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Re: Invitation to make a written submission – General Scheme of the Civil Reform Bill 2025

5 February 2026

Dear Mr Guidon,

Thank you for your invitation to make a written submission for the Committee's consideration in relation to the proposed 'General Scheme of the Civil Reform Bill 2025'.

As the national public water utility, our priority is the timely delivery and maintenance of critical water and wastewater infrastructure that supports housing, environmental protection, and wider social and economic development.

To deliver on these goals, we operate within a regulated framework that involves multiple planning and consenting processes and which regularly sees us engage in, interact with or adhere to various legal procedures and requirements. Proposed changes to the environment in which we work are of key interest and importance, so we welcome the opportunity to provide our observations on same.

As requested by the Committee, we have set out our observations on a Head-by-Head basis, highlighting areas where the proposed reforms align with recommendations in the Accelerating Infrastructure Report and Action Plan, and where additional clarity, consistency, or definition would support certainty for public bodies, applicants and communities.

I hope this response provides the Committee with clear and informed insights for their consideration, but if you require any clarification please don't hesitate to contact us via CEO@water.ie.

Yours Sincerely,

Noeleen McHenry
Chief Legal Officer

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Uisce Éireann observations on the General Scheme for the Civil Reform Bill 2025

Summary

Uisce Éireann welcomes the opportunity to provide observations on the General Scheme of the Civil Reform Bill 2025 (the "General Scheme").

We broadly support the proposed reforms to court processes, particularly those aimed at improving clarity, consistency and efficiency in judicial review and civil proceedings. In recent years, Uisce Éireann has experienced a significant increase in planning and environmental judicial reviews—often unsuccessful but nonetheless causing delay, cost and resource diversion. The reforms proposed in the General Scheme, especially those emphasising proportionality, materiality of error, and public interest, have the potential to reduce unnecessary barriers to essential infrastructure delivery.

Observations

PART 2: Production of Documents

Head 5 – Production of Documents in Civil Proceedings

We note and welcome the implementation of the recommendations of the Review of the Administration of Civil Justice Review Group Report (the "Kelly Report") and consider it should make Court processes more efficient.

PART 3: Judicial Review

Over the last few years, Uisce Éireann has dealt with an increasing number of planning and environmental judicial reviews, both as a Notice Party and Respondent, relating to both consents for its own infrastructure, and responding to grounds raised in challenges to other consents, primarily for housing. Uisce Éireann was involved in one judicial review in 2023, seven in 2024 and increase to ten in 2025.

Although very few of these judicial reviews to date have been successful, they all add delay, risk, costs and the siphoning of resources into managing judicial reviews.

Many of these judicial reviews relate to consents which now fall within the ambit of the Planning and Development Act 2024. However, others are non-statutory judicial reviews. We welcome the placing of all judicial reviews on a statutory footing (as recommended in the Accelerating Infrastructure Task Force and Action Plan, the "Action Plan"), as it brings clarity and consistency to all parties, and also welcome the simplified terminology (e.g. abolition of orders of Certiorari, Mandamus and Prohibition).

Given the difficulties in managing proceedings that are subject to varying tests and procedures, we would recommend that the enhanced provisions that are set out in Part 3 apply to all planning and environmental judicial reviews, to the extent that this is possible.

Head 8 – Judicial Review

Head 8 of the General Scheme includes some very helpful criteria as to when a remedy on foot of a judicial review application shall not be granted. We welcome in particular, the

inclusion of the test that any the error of law must be material to the decision in order for a remedy to be granted.

This places on a statutory footing the "harmless error" jurisprudence that is being developed, and which ensures that decisions of public bodies are not overturned for procedural irregularities that would not have impacted the outcome, as has happened in the past.

We also welcome the inclusion of a public interest test, which should enable the balancing of individual rights with the public good. Greater emphasis on the public good is a key recommendation from the Action Plan. These are important inclusions to remove unnecessary or disproportionate barriers to the delivery of critical infrastructure, where the infrastructure is vitally needed and will provide significant environmental, social, economic and public health benefit for many people.

We recommend the consideration of including some guidance as to what constitutes the public good e.g. delivery of housing, delivery of public infrastructure - particularly infrastructure that has been defined as being critical infrastructure or infrastructure that furthers protection of the environment or compliance with EU Directives.

We appreciate the inclusion in Head 8 also of certain other tests, including ensuring that the "applicant has suffered harm or prejudice", and that "the granting of the remedy provides a significant benefit to the applicant". This should have the welcome effect of focusing judicial reviews on those cases where a decision has had a significant impact on an individual and deterring proceedings which use an alleged procedural defect to delay or impede necessary development, or where the case has been brought just to litigate an academic point.

However, we would suggest that these terms be clearly defined, or guidance given in relation to them. This is particularly so in the case of proceedings that might be brought by individuals on environmental grounds, and there may be dispute as to whether the proposed development would or would not benefit the applicant e.g. if the developer is satisfied that a development would bring benefits to a community including the applicant, whereas the applicant contends that it would cause pollution.

