note 'with some concern' that the legislation 'substantially reduces the level and quality of public participation in decision-making of this category in comparison with previous Hungarian legislation'.[22] The Committee noted that the Convention 'does not completely exclude a possibility of reducing existing rights as long as they did not fall below the level granted by the Convention'. At the same time,

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[17] These are largely replaced by Part 9 of the Planning and Development Act 2024.

[18] See: Case C-240/09 *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky* EU:C:2011:125; Case C—664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd* EU:C:2017:987; Case C-873/19 *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland* EU:C:2022:857.

[19] Case C-260/11 *R (Edwards) v Environment Agency* at [35].

[20] Ibid at [46].

[21] ACCC, Communication ACCC/C/2004/4 (Hungary).

[22] Ibid at [17].

the reducing of rights is not generally perceived to be in line with the *objective* of the Convention (i.e., advancing the substantive right to an environment adequate to one's health and wellbeing).[23] The Committee also pointed to the possibility of taking into account international environmental and human rights law when determining issues of non-compliance.

20. Another helpful (albeit non-binding) source of guidance on the interpretation of the Aarhus Convention is the UNECE's *Aarhus Convention Implementation Guide*. In relation to the overarching requirements in relation to access to justice in Article 9(4), it notes that 'adequate and effective remedies… requires the relief to ensure the intended effect of the review procedure [and] that they should be capable of real and efficient enforcement'.[24] The requirement that these procedures are 'fair, equitable [and] timely' requires amongst other things that procedures 'avoid the application of the law in an unnecessarily harsh and technical manner'.[25]

21. In its *2025 Environmental Implementation Report Country* Report for Ireland, the European Commission found that 'Ireland still needs to improve its system for access to justice in environmental matters'.[26] It states that the access to environmental justice 'regime is again in flux, as Ireland is in the process of implementing its new Planning and Development Act. There has been *considerable criticism of some of the provisions of this new law*, particularly regarding the continued lack of clarity regarding rules on costs, and *new concerns regarding additional hurdles being added to environmental claimants attempts to gain locus standi'* (emphasis added).[27] One of the 2025 priority actions identified by the Commission is to '*improve access to courts in national environmental cases* by the public concerned and eliminate practical barriers, such as length of proceedings and excessive costs' (emphasis added).[28]

22. This brief survey of CJEU case law, ACCC findings, guidance from the UNECE Aarhus Convention Implementation Guide and the 2025 Environment Implementation Report set down important markers against which the reforms proposed in Part 3 of the General Scheme of the Civil Reform Bill 2025 can be assessed.

Concerns with partially exempted environmental judicial reviews

23. Certain environmental judicial reviews (i.e., those covered by the Planning and Development Act 2024) are partially excluded from the General Scheme of the Civil Reform Bill 2025. However, other forms of environmental judicial reviews, such as climate litigation under the Climate Action and Low Carbon Development Act 2015 (as amended), appear to be subject to its full impact.

24. Head 13(1) of the General Scheme of the Civil Reform Bill 2025 disapplies heads 10, 11, 12 on leave applications and appeal options to planning judicial reviews under the Planning and Development Act 2024. However, certain provisions of head 8 still apply to planning judicial reviews. For the purposes of a planning judicial review, head 8(5)(a)

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[23] Ibid at [18].
[24] UNECE, *The Aarhus Convention: An Implementation Guide* (2nd edn, United Nations 2014) at 200.
[25] Ibid at 201.
[26] European Commission, *2025 Environmental Implementation Review Country Report – Ireland* SWD(2025) 313 final (7 July 2025) at 3.
[27] Ibid at 52.
[28] Ibid at 53.

provides ‘in exercising its discretion to grant a remedy on foot of a judicial review application, a court shall not grant such a remedy unless it is satisfied that (i) the respondent has acted unlawfully… (iii) any error of law, or procedural error, was *material* to the decision, (iv) the interests of justice, taking into account the interests of the applicant and the public interest, require such a remedy to be granted’. Head 8(5)(b) states that ‘in considering whether an error of law or procedure was *material* to the decision, the Court shall take into account whether, in the absence of such an error, a different decision would have been made, which would have placed the applicant in a materially better position’. No definition is provided for what constitutes a ‘materially better position’.

25. It is well known that the primary mechanism for enforcing environmental laws in Ireland is through judicial reviews. As was famously stated by the former Advocate General Sharpston, in the *Trianel* case ‘the fish cannot go to court’.[29] The privileged status of NGOs under the Aarhus Convention flows from a recognition that environmental law is often enforced by concerned members of the public who are acting in *the public interest.* Such individuals or NGOs may have no personal stake in the matter. For this reason, it is likely to be very difficult, if not impossible, for an applicant to prove that in the absence of the error of law or had a different decision been made the applicant themselves would be in a *materially better position*. This requirement is antithetical to environmental litigation in the public interest. For example, if a judicial review challenge raised concerns about the impact of a development on a Special Area of Conservation under the Habitats Directive, these prime wildlife conservation areas are usually in sparsely populated areas in the countryside. As a result, there are unlikely to be many prospective applicants who could show that they would be in a *materially better position* if the relevant decisionmaker had not erred in law or arrived at a different decision. The ‘materially better position’ requirement is likely to create an excessive burden and significantly restrict access to justice for individuals and NGOs, contrary to Article 9 of the Aarhus Convention.

