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Consultation on the General Scheme of the Strategic Gas Emergency Reserve Bill 2025

An Taisce welcomes the opportunity to make a submission to help inform the Pre-Legislative Scrutiny process for the General Scheme of the Strategic Gas Emergency Reserve Bill 2025. We have laid out our submission as follows:

- A summary of our overarching position starting on page 1
  - Climate and Energy considerations starting on page 1
  - Planning considerations starting on page 5 (these are also covered in our comments on specific Heads)
- General recommendations on page 6
- Comments and recommendations on specific Heads of Bill starting on page 8

I. Summary of Overarching Position on the General Scheme

An Taisce has multiple serious concerns regarding the Bill. These include its implications for the climate and biodiversity crises, the limitations of the project in addressing energy security, and the various threats it poses to the integrity of the planning process.

1. Climate and Energy Considerations

The physical, human and economic impacts of climate change, illustrated well by recent extreme weather events, have never been more evident. The proposed project, which represents close to a €1bn investment in new fossil fuel infrastructure, is inconsistent with Ireland's legal climate obligations, recognition in national policy of the need for fossil fuel phase out, and our international climate commitments.

Liquefied Natural Gas (LNG) is a highly emissions-intensive fossil fuel, far more so on a full lifecycle basis than conventional gas, and even coal. This project, if operating as an emergency reserve, is estimated to require six top up LNG shipments per annum,[1] with a minimum send out of gas to the national network. Compliance with the national carbon budget programme and the Climate Action and Low Carbon Development Act 2015 (as amended) (hereafter referred to as the Climate Act), requires that consumption of all fossil fuels, including natural gas, must decline rapidly over the

[1] https://www.gov.ie/en/department-of-climate-energy-and-the-environment/press-releases/government-approves-development-of-state-led-strategic-gas-emergency-reserve/

coming decade and beyond. Deployment of any additional fossil fuel import infrastructure would work directly against that requirement.

Yet, despite these very clear issues, a Strategic Gas Reserve is currently provided for in Government policy, and Government is rushing through provisions to facilitate such a development. In light of this current situation, and without prejudice to our position against the further development of fossil fuel infrastructure, including LNG, it is important that we address multiple aspects of what is proposed in this General Scheme.

1.1 Compliance with Climate Legal Obligations

On-time compliance with all carbon budget and sectoral ceiling emissions tonnages is legally binding per the Climate Act 2015 (as amended). However, the Heads of Bill appear to simply toss out genuine compliance with the carbon budgets and other provisions of the Climate Act via Head 20, which states that the proposed strategic reserve development is *"deemed to be in compliance"* with the provisions of the Climate Act. We consider this pre-emptive, evidentially unfounded determination of compliance to be wholly inappropriate and unacceptable. Simply deeming compliance via legislation without *actually testing* for compliance is extraordinarily poor practice. This risks reputational damage for the Oireachtas and the State at a time when Ireland assumes the European Council Presidency in 2026, with an elevated leadership role for COP31, and when Ireland reaffirmed its commitment to enhanced EU emissions reduction targets and accelerated domestic decarbonisation efforts during the latest COPs (29 and 30).

Furthermore, the provisions under Head 20 are contrary to the findings from the Climate Change Advisory Council (CCAC) in their 2025 Sectoral Review for Electricity[2] that:

> *"further expansion of fossil fuel infrastructure through an LNG terminal will commit Ireland to further fossil fuel lock-in, with serious concerns over the total emissions associated with LNG production, including the upstream release of methane where LNG is sourced via fracking... the most ambitious energy scenarios that are needed for Ireland to meet climate neutrality involve in effect, phasing out fossil fuel use by 2039 within the Electricity, Industry, Buildings and Transport sectors, with limited to no opportunity for new investments in fossil fuel systems."*

It would appear that the Heads of Bill in their entirety fail to recognise the increasingly stringent nature of successive carbon budgets within the timeframe of a Strategic Gas Emergency Reserve facility being operational. Section 6D(5) of the Climate Act provides for exceedances of carbon budgets to be carried over into subsequent ones, meaning that carbon budgets will become stricter, leaving little room for additional fossil fuel infrastructure, a point also noted by the CCAC above and requiring recognition by advocates of the strategic reserve.

The Explanatory Note for Head 20 states that "*The intention is to ensure there is no conflict between provision for the designated development in this Act, with the provisions of the Climate Action and Low Carbon Development Act 2015."* An Taisce wholly disagrees with this given that it seeks to simply deem compliance with the Climate Act without a transparent assessment of consistency with carbon budgets, and the foundation and purpose of the Act. Instead, the General Scheme seeks to demonstrate consistency with *"plans, strategy, framework and objectives"* which is legally questionable and subject to challenge. It also exacerbates the risk of fossil fuel emissions lock-in by allowing for the LNG facility to remain operational due to declared government policy at any moment

[2] https://www.climatecouncil.ie/councilpublications/annualreviewandreport/CCAC-AR2025-Electricity-FINAL.pdf

in time, despite increasingly stringent carbon budgets and an obligation to adhere to these as time progresses.

