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Bill Digest

Critical Infrastructure Bill 2026

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Abstract

The **Critical Infrastructure Bill 2026** (the 'Bill') was published on 8 April 2026. The Bill seeks to create a fast-track approval processes for critical infrastructure, emphasising energy, transport and water infrastructure projects and programmes. The Bill would provide for the designation of certain projects and programmes as critical infrastructure projects and critical infrastructure programmes. Designation would be done via a government order that would need to be laid before Daíl Éireann, allowing 21 sitting days for an annulment motion to be passed. The Bill would also establish new duties on public bodies dealing with critical infrastructure projects or programmes and, after consultation, provide the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation powers to give directions to those public bodies to compel performance of specified functions and duties. The Bill also seeks to disapply **section 15 of the *Climate Action and Low Carbon Development Act 2015*** to acts done in accordance with the Bill.

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Executive Summary

The Critical Infrastructure Bill 2026 (the 'Bill') was published on 8 April 2026 and is scheduled for Second Stage debate on 14 April 2026 in Dáil Éireann. The Bill comprises ten (10) sections.

On 25 March 2026, the Oireachtas Joint Committee on Infrastructure and National Development Plan Delivery agreed to a request from the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (the 'Minister'), Jack Chambers TD, for an exemption from pre-legislative scrutiny of the Bill.

The Government Legislation Programme Spring 2026 listed the Critical Infrastructure Bill under Legislation for Priority Publication Spring Session 2026.

The Bill received government approval on 4 March 2026.

A Regulatory Impact Analysis (RIA) in respect of the Bill has not been published.

The Minister has explained that the drafting and publication of the Bill forms part of a key measure in the implementation of the Accelerating Infrastructure Report and Action Plan (the 'Action Plan').

According to the Action Plan, one of the main impediments to the efficient delivery of critical infrastructure in the State involves failures in prioritisation and coordination. It states:

> *"A common theme emerging across the three sectors of water, transport and energy is the significant volume of consents, licences and permits that an infrastructure project potentially requires. ... Multiple consents may be required from a variety of agencies/bodies, many of which are seeking similar information, working off different timelines, often with no prioritisation for critical infrastructure projects."*

The Bill aims to introduce a set of more streamlined regulatory processes for authorisation of development related to critical infrastructure in the State.

The stated purpose of the Bill is:

- to provide for the designation, by order of the Government, of certain projects and programmes as critical infrastructure projects and programmes, emphasising those involving water, transport and energy;
- to establish duties on certain public bodies in so far as they perform functions with respect to critical infrastructure projects or programmes;
- to empower the Minister to give directions to relevant public bodies, to compel performance of specified functions and duties; and
- to disapply section 15 of the *Climate Action and Low Carbon Development Act 2015* to acts done under the Bill.

When the Bill was published, the Minister announced:

> *"This Bill will make sure that those projects and programmes that the Government designates as critical infrastructure will get speedy and coordinated attention on a whole-of-State basis, cutting timelines and eliminating delays. These projects and programmes will go to the top of the queue for consideration in every public body and will be fast-tracked path through existing processes without skipping any steps."*

The proposed new duties on relevant public bodies will require them to cooperate with other affected bodies and coordinate, prioritise and sequence duties with other public bodies. Relevant public bodies would also be required to appropriately allocate any administrative, technical and decision-making resources necessary for the rapid approval of critical infrastructure projects and programmes.

The Bill would create a separate legislative scheme, distinct from the existing strategic infrastructure development (SID) system provided for in the ***Planning and Development Act 2000*** and ***Planning and Development Act 2024***.

In support of the Bill, on 25 February 2026, the Minister announced the establishment of a new Regulatory Simplification Unit (RSU) within the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (the 'Department'). The RSU has been tasked with conducting a risk-based review of the current regulatory landscape, identifying opportunities to enhance cooperation and streamline processes for more effective delivery of the National Development Plan, and suggesting methods by which the regulatory process might be simplified for energy, transport and water infrastructure projects.

In addition, on 26 March 2026 the Department issued a Circular requiring all Departments and other public sector bodies involved in the regulation of energy, transport, water and housing infrastructure to implement a series of regulatory process reforms. These reforms require relevant public sector bodies to simplify and streamline new and existing regulation for which they are responsible.

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Glossary and abbreviations

Table 1 Glossary and abbreviations

Term	Meaning
2000 Act	*Planning and Development Act 2000*
2006 Act	*Planning and Development (Strategic Infrastructure) Act 2006*
2015 Act	*Climate Action and Low Carbon Development Act 2015*
2024 Act	*Planning and Development Act 2024*
ACP	An Coimisiún Pleanála
Action Plan	Accelerating Infrastructure Report and Action Plan
Bill	Critical Infrastructure Bill 2026
Department	Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation
Minister	Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation
Taskforce	Accelerating Infrastructure Taskforce

Source: Compiled by the PRS.

Introduction

The Critical Infrastructure Bill 2026 (the 'Bill') was published on 8 April 2026 and is scheduled for Second Stage debate on 14 April 2026 in Dáil Éireann. The Bill comprises ten (10) sections.

