

Executive Summary

Largely to help fund vital new infrastructure, water bills in England and Wales rose by 26% last year and a further 5% in April. The water industry is acutely conscious that, having had bills rise so much, we must do everything we can to ensure projects are delivered on time and to budget. Water companies can manage some risks, but there are many barriers which stand in the way of water companies which the UK Government could and should remove.

This paper sets out each of those barriers and sets out the cost of inaction. With homes increasingly unable to be built, businesses increasingly unable to expand and even a new cancer hospital held up for no other reason than a lack of water, the situation is urgent. The situation has become so bad that independent experts now estimate that England will only have enough water for 420,000 of the 1.5 million houses the government aims to deliver by 2030.¹ Removing these barriers to delivery would help ensure there is water for the government to deliver its goals of increasing housing and of expanding the economy.

Delivery is made unnecessarily expensive, uncertain and costly by:

- **Gold-plating international obligations:** When transposing some international agreements into domestic law, the UK has unnecessarily added further restrictions.
- **Failing to update legislation:** Waging campaigns against infrastructure is made easier because the UK has failed to uprate adverse cost liability caps in line with inflation.
- **Imposing additional UK environmental law:** The UK has chosen to go beyond its international agreements by imposing additional environmental restrictions, such as requiring Biodiversity Net Gain.
- **Applying environmental law in an overly cautious, slow and expensive manner:** Regulator and local government permits can take years and licence fees are often prohibitive. In many cases, regulators and planners are unnecessarily cautious – requesting ever more information before making decisions – even when it is not required by underlying legislation.

In combination, the system is:

Too cautious

Regulators require excessive evidence or excessive mitigations to address theoretical risks.

Case Study: Severn Trent's attempts to send raw water to drier parts of England

As Severn Trent developed options for increasing its sources of raw water, the Environment Agency asked for greater assurance that its plans to move water around its network would not increase the risk of substance pollution. To address identified risks and regulator feedback regarding the Habitats Regulations Assessment and to prove assessment conclusions "beyond reasonable scientific doubt", the project team is now having to explore several ways to reduce risk. Their efforts include consulting international academic experts in fish behaviour and chemical inhibitors; and working with UK universities to assess whether their laboratories can detect substances currently undetectable in commercial laboratories. Regulators' acceptance of data from non-accredited university laboratories would then need to be confirmed.

¹ Public First (2026), The Risk of Water Shortages

Too uncertain which makes projects overly expensive

Unclear environmental standards often lead to expensive late-stage design changes.

Case Study: Reservoirs delayed despite net environmental benefit

The fleet of new reservoirs will enable water companies to support growth in Britain's fastest growing cities and to reduce the amount of water they take from the environment at times of water stress. These reservoirs will take additional water in the winter and store it, to reduce abstraction in summer. Despite this net environmental benefit, these projects risk being delayed because of the potential, but uncertain, effect of the abstraction on Habitats Regulation protected sites. These situations can put a reservoir's viability at risk, because if a water source sufficient for its size cannot be established, it cannot be built. If reservoirs are blocked and no alternative projects are brought forward it is certain that growth will be constrained and the environment will be harmed as water companies will not be able to reduce abstraction as planned.

Too slow and getting even slower

Planning consents and permits – often required for very low-risk activity – are extremely slow to be issued.

Case Study: Flood Risk Activity Permits used to be granted in weeks, now it's up to a year.

Water companies are now required to apply for Flood Risk Activity Permits for building outfalls into rivers or any activity within 8m of a main river bank.² Before 2025, water companies and their suppliers could obtain these permits within a few weeks from local Environment Agency teams. Now, applications are processed by the overburdened National Permitting Service and take **between 6-12 months**. As Flood Risk Activity Permits are needed before construction can commence, such processing times will significantly delay the projects the water industry has been asked to deliver in this investment period (2025-30).

We are not alone. John Fingleton finds regulators to be both risk averse and prioritise process over outcome.³

Only the government can institute the necessary reforms

The delivery of vital water infrastructure is *already* being slowed down. Without reform, the case studies cited are merely a preview of the cost and delay to come as we attempt to build nine new reservoirs, nine desalination plants, seven water recycling projects and several transfers of water between regions. The power to enable more construction and make it faster and cheaper lies with government. Only it can implement the reforms set out below:

'Quick wins' – implementable within the next six months

There appears to be nothing stopping the following from happening immediately:

- **Extend permitted development rights:** Many developments require planning consent but should not be in the planning system at all. Extending permitted development rights would free up planners' resources at no additional cost to the taxpayer and no adverse impact on people or the environment. *A review was promised in January,⁴ but it has not started and we have been told the review will not happen for another year.*

² Environment Agency (2025), [Flood Risk Activities: Environmental Permits](#).

³ John Fingleton (2025), [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#), p.2

⁴ Defra, [A New Vision for Water](#) (2026). Page 39.

- **Grant water infrastructure Special Development Orders:** Instead of costly and time-consuming Development Consent Orders, the government should grant planning permission for water schemes using Special Development Orders. It was done for Universal Studios and, instead of taking two years, the process took six months.⁵ If it's good enough for a theme park, it seems good enough for a reservoir.
- **Reduce biodiversity net gain requirements:** Smaller schemes should be entirely exempt. For larger schemes, the footprint of net gain requirements should be narrowed to the land actually affected long term rather than land disturbed, but then restored after construction.
- **Issue stronger guidance to regulators and planners to:**
 - » **Require the Environment Agency and Natural England to apply expert judgment:** Statutory conservation bodies should be made to use available scientific evidence to avoid disproportionate demands for additional assessment, mitigation and compensation. They should be instructed not to raising hypothetical or speculative risks. Where they feel such concerns must be raised, they should seek expert advice (e.g. from qualified ecologists), rather than rely on non-expert opinion.
 - » **Require the Environment Agency and Natural England to attend planning hearings:** Whenever they fail to attend hearings, planning authorities cannot test their positions and make suitably informed conservation decisions. Instead, planning authorities should be instructed to not fully consider their submissions if they fail to attend the relevant hearing.
 - » **Require planning authorities to take decisions, not defer them:** Rather than accede to the requests by the Environment Agency or Natural England for more assessment, unless there are exceptional circumstances, planning authorities should be required to make judgments on the available evidence.

