

Insights

FURTHER CURBS ON THE JUDICIAL REVIEW OF NSIPS ANNOUNCED

May 28, 2026

SUMMARY

New judicial review proposals for nationally important infrastructure schemes have been announced for consultation by the Treasury, as part of the Government's ongoing infrastructure planning reforms to speed up the consenting and delivery of infrastructure projects to drive growth. These are in addition to, and go further than, the judicial review reforms in the Planning and Infrastructure Act 2025 which reduce the number of attempts a claimant can make to bring a legal challenge to a Development Consent Order. Those reforms came into force earlier this year.

In summary, two new optional mechanisms will be introduced to protect consented infrastructure schemes from unnecessary delays caused by judicial review (JR):

1. **A parliamentary authorisation mechanism** to give a DCO the same protections as an Act of Parliament which would reduce exposure from JR on all but human rights grounds. It would be available only to a narrow category of the most critical clean energy projects identified on a case-by-case basis by the Energy Secretary as being of Critical National Importance (CNI) and endorsed by Members of Parliament. The normal DCO process for submission and examination would be followed, but the final decision put before the House of Commons, and a vote held. If approved, the DCO would be afforded a distinct statutory status specified in the underpinning legislation, similar to an Act of Parliament, protecting it from judicial review on issues other than human rights grounds.
2. **A challenge window mechanism**, for all other NSIPs, including transport and water projects. The fixed legal challenge window would be updated to allow the Secretary of State (SoS) to address potential legitimate issues before finalising a consent, along with limits on the ability of potential claimants to raise other issues after publication of the final DCO. The SoS would publish the draft decision, after which the JR period would open. The Secretary of State would then have a period in which s(he) could consider and address issues raised before amending a final DCO. As a consequence, if any JR on the same grounds were subsequently pursued, the Courts would have a clearer basis to refuse permission or relief, making use of the new provisions introduced

by the Planning and Infrastructure Act on meritless claims. The law would also be changed so that the courts could refuse permission for a JR to proceed on any issues not brought up during the consent process or challenge window.

For promoters, these mechanisms will be helpful. Option 1 is more robust because it would shut down the possibility of any JR other than on human rights grounds. Human rights grounds may be hard to sustain even if compulsory acquisition powers are included in a DCO, because case law has already determined the CPO process to be human rights compliant. However, this option will only be available to a very narrow band of DCOs (clean energy projects designated as CNI) and is reliant on a vote in the House of Commons, putting it at risk of political influence. Given that there could be a critical need for other project types, such as digital and data infrastructure and water systems, whilst not eligible for a formal CNI designation, there may be an argument (and logic) to extend this option through consultation responses.

Option 2 will be available to all DCOs and is helpful, but less robust. Allowing the SoS the opportunity to address potential grounds of judicial review and amend a DCO before it is finalised should help flush out grounds of complaint early and allow the SoS the chance to overcome them. So long as it is policed properly, using this window to shut out future challengers will be very welcome.

However, relying on provisions in the Planning and Infrastructure Act 2025 on meritless claims (to allow courts to refuse permission for JR where it is brought on the same grounds as were raised during the challenge window) may have limited impact in practice. A well advised claimant is unlikely to plead a ground of challenge in exactly the same way as an issue already raised, and whether a ground is the 'same' will no doubt be arguable. This could potentially be resolved if the mechanism is clear that challenges will be refused on grounds which are "in substance" the same as complaints made during the challenge window, even though not identical, but one suspects this point could remain arguable.

The proposals say that there will be consultation, which has not yet commenced. This rules out the legislation being enacted quickly, even if there were Parliamentary time available. The mechanisms are therefore unlikely to be available before the summer recess and it is unclear when the benefits will take effect.

The full details of these proposals can be found [here](#).

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