On 25 March 2026, the Oireachtas Joint Committee on Infrastructure and National Development Plan Delivery agreed to the request from the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (the 'Minister'), Jack Chambers TD, for an exemption from pre-legislative scrutiny ('PLS') of the Bill.[1]

The stated purpose of the Bill is:

- to provide for the designation, by order of the Government, of certain projects and programmes as critical infrastructure projects and critical infrastructure programmes;
- to impose new duties on certain public bodies performing functions relating to critical infrastructure projects or critical infrastructure programmes;
- to empower the Minister to give directions to public bodies to compel performance of specified functions and duties; and
- to disapply section 15 of the *Climate Action and Low Carbon Development Act 2015* to acts done under the Bill.[2]

The Government Legislation Programme Spring 2026 listed the Critical Infrastructure Bill under Legislation for Priority Publication Spring Session 2026 and stated that the Bill would be designed to:

> *"… prioritise the advancement of Government designated critical infrastructure projects through consenting and approval processes. The Bill will also provide for Emergency powers that can exempt critical infrastructure projects from some approvals and consents, or which can provide for alternative means of providing the relevant approvals and consents."*[3]

The Bill received government approval on 4 March 2026.[4] At the time the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (the 'Department') explained:

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[1] Oireachtas Joint Committee on Infrastructure and National Development Plan Delivery, 'The Joint Committee on Infrastructure & National Development Plan Delivery agrees with Minister's Request for Exemption from Pre-Legislative Scrutiny of the Critical Infrastructure Bill', *Press Release*, 25 March 2026.

[2] Critical Infrastructure Bill 2026, Long Title.

[3] Government Legislation Programme Spring 2026, p. 10.

[4] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Minister Chambers Announces Government Approval for Development of Critical Infrastructure Bill', *Press Release*, 4 March 2026.

> *"The Bill will allow Government, with Dáil approval, to designate specific infrastructure projects or programmes that the Government considers to be critical. This designation will require all State bodies involved in the approval process for the infrastructure in question to prioritise their consideration of it. It also requires all State bodies involved in the approval processes for this infrastructure to cooperate and coordinate with each other.*
>
> *In practical terms, [if enacted] this Act will create a fast-track channel through existing processes for designated critical infrastructure where projects go to the top of the queue for assessment by decision making bodies. This should lead to significant improvements in the timelines for the approval of critical infrastructure."*[5]

The Bill as published does **not** provide for any emergency powers.

The Department has announced its intention to continue to review the role that emergency powers might play in speeding up specific critical infrastructure projects, in consideration of the recommendations made by the Accelerating Infrastructure Report and Action Plan (the 'Action Plan').[6] The Department has stated that:

> *"The consideration and development of potential emergency powers remain a priority and are being progressed in parallel with the passage of this legislation."* [7]

Some of the policy and legislative background to and content of the Action Plan have been examined in the Oireachtas Library & Research Service, Policy and Legislative Briefing Paper: Proposed legislation affecting judicial review of planning decisions. It is recommended that readers consider that paper as a companion paper to this *Bill Digest*.

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[5] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Minister Chambers Announces Government Approval for Development of Critical Infrastructure Bill', *Press Release*, 4 March 2026.

[6] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Minister Chambers Announces Government Approval for Development of Critical Infrastructure Bill', *Press Release*, 4 March 2026.

[7] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, ' Minister Chambers Announces Publication of the Critical Infrastructure Bill', *Press Release*, 8 April 2026.

Background

The concept of critical infrastructure

To date, the term 'critical infrastructure' has not been specifically defined in legislation in Ireland. However, the term is used in the *European Union (Resilience of Critical Entities) Regulations 2024* (SI No 559 of 2024), that transposes into Irish law Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities (the 'Directive on the Resilience of Critical Entities'). The stated purpose of the Directive on the Resilience of Critical Entities is to create a framework to support Member States in ensuring that their 'critical entities' are able to prevent, resist, absorb and recover from disruptive incidents. The Directive on the Resilience of Critical Entities identifies eleven sectors in which critical entities might operate:

- Energy;
- Transport;
- Banking;
- Financial market infrastructure;
- Health;
- Drinking water;
- Waste water;
- Digital infrastructure;
- Public administration;
- Space;
- Production, processing and distribution of food.

The Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Jack Chambers TD (the 'Minister') has stated that the creation of the Bill is a key measure in the Accelerating Infrastructure Report and Action Plan (the 'Action Plan').[8]

For the purposes of the Action Plan 'critical infrastructure' was taken to refer to the electricity network, and water and transport infrastructure.[9] The Action Plan explains that the various forms of water, electricity, and transport infrastructure are foundational to the functioning and

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[8] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Minister Chambers Announces Government Approval for Development of Critical Infrastructure Bill', *Press Release*, 4 March 2026.

[9] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 8.

sustainability of modern society, and they are crucial in supporting the delivery of infrastructure in other key sectors.[10]

The Accelerating Infrastructure Report and Action Plan

In May 2025, the Accelerating Infrastructure Taskforce (the 'Taskforce') was established and chaired by the Minister.[11] In July 2025, the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (the 'Department') published the Taskforce's Report on Stakeholder Consultation and Engagement with Emerging Themes on Infrastructure. The publication followed public consultation and stakeholder engagement by the Taskforce.[12]

The collection of survey data and the call for submissions resulted in 164 substantive responses, representing public and private sector stakeholders, covering local authorities, state utilities, transport agencies, developers, representative bodies, professional services firms and energy companies, among others such as members of the public who have been affected by delays in planning delivery.[13]

The Taskforce's Report on Stakeholder Consultation and Engagement with Emerging Themes on Infrastructure claimed to have identified 12 main barriers to effective infrastructure delivery in Ireland. These twelve barriers were further categorised into three main interrelated headings:

1. A complex legislative and regulatory environment.
2. Planning and legal systems that are increasingly used by objectors, causing uncertainty and a cascade of procedural delays.
3. Internal systems related to the allocation of funding, procurement processes and delivery expectations.[14]

Some respondents to the consultation process cited that the increasing number, complexity and burden of regulatory and policy requirements, when combined with increasing judicial

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[10] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 21.

[11] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Taskforce, 24 June 2025.

[12] Accelerating Infrastructure Taskforce, Accelerating Infrastructure: Stakeholder Engagement and Public Consultation Summary, 5 December 2025. Each of the submissions made to the call for submissions have been reproduced here (names are redacted).