Medium term reforms – implementable within the next one or two years

More detailed structural reforms are also needed, but some may require legislative change:

- **Accelerate the replacement of Environmental Impact Assessments with Environmental Outcome Reports:** The Government has promised to act by the end of 2027, but we see no reason to wait.
- **Exclude minor works from Environmental Impact Assessment and, where relevant, licenses by:**
 - » **Reducing the need for permits and licenses:** to reduce the number of situations in which an abstraction license or flood risk activity permits are required.⁶
 - » **Increasing the threshold for excluding developments:** Minor developments, below one hectare, are exempt from Environmental Impact Assessments. This threshold should be increased to cover a higher proportion of small developments, including those already on water companies' sites.
- **Strengthen the evidence bar for judicial review:** The bar for a judicial review is whether a case is 'arguable' but, as recently proposed by the High Court, this could (and in our view, should) be amended to set out that a case can only be heard if it is more likely than not to succeed.⁷
- **Allow offsite mitigations for biodiversity net gain by default.** Amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 to disapply the hierarchy for biodiversity net gain to enable offsite mitigations as a first option. Net gain is net gain, regardless of the site.

⁵ MHCLG (2025), [Entertainment resort complex, Bedford: Statement of reasons for the grant of planning permission](#)

⁶ By amending the Water Abstraction and Impounding (Exemptions) Regulations 2017 and the Environmental Permitting (England and Wales) Regulations 2016

⁷ [R \(Hynot Ltd.\) v. Secretary of State for Energy Security and Net Zero](#) [2025] EWHC 2644 (Admin) at [70] - [71]

- **Treat water the same as energy when reforming judicial review:** The Chancellor of the Exchequer has proposed granting special status to some energy projects so that their planning permission – known as a Development Consent Order – is granted by Parliament. Thereby, the projects would be protected from judicial review, other than on human rights grounds.⁸ Water is just as critical as energy, if not more so. There is no reason why water should not receive the benefits of this worthwhile reform.

Reforms relating to international agreements

It is in the government's gift to re-consider its participation in international treaties or to accept higher risk on more radical, untested, approaches. In fact, government has committed to do so when the Prime Minister committed last December to implementing the recommendations of the Nuclear Regulatory Review in full and to apply it "across the entire industrial strategy"⁹ which includes reservoirs.¹⁰ As such, the government should rapidly:

- **Reduce the threat of spurious legal challenges:**
 - » When a court finds a 'misuse of judicial review,' cost protections should be automatically removed;
 - » Uprate the adverse liability cost cap for inflation as it was set in 2013, then indexed annually;
 - » The cost cap should be doubled at each stage of a challenge;
 - » The cost cap should be set at 70% of total funds where challenges are crowd funded; and
 - » The cost cap for the decision maker should always be set at five times the claimant's cap in order to balance the relationship between the challenger and the decision maker.
- **An alternative route to compliance for the Habitats Regulations:** John Fingleton recommended enabling nuclear developers to compensate for adverse impacts on protected habitats and species offsite rather than delivering expensive mitigations on site. The same proposal should be applied to water infrastructure.

⁸ HM Treasury (2026), [Getting Britain Building: Reforming judicial review for infrastructure](#)

⁹ Sir Keir Starmer (December 2025), [Britain built for all](#).

¹⁰ HM Government, (November 2025), [The UK's Modern Industrial Strategy](#). Page 110.

1. Decades spent blocking vital water infrastructure have cost the country dearly

In a growing number of places, England has run out of water. The situation is so bad that, solely due to a lack of water, the Environment Agency tried to stop a new cancer hospital from being built in Cambridge. Water supplies are so low that it has forced a moratorium on business expansion in East Anglia and parts of Essex. A lack of sewerage capacity is stopping homes from being built in Oxfordshire. A lack of water infrastructure is the only thing stopping development in parts of Sussex, Suffolk and Lincolnshire. The problem is spreading.

We have spent years being prevented from building. Notable (and very expensive) examples include:

- In 2011, the then Environment Secretary, now Dame Caroline Spelman, rejected an application by Thames Water to build a new reservoir in Abingdon. It would have cost £1 billion had it been approved then, but she said there was “no immediate need”. In 2024, Thames Water was finally given approval, but costs over the wasted 13 years have now risen to between £5.5 billion and £7.5 billion.
- In 2014, Bristol Water applied to build a new reservoir at Cheddar for £114 million. It was rejected then, but was approved in 2024. The exact same reservoir will now cost £839 million.

The government has now admitted that our system for planning water resources was broken and that, without action there will be a 5 billion litre a day gap between supply and demand by 2050. As a result, one new reservoir is already under construction and the government has enabled development funding for 9 more, alongside development funding for 9 desalination plants, 9 major water transfer schemes and 7 water recycling projects. However, even this is not enough, because water companies are still required to plan for future water availability on the basis that they will meet very ambitious targets to reduce water demand.

2. Our system for planning for future water resources is broken

Water companies plan for long term water supplies through Water Resources Management Plans. These plans project changing water demand over a minimum of 25 years – factoring in climate change and population growth – and set out how this additional demand will be met – through a combination of new supply options such as reservoirs, reducing consumer and business demand, and reducing leakage. In the latest round of plans in 2024, water companies were required to assume they would achieve very ambitious targets for reducing households’ and businesses’ use of water and for reducing leakage. These targets were dictated by a legal target in the Environment Act 2021 requiring the government to reduce public water supply per person by 20% by 2037-38, and were not informed by forecasts of what would actually happen to the volume of water put into supply over time. This is flawed because:

- **Household demand will not fall in line with the government’s target:** Household demand has seen a small gradual decline in the last 10 years, but the government target assumes household demand will fall by 10% by 2037-38. Water UK does not believe this will happen because while interventions such as smart water metering should deliver savings, these will be incremental. Analysis suggests that traditional water meters reduce demand by 10% and smart meters only save an additional 3% - and 75% of households receiving smart meters already have a traditional meter. In addition, we are seeing longer and hotter summers which will push up demand. In the summer of 2022, on very hot days demand increased by 36%. The target also assumes government action to introduce water efficient product labelling and tighter water efficiency standards for new buildings. At the time Water Resources Management Plans were drafted, based on the government’s timetable for delivering these

interventions, water companies assumed that the label and tighter building standards would save 91 million litres of water a day by 2030.¹¹ Neither of these interventions have been implemented and on current timetables it is very unlikely that they will have any impact on reducing water demand by 2030.

- **Rates of leakage will continue to fall, but not in line with the government's target:** Leakage is currently at its lowest ever level. The water industry in England and Wales reduced leakage by 9% between 2020-25. The government's target, however, was for the industry to reduce leakage by 16%. From 2025-30 the industry has a target to reduce leakage by 17% on 2025 levels. The industry has a very strong financial incentive to deliver this target – if it performs in line with trend and delivers two thirds of the target the industry stands to lose £5.4 billion in penalty payments – 5% of the value of its 2025-30 investment programme at the 2024 Price Review.¹² Nevertheless, while smart meters providing real time data will help to identify more leaks in the network, there are other factors which could drive leakage up rather than down. In recent hot dry summers leakage rates have *increased* – as in the summer of 2022 when leakage increased by 3.5%. This is because as soils dry out, the ground moves, moving and bursting pipes. These challenges, and the fact that the easiest and most affordable solutions to tackle leakage have already been implemented, mean that hitting the government target will be very challenging.
- **Non-household demand is likely to rise rather than fall:** Government targets assume business demand for water will fall by 9% *in real terms* by 2037-38. Water Resources Management Plans recognised this was not realistic and assumed a fall in business demand of 6.1% over the same period. However, business demand has been flat over the last ten years, and is likely to grow as new water intensive industries such as data centres and hydrogen production come online.