We would highlight another problematic statement under Head 20:

> *"The purpose of the Head is to ensure the Minister and the Coimisiún, in performing their functions under this Act, balance the need to have regard to the provisions of Section 15(1) of the Climate Action and Low Carbon Development Act 2015, in conjunction with the urgent and compelling necessity for securing the supply of gas in the State which underpins the need for this legislation."*

This makes security of gas supply an overriding consideration and seeks to executively legislate for compliance on the government's own terms, rather than respect for existing climate law as formulated by the legislature, while also not allowing for consideration of other issues.

The Climate Action Plans (which would presumably fall under the "plans, strategy, framework and objectives" referred to in section 15 (1), per Head 20(1)) are bound by the carbon budgets and sectoral ceilings, therefore, per s.15(1), it is submitted that relevant bodies are also bound to perform their functions in a manner consistent with the budgets and sectoral ceilings. The proposed provisions instead alter this role by allowing for the Minister and An Coimisiún to perform their functions consistent with climate objectives to *"the extent that they consider practicable",* leaving significant discretion and leeway to deviate from actions rooted in climate obligations. This seriously weakens the requirements of section 15(1) and sets a highly undesirable precedent. It also raises significant legal questions.

In light of the foregoing considerations, we advocate for the full deletion of Head 20 given how it seeks to reformulate the legal provisions of the Climate Act, namely consistency obligations in terms of climate action plans, carbon budgets and sectoral emissions ceilings. We would consider this to be legally impermissible and deeply problematic on administrative and environmental law grounds as it provides excessive discretionary powers to decision-makers to deviate from existing climate law to approve a fossil fuel facility, establishing a concerning precedent for other facilities of a similar nature. Furthermore, the carefully formulated legal architecture of Ireland's Climate Act also contributes to meeting our EU climate law obligations.

Additionally, it must be considered whether alleged non-compliance under the N-1 Infrastructure Standard (within Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply) takes precedence over the EU Climate Law (EU Regulation 2021/1119) and domestic climate law. We would argue that it does not provide a mandate for new fossil fuel infrastructure. Energy security should not be used as a justification to circumvent emissions limits, which is the adopted approach within these provisions without a systematic test of compliance with the Climate Act.

1.2 Lifecycle Emissions and Leakage

The Heads of Bill appear to offer no acknowledgement of methane leakage potential and consequent emissions across the entire LNG supply chain, the majority of which is noted by research to occur during the extraction and processing phases. This evidence suggests that LNG is 33% worse than coal in terms of planet heating emissions over a 20-year period.[3] It is not clear how this adheres to

[3] Howarth, R. 2024. The greenhouse gas footprint of liquefied natural gas (LNG) exported from the United States. Energy, Science and Engineering. Volume 12, Issue 11. https://scijournals.onlinelibrary.wiley.com/doi/10.1002/ese3.1934

legally binding obligations under the Climate Act or the Global Methane Pledge, to which Ireland is a signatory.

1.3 Two Bills and the Strategic Reserve as a Transitional Measure

It appears to be the plan to split the legislation for the operation and decommissioning of the proposed facility into a separate bill, which we consider to be highly problematic and recommend against. It is essentially asking the Oireachtas to sign a blank cheque with this Bill.

Moreover, it is indicated in this Bill that the proposed Strategic Gas Emergency Reserve facility is a transitional measure (a feature of its operation). If so, *this current* Bill should also explicitly state that the overarching approach of the state to ensuring strategic national energy and climate security, is to rapidly phase out all use of fossil fuels, specifically including natural gas. The Bill should also explicitly provide for the transitional and temporary nature of the proposed project, in line with the carbon budgets and Climate Act.

1.4 State-Owned Facility

The General Scheme states that the facility would be operated as a State-owned Strategic Gas Emergency Reserve only. Head 8 states that Gas Networks Ireland, or such other entity that may be prescribed by the Minister, may apply to the Minister for approval to carry out the designated development. The explanatory note clarifies that if the Minister deems it expedient, a public or private body may make the application on behalf of Gas Networks Ireland. Without prejudice to our stance against further development of fossil fuel infrastructure, An Taisce considers that no private, commercial body should be allowed to develop this project.

1.5 Energy Security

The proposed project has been put forward as an energy security measure. However, it does not offer energy security in extreme weather events, and furthermore, it is not the only available solution. As CEPA's updated 2025 study on security of energy supply outlines[4], energy security could be supported through multiple alternative options. More fundamentally, gas, particularly gas imported from the US, is an energy security risk in itself. Given the current geopolitical climate, this represents a high-risk strategy, flying in the face of the energy security and independence narratives. This is not addressed at all in the General Scheme.

Renewable energy has also become cheaper, more efficient and abundant since the energy security review, and the rollout of renewables and acceleration of clean energy storage solutions is urgently required, along with modernisation of the electricity grid. In the EU in 2025, more electricity was generated by wind and solar than fossil fuels[5] for the first time, and it is now cheaper to produce wind, solar and battery storage than coal and gas.[6] Progress made under the Electricity Storage Policy Framework for Ireland (2024) remains unclear. Building up LNG infrastructure means locking in higher costs for decades to come instead of directing investment to renewable and zero-emission technologies, which, as stated above, are dropping in price. At a time when households and industries are already squeezed by inflation and energy price shocks, reduced economic resilience is the likely outcome.

