

Judicial Review Reforms: Beyond Nationally Significant Infrastructure

Purpose

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Water UK is the trade association for the UK's water industry. We represent all regulated water and wastewater companies in England, Northern Ireland, Scotland and Wales.

Improvements to accelerate infrastructure delivery are needed at every stage of water and wastewater development, and we welcome the opportunity to respond to the Ministry of Justice consultation examining [Judicial Review Reforms: Beyond Nationally Significant Infrastructure](#).

Before responding to the consultation questions Water UK has set out wider recommendations on judicial review reform to accelerate water and wastewater infrastructure delivery and unlock economic growth.

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Background

Water infrastructure is a critical enabler to economic growth

Water infrastructure unlocks growth; however, critical projects face a combination of barriers including unnecessary legal appeals that culminate in hampered growth. Water UK strongly welcomes this consultation because it could speed up the delivery of vital water infrastructure. Despite water infrastructure being intrinsically linked to achieving sustained economic growth, water has received insufficient investment and prioritisation. Water companies have been historically prevented from adequately investing in critical infrastructure given previous governments prioritising keeping customer bills low. In 2011, the then Environment Secretary rejected Thames Water's application to build a new reservoir, claiming there was "no immediate need."¹ As a result, it's now progressing through planning and regulatory processes at significantly higher cost due to the increase in interest rates. As a result of government desire to keep bills low, no new reservoirs have been delivered in 30 years despite a 21 per cent population increase in that time.²

Business demand is also projected to rise as water-intensive industries such as data centres come online. Yet government targets require water companies to plan on the basis that business demand will fall by 9% by 2037-38.³ The Water Resource Planning system, intended to set out long-term infrastructure requirements, has not been fit for purpose, and this makes it more critical that new water supplies are delivered as fast as possible.

We already experience the negative effects today, and without urgent action they will likely worsen:

- The government has acknowledged that our system for planning water resources is 'piecemeal and disjointed' and that, without action there will be a 5 billion litre a day gap between supply and demand by 2055;⁴
- But water scarcity is already constraining business growth by £8.5bn - £13bn during this Parliament;⁵
- And above and beyond the government acknowledged deficit, because water companies were forced to plan on the basis of highly ambitious targets for demand and leakage reduction, rather than reasonable forecasts, independent analysis for Water UK estimates that England will only have enough water for 420,000 of the 1.5 million homes government has pledged to deliver this Parliament.⁶

As a result, it's now critical that barriers to water supply projects - such as added costs and delay to delivery - are minimised. Under the 2019 Ofwat Price Review, £469 million was approved for development funding for new water supply infrastructure⁷; five years later under the 2024 Price Review, this increased to over £2 billion in approved development funding for major Strategic Resource Options

¹ BBC News (March 2011), [Abingdon £1bn reservoir plan rejected by government](#)

² Office for National Statistics (2025), [United Kingdom population mid-year estimate](#)

³ *ibid*

⁴ Department for Environment, Food & Rural Affairs (January 2026), [A new vision for water](#), P7, P41

⁵ Public First (June 2025), [The Economic Cost of Water Scarcity](#), P19

⁶ Public First (May 2026), [The Risk of Water Shortages](#)

⁷ Ofwat (2019), [PR19 Final Determinations](#), P4

like reservoirs and water transfers.⁸ To address the 5 billion litre a day deficit by 2055, water companies are planning to deliver ten new reservoirs, nine desalination plants, seven water recycling centres and nine major water transfers from wetter to drier regions. These projects, and likely more expected as part of the 2029 Price Review, need to be delivered on time and at the lowest reasonable cost to ameliorate the effect of water scarcity.

Reform beyond the immediate scope of this consultation

Improvements to accelerate infrastructure delivery are needed at every stage, and we welcome the opportunity to respond to the Ministry of Justice consultation examining Judicial Review Reforms Beyond Nationally Significant Infrastructure. Water UK has recently published *Barriers to project delivery* setting out a wide range of barriers government should remove.⁹ Reforming legal challenges is especially important given the risk of judicial review creating caution leading to added delays and costs.

Removing 'gold-plate' standards designed to avoid legal challenges

Though outside the scope of this consultation, the physical planning consent process is constrained by overlapping regulatory requirements, which can be streamlined through a mix of immediate administrative updates and medium-term structural changes. Regulatory bodies such as the Environment Agency and Natural England are risk averse, often demanding numerous, costly assessments to minimise any exposure to procedural legal challenges. Regulators should be legally empowered to make definitive decisions based on the best available scientific evidence, rather than letting projects stall over negligible or hypothetical risks.

Regulatory reform should aim to strike a more pragmatic balance including avoiding "gold-plating" standards. Decision-makers should instead establish a regulatory environment that prioritises the timely, cost-effective delivery of critical national infrastructure.

Strengthening the evidence bar for judicial review

In addition to recent Nationally Significant Infrastructure Projects (NSIP) reforms and those being considered in this consultation, government should strengthen the evidence bar for judicial review, treat water the same as energy and consider reform of any legal constraints to delivering these reforms. Suggested reforms, in addition to those proposed in the consultation, are set out below:

- **Evidence bar for judicial review:** 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.¹⁰ 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.¹¹ The independent Banner Review concluded that raising the threshold would not

⁸ Ofwat (2025), [RAPID: securing customers' future water supplies in AMP8](#)

⁹ Water UK (July 2026), [Barriers to project delivery](#)

¹⁰ Pinsent Masons (2024), [Judicial Review](#)

¹¹ Royal Courts of Justice (October 2025), [EWHC 2644, R \(Hynot Ltd.\) v. Secretary of State for Energy Security and Net Zero](#), Paragraphs 70 - 71

be inconsistent with legislation and could be carried out through amendments to the Civil Procedure Rules.¹²

- **Equality of treatment for water and energy projects:** Former Chancellor of the Exchequer Rachel Reeves 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.¹³ Water is at least as critical as energy, particularly in the coming years where we expect the threat of climate change-driven droughts to continue growing, so there is no reason why water should not receive the same benefits of this worthwhile reform.