The result of this is that if usage and leakage rates follow trends over the last ten years, rather than the government's ambitious targets, then Public First analysis for Water UK highlights that England will only have enough water for **420,000** of the **1.5 million** homes the government plans to build. This deficit will become apparent over time as targets for demand and leakage reduction are missed – meaning more houses may continue to be approved in the short term, but ultimately that housebuilding will be blocked in many parts of the country (supporting evidence and maps showing the affected areas has been supplied to Defra and MHCLG). It also means that as more houses are built both new and existing houses will increasingly face more frequent restrictions on water use, such as hosepipe bans. All of this means it is critical that the water industry delivers the infrastructure that Ofwat has funded, and more, but delivery is unnecessarily risky, costly and slow.

3. There are huge barriers to delivery of water infrastructure

To help deliver vital new water infrastructure, people's average water bills in England and Wales rose by 26% in April 2025. Having had their bills rise by so much, people rightly expect infrastructure to be built on time and to budget. Unfortunately, both are at risk. Our planning system is inefficient, expensive and legally risky. Equally, environmental law imposes unnecessary constraints which jeopardises even the most essential infrastructure. Only government has the power to remove these barriers to delivery.

¹¹ Environment Agency (2024), [A Summary of England's Revised Draft Regional and Water Resources Management Plans](#)

¹² Internal analysis from Water UK based on unlimited fines of £12 million per megalitre of leakage above target per year across the AMP. This assumes companies follow trend performance of achieving 2/3 of their leakage target and that the gap between performance and target widens evenly across the AMP.

Accelerating the construction of infrastructure whose needs have already been approved by the UK Government, Ofwat and the Environment Agency is now urgent. Until that happens, new housing will keep being blocked and businesses will remain unable to expand for no other reason than a lack of water.

Regulatory decisions are cautious, sluggish and unpredictable which adds time, money and risk to the construction of vital water infrastructure due to:

- **Restrictive international environmental law:** The UK is a signatory to several international agreements which impose far-reaching environmental and related obligations.
- **Additional UK environmental law:** The UK has chosen unilaterally to go further than its international agreements require by imposing its own additional environmental restrictions.
- **Regulators and local government applying environmental law in an overly cautious, slow and expensive manner:** permits can take years and licence fees are often prohibitive. In many cases, regulators and planners are unnecessarily cautious – requesting ever more information before making decisions – even when it is not required by underlying legislation.

In practice, in part to avoid legal challenges, in combination, the system is too cautious, too uncertain which makes projects overly expensive and too slow and getting even slower.

Too cautious

Regulators require excessive evidence or excessive mitigations to address theoretical risks.

Case Study: Severn Trent's attempts to send raw water to drier parts of England

As Severn Trent developed options for increasing its sources of raw water, the Environment Agency asked for greater assurance that its plans to move water around its network would not increase the risk of substance pollution. To address identified risks and regulator feedback regarding the HRA and ability to prove assessment conclusions "beyond reasonable scientific doubt", the project team are now having to explore several ways to reduce risk. Their efforts include consulting international academic experts in fish behaviour and chemical inhibitors; and working with UK universities to assess whether their non-commercial labs can detect substances currently undetectable in commercial labs. Regulators' acceptance of data from non-accredited university laboratories will then need to be confirmed.

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Too slow and getting even slower

Planning consents and permits – often required for very low-risk activity – are extremely slow to be issued.

Case Study: Flood Risk Activity Permits used to be granted in weeks, now it's up to a year.

As of last year, water companies are now required to apply for Flood Risk Activity Permits for many of their activities because they are required for building outfalls into rivers or any activity within 8m of a main river bank.¹³ Previously, water companies and their supply chain could obtain these licenses within a few weeks from their local Environment Agency team. Now, applications are processed by the overburdened National Permitting Service and **lead times have increased to between 6-12 months**. Flood Risk Activity Permits are needed before construction can commence, such processing times will significantly delay the projects the water industry has promised in this investment period (2025-30).

We are not alone. John Fingleton finds regulators to be both risk averse and prioritise process over outcome.¹⁴

Only the government can institute the necessary reforms

The power to enable more construction and make it faster and cheaper lies with government. Only it can:

- Reform the regulatory and planning system so that it is faster and cheaper;
- Issue stronger guidance to regulators and planners to take a less risk-adverse approach to environmental regulation and planning approval;
- Amend the underpinning legislation;
- Accept greater legal risk by authorising development unless and until the authorisation is overturned by the courts;
- Indemnify water companies for proceeding with approved projects subject to judicial review; and/or
- Seek to amend international conventions, or withdraw from them entirely.

This paper sets out the challenges, shows the damage done and provides clear options for reform. The delivery of vital water infrastructure is *already* being slowed down. Without reform, the case studies cited are merely a preview of the cost and delay to come as we attempt to build nine new reservoirs, nine desalination plants, seven water recycling projects and several transfers of water between regions.

4. The law and regulation act as barriers to delivering water infrastructure

With a laudable concern for the environment, successive UK governments have enacted laws to protect habitats and species which particularly affect new developments.

4.1 The UK's international legal agreements impede growth

The UK is a signatory to several international agreements which impose significant environmental and related obligations. In summary, they are:

The Espoo Convention¹⁵ – requires environmental impact assessments for almost all large developments and that those assessments are governed by the precautionary principle which requires that, “...where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.¹⁶

¹³ Environment Agency (2025), [Flood Risk Activities: Environmental Permits](#).

¹⁴ John Fingleton (2025), [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#), p.2

¹⁵ Given effect in UK law by the *Town and Country Planning (Environmental Impact Assessment) Regulations 2017*

¹⁶ United Nations (1992), [Rio Declaration on Environment and Development](#)

The Bern Convention¹⁷ – provides additional protection for over 650 species, and assessments of potential impacts on those species are also governed by the precautionary principle. It is given effect into EU law by way of the [Habitats Directive](#) which the UK subsequently transposed into UK law.

The UK/EU Trade & Co-operation Agreement – may prevent dealing with the above issues by weakening or reducing the level of environmental protection in a manner that affects UK/EU trade. We think it worth considering whether water infrastructure could ever be deemed to affect trade.

The Aarhus Convention – incentivises litigation by capping adverse cost liability at very low levels.