[13] Accelerating Infrastructure Taskforce, Accelerating Infrastructure: Stakeholder Engagement and Public Consultation Summary, 5 December 2025 pp 2-4.

[14] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Report on Stakeholder Consultation and Engagement with Emerging Themes on Infrastructure, July 2025 p. 17.

reviews, have resulted in uncertainty and a level of risk aversion (or chilling effect) on infrastructure investment, slowing the development cycle.[15]

On 3 December 2025, the Department published an Accelerating Infrastructure Report and Action Plan ('Action Plan') aimed at addressing these perceived barriers to effective infrastructure delivery in Ireland, set out in the Report on Stakeholder Consultation and Engagement with Emerging Themes on Infrastructure.

The Action Plan outlines 30 specific measures designed to streamline development processes and remove barriers to the delivery of infrastructure. These 30 measures are grouped under four main pillars:

1. Legal reform,
2. Regulatory reform and simplification,
3. Co-ordination and delivery reform, and
4. Public Acceptance.[16]

The Action Plan identifies a number of barriers considered to affect the efficient delivery of critical infrastructure projects in Ireland. It states that:

> *"… barriers to infrastructure delivery point to a system that is overly-complex, sequential and fragmented across legal, regulatory and operational lines."* [17]

According to the Action Plan, one of the main impediments to the efficient delivery of critical infrastructure in the State involves failures in prioritisation and coordination. It states that these:

> *"… failures occur because infrastructure decisions are fragmented across agencies with narrow mandates, limiting flexibility to align projects with wider societal goals."* [18]

The Action Plan goes on to suggest that "conflicting priorities, sequential approvals, and poor resource alignment" of semi-state companies and regulatory agencies further delay projects and inflate costs.[19]

The recommended action to deal with these perceived failings is to legislate to create a legal obligation for public bodies to recognise and accelerate key projects through planning,

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[15] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Report on Stakeholder Consultation and Engagement with Emerging Themes on Infrastructure, July 2025 p. 18.

[16] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, 3 December 2025, pp 8-9.

[17] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 37.

[18] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 28.

[19] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 28.

licensing, and other consenting stages. The Action Plan states that the proposed legislation should:

> *"… address systemic delays by mandating whole-of-State cooperation and creating a fast-track pathway for nationally significant projects and programmes."*[20]

Lorcan Sirr, Senior Lecturer at the Technological University Dublin, has written that the use of a fast-track mechanism to deal with perceived delays in the delivery of critical infrastructure may result in unexpected consequences. Sirr cites the introduction of a fast-tracked decision-making process for Strategic Housing Development introduced in 2016, arguing that the removal of an appeal process directly resulted in a rise of judicial reviews taken in the High Court.[21] Sirr has gone on to suggest that the act of shifting the public further away from the decision-making process could result in a higher number of judicial reviews, as this would be the only means by which interested groups might be able to affect a decision, potentially causing further delays to the delivery of critical infrastructure projects.[22]

The current regulatory process

The regulatory process will vary based on who the applicant is and the nature of a critical infrastructure project.

For projects that draw on public money, the regulatory process will include a procurement stage that must follow the Department's Infrastructure Guidelines. These Guidelines incorporate three 'Approval Gates' through which all proposals must pass:

- Approval Gate 1 - Strategic Assessment and Preliminary Business Case.
- Approval Gate 2 - Pre-tender – Project Design, Planning and Procurement Strategy.
- Approval Gate 3 - Post Tender – Final Business Case.[23]

A study conducted by the Department's National Investment Office found that, on average, for major projects it takes approximately 63 weeks between a Preliminary Business Case being

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[20] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 41.

[21] L Sirr, 'Meath house the latest example of our disrespect for planning', *Irish Examiner*, 24 March 2026. The Strategic Housing Development programme was introduced via the *Planning and Development (Housing) and Residential Tenancies Act 2016* **s. 4(1)** (repealed). The relevant provision was repealed in 2021, by the *Planning and Development (Amendment) (Large-scale Residential Development) Act 2021* s. 17(1).

[22] L Sirr, 'Ireland's plans to deliver housing and infrastructure are a roll of the dice', *Irish Times*, 19 March 2026. The

[23] Department of Public Expenditure, NPD Delivery and Reform, *Infrastructure Guidelines*, December 2023.

submitted to the funding Department and the project being submitted at Approval Gate 1.[24] On 12 February 2026, the Department amended the Infrastructure Guidelines to increase the threshold before the guidelines apply from €200 million to €500 million, and to reduce the amount of time required to get through the approval process.[25]

The nature of the critical infrastructure project will determine what regulatory processes need to be met. Certain consents, licences and permits are needed before applying for planning permission. Some of these processes would need to be satisfied prior to a planning application, while others would involve a separate planning application process.

The Action Plan states:

> *"A common theme emerging across the three sectors of water, transport and energy is the significant volume of consents, licences and permits that an infrastructure project potentially requires. ... Multiple consents may be required from a variety of agencies/bodies, many of which are seeking similar information, working off different timelines, often with no prioritisation for critical infrastructure projects.*
>
> *Furthermore, many of these processes are sequential in nature, which can add to timelines. ... These issues can add years to project delivery timelines.*
>
> *The variability and uncertainty of timelines throughout the project development cycle is a fundamental issue for project developers. ... The uncertainty increases project risk. The lack of clarity regarding timelines, paired with the sequential nature of many of the consents required, also hinders effective resource planning within delivery bodies, further exacerbating delays."*[26]

On 25 February 2026, the Minister announced the establishment of a new Regulatory Simplification Unit (RSU) within the Department. The RSU is tasked with conducting a risk-based review of the current regulatory landscape, identifying opportunities to enhance cooperation and streamline processes for more effective delivery of the National Development Plan, and suggesting methods by which the regulatory process might be simplified for energy, transport and water infrastructure projects.[27]

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[24] 'Parliamentary Questions: Departmental Reports - Questions (934, 935, 936, 937)', *Dáil Éireann Debates*, 13 January 2026.