[4] https://assets.gov.ie/static/documents/CEPA_-_Energy_Security_of_Supply_Study_Update_v2.pdf
[5] https://ember-energy.org/latest-insights/european-electricity-review-2026/
[6] https://about.bnef.com/insights/clean-energy/global-cost-of-renewables-to-continue-falling-in-2025-as-china-extends-manufacturing-lead-bloombergnef/

Additionally, nowhere has the General Scheme looked at alignment with the criteria in Action 17 of the Energy security Review, which includes the need for the proposal to *"not inadvertently increase gas demand by increasing the supply available on the market"*, ensure that it is *"a cost-effective proposal"* and *"a proposal which is compatible"* with the Climate Act. Persistent uncertainty around the potential for commercial LNG provision in addition to a state-led project raises doubts about limited supply to market and demand management. The cost effectiveness of the proposal is doubtful given stranded asset risk and eventual economic unviability due to low utilisation and other external factors such as geopolitics. Finally, compatibility with the Climate Act has not been actually demonstrated - as discussed in section 1.1 above, simply deeming compliance via legislation is completely inappropriate in our view.

1.6 Social Justice Considerations

There are also significant social justice implications of importing LNG. LNG is typically obtained by fracking[7], a method of extraction we have banned in Ireland, which has serious environmental and health impacts[8]. Importing LNG would support the fracking industry and exploit vulnerable communities, and increase Ireland's exposure to the many human rights abuse controversies related to LNG production and expansion.

Furthermore, in Ireland, the estimated project cost of €900 million over 10 years is expected to be funded by a household levy. This would impose costs directly on consumers when electricity prices in Ireland are already among the highest in the EU[9]. These and all other social justice issues must be assessed.

2. Broad Planning Considerations

This Bill is proposing to disapply the existing planning procedures as set out in the 2000 and 2024 Planning and Development Acts and to create an entirely new procedure for this particular development. Without prejudice to our position on the need for the rapid phase out of fossil fuels and our position against further fossil fuel and LNG infrastructure development, we are opposed to this proposal. We highlight that choosing to diverge from the well-established standard planning procedures opens up multiple potential avenues for legal challenge to a novel and un-tested planning process. Ultimately, if the strategic reserve does go ahead, without prejudice to our position against further development of fossil fuel infrastructure, we strongly recommend that the highly problematic planning procedure as laid out in the Heads of Bill is dropped and that any planning proposal for a strategic reserve go through the already established planning and permitting channels. The risks of proceeding with the proposed planning process are compounded by the very worrying lack of clarity on and problems with numerous aspects of this process throughout the Heads of Bill. See the following sections on Head-specific comments.

We would highlight the significant risks that come with expedited planning timelines, as proposed in the Heads of Bill. Unrealistic timelines that are inappropriate for the development type or its complexity can incentivise rushed or poorer quality decision making, thereby increasing the possibility of unlawful decisions, legal challenges and delays.

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[7] https://www.gov.ie/en/department-of-climate-energy-and-the-environment/publications/policy-statement-on-the-importation-of-fracked-gas/

[8] https://psr.org/resources/fracking-compendium-9/

[9] Goldrick – Kelly. 2025. Ireland's Electricity Prices Over Time. NERI Report Series, No. 40. https://www.nerinstitute.net/sites/default/files/research/8951%20NERI%20RS%2040%20Electricity.pdf

We also have serious concerns about the very limited provisions regarding public participation. The minimum window for public comment is short compared to that provided for in the current planning processes, and comment appears to be limited to certain environmental considerations to do with the EIAR and Appropriate Assessment. Public comment on any other aspect of the development does not appear to be permitted.

Furthermore, the proposed planning process represents a very significant centralisation of a planning power with the Minister, and this is very concerning to An Taisce. As the Minister, whoever they may be at the time, and the Department do not currently act as a planning authority, it must be ensured that the relevant expertise is available for assessing and deciding on such a complex proposal.

It also must be ensured that project splitting does not occur, as this would contravene the EIA Directive. Any EIA for the proposal must cover all aspects of the proposal including construction, operation, decommissioning, supporting infrastructure, etc. As discussed in section 1 of this submission, we note that a separate piece of legislation is proposed to cover the operation and decommissioning of the proposed strategic reserve. This should not create conflicts that would facilitate or accidentally cause project splitting or lead to inaccuracies in an EIAR.

The multiple issues outlined above, and the numerous other issues highlighted in our comments on specific Heads below, introduce uncertainty and ambiguity, therefore significantly raising the risk of flawed or unlawful decisions. This of course then risks additional delay - precisely the opposite of what this Bill is purportedly trying to do.

