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**Friends of
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Joint Briefing Document on the Critical Infrastructure Bill 2026 22 April 2026

This briefing provides information on a) the serious implications of the Bill's disapplication of section 15 of the Climate Action and Low Carbon Development Act 2015 (as amended) and b) the extraordinarily broad and non-safeguarded powers given to the Minister with regard to the designation of projects and programmes as critical infrastructure.

Modification of Climate Act application

S.7 of the Bill should be deleted, as proposed by Cian O'Callaghan, Ged Nash, Conor Sheehan, Ciarán Ahern, Roderic O'Gorman, Paul Murphy, Richard Boyd Barrett (as an amendment to s.7 page 2 of the Committee Stage amendments)

This is the third Bill (or General Scheme) in the past four months that has sought to disapply, or automatically deem compliance with, the Climate Action and Low Carbon Development Act 2015 (as amended) or parts of it. This was also done in the Heads of the Strategic Gas Emergency Reserve Bill 2025 and the Dublin Airport (Passenger Capacity) Bill 2026.

Disapplying section 15 of the Climate Act in the context of critical infrastructure is also essentially an own-goal in that section 15 also constitutes an enabling framework through which the Government can facilitate and support projects with emissions reduction and climate benefits, for example Metrolink and renewable energy developments. As noted by McCann Fitzgerald, compliance with section 15 and integration of such projects into the Climate Action Plan would rather mean it would have a stronger policy basis and legitimacy (thereby potentially preventing undue delays).¹

Minister Chambers' comments on s.7 of this Bill in the Dáil debate focused primarily on what he views as the need to reduce judicial reviews, yet he failed to provide any evidence that adhering to the obligations under section 15 of the Climate Act is creating delays or leading to additional cases. Instead of trying to prevent access to justice, we should be focused on creating the conditions needed to make robust, lawful decisions efficiently. It is also important to note that s.7 and the exclusion of climate obligations was not recommended in the Accelerating Infrastructure Report produced by DPER in December 2025.

¹<https://www.businesspost.ie/legal/how-the-blunt-new-climate-law-exemption-may-muddy-the-waters-for-vital-in-frastructure/>

The entirely unevidenced disapplication of or deemed compliance with climate obligations in the various bills from this Government is setting an alarming precedent for relinquishing climate action and planning controls to facilitate emissions-intensive facilities while we face a worsening climate emergency. It also significantly increases the possibility of legal challenge.

We welcome the response from Tánaiste Harris that the Minister for Public Expenditure will engage with the opposition on these concerns. We would note however the Minister has not engaged with civil society or legal experts who have raised fundamental issues with the proposed approach. It should also be noted that the Minister expressly requested a waiver to any pre-legislative scrutiny process.²

We also welcome the statements by Fine Gael during that second stage debate which supported the need for another approach. Naoise O'Muirí TD noted that 'It is really important that we meet our climate obligations and we do not sidestep those.' Barry Ward TD also noted that 'I do not think the answer is to cut out judicial review.'³

The Government's move to disapply section 15 raises legal concerns regarding its proportionality and justification. Legislative disapplication of a statutory duty, particularly one forming a core part of the State's climate governance framework, should only be justified where there is clear evidence of a substantive conflict. Disapplying section 15 to avoid legal scrutiny may be vulnerable to challenge as a disproportionate measure and an unreasonable attempt to circumvent national and EU law.

Legal experts have also raised questions around the legal approach adopted. McCann FitzGerald and Philip Lee have correctly highlighted that disapplication s.15 does not circumvent alignment with EU climate law and would not accelerate infrastructure delivery.⁴

Section 15 requires public bodies, including the Minister, to perform their functions in a way that is consistent with national climate policy. The Supreme Court's recent decision in the Coolglass case reaffirmed that section 15 is an enforceable legal obligation requiring relevant public bodies to give meaningful consideration to climate obligations when exercising their statutory functions. In seeking to disapply section 15, the Government has sought to create a legal loophole to circumvent the duty that the Supreme Court concluded is a binding requirement.

Legislating to bypass the Climate Act risks breaching the Minister's statutory duty to ensure all ministerial functions remain consistent with the National Climate Objective. The Minister cannot legally fulfill this obligation while simultaneously proposing a Bill designed to facilitate increased emissions and circumvent climate oversight.