[25] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, *Circular 8 of 2026 - Circular Update to Infrastructure Guidelines*, 12 February 2026.

[26] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, Accelerating Infrastructure Report and Action Plan, December 2025, p. 31.

[27] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Major review of regulations to tackle barriers to infrastructure delivery to commence', *Press Release*, 25 February 2026.

On 26 March 2026, the Department issued a Circular requiring all Departments and other public sector bodies involved in the regulation of energy, transport, water and housing infrastructure to implement a series of regulatory process reforms. These reforms require relevant public sector bodies to simplify and streamline new and existing regulation for which they are responsible.[28] These include, but are not limited to:

- completing evidence-based assessments of proportionality of regulatory and consenting processes and identifying reforms,
- implementing reforms to simplify regulatory processes and approvals applied to critical infrastructure,
- identifying possible legislative changes or EU engagement to promote reforms, and
- reviewing and optimising resourcing and operating models and needs, based on simplified processes.[29]

While implementing these reforms, relevant public sector bodies are obliged to act in accordance with the listed Principles of Better Regulation - considering necessity, effectiveness, proportionality, coherence with the wider regulatory system, efficiency, the application of clear and predictable timelines, transparency and accountability.[30]

The current legislative process

The *Planning and Development (Strategic Infrastructure) Act 2006* (the '2006 Act') amended the *Planning and Development Act 2000* (the '2000 Act') to provide a fast-track one-stage planning process for significant strategic infrastructure development. The amendments require planning applications by private parties to be made directly to An Coimisiún Pleanála ('ACP') for development of strategic infrastructure, listed in Schedule 7 of the 2000 Act, covering the development of energy, transport, environmental (and water) and health infrastructure that is of strategic economic or social importance to the State or region, or fulfils objectives in the National Planning Framework, among other things.[31] Certain strategic infrastructure development applications may also be made by State and local authorities under Part XI of the 2000 Act.[32]

Under the legislation, the ACP is required to decide a case as expeditiously as possible, within a target of 18 weeks from the last date for public observations.[33] The validity of ACP's decision

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[28] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, *Circular 18 of 2026 - Principles for Better Regulation for Critical Infrastructure Projects*, 26 March 2026.

[29] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, *Circular 18 of 2026 - Principles for Better Regulation for Critical Infrastructure Projects*, 26 March 2026.

[30] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, *Circular 18 of 2026 - Principles for Better Regulation for Critical Infrastructure Projects*, 26 March 2026.

[31] *Planning and Development Act 2000* s. 37A, Sch 7.

[32] An Coimisiún Pleanála, *Functions of the Commission: Planning and Development (Strategic Infrastructure) Act 2006*, webpage last accessed 8 April 2026.

[33] An Coimisiún Pleanála, *SID: Board's decision*, webpage last accessed 8 April 2026.

in a SID case may only be challenged via a High Court judicial review, that must be commenced within eight weeks of the date of the decision.[34]

The strategic infrastructure development planning process will generally involve these stages:

1. Pre-application consultations by the prospective applicant with the ACP are mandatory. There is no time limit for these consultations to be completed.
2. Scoping is an optional procedure that allows a prospective applicant to request the ACP to give an opinion in writing on what information would be required in an environmental impact assessment report (EIAR) about the proposed development
3. An application must be made by applicant to ACP and relevant notices published and displayed. Relevant reports and statements need to be included with the application.
4. The ACP may choose to hold oral hearings and meetings and will consider relevant written observations and submissions.
5. The ACP may request further or additional information from the applicant or others.
6. The ACP will issue its decision.[35]

Although the relevant provisions of the *Planning and Development Act 2024* (the '2024 Act') are not in force (as at the time of writing), provision is made in the 2024 Act for a fast-track one-stage planning process for significant strategic infrastructure development similar to that currently in force under the 2000 Act.[36]

From 2 October 2025, the 2024 Act established a new system of National Planning Statements (NPSs) to replace 'Ministerial guidelines' that had been made under section 28 of the 2000 Act.[37] All regional and local authorities are obliged to follow NPSs, and existing plans must be revised to reflect the Revised National Planning Framework.

The Department of Housing, Local Government and Heritage has stated that the NPS system:

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[34] Office of the Planning Regulator, 'Strategic Infrastructure Development', *Planning Leaflet*, October 2022, p. 10.

[35] An Coimisiún Pleanála, *Strategic Infrastructure Development Guide*, webpage last accessed 8 April 2026.

[36] See *Planning and Development Act 2024* s. 84, Pt 4 Ch. 4 and Sch 1. For development by State and local authorities see *Planning and Development Act 2024* Pt 4 Ch. 6.

[37] See *Planning and Development Act 2024* Pt 3 Ch. 3; *Planning and Development Act 2024 (Commencement) (No 4) Order 2025* (SI No 452 of 2025).

> *"… will strengthen planning alignment with national objectives, relating to priority areas such as housing, infrastructure and renewable energy."* [38]

Regulatory Impact Analysis (RIA)

No RIA was produced for the Bill.

[38] Department of Housing, Local Government and Heritage, 'Major milestone in planning reform commenced by Minister Browne and Minister of State Cummins', *Press Release*, 3 October 2025.