The Habitats Directive is extremely restrictive

The Habitats Directive requires the UK to ensure that an assessment is conducted if a development is, “...likely to have a significant effect on...” a Special Area of Conservation or a Special Protection Area. Development can only proceed if it, “...will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.” The UK, “shall take appropriate steps [should] be taken to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant...”¹⁸

Jurisprudence has revealed, or arguably extended, the meaning of the requirement that an assessment is required whenever a development is “likely to have a significant effect”¹⁹ on the conservation objectives of the site in question and of the nature of the assessment:

- In 2004, the European Court of Justice held that if there is “obvious doubt as to the absence of possible significant adverse effects on the ecosystem, the benefit of the doubt will favour conservation...”²⁰
- In 2007, the European Court of Justice held that such assessments must provide “...complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects...” of the proposed works on the protected site concerned.²¹
- In 2008, the High Court of England and Wales held that an assessment is needed if there is merely “some doubt” concerning the efficacy of the development’s proposed mitigation measures, “...because it will not have been able to exclude the risk of a significant effect on the basis of objective information.”²²
- In 2013, the European Court of Justice added that the assessment “cannot have lacunae”.²³

In less than ten years, the courts held the need to conduct an assessment whenever a significant effect is likely, to needing to consider any obvious doubt, and that such assessments would then need complete, precise and definitive conclusions capable of removing all reasonable doubt, to needing an assessment if there is merely some doubt, and then requiring assessments to have an absence of lacunae.

Furthermore, the Directive stipulates that “...appropriate steps [should] be taken to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as

¹⁷ Given effect in UK law by the *Conservation of Habitats and Species Regulations 2017*

¹⁸ Article 6(2) [Habitats Directive](#)

¹⁹ Article 6(3) of the [Habitats Directive 1992](#)

²⁰ Case C-127/02 [Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij](#) at paragraph 10.

²¹ Case C-304/05 [European Commission v Italy](#) at paragraph 100.

²² [R \(Hart District Council\) v Secretary of State for Communities & Local Government](#) [2008] EWHC 1204 (Admin) [76]

²³ Case C-258/11 [Sweetman and others v An Bord Pleanála](#) at paragraph 44.

disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant...”²⁴ Therefore, where the listed species or sites *may be* affected a developer *must*, under the precautionary principle, either provide *scientific certainty* that they will not in fact be affected or, if this cannot be done, demonstrate that they can avoid the identified potential impact. If the project cannot do this, it will not be allowed to proceed unless three legal tests can be met:

- There must be no alternative to the development;
- The development must be In Reason of Overriding Public Interest (IROPI); and
- It must be possible to compensate elsewhere for the identified potential harm.

Furthermore, mitigation is very hard because:

- In 2014, the European Court of Justice held that, “...protective measures provided for in a project which are aimed at compensating for the negative effects of the project ...cannot be taken into account in the assessment of the implications of the project...” and that, “...as a rule, any positive effects of a future creation of a new habitat which is aimed at compensating for the loss of area and quality of that same habitat type on a protected site, even where the new area will be bigger and of higher quality, are highly difficult to forecast with any degree of certainty and, in any event, will be visible only several years into the future... Consequently, they cannot be taken into account at the [assessment] stage...”²⁵

4.2 The UK Government has unilaterally added even more barriers to growth

Gold-plating the Habitats Directive

The UK’s interpretation of the Environmental Impact Assessment process, arising from Espoo convention requirements, is especially onerous. In Spain, regional governments have powers to set streamlined environmental regulations. The government of Madrid used this to introduce a streamlined process which resulted in a 19 page Environmental Impact Assessment for a 4-mile extension to line 11 of the Madrid Metro. In contrast, the 3.3 mile Portishead branch line reopening in the South West of England required a 17,912 page Environmental Assessment, making it 1,142 times longer on a per-mile-of-new-track basis.²⁶

The European Commission has recognised that the UK’s restrictions (and those of Sweden) are more onerous and, “...can lead to onerous requirements for mitigation and compensation. Such problems are particularly significant in relation to animal species that are relatively common, in at least some parts of their range. In addition, ...species (such as some amphibians and reptiles) are attracted to disturbed habitats (such as gravel workings) and this can create conflicts with industry. For example, there have been numerous conflicts over protection, mitigation and compensation requirements for the locally common Great Crested Newt in the UK.”²⁷ Perhaps only Sweden and the UK are upholding the law as they should, but ten years of practice by France and Germany suggest that European authorities are not concerned.

Although the Habitats Directive already imposes extremely burdensome barriers to growth, the UK has chosen to add even more barriers in the way it has transposed the Directive into domestic law. For example, unlike Germany, Estonia, Belgium (Flanders) and France, where developments must merely show that local

²⁴ Article 6(2) [Habitats Directive](#)

²⁵ Case C-521/11 [T.C. Briels v Minister van Infrastructuur en Milieu](#) at paragraphs 29 and 32.

²⁶ Works in Progress Issue 17 (2024), [How Madrid Built its Metro Cheaply](#)

²⁷ Ibid.

and national conservation status of a specimen will not be adversely affected, the UK strictly protects each individual specimen.

Case Study – fish disco

One of the most infamous illustrations of the UK's overly zealous attempts to protect individual specimens, rather than species is **£50 million on acoustic fish deterrents at Hinkley Point C** to save 0.083 salmon a year, 0.028 sea trout, 6 river lamprey, 18 Allis shad and possibly fewer than 100 twaite shad.²⁸ Until the law changes, such waste will continue.

Biodiversity Net Gain – offsetting temporary disruptions with thirty years of 10% more

All major new developments must now produce a 10% improvement in the biodiversity that existed on the land on which the project will be built before construction started. Gains must be legally guaranteed to last for thirty years.²⁹ Though they may appear straightforward, the rules are incredibly costly to apply because:

- **Unnecessarily large areas are captured:** Projects use a 'red line' boundary to define their outermost *possible* limits. Much area is unused and some only temporarily before restoration (e.g. access roads).
- **It is much harder to guarantee gains on land owned by others:** Developments regularly, but temporarily, affect land belonging to third parties (e.g. pipe buried underground where land above is returned to its original use after construction).³⁰ Despite such schemes causing no lasting environmental impact, the expense of creating a 10% biodiversity net gain is still imposed.