Disapplying section 15 risks undermining the rule of law. It also sets a dangerous precedent that the Government may seek to exclude obligations where they are considered

² <https://www.irishexaminer.com/news/politics/arid-41828531.html>

³ https://www.oireachtas.ie/en/debates/debate/dail/2026-04-14/30/#spk_710

⁴ <https://www.businesspost.ie/legal/how-the-blunt-new-climate-law-exemption-may-muddy-the-waters-for-vital-infrastructure/>

inconvenient for a particular industry. This approach also risks reputational damage, particularly as Ireland assumes the EU Council Presidency and will play a leading role in international climate negotiations during COP at the end of this year.

The Committee should also take note that the proposed exemption in Head 7 follows a separate but similarly problematic provision in the Government's proposed *Strategic Gas Emergency Reserve Bill*, which was strongly and comprehensively rejected by the Joint Oireachtas Committee on Climate in its recent PLS report. We call on this Committee to follow suit and reject the provision in line with their colleagues on the Climate Committee.

Definition of critical infrastructure and the criteria for designation

We would ask that members question substantive legal risks raised by the current definition of 'critical infrastructure'.

The definition of critical infrastructure per s.1 of the Bill is extraordinarily broad: "*any infrastructure that enables essential facilities and systems of the State to function effectively and **includes, but is not limited to...***" (emphasis added). This leaves the designation of an infrastructure project entirely to the Minister's discretion. This framework appears to provide the Minister himself with unfettered discretion, potentially enabling unilateral decision-making or the promotion of non-strategic projects that have not undergone proper vetting by other parts of Government. It may also allow the designation of developments as critical infrastructure, even if they are emissions and energy-intensive, otherwise environmentally problematic, not in the public interest, etc

The criteria for a designation order as laid out in s. 3(3) are also extraordinarily broad and centralise power with the Minister. For example:

- 3(3)(b) - "*adverse economic or social consequences for the State*" are not defined - this is left entirely to the Minister's discretion on what constitutes adverse economic or social consequences.
- 3(3)(e) - *such other matters in relation to infrastructure as the Minister may consider appropriate for the purposes of making a recommendation under subsection (2)*. This allows the Minister to give essentially any reason for designation.

There is a serious lack of safeguards and oversight mechanisms in the designation process:

- The process for the Minister making the decision on designation is not prescribed or laid out, meaning there is no transparency with regard to how those decisions can be made;
- There is no provision for consultation on designations;
- There are no safeguards against politically-motivated designation.

In our view, this is part of a highly problematic trend of centralising significant powers with a Minister while eliminating crucial independent checks and balances. We have seen similar issues arise in the Planning and Development Act 2024, the Strategic Gas Emergency Reserve Bill 2025, and the Dublin Airport (Passenger Capacity) Bill 2026.

Directions to public bodies

S.6(2) provides for a Ministerial direction to public bodies: *The Minister, having consulted with the relevant Minister, may give a direction in writing to a relevant public body requiring it to adopt such measures as are specified in the direction for the purposes of carrying out its duties under section 5.*

- We note this provision is proposed for removal by Amendment 7, which is very welcome and we call on members to support this amendment.
- The broadness of this provision raises numerous concerns. It further centralises power with the Minister and gives him or her unfettered discretion on the content of the order under this section - there appear to be no limitations, restrictions, safeguards, or oversight provisions.
- It also gives rise to potential conflicts with national and EU law (notwithstanding s.2 of the Bill).
- For example, are there ways in which this could lead to interference in the planning process? Such interference could potentially conflict with other obligations, including under EU law, but it does not appear to be precluded under this section. This is one of the ways the broad and vaguely defined powers in this Bill increase the possibility of legal uncertainty and delay. Furthermore, the lack of PLS means that questions like this have not been teased out.

Lack of proper scrutiny/assessment

- The waiving of pre-legislative scrutiny and the lack of a Regulatory Impact Assessment mean it is very difficult to fully assess the practical implications of the Bill. There are multiple aspects of the Bill that have the potential to create legal uncertainty, increasing the likelihood of challenge. This could lead to further delays, which is the opposite of the Bill's purported purpose.
- Programmes can also be designated under s.3, in addition to specific projects, and many programmes will fall under the ambit of the Strategic Environmental Assessment (SEA) Directive. Given the provisions in this bill for the prioritisation and expediting of public body procedures there is, in our view, an increased possibility that SEAs will be less robust, non-compliant with the Directive, and potentially unlawful. This therefore increases the risk of legal uncertainty, legal challenges, and delay.