Legal and legislative context

Parliamentary Scrutiny of Secondary Legislation

Article 15.2 1° of the Constitution states:

> *"The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State."*

Irish courts have long accepted that, through primary legislation (Acts), the Oireachtas may delegate legislative powers to a Minister, regulatory body or an authority. In *Laurentiu v Minister for Justice*,[39] Justice Barrington recognised the need for the legislature to delegate responsibility for secondary legislation. However, he qualified this by stating:

> *"… the legislature should not abdicate its position by simply handing over an absolute discretion to the executive. It should set out standards or guidelines to control the executive discretion and should leave to the executive only a residual discretion to deal with matters which the legislature cannot foresee."*[40]

In the past, the power to enact secondary legislation has been constitutionally limited to procedural matters that give effect to the 'principles and policies' of the delegating Act (the 'Parent Act').[41] However, more recently, the Supreme Court has acknowledged that although using a 'principles and policies' criteria is important, it is preferable to use a more holistic, broader-based consideration of the question of constitutional validity.[42] The Court has held that this consideration should involve asking a number of questions, one of which is whether the Oireachtas has relinquished its constitutional role.[43]

The Parent Act that delegates powers to make secondary legislation (including Ministerial Orders) may include certain safeguards. For example, the Parent Department may be required to lay a copy of the secondary legislation before one or both of the Houses of the Oireachtas for a designated period (a 'laying requirement'). The period is usually twenty-one (21) sitting days, but it could be for seven (7) or ten (10) sitting days. The laying requirement may serve a number of different functions. At a minimum, it makes the secondary legislation a public

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[39] [1999] IESC 47.

[40] *Laurentiu v Minister for Justice* [1999] IESC 47 at [83] per Barrington J.

[41] See for example, *Kennedy v Law Society of Ireland (No 3)* [2002] 2 IR 458 at 468, per Fennelly J. See also *Cityview Press Ltd v An Chomhairle Oiliúna* [1980] IR 381 at 398-399 per O'Higgins CJ.

[42] *Bederev v Ireland* [2016] IESC 34; *Náisiúnta Leictreach Contraitheoir Éireann v Labour Court* [2021] IESC 36 and *Conway v An Bord Pleanála* [2024] IESC 34 at [26] per Hogan J. See also C Casey, "The Supreme Court and the Reformation of the Non-Delegation Doctrine" (2022) 4 *Irish Supreme Court Review* 36.

[43] *Bederev v Ireland* [2016] IESC 34; *Náisiúnta Leictreach Contraitheoir Éireann v Labour Court* [2021] IESC 36 at [63] per the Court and *Conway v An Bord Pleanála* [2024] IESC 34 at [26] per Hogan J.

document and it draws the attention of members of one or both of the Houses to the making of the instrument.

The Parent Act may also provide a mechanism for the secondary legislation to be annulled or on some occasions (such as with regulations establishing exempted development under the Planning and Development Acts) it may require that the Houses pass a positive resolution to approve the secondary legislation before they may be enacted.[44] The Parent Act may specify how a successful annulment motion affects the application of the secondary legislation. Depending on the provisions of the Parent Act, an annulment might or might not have retrospective effect. There is no precedent for allowing the Houses of the Oireachtas a power to amend secondary legislation.[45]

Very few pieces of secondary legislation have been debated in the Houses of the Oireachtas. The only time in the history of the State that secondary legislation has been annulled by a House was on 29 May 2018, when the Daíl passed a motion to annul a Statutory Instrument that introduced a penalty point system for fishermen engaging in unregulated, unreported, or illegal fishing. Previous iterations of the instrument had been challenged in the courts on two separate occasions, in 2014 and 2016 respectively, resulting in the withdrawal of those instruments prior to the hearings.[46]

The laying process outlined above is not a mandatory requirement. ***Erskine May: Parliamentary Practice***, the procedural handbook of the UK Parliament, explains that the practice of laying secondary legislation before Parliament is a long-standing practice, grounded in the need to ensure parliamentary control of law-making functions. However, if the contents of a proposed piece of secondary legislation is deemed to be of 'minor significance only', a Parent Act may not include provision for such a requirement or may require nothing more in the way of parliamentary control.[47]

The Supreme Court has considered the effect of a laying requirement in in *Cityview Press v An Comhairle Oiliúna*.[48] The Chief Justice explained:

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[44] See R. Byrne, P. McCutcheon, C. Bruton and G. Coffey, Byrne and McCutcheon on the Irish Legal System (4th ed.) Bloomsbury Professional, Dublin: 2001, p. 461.

[45] See *Laurentiu v Minister for Justice* [1999] IESC 47 at [142] per Keane J.

[46] See *European Union (Common Fisheries Policy) (Point System) Regulations 2018*; Pat The Cope Gallagher TD, 'European Union (Common Fisheries Policy) (Point System) Regulations 2018: Motion' *Dáil Éireann debate*, 23 May 2018; 'European Union (Common Fisheries Policy) (Point System) Regulations 2018: Motion' *Dáil Éireann debate*, 29 May 2018; Aoife Cusack, 'Dáil votes to annul penalty point system for fishermen' *Green News*, 30 May 2018.

[47] Erskine May [31:11].

[48] *Cityview Press Ltd v An Chomhairle Oiliúna* [1980] IR 381 at 398 per O'Higgins CJ.

> *"Sometimes ... the legislature, conscious of the danger of giving too much power in the regulation or order making process, provides that any regulation or order which is made should be subject to annulment by either House of Parliament. This retains a measure of control, if not in Parliament as such, at least in the two Houses. Therefore, it is a safeguard."*[49]

It must also be noted that the laying procedure is not the only mechanism through which members of the Houses may scrutinise secondary legislation. Another method would be through a Select Committee of the Oireachtas. Daíl Standing Order 104(4) and Seanad Standing Order 80(4) provide:

> *"... in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—*
>
> > *(a) require any Government Department or other instrument-making authority concerned to—*
> >
> > > *(i) submit a memorandum to the Select Committee explaining the statutory instrument, or*
> > >
> > > *(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil[/Seanad], and*
> >
> > *(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended."*

The power of a committee to scrutinise statutory instruments applies to any instrument, whether it has been laid before the Houses or not. That said, the relevant committee's power to recommend an amendment or annulment would be limited to the making of the recommendation – it would then be up to the relevant Minister to decide whether they wished to comply with such a recommendation.