26. From the point of view of nature conservation, the timing of the Government’s attempt to restrict access to justice in environmental matters could also hardly be worse. In December 2025, the National Parks and Wildlife Service published its *Status of EU Protected Habitats and Species in Ireland 2025.* It found that 90% of Ireland's EU-protected habitats are in ‘unfavourable’ conservation status, with 51% showing ongoing deteriorating trends.

27. Implementation *and enforcement* of EU nature laws are vital to protecting our natural heritage and life sustaining eco-systems. Our environmental governance system is highly reliant on private enforcement of environmental laws. If it becomes impossible for members of the public to raise concerns in court about how a new development could have a significant effect or adversely affect the integrity of an EU-protected site, these declining biodiversity trends are unlikely to be reversed.

Concerns for environmental judicial reviews that come within the scope of the Civil Reform Bill 2025

28. Some forms of environmental judicial review, like climate litigation under the Climate Action and Low Carbon Development Act 2015 (as amended) (Climate Act) would

[29] *Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg* [2011].

appear to be subject to the full force of Part 3 of the Civil Reform Bill 2025. For an applicant to succeed in an environmental judicial review in this context, they would need to satisfy *all* the relevant requirements in Heads 8-12 of the Bill. Taking the example of Head 8(5)(a) (which would apply fully here) a court adjudicating on a judicial review under the Climate Act would be prohibited from ('shall not') granting the remedy of judicial review unless it is satisfied that:

(i) the respondent has acted unlawfully,
(ii) the applicant has suffered harm or prejudice,
(iii) any error of law, or procedural error, was material to the decision,
(iv) the interests of justice, taking into account the interests of the applicant and the public interest, require such a remedy to be granted, and
(v) the granting of the remedy provides a significant benefit to the applicant.

(b) In considering whether an error of law or procedure was material to the decision, the Court shall consider whether, in the absence of such an error, a different decision would have been made, which would have placed the applicant in a materially better position.

Additionally, head 8(7) states that 'notwithstanding any other provision in any enactment, costs may only be awarded to an applicant where the final decision of the court provides a significant benefit to the applicant'.

29. It has already been outlined above why head 8(5)(a)(iii) and 8(5)(b) could effectively operate to bar individuals and NGOs from taking an environmental judicial review in the public interest. For environmental judicial reviews that are not partially excluded from the Civil Reform Bill like climate litigation, the impacts are even more regressive. An applicant would also need to prove that they have suffered harm or prejudice (head 8(5)(ii) and that granting the remedy provides a significant benefit for the applicant (head 8(5)(v)). The suffering harm or prejudice requirement would be exceptionally difficult to prove in a climate case due to the diffuse, uneven, and intergenerational impacts of climate harms. Some climate victims may not even be born yet. If the 'suffering harm or prejudice' requirement were to be applied strictly, and it were necessary to wait for climate harms to materialise, this would likely deprive an applicant of their right to an effective remedy. Interestingly, it was on a very similar basis that the European Court of Human Rights found a violation of Article 6(1) of the ECHR in *KlimaSeniorinnen v Switzerland*.[30] The significant benefit of the remedy requirement is also likely to be challenging to prove given the benefit of the Government or Minister adhering to their obligations under the Climate Act is likely to accrue to the public at large. It is in the public interest for Ministers and government to comply with their statutory climate obligations. If this requirement were to apply strictly, there is a risk that no applicant in climate litigation could overcome this hurdle.

30. The costs provision in head 8(7) is also likely to fall foul of the ban on prohibitively expensive costs in environmental litigation. It is a particularly worrying reform proposal given the importance of what is at stake. According to the EPA's Emissions Projections 2024-2055, Ireland is projected to exceed its first two carbon budgets 2021-2025 and

[30] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

2026-2030 by a 'significant margin'.[31] The Government has delayed the publication of its 2026 Climate Action Plan which is urgently required to close the emissions gap.[32] Reform proposals to judicial review that could limit judicial scrutiny and oversight of government's action under the Climate Act at this critical juncture should raise alarm.

Conclusion

31. In conclusion, there are serious concerns about the compatibility of Part 3 of the Civil Reform Bill 2025 with the State's obligations under the Aarhus Convention and related EU law. It is imperative that these issues are addressed before the Bill advances. Against the backdrop of worsening climate, environmental and pollution crises, seriously curtailing environmental judicial review, one of the most important accountability tools the public has to uphold the rule of law, can be seen as nothing less than a retrograde step.

12 February 2026

[31] EPA, *Ireland's GHG Emissions Projections 2024-2055* (May 2025)

[32] Caroline O'Doherty, 'Climate action plan delayed for second year despite emissions cuts falling behind target' (The Irish Times, 16 January 2026)