Gold-plating the Aarhus Convention

Since 1998, the Aarhus Convention obliges its signatories to provide citizens with guaranteed rights of access to information; public participation in decision-making; and access to justice in environmental matters in a way that is "...fair, equitable, timely and not prohibitively expensive."³¹

These obligations pertain to all water companies in the United Kingdom. Claimants who fail when attempting to bring environmental legal challenges have their costs capped at £10,000. Last year, the High Court dismissed an application by Natural England to have the cap doubled to £20,000 in a case concerning The Badgers Trust and Wild Justice. As John Fingleton has reported to the Prime Minister, "A cost cap does not affect strong legal challenges, but may encourage weaker ones. In effect, the "subsidy" it provides is greatest the weaker the basis for appeal."³²

As Fingleton has pointed out, "Other signatories of the Aarhus Convention do not apply a system of caps...:

- In German environmental cases, court and legal fees are capped via a formula focused on the financial 'value' of the project being disputed. Claimants who lose in court are obliged to cover the costs of any expert opinions commissioned by the developers, without an upper limit.
- In 2018, Norwegian courts compelled Greenpeace and other environmental organisations to pay the Norwegian Government 580,000 NOK (then worth around £50,000) after these organisations

²⁸ John Fingleton [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#). Page 67.

²⁹ [Schedule 7A of the Town and Country Planning Act 1990 \(as inserted by Schedule 14 of the Environment Act 2021\)](#).

³⁰ 'Temporary' environmental impacts are excluded from the calculation but to be considered temporary impacts must be of two years or less duration.

³¹ Article 9(4) [The Aarhus Convention](#) which is formally called the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, it is given effect in UK law through the [Environmental Information Regulations 2004](#) and [Civil Procedure Rules and Directions](#).

³² John Fingleton (2025), [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#) Page 83

lost their case that the Government had violated the constitution in awarding oil drilling licenses in the Arctic.

- The Italian Council of State has ruled that the Aarhus Convention does not override the country's general legal principle that the loser should cover court costs, after accusers had argued that being ordered to pay €16,000 in costs violated this rule. The Italian courts have the ability to impose damages on claimants if the judge believes that a trivial claim has been brought.”³³

The cost caps were set in 2013, but have not risen since then. Fingleton is right to advise the Prime Minister that, “Claimants should face penalties if a judge deems that the judicial review process is being misused.” However, “No element of the Aarhus Convention protects the misuse of the judicial process. Courts have determined in the past that there has been a misuse of judicial review in this area.”³⁴ A cost cap does not affect strong legal challenges, but may encourage weaker ones. In effect, the “subsidy” it provides is greatest the weaker the basis for appeal.

Scope

Whether the project in question is of national significance, such as ensuring the country has sufficient supplies of drinking water, is immaterial. Repeatedly launching claims is no barrier to launching more litigation. A court will only throw out a claim if it has no reasonable prospect of success or is frivolous.

Indeed, the High Court has held that, “It is in the interests of access to environmental justice, with its public interest imperative, that NGOs such as the Wild Justice and Badger Trust should retain the viability to be ‘repeat players’. Objective reasonableness does not mean room for one, or even two, more cases. Proper access to environmental justice for a responsible NGO cannot mean a system of limited ‘credits’, after which the NGO is bust or effectively excluded, with the environment unprotected until someone has the energy to start up a new NGO with a new set of ‘credits’.”³⁵

Consequences for development

For those who oppose development, the Aarhus Convention makes litigation and judicial review virtually free of charge. Whilst litigation is heard, development is routinely held up which increases the cost of the project. Relying on a court dismissing legal action on the basis that it is frivolous or without a reasonable prospect of success is too high a bar. That something may be of national significance, such as ensuring the country has sufficient supplies of drinking water, is immaterial.

More broadly, the High Court reasoned that considering cost caps on judicial review would have a ‘chilling effect’ on environmental justice – but conversely, *not restricting judicial review* has a chilling effect on the action of regulators – making them unnecessarily slow and cautious for fear of legal challenge.

4.3 UK Regulators then erect further barriers

Perhaps due to the incredibly strict and far-reaching laws described above, regulators then add to the cost and time it takes to build by being overly cautious, and delivering inconsistent decisions which take too long.

³³ Ibid.

³⁴ Ibid.

³⁵ [The Badger Trust and Wild Justice v Natural England and Environment Secretary](#) [2025] EWHC 2761 (Admin) [49]

Regulators are overly cautious

Seemingly motivated by a fear of judicial review, environmental regulators are excessively cautious. Judicial review is not a review of the merits of a decision, but a review of the *process by which the decision was reached* to assess whether it was legally flawed.³⁶ Regulators, in their primary functions and as statutory consultees on planning applications, minimise legal risk by adopting a rigid ‘tick box’ approach.

A lack of coordination among regulators can cause bureaucracy to be layered onto projects, with the combined effect being worse than the sum of individual interventions. Examples include:

- **Planning and license applications being required for schemes even when the schemes themselves are legally mandated:** Where infrastructure is legally required, and its type and position is already specified by regulators, it should not require further permissions – either through the planning or regulatory system. Instead, it should be covered by permitted development rights and requirements for other licenses should be waived. This problem is pervasive.

Case Study: 3,500 uniformly designed water quality monitors need 3,500 individual planning applications

Water companies must install around 3,500 continuous water quality monitors in England by 2030. Despite being mandated by the Environment Act 2021 and being of uniform design, not all local planning authorities consider them to be covered by permitted development rights. Instead, individual planning applications must be made to overstretched local planning authorities. Water companies are also asked to apply to the Environment Agency for Flood Risk Activity Permits.

- **Requirement for licenses for low-risk temporary activities:** Water companies are required to apply for low-risk temporary licenses which add to their workload, and that of regulators, but which do not effectively manage risk – see the case study below.

Case Study: Wessex Water’s needs a licence to ‘de-water’ the ground it must excavate before it can install tanks needed to prevent sewage spilling into rivers.

To deliver the UK Government’s target of a 50% reduction in sewage spills, Wessex Water needs to install large tanks capable of holding stormwater. Before it can excavate the required land, Wessex Water must first ‘de-water’ the ground so that it is safe to excavate. As the volume of groundwater which needs to be drained is more than 100m³ and cannot be returned to a soakaway, the Environment Agency has said it must first issue an abstraction licence. While the stated time for granting such a license is four months, it can take much longer, and can require a Groundwater Investigation Consent which can also take months. As a result, it can take a year or more just to gain consent to drain water *to enable construction*.

Regulators are inconsistent

The outcomes of the planning system are inconsistent – increasing overall project costs and the risk of project delays. There are several opportunities for water sector infrastructure projects to be challenged. Across all sectors, Nationally Significant Infrastructure Projects have seen an increased rate of legal challenge, from a long term average of 10% to 58% in recent years.³⁷ Although many major projects in the water sector are in their early stages of development, they are already subject to planning delays caused

³⁶ Pinsent Masons (2024), [Judicial Review](#)

³⁷ National Infrastructure Commission (2023), [Delivering Net Zero, Climate Resilience and Growth: Improving Nationally Significant Infrastructure Planning](#), p.10.

by legal challenges on the slightest of grounds, often from opponents who oppose projects in principle rather than on *how* they should be delivered.