As judicial review is concerned with ensuring the decision-making process is lawful rather than determining whether pollution would or would not occur (this being a matter more properly for the consenting authority), this could be difficult to determine in practice. Can stopping a development from proceeding be considered a "significant benefit" to the applicant? For critical infrastructure, we would contend in most circumstances it is not of objective benefit to an applicant that the development is stopped. Without some additional definitions or guidance, there is a risk of considerable litigation with uncertain outcomes on the meaning of "significant benefit", leading to uncertainty and risk.

We also note that companies or incorporated undertakings as per the definition of section 286(2) of the Planning and Development Act, 2024 (the "Planning Act") (i.e. environmental NGOs) do not need to meet these tests relating to benefit or harm.

Head 11 – Court's consideration of Application for Leave to Apply

We note that this Head implements the Kelly Report in respect of introducing a stage whereby the applicant must demonstrate that there are arguable grounds and that the claim has a reasonable prospect of success.

This has the potential to reduce costs, but also potentially to add an additional step causing elongation of proceedings.

At the same time, we appreciate that this step could be a helpful way of determining at an early stage whether the applicant would in fact be able to meet the criteria set out in Head

8, before getting into the legal arguments made in the case. This should reduce costs and delay.

Head 12 – Appeal of Judicial Review Determination

We note that the position under this Head is different from that in the 2024 Act and would again recommend consistency for decisions relating to infrastructure, e.g. decisions of the Environmental Protection Agency or other types of environmental decisions.

Head 13 – Specialised Provisions

Head 13 specifically provides that Heads 10, 11 and 12 do not apply to judicial reviews taken under Part 9 of the Planning Act. The result of this, as mentioned above, is that there will be different processes in respect of leave for planning and non-planning judicial reviews.

We recommend ensuring a consistent process for all planning and environmental judicial reviews.

PART 4: Civil Procedure in the Courts

Head 15 – Case Conduct Principles and Function of the Court in Conduct of Civil Proceedings

This Head proposes that the parties conduct civil proceedings in accordance with the "case conduct" principles outlined. We are supportive of conducting litigation in accordance with these principles, in particular in relation to the early identification of matters of law and fact in the proceedings.

To be effective and provide the parties with appropriate guidance to ensure a common understanding of what adherence to those principles entails, we suggest that they could be cross referenced in existing provisions or practice directions (or supported by new provisions/practice directions) that deal with the conduct of civil proceedings.

Head 16 – Presumption Against Granting of Adjournments

We welcome what is proposed, to provide parameters and clarity around the circumstances in which adjournments will be granted. Sub-section (3) of Head 16 provides that the Court "shall impose a penalty" on the party or parties seeking an adjournment where the case conduct principles have not been complied with. More clarity is needed around the penalty that will be imposed (e.g. a cost order or other).

Head 17 – Deemed Discontinuance of Civil Actions

We are supportive of the introduction of a provision for deemed discontinuance. It is Uisce Éireann's experience that proceedings are often instituted but not progressed or not done so in a timely manner which means increased costs and likely issues with the adequacy of evidence should the matter eventually progress to trial.

While the recent Supreme Court case of *Kirwan v Connors & Ors* [2025] IESC 21 provided useful guidance on specific periods of delay/inactivity which might give rise to dismissal of proceedings, the proposal under this head is welcome as it provides clear statutory rules for automatic discontinuance after 6 months with appropriate safeguards for the other party.

Heads 18 – High Court Practice Directions

We note the introduction of a range of procedural changes, which we are generally supportive of as these aim to produce timely and fair decision making. Head 18 refers to Practice Directions and care needs to be taken that these correspond to existing practice

directions. For instance, the introduction of the Planning and Environment Court has resulted in very helpful directions and procedural changes.

The Planning and Environment Court is not only limited to the planning judicial reviews and the reforms suggested in this General Scheme should build on and intersect with these and not replace them.

Head 19 – Pre-Action Protocols

We are generally supportive of pre-action protocols aimed at achieving the matters outlined in sub-paragraph 4 of this Head. However, we would encourage engagement with critical infrastructure providers in the consultative process before the regulations are made.

Head 29 – Limitation of the Term of Lis Pendens

We also note the reforms in relation to Lis Pendens which provides for an automatic vacation of a lis pendens after 28 days.

For bodies with CPO powers, this may increase the risk of acquiring land without any public notice of existing disputes. We also note that this replaces section 123 of the Land and Conveyancing Law Reform Act 2009 but it is not clear how it interacts with section 122 of that Act. Section 122 sets out the circumstances within which a lis pendens shall be cancelled in the register.

The implications of Head 29 may need further consideration.

PART 5: Jurisdiction of District Court and Circuit Court

Head 30 and 31 – Extension of Monetary Limit of Jurisdiction of Circuit Court and District Court

We support the extension of the monetary limit of the District and Circuit Court. This will facilitate more proportionality in respect of costs, allowing more cases to be heard in the lower courts which are less costly for all parties and do not require the same levels of representation as in the Higher Courts.

Links / References

Accelerating Infrastructure Report and Action Plan

Review of the Administration of Civil Justice Review Group Report

Planning and Development Act 2024

Kirwan v Connors & Ors [2025] IESC 21

ENDS