our infrastructure ambition

For the Civil Reform Bill 2025

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Introduction

Ibec strongly supports proposed reforms to modernise judicial review, limit misuse of legal challenges, and ensure a better balance between individual rights and the common good. Our response to the General Scheme of the Civil Reform Bill focuses on the Judicial Review provisions, which reflects our submission to the Review of the Administration of Civil Justice, our interaction during the development and enactment of the Planning and Development Act 2024, and our continued engagement with Government and through the work of the Accelerating Infrastructure Taskforce on our infrastructure ambition for a competitive, productive and resilient economy.

To meet urgent housing, economic, and climate targets, Ireland needs infrastructure-led development backed by a planning, licensing and permitting system that is responsive, resourced, consistent, and certain. Government's Accelerating Infrastructure Report & Action Plan highlights the barriers to infrastructure delivery in Ireland right now. Ineffective infrastructure delivery creates the conditions for long-term competitiveness losses, seriously compounding our current capacity constraints and infrastructural bottlenecks that are holding the economy back. It also has a negative impact on environmental, social and public health outcomes.

It is critical that Government fully and urgently implements the recommended reforms of this Action Plan, specifically the measures to address issues in relation to judicial reviews. The Action Plan highlights, that while judicial review is essential for lawful decision-making, a 43% surge in cases during 2024 has created an imbalance that fosters risk aversion, delays delivery, and increases taxpayer costs.

Significant reform of the Judicial Review (JR) process is identified as a vital step to reconstitute this legal instrument away from causing significant delays and moving to a more balanced approach. Proposed measures include introducing proportionate cost caps to deter frivolous claims and requiring applicants to exhaust all alternative remedies before seeking judicial intervention, as recommended by the Report of the Review of the Administration of Civil Justice (the Kelly Report). Early reform initiatives already adopted include Section 283 of the Planning and Development Act 2024, which empowers the High Court to strike out Part 9 judicial review proceedings based on several specific statutory grounds. For example, it ensures that the courts remain a last resort by allowing cases to be dismissed if an applicant bypassed other legally available administrative appeal procedures instead of attempting to resolve the dispute through those channels first.

While the Planning and Development Act 2024 has recently overhauled the role of Judicial Reviews in the planning system, much-needed reforms must now focus on the wider ecosystem of other regulatory consents. It is important to clearly distinguish that a Judicial Review is to test the legality of a decision, not to re-litigate the merits of a project. Judicial Reviews have increasingly been treated as a final appeal stage for planning consents, which is not their purpose.

In the spirit of fair and equitable access to justice, attending court should remain a last resort. Crucially, while planning JRs have been on a statutory footing for some time, the Civil Reform Bill 2025 proposes to place the Judicial Review process for non-planning regulatory consents (such as those from the EPA, MARA, and CRU) on a statutory footing for the first time. This introduces stricter criteria to reduce "technical" challenges to decisions relating to much-needed infrastructure in the public interest (e.g. planning, infrastructure projects). It will introduce a public interest test, where a remedy will only be granted if the court is satisfied that it is required in the interests of justice, balancing the applicant's rights against the public interest. The Bill also seeks to codify the requirement that an applicant must be "directly affected" by the act in question to have standing. The threshold for obtaining "leave" (permission) to bring a case will be formally set at having "substantial grounds," preventing weak cases from entering the system. These specific provisions are for non-planning licensing and permitting processes and do not apply to judicial review proceedings under Part 9 of the Planning and Development Act 2024.

If reforms are not fully implemented, the consequences will extend out into legal inefficiency, deepening the housing crisis, inflating project costs, undermining Ireland’s competitiveness, and delaying the benefits that climate resilient infrastructure would bring to impacted communities.

The proposed framework: codifying Judicial Review

The Civil Reform Bill represents a significant signal of intent to overhaul the judicial review landscape. By placing the process on a comprehensive statutory footing for the first time as set out in **Head 8**, the Bill moves judicial review away from common law and provides the legislative certainty required for major infrastructure projects. The framework establishes that a remedy may *only* be granted if strict cumulative conditions are met:

> **Statutory Codification:** The Bill aims to codify the principles of JR, explicitly defining available remedies under **Head 8(9)** and moving away from old common law terminology. Specifically, the traditional orders of Certiorari, Mandamus, and Prohibition will be abolished and replaced with quashing, mandatory, and prohibiting orders, respectively. Importantly, these codified remedies also include injunctions restraining a public body from carrying out a decision pending determination. Applying the Bill's strict new statutory thresholds—such as the mandatory public interest test—to these project-halting injunctions will be critical for avoiding unnecessary delays to vital infrastructure.