Section 15 of the Climate Action and Low Carbon Development Act 2015

Section 15 of the *Climate Action and Low Carbon Development Act 2015* (the '2015 Act') creates a duty on relevant bodies, as far as practicable, to perform its functions in a manner consistent with the most recent climate action plan, strategy, adaption framework and plans, and national climate objectives including mitigating greenhouse gas emissions.[50]

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[49] *Cityview Press Ltd v An Chomhairle Oiliúna* [1980] IR 381 at 398 per O'Higgins CJ.

[50] The section was amended by the *Climate Action and Low Carbon Development (Amendment) Act 2021* s. 17 to include a duty to consider as far as practicable the most recent approved national long term climate action strategy.

The Supreme Court considered application of section 15 of the 2015 Act in *Coolglass v An Coimisiún Pleanála*.[51] The Court held that section 15 of the 2015 Act does not require public bodies to undertake any new functions related to climate action. Rather, section 15 of the 2015 Act requires a relevant body to perform its functions consistent with climate objectives, so far as practicable.[52] On the facts of the case, the Court held that ACP had failed in this obligation, as although it was afforded a discretionary power under the relevant statute it did not engage with the question of whether or not to use that discretion, "in a real and substantive way".[53]

The EU and all its member states (including Ireland) have signed and ratified the Paris Agreement.[54] By ratifying the agreement, Ireland is legally bound by its goal of keeping global temperatures within safe limits. To help reach this goal, the EU launched the European Green Deal strategy, which puts in place measures and rules to cut emissions and transform the EU economy to become climate-neutral by 2050. The Green Deal strategy has been bolstered by the EU Climate Law (Regulation (EU) 2021/1119), which makes the EU's 2030 emissions-reduction target and 2050 climate-neutrality objective legally binding.[55]

In the case of *Verein KlimaSeniorinnen Schweiz v Switzerland*, the European Court of Human Rights (ECtHR) found that bodies of the Swiss Government had failed to uphold obligations under the European Convention on Human Rights (ECHR), by not steering Switzerland onto an emissions reduction trajectory consistent with the goal of keeping global temperatures below 2°C above pre-industrial levels. The ECtHR considered articles 2 (right to life) and 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR).[56] The case was initiated by a non-profit association (NPA) together with four individuals.

As the individual claimants did not fulfil the victim-status criteria under article 34 of the ECHR, the ECtHR declared their complaints inadmissible.[57] However, it did accept the case of the NPA, finding among other things that there had been a violation of the right to respect for private and family life. In particular, the ECtHR held that the Swiss Confederation had failed to comply with its positive obligations concerning climate change. It noted that although the

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[51] [2026] IESC 5.

[52] *Coolglass v An Coimisiún Pleanála* [2026] IESC 5 at [95], [98] per O'Donnell CJ.

[53] *Coolglass v An Coimisiún Pleanála* [2026] IESC 5 at [116] per O'Donnell CJ.

[54] The Paris Agreement is a legally binding international treaty on climate change which entered into force on 4 November 2016. The overarching goal is to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels.": Paris Agreement, Article 2.

[55] European Council, 'Paris Agreement on climate change', webpage last accessed on 12 March 2026.

[56] See also *European Convention of Human Rights Act 2003*.

[57] *Verein KlimaSeniorinnen Schweiz v Switzerland* at [624] – [625].

ECHR does not specifically provide general protection of the environment, it does recognise the right of people to live in a safe and healthy environment.[58]

The Supreme Court considered the *Verein KlimaSeniorinnen* decision in *Coolglass*.[59] The Supreme Court distinguished the ECtHR decision from the case being heard as:

- the Coolglass case had been brought against ACP, and not the State,
- Coolglass did not claim that ACP had itself breached Article 8 of the ECHR, and
- for Article 8 to apply, there needed to be a victim, and Coolglass did not claim to be a victim of a violation of Article 8. [60]

It is also noteworthy, that in both *Coolglass* and in *Friends of the Irish Environment v Government of Ireland*,[61] the Court found that the ECHR is not directly applicable to Ireland, it is a treaty that becomes applicable in Ireland through domestic legislation (the *European Convention on Human Rights Act 2003*) and it is therefore subject to the Constitution. This means that the judicial interpretation of the application of a derived right in the Constitution that protects the family (Article 41) would take precedence over the interpretation of the ECtHR when looking at an equivalent ECHR right (Article 8).

In the *Friends of the Irish Environment* case, the Supreme Court rejected an argument that there was a specific constitutional right to a clean environment.[62]

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[58] *Verein KlimaSeniorinnen Schweiz v Switzerland* at [445] – [447].

[59] [2026] IESC 5.

[60] *Coolglass v An Coimisiún Pleanála* [2026] IESC 5 at [148] – [153] per O'Donnell CJ.

[61] [2020] IESC 49.

[62] *Friends of the Irish Environment v Government of Ireland* [2020] IESC 49; *Coolglass v An Coimisiún Pleanála* [2026] IESC 5 at [155] per O'Donnell CJ.

Legislative proposal

The Critical Infrastructure Bill 2026 contains ten (10) sections. The stated purpose of the Bill is:

- to provide for the designation, by order of the Government, of certain projects and programmes as critical infrastructure projects and programmes, emphasising those involving water, transport and energy;
- to establish duties on certain public bodies in so far as they perform functions with respect to critical infrastructure projects or programmes;
- to empower the Minister to give directions to relevant public bodies, to compel performance of specified functions and duties; and
- to disapply section 15 of the *Climate Action and Low Carbon Development Act 2015* to acts done under the Bill.[63]

This section of the *Bill Digest* analyses the principal provisions of the Bill focussing on those areas that are central to the overall policy behind the Bill. Note that any defined terms used below will be in bold.