As projects also must meet uncertain regulatory standards, developers feel they have to aim for the very highest standards to ensure planning approval, regardless of what value they add.

Managing impacts of construction with impact on the natural and built environment, such as traffic management, often requires protracted negotiations involving uncertain standards. In addition to the Severn Trent water supply scheme set out above, examples of uncertainty causing delays and driving up costs include:

- **Changing evidence bar:** Wessex Water's Poole Water Recycling Scheme is designed to reduce the amount of water it takes from the Hampshire Avon – a sensitive chalk stream – by diverting highly treated wastewater from Poole Harbour to the River Stour. It will enable Wessex to take more water out downstream to compensate for the water lost from the Avon.³⁸ At the start of the scheme's development, the Environment Agency and the Drinking Water Inspectorate agreed a list of substances to test. Now the Environment Agency has issued a new list of 120 substances, 80 of which are yet to be sampled. It will require at least a minimum of a year's further data, at a cost of between £300k-£400k. If testing finds levels which are not acceptable (and the acceptability threshold has yet to be determined), an expensive scheme redesign may be required. Note that the tests relate only to water being discharged into the environment, as it would be treated again before being put into public water supply, and our understanding of the impact of these substances on the environment is still emerging, so the risk being mitigated is largely theoretical.
- **Regulatory inconsistency:** Within individual regulators, there can be significant differences of opinion and the uncertainty drives time and cost. For example, water companies are required to apply for impounding licenses to make any changes to structures which impound water – such as a sluice, weir or dam. The Environment Agency has said it “will not normally take enforcement action” if the impounding activity “meets the removal or partial removal of larger weirs and structures up to 150 centimetres high.”³⁹ For one water company only, just as the scheme was ready to commence construction, the Environment Agency requested an impounding license which delayed the project by nine months.
- **Non-essential additions:** Some requirements made of water companies are not always essential to the fundamental purpose of the project and can add cost. This is particularly important when these options are considered cumulatively. For example, one water company building a major water supply scheme submitted an application to construct a temporary ‘park and ride’ as part of its traffic management plan. A decision has been deferred twice while the planning committee requested additional £1 million footpath and cycleway improvements as well as, potentially, a much more expensive new roundabout. However, unlike the temporary park and ride, rightly proposed to manage the flow of additional traffic during construction, the footpath and cycleway would be permanent improvements. Such requirements raise questions of fairness. Not many of the affected water bill payers are cyclists or motorists, or indeed live anywhere near the area that would receive the upgrades.

³⁸ West Country Water and Environment, [West Country Water and Environment](#).

³⁹ Environment Agency (2025, [Low Risk Impounding Activities: RPS 302](#)

Regulators are inordinately slow

Planners and regulators are risk averse - leading to them being very slow to decide on applications – slowing down planning consent and thus overall water industry project delivery timelines. Statutory consultees, such as highways authorities, who comment on planning applications, often fail to meet the 21 day response target for planning applications. Similarly, local planning authorities often fail to adhere to the eight week deadline for planning decision on minor works. Our members have reported a two year timeline to get a small pumping station consented and 15 months for a small treated water storage tank.

Examples of undue caution slowing down the system include:

- **The need for *at least 3 years of environmental survey data*:** Developers are required to collect baseline environmental data to understand a project's likely environmental impact. As part of this requirement, to develop its Ford Water Recycling Centre, Southern Water was expected to not only provide three years of monthly marine survey samples, but for those samples to capture seasonal variation – with additional surveying needed if the three years covered by the survey did not provide enough year-on-year climatic variation.
- **Cumulative delays to several applications for the same project:** A water company experienced cumulative delays to a water treatment works designed to treat 20 million litres of water per day, which pushed its delivery into the new price control – meaning the company had to fund the project through base expenditure. Local authority planning delays included:
 - » **Three months** for approval to install a new building to house the site's essential power equipment.
 - » A subsequent delay of **four months** to obtain planning permission for the installation of a small kiosk within the borehole site – minor works on an already active site which, arguably, should not require planning permission but should be covered by permitted development rights.
 - » A further delay of **two months** to approve the details of an on-site archaeology planning condition.
- **Overly elaborate 'gated' approvals with construction unable to start for more than ten years:** Apparently in recognition of the inordinate time it takes to approve and develop vital new water supplies, in 2019, Ofwat, the Environment Agency and the Drinking Water Inspectorate created the Regulators Alliance for the Progression of Infrastructure Development (RAPID). Despite its name, rapid it is not. The regulators' alliance created a series of discreet decision 'gates' with final approval not provided until the fourth gate. The process can take over a decade, even for schemes which will only take two years to build. At Price Review 19, Severn Trent requested *development* funding for a scheme to build pipes, pumps and associated infrastructure to connect its network to the Grand Union Canal to enable the transfer of much needed water to the South East of England. Ofwat provided approval for it in December 2019, but required a series of additional steps. A "gate-1 report" which provided a preliminary feasibility assessment was submitted to Ofwat in 2021. A Gate-2 "detailed feasibility, concept design and multi-solution decision making" submission was provided to Ofwat in November 2022. Ofwat consulted on its decision before making a final decision June 2023. Gate 3 was submitted in May 2025 and a decision was published on 17th October 2025. Gate four is due to be submitted in late 2026 along with a proposed planning application. The transfer is proposed to be "construction ready" in 2029, ten years after it was first proposed, and operational in 2031.

4.4 Environmental protections are disproportionate and ineffective

Existing environmental protections act as a barrier to growth across large swathes of development – not just water infrastructure.

Housing held up for a hypothetical risk to snails

In December 2019, Natural England told Southern Water that ‘it could not conclude, with certainty, that the existing abstraction within the Sussex North water supply zone was not having an adverse impact on the integrity of [three protected habitats sites]’ in the Arun Valley.⁴⁰ That Natural England could not prove a negative should have had no consequence, but the Habitats Regulations specify that the inability to overcome the laws of logic are such that the planned infrastructure could not proceed. Natural England’s announcement came in the same month that the price review for the following five years of water company investment were being determined. So it was too late to try and correct and the five year window of investment was missed.