> **Strict Conditions for Remedy:** Under the proposed framework, a court can only grant a remedy if:
  - The respondent acted unlawfully as set out in **Head 8(5)(a)(i)**.
  - The applicant suffered actual "harm or prejudice" as set out in **Head 8(5)(a)(ii)**.
  - There was a "material error" of law or procedure (technical breaches are insufficient) as set out in **Head 8(5)(a)(iii)**.
  - The "interests of justice" require the remedy, balancing the applicant's rights against the public interest as set out in **Head 8(5)(a)(iv)**.
  - The remedy provides a "significant benefit" to the applicant as set out in **Head 8(5)(a)(v)**.

> **Standing and Access:** The threshold for standing is tightened to persons "directly affected" with a "sufficient interest" as set out in **Head 10(2)(b)**. Furthermore, time limits are shortened to eight weeks as set out in **Head 10(2)(d)**, with a "hard cap" of 16 weeks for extensions as set out in **Head 10(7)(c)**, ensuring that challenges are brought swiftly.

Crucially, the legislation has an interesting interface with the *Planning and Development Act 2024*. Planning judicial reviews under Part 9 of the Planning and Development Act 2024 are "expressly excluded" from certain provisions of this Bill as set out in **Head 13(1)** to allow the specific statutory regime for planning to take precedence. This careful calibration ensures that the *Civil Reform Bill* supports, rather than conflicts with, the specialised planning regime already enacted to accelerate delivery.

Reforming ordinary Judicial Review for infrastructure licensing and consents

While the Planning and Development Act 2024 provides a robust framework for the "planning" consents required for housing and infrastructure, it is vital to recognise that the delivery of major projects relies on a wider ecosystem of licenses and approvals. Critical infrastructure delivery frequently depends on "non-planning" decisions made by bodies such as the Environmental Protection Agency (EPA), the Maritime Area Regulatory Authority (MARA), and the Commission for Regulation of Utilities (CRU).

Ibec strongly welcomes the fact that the General Scheme of the Civil Reform Bill 2025 extends its reform ambition beyond the planning code to overhaul "ordinary" Judicial Reviews. By codifying the process for these sectors, the Bill ensures that the "secondary" consents required for industrial emissions, waste management, and offshore energy are not left vulnerable to the uncertainties of the old common law regime.

The Civil Reform Bill introduces a new, rigorous statutory footing for ordinary judicial reviews that mirrors the efficiency and certainty targeted in the planning system. Key measures for non-planning infrastructure consents include:

- **Elevated Thresholds for Leave:** The Bill raises the bar for obtaining "leave" (permission) to bring a case. Under **Head 11**, the test moves from the lower "arguable case" standard to a stricter requirement for "substantial grounds" or "arguable grounds" with reasonable prospects for success. The applicant must demonstrate that the remedy would provide them with a significant benefit, ensuring the court's time is reserved for cases of genuine substance rather than technical exploration.

- **Stricter Standing Requirements:** To prevent remote or academic challenges, **Head 11** codifies that an applicant must be "directly affected" by the decision and possess a "sufficient interest" in the matter. This ensures that only those with a tangible connection to the decision can impede critical processes.

- **Mandatory Public Interest Testing:** A transformative provision of the Bill is the express requirement under **Head 8** for the court to take the "public interest" into account. A remedy will only be granted where it is required in the interests of justice, placing a legal obligation on the court to balance the applicant's specific rights against the wider

societal and economic benefits of the infrastructure in question.

- **Defined Time Limits:** To eliminate open-ended uncertainty, **Head 10** imposes a standardized 8-week limit to bring a case. Crucially, it introduces a "sunset clause" on extensions of time, capping them at a hard maximum of 16 weeks, removing the previous discretion that allowed challenges to emerge months or years post-decision.

- **Materiality of Errors:** The Bill introduces a strict "materiality test" for legal or procedural errors as set out in **Head 8**. A decision will not be quashed unless the Court determines that, in the absence of the error, a different decision would have been reached that would have placed the applicant in a materially better position.

- **Jurisdiction and Appeals:** To enhance efficiency and reduce costs, **Head 9** confers concurrent jurisdiction on the Circuit Court for specific categories of judicial review, including decisions by public bodies listed in **Schedule 2** like planning authorities. Coupled with the increased monetary limits for the Circuit Court under **Head 30**, this structural shift will divert routine challenges away from the High Court, freeing up crucial resources for more substantive matters such as large-scale infrastructure projects. Furthermore, the Bill curtails the ability to prolong litigation by making lower court determinations final. Appeals to the Court of Appeal will strictly require the lower court to certify a point of law of exceptional public importance that serves the public interest. Combined with the introduction of "leave on notice," this streamlined approach will severely limit the ability to delay essential infrastructure delivery through drawn-out litigation.