3. Full Assessment of Proposed Legislation

We strongly recommend that the Bill is independently assessed against our national, European and international legal obligations, including but certainly not limited to the Aarhus Convention on the rights to public participation and access to justice, the Environmental Impact Assessment Directive, the Habitats and Birds Directives, the Water Framework Directive, the Espoo Convention, etc., etc. Such assessments should be made publicly available. Of course, we also submit that the Heads (and eventual reserve proposal) need to be assessed against the Climate Act. Deemed compliance is wholly insufficient.

All evidence, data and rationale that have informed the development of this proposed legislation should also be made publicly available. This is of particular importance given that this General Scheme is proposing a new fast-tracked planning procedure with, in our view, a huge number of potential pitfalls, ambiguities, and legal issues.

II. RECOMMENDATIONS AND HEAD-SPECIFIC COMMENTS

Below we summarise our broad recommendations and then provide comments and recommendations on specific Heads of Bill.

1. General Recommendations

Overall, in light of our stances articulated above on not developing additional fossil fuel infrastructure and the inappropriateness of the new planning procedure set out in the Heads, our overarching recommendation is to drop this General Scheme. However, since the Government intention appears to be to pushing on with the plans for a strategic gas reserve, we must also make the following recommendations without prejudice to our overall position:

- Drop all proposals, including the entirety of Head 20, to legislatively deem a strategic gas reserve development compliant with the Climate Action and Low Carbon Development Act 2015 (as amended). Compliance with the Climate Act, both of the General Scheme and a potential gas reserve, needs to be genuinely and transparently assessed and evidence-based;
- It should be assessed whether alleged non-compliance under the N-1 Infrastructure Standard (within Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply) takes precedence over the EU Climate Law (EU Regulation 2021/1119) and domestic climate law. Energy security should not be used as a justification to circumvent emissions limits;
- Ensure lifecycle emissions of LNG are fully assessed, including fugitive methane emissions;
- The legislation for the operation and decommissioning of a strategic reserve should not be split into a separate Bill;
- Ensure that splitting the proposal across two pieces of legislation will guard against project splitting, including accidentally, which is not permissible under the EIA Directive – the entire project must be assessed in one EIA;
- If the proposed project is a transitional measure, as stated in the Bill, this current Bill should also explicitly state that the overarching approach of the state to ensuring strategic national energy and climate security, is to rapidly phase out all use of fossil fuels, specifically including natural gas. The Bill should also explicitly provide for the transitional and temporary nature of the proposed project, in line with the carbon budgets and Climate Act;
- Only public bodies should be permitted to carry out the development – the Heads should not permit private, commercial bodies to develop the project;
- Other energy security risks, including the risks of further dependence on gas and the vulnerability of the proposal to extreme weather events, should be assessed;
- Alignment and compliance of the proposal with the criteria in Action 17 of the Energy Security Review should be assessed and these criteria must be included in any reserve proposal;
- If the strategic reserve goes ahead per current Government plans, the highly problematic planning procedure as laid out in the Heads of Bill is dropped and that any planning proposal for a strategic reserve go through the already established planning and permitting channels;
- The public consultation provisions should be extended in line with our recommendations under Head 11 below;
- Evidence should be provided regarding the appropriateness of the proposed planning timelines and they should be revised if needed to ensure that they are realistic and will not incentivise flawed decision-making;
- As the Minister, whoever they may be at the time, and the Department do not currently act as a planning authority, it must be ensured that the relevant expertise is available for assessing and deciding on such a complex proposal;
- The General Scheme and all Heads should be independently assessed against our national, European and international legal obligations, including but certainly not limited to the Aarhus Convention on the rights to public participation and access to justice, the Environmental Impact Assessment Directive, the Habitats and Birds Directives, the Water Framework Directive, the Espoo Convention, etc., etc. The Heads (and eventual reserve proposal) also need to be assessed against the Climate Act. Deemed compliance is wholly insufficient. Such assessments should be made publicly available;
- All evidence, data and rationale that have informed the development of this proposed legislation should be made publicly available.

2. Comments and Recommendations on Specific Heads of Bill

Since the Government intention appears to be to pushing on with the plans for a strategic gas reserve, we must also make the following comments on specific Heads without prejudice to our view that the whole General Scheme is deeply flawed on multiple fronts as outlined in the sections above, that further development of fossil fuel infrastructure (including LNG) should not be permitted, and that the new and bespoke planning procedure outlined in the Heads should be dropped.

The following Head-specific comments are in no way exhaustive as we are still very much in the process of studying the Heads of Bill given the expedited timeframe (we very much recognise and appreciate that the Committee is scrutinising the General Scheme under these expedited timeframes as well).

Head 4 – Designation of Development
Our overarching comments above on the appropriateness of the proposed reserve are relevant here. We also query if the "*<site name>*" will be updated to specify the site in County Clare that we are aware has been selected.

Head 4(3)
This and all Heads relating to Environmental Impact Assessment (EIA) and/or the Espoo Convention should be independently reviewed for compliance with same.