In September 2021, nearly two years later, Natural England declared ‘water neutrality’ in the Sussex North water resource zone. That meant that ‘for every new development, total water use in the Sussex North Water Supply Zone after any development had to be equal to or less than the total water use in the region before the new development.’⁴¹ Around 21,000 new homes were effectively blocked, as well as any new businesses in the area requiring public water supplies. Controls were so draconian that even the demolition and rebuilding of individual homes required a water neutrality statement.⁴²

Natural England stated that it expected restrictions to be in place until 2030, after which Southern Water would bring new water supply infrastructure online. However, Natural England’s restriction on growth was found to be needless in 2025 when Southern Water produced a study of abstraction which found that:

- The existing volume of water abstracted caused no impact on the relevant wetlands or the species of most concern – the lesser whorlpool ram’s-horn snail;
- The last census of the snail at the site in 2013-14 found them to be abundant, so the risk was hypothetical;
- The hypothetical risk appeared to have been based on one survey, in one year, at a different part of the protected area not connected to the abstraction. That survey found the snail reduced to being present only in a single ditch. However, the latest survey (2024) demonstrated that the snail had in fact *expanded* its reach in the Pulborough Brooks area where abstraction was deemed to be causing a risk.
- Studies from other parts of the protected habitat demonstrated that even in drought conditions, as in 2022, the snail’s population expanded.⁴³

While we welcome Defra’s support in resolving this situation, we believe it to be unacceptable that a hypothetical risk *de facto* held up business growth, and housing growth, across an entire water resource zone for a period of four years.

⁴⁰ Natural England (2022), [Natural England’s Advice Note Regarding Water Neutrality within the Sussex North Water Supply Zone: February 2022 V2](#), p.1

⁴¹ Ibid., p.2

⁴² See for example H2Ogeo (2025), [Water Neutrality Statement for the Proposed Development at Tucepi, The Drive, Ifold, West Sussex, RH14 0TE](#)

⁴³ AtkinsRealis (2025), Hardham Basin Environmental Studies, pp.11-13.

Birds before Net Zero

Dogger Bank South offshore wind farm is 103 km away from the Flamborough and Filey Special Protection. Natural England judged that the birds may come into contact with, and be harmed by, the wind farm. It used the maximum distance from six tracked seabirds, including a 338km outlier from a year of prey collapse and calculated a 'mean maximum plus one standard distribution' foraging range of 153 km – a range the British Trust for Ornithology judged to be 'implausible'.⁴⁴ Nevertheless, the wind farm was forced to spend £173 million to protect 719 breeding pairs of seabirds, including predator control and bird hotels.

Environmental protections are ineffective

The challenges caused by environmental protections would be understandable if they were effective, but they are not. Defra itself has highlighted that only 6 (8%) of habitat types protected by the Habitats Regulations were in favourable condition, with 80% in unfavourable status and more than half (57%) in unfavourable status which was either stable or deteriorating further.⁴⁵ While the same review found that protected species had fared better than non-protected species, it did not say whether it meant the protected species were achieving favourable conservation status or indeed whether their conservation status was actually improving.⁴⁶

This is to be expected from the way the legislation is written and the way it has been interpreted by its regulators. The rules offer very strict protections to *prevent the deterioration* of sites and species in specific locations, but nothing to *improve* that status across the country. If specific site protections were removed in favour of funding for conservation efforts elsewhere, guaranteeing and improving the protection of sites and species overall, perverse local outcomes could be avoided and much better environmental outcomes in the round could be delivered at a fraction of the cost.

5. After the law comes the lengthy and expensive process

The aforementioned restrictive legal tests merely inform the complicated and time-consuming process for assessing and mitigating, or compensating for, a development's impact on the environment. Infrastructure development in the UK, outside of a small number of permitted development rights, require planning permission.⁴⁷ There are four stages to this process:

- i) **Assessing whether projects require an Environmental Impact Assessment (screening):** some projects, such as nuclear power stations, will *always* require an Environmental Impact Assessment.⁴⁸ The majority will only be required to *consider* undertaking them if they meet certain thresholds (e.g. for dams and reservoirs that they cover more than one hectare of land, and wastewater treatment works that cover more than 1000 m² - 0.1 hectares).⁴⁹ Developments over this threshold must obtain a screening opinion from the local authority to confirm whether or not the development requires an Environmental Impact Assessment.

⁴⁴ John Fingleton (2025), [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#), p.67.

⁴⁵ Defra (2025), [The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Habitats and Species Regulations 2017: Post implementation review](#), pp.9-10.

⁴⁶ Ibid, pp.9-10.

⁴⁷ Although even some permitted developments may require environmental impact assessments.

⁴⁸ <https://www.legislation.gov.uk/uksi/2017/571/schedule/1>

⁴⁹ <https://www.legislation.gov.uk/uksi/2017/571/schedule/2>

- ii) **Surveying the environment of the development site:** If a project needs an Environmental Impact Assessment, the developer will be required to survey the area under development to assess the baseline environment. For large projects, or those located near sensitive sites, three years of survey data can be required to capture natural variations in different climatic conditions.⁵⁰ Such data is deemed to expire quickly. After 18 months, a professional ecologist needs to provide validation which is rarely allowed to stand for more than another 18 months, thus forcing resurveying.⁵¹
- iii) **Mitigation or compensation:** A project must show how it will prevent (mitigate) any environmental impacts. If it cannot do that, it must develop compensation measures (e.g. by creating breeding grounds for a threatened species off-site so that they add more to the population that the proposed development affects). The developer must consult with the Environment Agency – and also Natural England if the site affects a Habitats Regulations site or the Marine Management Organisation for a protected marine site. For Habitats Regulations sites, impacts must be mitigated. Compensation, not mitigation, is only allowed if the overall coherence of a site or species can be maintained, if there are no alternatives to development and if the project is In Reason of Overriding Public Interest (IROPI).
- iv) **Planning approval:** Once the above process is complete, the development can proceed to a planning decision (from local planning authorities for most developments and from the Secretary of State, following a recommendation from the Planning Inspectorate, for Nationally Significant Infrastructure Projects). Most major projects will receive planning approval through the process under the Planning Act 2008 which is a formalised process taking at least two years. It includes a six month period for the Planning Inspectorate to examine the project, three months of the planning inspectorate to then make a recommendation and three months for the Secretary of State to make a decision about approval following that recommendation.⁵²
- v) **The risk of legal challenge:** If approval is granted, opponents have six weeks to lodge a judicial review. They can do so on the basis that any aspect of the Environmental Impact Assessment, proposed mitigations and compensation have not followed due process. Environmental law is only one area of legal challenge risk. Projects can also be challenged on a wide range of other areas including the impact on built heritage, traffic management during construction and the process of public consultation during the planning process.

6. It doesn't have to be this way – proposals for improvement

People will continue to suffer from a lack of housing and businesses will be increasingly unable to expand until it is made easier to build infrastructure. After water bills rose by 25% last year and are due to rise by more than 5% in April, people need to see new infrastructure being built and the benefits they will deliver. Certainly, only the most essential barriers should hold up those projects which were approved in PR24.

⁵⁰ Chartered Institute of Ecology and Environmental Management (2018), Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine,

⁵¹ Chartered Institute of Ecology & Environmental Management (2019), [On the Lifespan of Ecological Reports and Surveys](#), p.1.

