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Alan Guidon, Clerk to the Committee,
Joint Committee on Justice, Home Affairs and Migration,
Leinster House,
Kildare Street,
Dublin 2.

12 February 2026

Re: Submission regarding the Civil Reform Bill 2025

Your Ref: JC/7/1/K/1

Dear Mr. Guidon,

Thank you for the invitation to make a submission in respect of your consideration of the Civil Reform Bill 2025.

We attach a copy of our submission and can clarify any items as required.

Yours sincerely,

Anne Shaw,
Chief Executive Officer.

NTA Submission on Civil Reform Bill 2025 (the "Bill")

Judicial Reviews

In relation to judicial reviews, we note the interaction of the Bill with the *Accelerating Infrastructure Report and Action Plan Dec 2025* (the "Report"). Pillar 1, Action 7 of the Report was to "*enact a Civil Reform Bill to legislate for JRs*" and more particularly to "d*evelop legislation that will codify law on judicial review by placing it on a statutory basis".*

The relevant commentary on that Action states:
"The Minister for Justice will bring forward proposals to place the entire judicial review process on a statutory footing. This potentially affords Government much greater flexibility to determine the circumstances in which judicial review procedures can be utilised. This could include measures that would significantly accelerate infrastructure provision such as ***limiting judicial reviews to the ultimate planning decision underpinning a decision****, rather than currently where every licence, consent and planning condition is separately subject to judicial review. It could also introduce* ***tests that are common in other jurisdictions such as an assessment of the prospect of the success for any litigation before it is allowed to proceed or perhaps replacing the concept of project delays with damages,*** *where rather than delaying a project, flaws are addressed retrospectively via damages".*

With regard to planning, Judicial Reviews ("**JRs**") are on a statutory footing under the Planning and Development Act 2024 (the "**PDA**") ("**Planning JRs**").

The aims highlighted in bold above are not included in the current draft Bill, and we note that in treating Planning JRs separately, they are excluded from some of the most useful elements of Head 8 of this Bill.

Specific to Road and Rail projects, this Bill compounds an issue which NTA has raised previously. Part 9 of the PDA which deals with JRs is confined to decisions made under that Act. The failure to include decisions under the Rail and Roads Acts[1] means that most major infrastructure projects which the NTA is involved in, are excluded from the Planning JR processes in the PDA. We had understood that this gap would be closed imminently.

The current Bill distinguishes between JRs taken under the PDA and other JRs. Under the current structure, JRs under the Road and Rail Acts would fall within the "other" category, as they are not JRs of decisions under the PDA. We assume that is not the intention.

The NTA request, which has been raised previously, is that Part 9 of the PDA be expanded to cover JRs of all decisions of An Comisiún Pleanála ("ACP"), or to include consents under the Roads and Rail Acts under Part 9.

We would also suggest that consideration be given to amending the current Bill to reflect the ambition set out in the Report. We note the distinction between planning JRs and non-planning JRs that is being consolidated in this Bill and are concerned that all of the benefits being applied to non-planning JRs, are not available to Planning JRs, which is contrary to the intention in the Report.

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[1] Approvals for proposed road developments approved under section 51 of the Roads Act 1993 (as amended) or to rail projects approved under the Transport (Railway Infrastructure) Act 2001 (as amended)

Additional Details:

With regard to the detail of the current Bill, as you will be aware, NTA in undertaking its statutory functions can find itself dealing with both planning related, and non-planning related JRs, and as such are commenting on that basis.

We have reviewed this Bill on the basis that ultimately JRs under the Roads and Rail Acts will be treated the same as other Planning JRs under this Bill, as we expect that this is the intention.

The Bill

We welcome the procedural reforms included in Part 2. All procedural steps in the court process should take account of the impact on cost and time delays. We welcome the ability of judges to make practice directions with an eye to these issues. We are supportive of courts having a level of discretion in terms of moving cases at the pace that the parties request, as this can sometimes allow room for early resolution of matters before a matter comes to hearing.

In terms of applications for JR, Head 8(3) provides that an application for JR may seek any of the following, and that a court may grant any of these reliefs, even if they are not sought:

(a) an order to quash a decision,
(b) an order to mandate the performance of a duty,
(c) an order to prohibit action being taken,
(d) a declaration that a decision taken infringed the applicant's rights or is unconstitutional,
(e) an order relating to damages,
(f) an injunction restraining a public body from carrying out a decision pending the determination of the matter.

We would suggest that this list should include an ability for a court to direct a relevant body to re-open a decision-making process at a particular stage, (as per s288 of the PDA), as this could often save a decision maker restarting a process unnecessarily, with the attendant time and cost implications.

For non-planning JRs:

All elements of Head 8 will apply to JRs which are not taken under the PDA. Head 8(5) introduces welcome parameters around the considerations which a court should take account of in assessing a JR. These include that a court shall not grant a remedy on foot of a JR 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 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.

Head 10 deals with Leave to Apply for non-planning JRs. We support the retention of the need for an applicant to show sufficient interest as required under the Rules of the Superior Courts. We welcome the certainty created by Head 10(7) which creates an outside limit for any extension of the period to bring proceedings to 16 weeks from the date when grounds for the application first arose. We would query whether an equivalent provision could be included for Planning JRs.

Head 11 also brings welcome clarity to the assessment which a court should make as to whether to grant leave to apply for JR. The requirement for the court to assess whether alternatives to a quashing order could be considered, that the granting of the remedy would provide a significant benefit to the applicant, whether the claim has a reasonable prospect of success and that the issue is an appropriate one for a court, would all assist with ensuring that only those challenges that rightfully should proceed the entire way through the JR process do so.

We would reiterate previous calls for a consideration of whether such steps as are appropriate above could be incorporated into the process for JRs under the PDA, including Road and Rail Projects.

Planning JRs (under the PDA):

The following heads of the Bill do not apply to JRs under the PDA:

- Head 10 – Leave to apply for JR – it remains the case that no leave is required to commence a JR under the PDA
- Head 11 – Courts consideration of application for leave to apply for JR
- Head 12 – Appeal of JR determination

Additionally certain elements of Head 8 do not apply to a JR taken by a company or incorporated undertaking under the provision of s 286.2 of the PDA. Subhead (5)(a)(ii), subhead (5)(a)(v) (both bolded where Head 8(5) is included above) and subhead (5)(7) of the current Bill shall not apply to judicial review applications under that section.

The relevant elements are:
Head 8.5 – the need to show that
(ii) the applicant has suffered harm or prejudice,
(v) the granting of the remedy provides a significant benefit to the applicant
Head 8.7
(7) 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.

While Heads 8(5) (extracted above) and Head 8(7) do apply to (non-section 286.2) Planning JRs, which is to be welcomed, we would query whether these elements could be extended to all Planning JRs so the benefit of these provisions is not lost.

Conclusion

As referred to above, there is a serious issue with regard to how JRs of decisions of ACP under the Roads and Rail Acts are dealt with. We have suggested a fix such that they would be dealt with like all other planning JRs under the PDA. We would flag that a failure to do so would have the effect that Heads 10, 11 and 12 which do not apply to JRs under the PDA, would apply to these JRs.