Head 5 – Disapplication of Planning and Development Acts to designated development
We are very seriously concerned about the disapplication of the existing Planning Acts of 2000 and 2024 in this proposed process and the establishment of a new fast-track process, untested in terms of its compliance with Aarhus requirements as well as other EU law and international law requirements. We recommend that a full regulatory impact assessment be done and made publicly available. We also recommend that any and all evidence and rationale for disapplying the Planning Acts and the use of the proposed approach be published. The Explanatory Note simply states:

> "*The rationale underpinning the disapplication of these Acts is that it allows an alternative process of direct application to the Minister to be made instead, with specified form, manner and time periods for that application, while retaining key aspects of good planning and development, such as the objective application criteria, Environmental Impact Assessment, Appropriate Assessment, and consultation, but with specified time periods for these processes*".

Even if one accepts expediency as the primary rationale, which An Taisce considers to be insufficient, no evidence has been presented that this new procedure will actually deliver that speed, particularly in light of the other flaws with the proposed approach as explained in our comments below.

Head 6 - Arrangements for Environmental Impact Assessment
This and all Heads relating to Environmental Impact Assessment (EIA) should be independently reviewed for compliance with the EIA Directive.

It is unclear who the competent authority is in this case for the purpose of EIA - is it the Minister or is it An Coimisiún? This must be explicitly clarified.

Head 6(3)
Head 6(3) states: *"The Minister may also direct the Coimisiún to complete this report in an accelerated time frame",* to which the Explanatory Note adds: "*and to place a statutory requirement on them to achieve this time frame.*" Anywhere where timelines for decisions or processes are to be introduced

or amended, it must be ensured that they are appropriate to the development type, its complexity, etc. Inappropriate or unrealistic timelines can incentivise rushed or poorer quality decision making, thereby increasing the possibility of unlawful decisions and legal challenges. Furthermore, without sufficient resourcing, delivering on decision timelines will not be possible, also increasing the possibility for flawed decision making and increasing the likelihood of delay.

Head 6(4)

This provides for the coordination of the EIA with any Appropriate Assessment that is required. No detail is provided in the Head or the Explanatory Note on what coordination with Appropriate Assessment actually entails, requires, etc. We would highlight that the numerous obligations under the EIA, Birds, and Habitats Directives cannot be compromised or weakened by coordinated or streamlined assessments.

Head 7 - Arrangements for Appropriate Assessment

This and all Heads relating to Appropriate Assessment (AA) should be independently reviewed for compliance with the Habitats and Birds Directives.

It is unclear who the competent authority is in this case for the purpose of AA - is it the Minister or is it An Coimisiún? This must be explicitly clarified.

We also note that there appears to be discrepancy throughout the heads of bill in regard to whether an NIS will be included or not. In head 8(5)(h) it provides: *"an Appropriate Assessment screening report and, where the applicant considers that an Appropriate Assessment will be required, a Natura Impact Statement"* In head 9(1)(f) it appears to indicate that an NIS will be included as standard: *"that an assessment will be carried out by the Coimisiún under Section 7 of the Act of 2025 for the purposes of Appropriate Assessment, and that a Natura Impact Statement will be included with the application".* This discrepancy may give rise to confusion, and it should be clarified that an NIS will always be required where the AA screening deems one necessary.

Head 7(2):

Head 7(2) states:

> *"The Coimisiún shall, as part of the assessments referred to in Section 6(2) and subsection (1), assess the impacts (if any) of the designated development on the species listed in Annex IV of the Habitats Directive and their breeding sites and resting places and consider whether there is a need for a derogation for the purpose of Article 16 of that Directive in respect of the designated development and whether such a derogation ought to be granted, and may make a recommendation to the Minister in relation to such need and grant."*

These derogations would apply to species such as bats, otters and marine mammals. The Minister for Housing, Local Government and Heritage is the only authority empowered under European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) to grant a derogation under Annex IV of the Habitats Directive, with the NPWS processing these derogations via licencing. This head should make clear that the NPWS, under the ambit of the Minister for Housing, is the relevant authority for the granting of these derogations.

Furthermore, based on the Court of Justice of the European Union (CJEU) ruling in Namur-Est Environnement (C-463/20), a derogation decision under the Habitats Directive is considered part of the development consent procedure and must be decided before the EIA is completed, to ensure that the EIA takes into account all aspects of the project. As described in head 7 and Head 6, this process appears to be reversed.

Head 7(3)

See comments for Head 6(3) regarding the potential pitfalls of mandatory timelines and accelerated timelines.

Head 8 - Application to the Minister

This Head outlines how the application shall be made to the Minister and what it shall include (though this is heavily caveated). The Explanatory Note states that the Head "*outlines the form that an application should take to ensure expedient processing and sharing of application information between the applicant, the Minister, the Coimisiún and any other relevant parties.*" This says nothing about the application's completeness, legal compliance, etc. Expediency cannot be the sole criterion here.

Head 8(1)

This prescribes that Gas Networks Ireland or "*such other entity that may be prescribed by the Minister*" may apply to the Minister for approval to carry out the designated development. The Explanatory Note states: "*The ability for the Minister to prescribe another public body to apply under this Act is being included to allow for circumstances where a subsidiary of Gas Networks Ireland may be the eventual primary applicant, or if the Minister deems it expedient for another public or private body to make the application under Section 4(1) on their behalf.*" We would highlight that as this does not preclude the Minister from allowing a commercial entity to carry out the designated development, it is contrary to national policy that any strategic reserve should be State led and owned. This Head should only allow for public bodies to be prescribed.