Principal provisions of the Bill

Section 1: Interpretation

This section would provide definitions for the main terms used in the legislation.

The term '**infrastructure**' as used in the Bill is defined as

> *"… any infrastructure that enables essential facilities and systems of the State to function effectively and includes, but is not limited to—*
>
> > *(a) transport facilities, including ports and airports, and transport systems, including roads and railways,*
> >
> > *(b) energy generation, transmission and distribution systems, and*
> >
> > *(c) water supply, wastewater and waste management systems".*

The term '**public body**', when used in the Bill, would include a Minister of the Government, local authorities, statutory corporations, bodies and corporations that a financially supported by or part-owned by the State and any other person or body that is prescribed by regulations made under the Bill.

In the Bill, a '**programme**' would include two or more projects with a common purpose. A '**project**' would only cover a project "funded by capital investment, by or on behalf of the State

[63] Critical Infrastructure Bill 2026, Long Title.

or by or on behalf of a public body" and where "the purpose of which is the delivery of infrastructure".

An '**authorisation**', when used in the Bill, would refer to an award, approval, decision, licence, consent, permit or other authority required, granted or made to enable a **project** or **programme** to proceed.

Section 2: Operation of the Act

This section is used to ensure that if there were a conflict between the State's obligations under EU law and the provisions of the Bill, the EU law would prevail.

Specifically, it provides that the provisions of the Bill are subservient to the State's existing or future obligations under EU law and Irish legislation transposing EU law. The section also seeks to protect current and future entitlements directly or indirectly derived from EU law.

Section 3: Designation of project or programme as critical infrastructure project or critical infrastructure programme

This section would create a new statutory power for the Government to designate a **project** or **programme** as a critical infrastructure project or critical infrastructure programme, by order (defined as a '**designation order**' for the purposes of the Bill), after considering a recommendation by the Minister.

The Minister, in recommending a designation order to the Government in respect of a **project** or **programme**, must have regard to:

- the need to ensure effective and efficient delivery of a **project** or **programme**;
- whether delay to, or disruption of, the delivery of a **project** or **programme**, or failure to deliver a **project** or **programme**, may have adverse economic or social consequences for the State;
- whether a **project** or **programme** may impact in a positive or negative manner on the delivery of any other **project** or **programme**;
- the current National Development Plan or equivalent document; and
- such other matters in relation to infrastructure as the Minister may consider appropriate.

After a **designation order** is made, it must be laid before Daíl Éireann. The House would then have twenty-one (21) sitting days from the date the order was laid to pass a resolution annulling that order, at which point the **designation order** would be annulled. An annulment motion would not affect the operation of the **designation order** up until the date of annulment.

Section 4: Relevant public body and relevant functions

This section defines the terms ‘**relevant public body**’ and ‘**relevant functions**’ as used in the Bill. The term ‘**relevant functions**’ would include any functions related to a critical infrastructure project or programme that is the subject of a valid **designation order**. A ‘**relevant public body**’ is any **public body** that performs **relevant functions**.

Section 5: Duties of relevant public bodies

This section seeks to create new statutory duties for **relevant public bodies** including, but not limited to:

- prioritising the performance of its **relevant functions** over other functions;
- when performing **relevant functions**, taking all necessary steps to act expeditiously and to avoid undue delays;
- taking necessary and appropriate steps to reduce the time required to complete an **authorisation**; and
- cooperating with other **relevant public bodies** to coordinate, prioritise and sequence their **relevant functions**, and identify and manage risks and constraints that may affect cooperation, and the extent to which the critical infrastructure project or programme concerned is dependent on other factors.

A relevant body would also need to appropriately allocate its administrative, technical and decision-making resources to facilitate these duties.

Under this section, the Minister would be empowered, to make a written request to a **relevant public body** to provide to the Minister:

- information related to the performance of its duties under this section, and
- any assessments, reports or analyses relating to the performance by the **relevant public body** of its **relevant functions**.

Under the section a body must comply with such a written request. However, a relevant public body would not be obliged to disclose **confidential information** or information that would be contrary to the law or the interests of national security. ‘**Confidential information**’ would include information of a commercially sensitive nature submitted to a body.

Section 6: Directions to relevant public bodies

This section would empower the Minister to give written directions to any **relevant public body**, after consulting with the relevant Minister who performs functions in respect of that body. Separate directions could:

- require the body to prepare and submit a report outlining the performance of their **relevant functions** and their duties under the Bill; or
- adopt specified measures related to the performance of its duties under the Bill

- amend or revoke a direction already given under this section.

The **relevant public body** that is subject to a direction would be obliged to comply with it.

Section 7: Modification of application of section 15 of Climate Action and Low Carbon Development Act 2015

This section seeks to disapply *section 15 of the Climate Action and Low Carbon Development Act 2015* to **relevant public bodies** when performing their **relevant functions**, when carrying out of their duties under the Bill, or when complying with a direction under the Bill ('specified acts').

This would mean that when a body is performing a specified act it would be exempt from meeting its statutory obligations of performing its functions in a manner consistent with the most recent climate action plan, strategy, adaption framework and plans, and national climate objectives including mitigating greenhouse gas emissions.

Section 8: Regulations

This section would empower the Minister, by regulations, to prescribe a person or body that performs functions in relation to infrastructure to be a **public body** under the Bill. Any regulation made under this section must be laid before both Houses of the Oireachtas. Each House would then have twenty-one (21) sitting days from the date the regulation was laid to pass a resolution annulling that regulation, at which point the regulation would be annulled. An annulment motion would not affect the operation of the regulation up until the date of annulment.