⁵² Planning Inspectorate (accessed 10.06.26), [National Infrastructure Planning: The Process](#)

Our recommendations to reduce costly uncertainty and time-consuming bureaucracy are below. Some of these changes have also been proposed in the government's recent water white paper, and where this is the case these have been highlighted.⁵³

'Quick wins' – implementable within the next six months

There appears to be nothing stopping the following from happening immediately:

- **Extend permitted development rights:** Many developments require planning consent but should not be in the planning system at all. Extending permitted development rights would free up planners' resources at no additional cost to the taxpayer and no adverse impact on people or the environment. For example, as they are almost always located away from residential areas, planning permission should not be required for onsite developments on active wastewater treatment works. Nor should it be for the installation, maintenance, improvement or repair of equipment for measuring water quality. Nor when a company must change the height threshold for kiosks and other 'buildings' on operational land (which would bring water into line with electricity undertakers and airports). A review was promised in January,⁵⁴ but it has not started and we have been told the review will not happen for another year.
- **Grant water infrastructure Special Development Orders:** Instead of costly and time-consuming Development Consent Orders, the government should grant planning permission for water schemes using Special Development Orders. It was done for Universal Studios and, instead of taking two years, the process took six months.⁵⁵ If it's good enough for a theme park, it seems good enough for a reservoir.
- **Reduce biodiversity net gain requirements:** Smaller schemes should be entirely exempt. For larger schemes, the footprint of net gain requirements should be narrowed to the land actually affected long term rather than land disturbed, but then restored after construction.
- **Issue stronger guidance to regulators and planners to:**
 - » **Require the Environment Agency and Natural England to apply expert judgment:** Statutory conservation bodies should be made to use available scientific evidence to avoid disproportionate demands for additional assessment, mitigation and compensation. They should be instructed not to raising hypothetical or speculative risks. Where they feel such concerns must be raised, they should seek expert advice (e.g. from qualified ecologists), rather than rely on non-expert opinion.
 - » **Require the Environment Agency and Natural England to attend planning hearings:** Whenever they fail to attend hearings, planning authorities cannot test their positions and make suitably informed conservation decisions. Instead, planning authorities should be instructed to not fully consider their submissions if they fail to attend the relevant hearing.
 - » **Require planning authorities to take decisions, not defer them:** Rather than accede to the requests by the Environment Agency or Natural England for more assessment, unless there are exceptional circumstances, planning authorities should be required to make judgments on the available evidence.

⁵³ Sir Jon Cunliffe (2025), [Independent Water Commission final report](#), pp.390-402.

⁵⁴ Defra, [A New Vision for Water](#) (2026). Page 39.

⁵⁵ MHCLG (2025), [Entertainment resort complex, Bedford: Statement of reasons for the grant of planning permission](#)

Medium term reforms – implementable within the next two years

More detailed structural reforms are also needed, but some may require legislative change:

- **Accelerate the replacement of Environmental Impact Assessments with Environmental Outcome Reports:** The Government has promised to act by the end of 2027, but we see no reason to wait.
- **Exclude minor works from Environmental Impact Assessment and, where relevant, licenses by:**
 - » **Reducing the need for permits and licenses:** to reduce the number of situations in which an abstraction license or flood risk activity permits are required.⁵⁶
 - » **Increasing the threshold for excluding developments:** Minor developments, below one hectare, are exempt from Environmental Impact Assessments. This threshold should be increased to cover a higher proportion of small developments, including those already on water companies' sites.
- **Strengthen the evidence bar for judicial review:** The bar for a judicial review is whether a case is 'arguable' but, as recently proposed by the High Court, this could (and in our view, should) be amended to set out that a case can only be heard if it is more likely than not to succeed.⁵⁷
- **Allow offsite mitigations for biodiversity net gain by default.** Amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 to disapply the hierarchy for biodiversity net gain to enable offsite mitigations as a first option. Net gain is net gain, regardless of the site.
- **Treat water the same as energy when reforming judicial review:** The Chancellor of the Exchequer has proposed granting special status to some energy projects so that their planning permission – known as a Development Consent Order – is granted by Parliament. Thereby, the projects would be protected from judicial review, other than on human rights grounds.⁵⁸ Water is just as critical as energy, if not more so. There is no reason why water should not receive the benefits of this worthwhile reform.

Reforms relating to international agreements

It is in the government's gift to re-consider its participation in international treaties or to accept higher risk on more radical, untested, approaches. In fact, government has committed to do so when the Prime Minister committed last December to implementing the recommendations of the Nuclear Regulatory Review in full and to apply it "across the entire industrial strategy"⁵⁹ which includes reservoirs.⁶⁰ As such, the government should rapidly:

- **Reduce the threat of spurious legal challenges:**
 - » When a court finds a 'misuse of judicial review,' cost protections should be automatically removed;
 - » Uprate the adverse liability cost cap for inflation as it was set in 2013, then indexed annually;
 - » The cost cap should be doubled at each stage of a challenge;
 - » The cost cap should be set at 70% of total funds where challenges are crowd funded; and
 - » The cost cap for the decision maker should always be set at five times the claimant's cap in order to balance the relationship between the challenger and the decision maker.

⁵⁶ By amending the Water Abstraction and Impounding (Exemptions) Regulations 2017 and the Environmental Permitting (England and Wales) Regulations 2016

⁵⁷ [R \(Hynot Ltd.\) v. Secretary of State for Energy Security and Net Zero](#) [2025] EWHC 2644 (Admin) at [70] - [71]

⁵⁸ HM Treasury (2026), [Getting Britain Building: Reforming judicial review for infrastructure](#)

⁵⁹ Sir Keir Starmer (December 2025), [Britain built for all](#).

⁶⁰ HM Government, (November 2025), [The UK's Modern Industrial Strategy](#). Page 110.

- **An alternative route to compliance for the Habitats Regulations:**

- » The Fingleton review suggested that nuclear sites should have a different pathway for complying with the habitats regulations – by enabling nuclear developers to compensate for adverse impacts on protected habitats and species off-site rather than having to deliver expensive mitigations on site.⁶¹
- » Water UK believes this should also apply to water infrastructure – which delivers net large benefits to the environment by reducing the amount of water that needs to be taken from it or by increasing the quality of water discharged to it. The scope of strategic compensation proposed through Environmental Delivery Plans could be expanded to cover Habitats Regulation Assessment sites as long as the overall coherence of sites and species, rather than that of individual specimens, is not threatened. While this may not be compliant with the Habitats Regulations, it would be in line with practice in other European countries that have transposed the Directive.

⁶¹ John Fingleton (2025), [Nuclear Regulatory Review 2025: Enabling nuclear delivery through regulatory reform](#), p.69.