These reforms are essential to closing the "back door" on infrastructure delays. By aligning as far as possible the judicial review standards for licensing and consents bodies like the EPA and MARA with the new planning laws due to a few differences between the two regimes, Government ensures a consistent, predictable delivery environment for the entirety of a project's lifecycle.

It should also be noted that in terms of the requirements to show that the applicant suffered “actual harm or prejudice” or that the granting of the remedy sought provides a “significant benefit” to the applicant, it is not necessary for companies or incorporated undertakings as per the definition of section 286(2) of the Planning and Development Act, 2024 (i.e. environmental NGOs) to meet these tests relating to benefit or harm.

The Civil Reform Bill as an action under the Accelerating Infrastructure Report & Action Plan

The *General Scheme of the Civil Reform Bill 2025* serves as the primary legislative vehicle to deliver **Action 7: Enact Civil Reform Bill to Legislate for Judicial Reviews** of the *Accelerating Infrastructure Report & Action Plan*. This legislation represents a fundamental shift in approach to Judicial Review procedures, moving the process from the realm of common law to a clear statutory basis for the first time.

By placing these procedures on a statutory footing, the Bill allows the State to explicitly determine the scope and application of Judicial Reviews. This shift is essential to "rebalance rights" toward the common good, ensuring that the legal system supports, rather than hinders, the timely delivery of national projects. It is also anticipated to reduce uncertainty in infrastructure development by allowing Government to explicitly define when and how Judicial Reviews can be used.

The twin pillars of Judicial Review reform

The proposed legislation on its own will not tackle all the issues with project delays to housing and infrastructure caused through Judicial Reviews and the wider planning system. It is part of a wider package of reform designed to enhance efficiency and reduce the volume of reviews such as the proposed introduction of a **Scale of Fees for environmental Judicial Reviews.**

Ibec's recent submission on the Scale of Fees states that a regulated scale is necessary to bring certainty to legal costs, cap the State's liability, and address the issue of "mismatched incentives" where applicants currently face minimal financial risk for delaying strategic infrastructure. The new scale of fees for environmental planning challenges is necessary to bring predictability to legal costs while maintaining compliance with the State's obligations under the Aarhus Convention.

The Civil Reform Bill and the proposed Scale of Fees must be viewed as twin pillars of a single reform agenda: one addressing the procedural mechanisms of the court, and the other addressing the financial incentives that drive litigation. Both have been prioritised for immediate implementation in the *Accelerating Infrastructure Report and Action Plan*. However, the scale of fees will only apply to Judicial Reviews covered by section 294 of the Planning and Development Act, 2024. It does not appear to be a similar fee scale for non-planning judicial reviews.

It is understood that the proposed scale of fees for environmental Judicial Reviews under section is intended to serve as a foundational model for broader civil litigation reform. Following recommendations in the Kelly Report and the Indecon analysis (commissioned by the Department of Justice) on models for controlling overall litigation, the Minister for Justice explicitly stated that the Department is developing these initial environmental scales with the formal policy goal that "*the outcome of that project can then be extended to other areas of litigation*" (response to a Parliamentary Question, 9th December 2025).

Furthermore, while the reference to extending legal costs mechanisms to "20 other areas" in the Spring 2026 Legislative Programme reflects broader, high-level civil justice goals, the Civil Reform Bill is explicitly intended to serve as the legislative vehicle to codify judicial review and should support the expansion of this capped scale of fees framework to non-planning matters across the board.

Conclusion

The enactment of the Civil Reform Bill 2025 is not merely a procedural adjustment; it is a critical economic imperative. For too long, Ireland's infrastructure ambitions have been held back by a legal framework that has inadvertently facilitated delay over delivery. Individual objectors, serial objectors and vexatious appeals can exercise considerable power over the delivery process, including judicial reviews.

On the other hand, the dispersed public good from these projects is often given less weight by our system. This legislation, combined with the proposed Scale of Fees, offers the only viable path to break the cycle of inertia that currently threatens our housing, climate, and competitiveness targets.

We cannot afford a system where procedural technicalities outweigh urgent societal needs. Government must proceed with these legislative changes without delay, ensuring that the new system actively disincentivises inefficiency and restores the primacy of the public interest in essential infrastructure development. This is a defining opportunity to secure a planning system that is robust, fair, and, above all, capable of supporting the delivery of projects that can transform our economy and society.

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