Section 9: Expenses

Under this section, expenses incurred by the Minister in administration of the legislation would be paid out of moneys provided by the Oireachtas.

Section 10: Short title and commencement

This provision would provide that the short title of the legislation, when enacted, would be the *Critical Infrastructure Act 2026*. It would also provide the commencement arrangements for the legislation:

> *"... on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions."*

Possible implications and implementation issues

Laying a designation order

Section 3 of the Bill would require a **designation order** to be laid before Daíl Éireann, giving the Daíl 21 sitting days in which to annul the order.

It is notable that section 8 of the Bill requires the Minister to lay regulations made under the legislation before 'each House of the Oireachtas'. It might be inferred from this that there is an intent to limit scrutiny of a **designation order** to the Daíl, which could be seen to diverge from common practice (such as in the 2000 Act and the 2024 Act) where a laying requirement usually pertains to both Houses.

On 4 March 2026, when Government approval for the Bill was announced by the Minister, the Department stated:

> *"The Bill will allow Government, with Dáil approval, to designate specific infrastructure projects or programmes that the Government considers to be critical."*[64]

However, section 3 of the Bill does not make a **designation order** subject to Daíl approval. Rather, section 3 of the Bill seeks to make a **designation order** subject to an annulment motion. Under the provision, an annulment motion will not prejudice the validity of anything previously done under the order.[65]

Disapplication of section 15 of Climate Action and Low Carbon Development Act 2015

Section 7 of the Bill seeks to disapply section 15 of the 2015 Act to relevant public bodies when performing their **relevant functions**, when carrying out their duties under the Bill, or when complying with a direction under the Bill.

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[64] Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 'Minister Chambers Announces Government Approval for Development of Critical Infrastructure Bill', *Press Release*, 4 March 2026.

[65] For a better understanding of the difference between an approval process and an annulment process see Oireachtas Library and Research Service, *Infographic on the Secondary Legislative Processes*, 2020 and Oireachtas Library and Research Service, *L&RS Note: Making and Scrutiny of Secondary Legislation*, 2020.

Similar provisions have been proposed in Head 12 of the General Scheme of the Dublin Airport (Passenger Capacity) Bill 2026, and Head 20 of the General Scheme of the Strategic Gas Emergency Reserve Bill 2025 which would deem designated development under that legislation to be compliant with the 2015 Act.

Under the Constitution, the Oireachtas holds the sole and exclusive power of making laws for the State[66] and, therefore, it also has the power to disapply the application of laws that it had previously made. However, Ireland has committed to the Paris Agreement and by ratifying the agreement, the State is legally bound by the goal of keeping global temperatures within safe limits.[67] As noted previously in this paper, Ireland as a Member of the EU, is also bound by the EU Climate Law and committed to the European Green Deal strategy, consisting of legally-binding measures and rules to cut emissions and transform the EU economy to become climate-neutral by 2050.[68]

According to the Environmental Protection Agency, Ireland is not expected to reach its 2030 greenhouse gas emissions targets.[69] As a result of 'missed opportunities' by Ireland to reduce greenhouse gas emissions, the Irish Fiscal Advisory Council and the Climate Change Advisory Council have estimated that, based on existing measures, the State "may have to pay out €8 to €26 billion to its EU partners if it does not step up on climate action it has agreed to".[70] It stands to reason that if the national climate policy and goals are disapplied, even if done on a case-by-case basis, Ireland risks falling further behind in its emissions reductions and being subject to even greater fines.

Moreover, a representative of Friends of the Earth, an environmental NGO, speaking to the Joint Committee on Climate, Environment and Energy, during pre-legislative scrutiny of the General Scheme of the Strategic Gas Emergency Reserve Bill 2025 stated that such a derogation:

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[66] Article 15.2 1° of the Constitution.

[67] The Paris Agreement is a legally binding international treaty on climate change which entered into force on 4 November 2016. The overarching goal is to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels.": Paris Agreement, Article 2.

[68] European Council, 'Paris Agreement on climate change', webpage last accessed on 10 April 2026.

[69] Environmental Protection Agency, EPA Projections Show Ireland off Track for 2030 Climate Targets, website last accessed 10 April 2026.

[70] Irish Fiscal Advisory Council and the Climate Change Advisory Council, *A Colossal Missed Opportunity: Ireland's climate action and the potential costs of missing targets*, March 2025.

> *"... fragments climate governance, leaving some public bodies bound by climate law while others ... are effectively exempt."* [71]

However, this comment should be read in light of the Supreme Court's ruling in *Coolglass*, in which the Court stated that section 15 of the 2015 Act does not create new functions for public authorities. Rather, section 15 of the 2015 Act

> *"... is in the nature of a statutory reset, reminding any authority that the performance of its functions, must be, so far as practicable, consistent with climate objectives."* [72]

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[71] Oireachtas Joint Committee on Climate, Environment and Energy, 'General Scheme of the Strategic Gas Emergency Reserve Bill 2025: Discussion', *Debates*, 5 February 2026.

[72] *Coolglass v An Coimisiún Pleanála* [2026] IESC 5 at [98] per O'Donnell CJ.

Pre-legislative scrutiny

Overview of pre-legislative scrutiny (PLS)

On 25 March 2026, the Oireachtas Joint Committee on Infrastructure and National Development Plan Delivery agreed to the request from the Minister, for an exemption from pre-legislative scrutiny ('PLS') of the Bill.[73] As a result, the Bill did not undergo any PLS.

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[73] Oireachtas Joint Committee on Infrastructure and National Development Plan Delivery, 'The Joint Committee on Infrastructure & National Development Plan Delivery agrees with Minister's Request for Exemption from Pre-Legislative Scrutiny of the Critical Infrastructure Bill', *Press Release*, 25 March 2026.