Head 8(2)

We recommend this specify that the electronic version be word searchable, not simply readable.

Head 8(5)

This head lays out the information to be provided in the application but subject to this very broad caveat: "*to the extent that information is reasonably available to the applicant at the time of the application*". This is an enormous loophole, and that clause (in italics above) should be deleted. It is wholly unacceptable in our view as it could allow for seriously deficient application materials to be lodged. This also raises potential legal issues with compliance with EU Directives and therefore potential legal issues with any decision made under this legislation.

Head 8(5)(h)

This Head provides for the application to include "*an Appropriate Assessment screening report and, where the applicant considers that an Appropriate Assessment will be required, a Natura Impact Statement*". The applicant cannot make the decision on whether full Appropriate Assessment is required. This is determined by the screening and ultimately the Competent Authority.

Head 8(5)(j)

Head 8(5)(j) provides for the inclusion of, separate to the Appropriate Assessment/Natura Impact Statement and EIAR (subparagraphs h and i): "*details of the measures, if any, envisaged to avoid or prevent or reduce and, if possible, offset what might otherwise have been significant adverse effects on the environment or adverse effects on the integrity of a European Site of the designated development*". It must be ensured that this does not conflict with the judgement of the European Court in case C-323/17 People over Wind v Coillte, in which the Court held that the Habitats Directive:

> *"must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site"*

It was the CJEU's view that the consideration of mitigation measures at the screening stage

> *"presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out*", and would be: *"liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive."*

Head 9 – Notice of application

Head 9(1)(j)

This Head provides for the inclusion of the following in the public notices:

> "*that the public will be invited to make submissions or observations, in writing or by electronic means, to the Coimisiún during the specified period, relating to the likely significant effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site".*

This appears to limit public comment to specific environmental matters. An Taisce considers this limitation to be unacceptable. Public comment should be provided for on the application in its entirety. See also our comments on Head 11, in particular 11(1)(d).

Head 11 – Consultation

Head 11(1)

This Head states: "*As soon as may be after receipt of an application by the Minister, the application shall be published on the website maintained by the Minister*". We do not consider "as soon as may be" to be adequate here – it leaves the Minister overly broad discretion in making the application publicly available, which is a particular problem given truncated consultation periods. A very short timeframe (perhaps two to three days?) should be explicitly specified.

Head 11 (1)(c)

This Head states: "*(c) the assessments referred to in subparagraphs (b) and (c) will include an assessment referred to in Section 7(2) of the Act of 2025".* This head appears to refer to itself (subparagraph c) and requires clarification.

Head 11(1)(d)

This Head provides for very limited public consultation only on certain environmental aspects of the application. Public comment on any other aspect of the development does not appear to be permitted:

> *"submissions or observations in relation to the likely significant effects of the designated development on the environment or on a European Site and, where a Natura Impact Statement is included with the application, the likely adverse effects of the designated development on the integrity of a European Site, may be made during a specified period (which shall not be less than 30 days) to the Coimisiún in writing or by electronic means to an email address specified in the notice.*"

The Explanatory Note states:

"The purpose of this Head is to allow for a statutory process of public participation in relation to an application for designated development under this act in accordance with good practice in planning and development, while ensuring this is carried out in a timely manner to achieve accelerated delivery of the designated development."

However, An Taisce considers that limiting public participation to likely significant environmental effects is not in any way good practice in planning and development. Members of the public and civil society groups may have very important and valuable contributions and comments on multiple aspects of a proposal, including personal impacts to people or property, that do not fall under what is proposed in the Head. It is also important to note that third party observations can bring to light key issues and deficiencies with application materials that may go unnoticed otherwise and that could lead to flawed decisions if they are uncorrected.

Additionally, we consider a 30-day minimum consultation period to be insufficient. It is less than the five weeks for standard planning applications and significantly less than the six-week minimum period for Strategic Infrastructure applications, which are more akin to the size and complexity of a potential strategic gas reserve application. We recommend that a minimum of six weeks be provided, given the inevitable length and complexity of the documentation that the public will need to review.

We would highlight that effective public participation is a requirement under the Aarhus Convention on the rights to public participation, access to justice, and access to information in environmental matters, to which both Ireland and the EU are parties. We do not consider that consultation provided for here facilitates effective participation.

Head 11(2)

This Head concerns notice to certain bodies: "*As soon as may be after receipt of an application, the Minister shall send a notice, by electronic means, to the persons specified in paragraph (3).*" Here again, we do not consider "as soon as may be" to be adequate – it leaves the Minister overly broad discretion in the timing of notifying the bodies prescribed in paragraph (3) of the application. Consultations should not commence until formal notification has been received. See also our comments on Head 11(1)(d) on what we consider to be the unacceptable limits on the content of the consultation.

Head 11(4)

This concerns the publishing of the application on An Coimisiún's website and making the application available in hard copy. Here again, the issues we raised with regard to the use of "as soon as may be" apply. it leaves An Comisiún overly broad discretion in making the application publicly available, which is a particular problem given truncated consultation period.

Head 11(6)

See our comments on Head 11(1)(d).

Head 12 – Environmental Impact Assessment Report

This and all Heads relating to Environmental Impact Assessment (EIA) should be independently reviewed for compliance with the EIA Directive.

The explanatory note says *'In determining these particulars, this Head should be developed in accordance with the substance of Sections 234-238 of the Planning and Development Act 2024.'* however Head 5 has explicitly disapplied the Planning Acts, and as such these criteria may need to be specifically written into this standalone piece of legislation or put on other statutory footing to ensure they are legally binding.

See also comments on Head 6.

Head 13 - Assessment by Coimisiún
The Explanatory Note for this Head states that "*Provision for a fee to accompany submissions similar to that pertaining for planning acts may be applied",* though this is not provided for in the actual head. We recommend that any requirement for any such fee to be paid to An Comisiún or other bodies for public participation or access to justice for the public be removed. There are no mechanisms to protect people or groups who cannot or who would struggle to afford the fees, and the fees only serve to exclude individuals and groups from public participation exercising their rights under the Aarhus Convention.

Head 14 - Appropriate Assessment
This and all Heads relating to Appropriate Assessment (AA) should be independently reviewed for compliance with the Habitats and Birds Directives.

Head 14(1)
Head 14(1)(d) provides: "*(d) a determination under paragraph (6) or (7) (as the case may be) of Regulation 42 in respect of the designated development shall be".* However, Regulation 42 contains multiple references to determination, with paragraph 8 of Regulation 42 referring to a screening determination, and paragraph 13 referring to a determination of adverse impact on a Natura 2000 sites. Clarity is needed here on which paragraph of Regulation 42 that these times lines pertain to.

Head 15 - Recommendation to Minister under Section 7(2)
This Head concerns any recommendation made by An Coimisiún on any likely significant effects to species designated under Annex IV of the Habitats Directive (and their breeding and resting places) and on any consideration or recommendation by An Coimisiún relating to a derogation under Article 16 of the Habitats Directive. Nowhere in this Head or in the Explanatory Note is it made clear such a derogation is decided upon via licensing by the NPWS under the Minister of Housing, Local Government and Heritage. There are no provisions on how a recommendation from An Coimisiún would be made available to the Minister for Housing, Local Government and Heritage and the NPWS and/or other relevant persons and the degree to which the Department/NPWS would have to take into account any recommendation from An Coimisiún.

Head 15(4)
This Head states: "*The Coimisiún shall carry out its functions under Section 7(2) of the Act of 2025 as expeditiously as possible having regard to the purpose referred to in Section 4(1) of the Act of 2025 and, in any event, within the period specified in Section 13(10)*." This says nothing about ensuring a robust decision made in accordance with all relevant national, EU and international legal obligations. Expediency cannot be the sole criterion.

Head 16 – Effects of steps not being completed by the Coimisiún or Minister within specified time period
This Head states: "*A person shall not question the validity of any step taken by the Minister or the Coimisiún under this Act or Regulations prescribed under this Act, by reason only that such step was not completed within the time required to take such step under the Act."* We recommend the Committee evaluate the potential impact of this provision on proper and lawful public consultation and public notification. Infringements of the right to public participation, including potentially by the non-completion of processes/steps within specified timeframes, could raise legal issues.

Head 17 - Decision of Minister
Nowhere in this Head (or anywhere else in the General Scheme as far as we can see) does it actually specify who the Competent Authority is for the purposes of EIA and AA. Head 13 describes a process

whereby An Coimisiún carries out the EIA and AA assessment and make a recommendation to the Minister. This Head then refers to the decision by the Minister. It is unclear to us that the necessary competence exists within the Department for assessing a complex planning application such as what is proposed here. An Coimisiún make EIA and AA determinations as a matter of course, it seems unnecessarily complex to involve the Minister in this decision, given there is, to date, no evidence of complex legal planning review competence within the existing Department. This head provides for the Minister to approve or reject their recommendation, or to provide for additional conditions.

While this Head does provide for the Minister to give reasons for his or her decision, it does not specify that the reasons should include specific justifications for any conditions imposed. Nor does it specify that where a decision differs from An Coimisiún's recommendation, the reasons for the deviation must be stated. The issue of lack of reasons in a planning decision has been the subject of multiple successful legal challenges and clarification by the CJEU and domestic courts (see Case C-721/21 Eco Advocacy CLG v ABP; O'Donnell v ABP [2023] IEHC 381; Konisberry v ABP [2024] IEHC 194; Connelly v An Bord Pleanála [2018] IESC 31; Sexton v An Bord Pleanála [2025] IEHC 449; Ballyboden Tidy Towns Group v An Bord Pleanála [2022] IEHC 7. The requirement to give reasons interacts with European law, and was applied in *Connelly*, in the context of an Appropriate Assessment regarding the requirement to make clear, precise and definitive findings. It also arises under the EIA Directive, where there is an expressed requirement on the decision maker conducting an EIA to give a reasoned decision. Strict adherence to the requirement for reasons in the making of any decision is essential.

Head 17(2)

This does not appear to acknowledge that the Minister of Housing, Local Government and Heritage and the NPWS are responsible for granting and licensing Article 16 derogations. This requires major clarification.

Head 20 - Section 15 of Climate Action and Low Carbon Development Act 2015

In the first instance and for the avoidance of doubt, it should be clarified that the relevant section is 15(1) of the Climate Action and Low Carbon Development Act 2015 *as amended*. The 2021 amendments to the 2015 Climate Act significantly strengthened the requirements on relevant bodies as laid out in section 15.

An Taisce submits that Head 20 should be entirely removed as it circumvents and undermines the purpose and provisions of the Climate Act. Please see section 1.1 of this submission for details.

Head 21 - Deemed MAC applying to designated development

Similar to our serious concerns about deemed compliance with the Climate Act, we have similar concerns regarding Head 21 and the deemed grant of a Maritime Area Consent (MAC) without the proposal having gone through the prescribed assessments and processes per the Maritime Area Planning Act 2021 (as amended). The Explanatory Note states: "*There is a risk that the timeframe for permitting would be delayed, due to the requirements of pre-planning engagement, if a MAC was sought at this time and so it is desired to provide for a MAC on a legislative basis*." Yet it does not in any way consider the risks, including legal ones, of deeming a MAC granted by legislation. We recommend the Committee evaluate this.

Head 22 – Section 39A of the Gas Act 1976

Head 22, like many others in the General Scheme, allows the Minister to set a specified time period within which the Commission for Regulation of Utilities shall make a decision in relation to an application under Section 39A of the Gas Act, 1976 (as amended). Here again we would highlight that it must be ensured that the prescribed timeframe is appropriate to the development type, its

complexity, etc. Inappropriate or unrealistic timelines can incentivise rushed or poorer quality decision making, thereby increasing the possibility of unlawful decisions and legal challenges. Furthermore, without sufficient resourcing, delivering on decision timelines will not be possible, also increasing the possibility for flawed decision making.

Head 23 – Compulsory Purchase Orders
This Head is vague and does not actually detail how compulsory purchase orders will be carried out. For example, it does not detail the process set out in Schedule 2 of the Gas Act 1976 (per the Explanatory Note) or what amendments may be made to it. Additionally, here again, the risks associated with expedited timeframes have not been considered but should be.

Head 24 – Judicial Review and Access to Justice
In the first instance, this Head is very vague and does not actually set out clear provisions for access to justice with regard to the proposed strategic gas reserve. It is unclear how this Head actually aligns with the disapplication of the Planning Acts and with the commencement of the 2024 Act. Is it the intention, as hinted at in the Explanatory Note, to replicate in whole or in part the provisions of Sections 50, 50A, and 50B of the Planning Act of 2000? It is impossible to adequately assess this Head and its legality in its current form.

We would highlight in the strongest possible terms that the right of access to justice, and that access to justice not be prohibitively expensive, is absolutely fundamental and cannot be compromised by this Bill. Any potential legal issues or flaws in the access to justice provisions could lead to significant legal uncertainties, satellite litigation and delay. An Taisce has written extensively about access to justice, the judicial review provisions in the Planning Acts, and the legal cost rules in various other submissions, and we would be happy to provide the Committee with any of these or additional information should it so desire.

We would highlight that the Planning and Development Act 2024 and its treatment of access to justice in the General Scheme for that legislation is a cautionary tale here. The Heads of Bill on judicial review and access to justice there were also vague and did not reflect the reality of what ended up in the Bill and the now Act, Part 9 of which (alongside various other pieces of legislation, etc.) has what we consider to be major legal flaws that will lead to huge legal uncertainty, significant satellite litigation, and delays.

If any restrictions on the rights to access justice are proposed in the Bill, it is crucial to note that it is a clear principle of European law that any proposed curtailment of rights must be supported by clear public interest justifications, analysis and rationale.

Head 28 – Design Flexibility
This Head is extremely broad, imposing essentially no limitations on design flexibility. The Explanatory Note states:

> *"This Head should align with the process set out in Sections 118 and 119 of the Planning and Development Act 2024, with ACP being obligated to facilitate a meeting (prior to the application being lodged) to discuss design flexibility and the issuance of the necessary opinion within a prescribed timeframe (from the time the design flexibility application is made."*

Yet, the Head makes no mention at all of the process set out in Sections 118 and 119 of the 2024 Planning Act. If it is the intention to follow that process, it must be detailed. In any case, it must be ensured that any assessment of design options, the setting of planning conditions in relation to approved options, and the selection process for the final option all must comply fully with the

requirements of EU law, including but not limited to the Environmental Impact Assessment Directive and the Habitats Directive.

We thank the Committee for its consideration of our submission and recommendations. We would be very happy to engage further on these matters if the Committee would find it helpful.

Is muidne le meas,

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