Considering legal barriers to reducing unwarranted legal challenges

It is in the government's gift to accept higher legal risk on radical untested, approaches or in extremis to reconsider its involvement in international treaties which inform current approaches to legal challenges. In fact, the previous government promised reform when Sir Keir Starmer, as 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"¹⁴ which includes the need to build new reservoirs.¹⁵

To rapidly reduce the threat of unwarranted legal challenges, the government should adopt the mechanisms recommended by the Nuclear Regulatory Review by taking the following actions which would disincentivise meritless legal challenges which delay projects:

- Remove cost protections automatically when a court identifies a 'misuse of judicial review.'
- Uprate the adverse liability cost cap to account for inflation since 2013 and index it annually thereafter.
- Double the cost cap at each stage of a legal challenge.
- Set the cost cap at 70% of total funds for any challenge that is crowdfunded; and
- Establish the decision-maker's cost cap at five times the claimant's cap to balance the relationship between the two parties.

Under the current system, water companies face legal challenges at several points in the development pipeline. For example, recently Thames Water's Water Resources Management Plan was subjected to judicial review regarding the South East Strategic Resource Option (SESRO / White Horse Reservoir) on the grounds that a public inquiry should have been held. Although the High Court dismissed the claim¹⁶, finding no procedural unfairness in the Secretary of State's decision, the litigation itself created a significant drag on progress. Under current rules, even after a project has successfully defended its statutory justification at the WRMP stage, it faces successive, separate opportunities for judicial review at subsequent stages including during consenting and permitting. There is a risk that individual reservoirs

¹² GOV.UK (October 2024), [Independent review into legal challenges against Nationally Significant Infrastructure Projects led by Lord Banner KC](#)

¹³ HM Treasury (May 2026), [Getting Britain Building: Reforming judicial review for infrastructure](#)

¹⁴ Sir Keir Starmer (December 2025), [Britain built for all speech](#)

¹⁵ HM Government, (November 2025), [The UK's Modern Industrial Strategy](#), Page 110.

¹⁶ Royal Courts of Justice (July 2025), [EWHC 1885, Saferwaters and Secretary of State for Environment](#)

are subject to a judicial review once the Secretary of State makes a final decision to grant a Development Consent Order, and further risk it is appealed once water abstraction or discharge licenses are granted by the Environment Agency. This case illustrates how the current planning framework allows the fundamental 'need' for strategic infrastructure to be litigated repeatedly, causing avoidable delays to projects essential for climate resilience and water security.

The urgent need for further judicial review reform

Alongside the above reforms, Water UK strongly supports the consultation's proposal to extend the judicial review reforms introduced for Nationally Significant Infrastructure Projects under the Planning and Infrastructure Act 2025 to major planning decisions made under the Town and Country Planning Act (TCPA) 1990. We support reforms to address the systemic threat of multi-stage litigation on critical projects.

The Grand Union Canal Transfer which will bring water from the Midlands to the South East could have progressed via the TCPA framework, however, because it spans ten local planning authorities it instead advanced via Development Consent Order or NSIP made available via the Planning Act 2008. The rationale was in part to reduce the risk of appeal or call in across the authorities potentially leading to "considerable delay to the delivery schedule".¹⁷

Water and wastewater infrastructure projects are critical to national climate and population resilience, however, given the following risk profile they are particularly vulnerable to sequential, multi-stage legal challenges.

1. **Multi-authority and linear vulnerability** – Because major pipelines and transfers are linear and often cross multiple local planning authority boundaries they require a suite of separate planning permissions. These scenarios result in additional risk because just one legal challenge relevant to a single local planning authority could slow down or halt the entire project until resolved.
2. **Sequential permits** – Water projects require an array of sequential permits including Abstraction Licenses, Discharge Permits and Habitats Regulations Assessments. Each of these permits presents an opportunity for appeals leading to further delays.
3. **Strategic co-dependency** – Strategic assets like reservoirs or major transfers are typically considered NSIPs (but not always e.g. Cheddar 2 and Havant Thicket reservoirs). NSIPs benefit from recent reforms, however, they are often dependent upon localised infrastructure like pumping stations typically covered under TCPA. Having linked projects proceeding via separate regimes runs the risk of a mismatch in timing which unnecessarily slows projects, and the resulting benefits.

Water UK urges the Ministry of Justice to extend the removal of the paper permission stage and the restriction of appeals on 'totally without merit' claims to all strategic water infrastructure consented outside of the NSIP regime. Preventing meritless legal challenges from being used as a vehicle for delay is essential to unlocking the historic £104 billion capital investment required to secure the UK's ongoing water security.

¹⁷ Grand Union Canal (September 2024), [Section 35 Direction – Qualifying Request](#), P21

Consultation questions

The case for further reform

Water UK have provided answers to specific consultation question below. We have not answered questions three, four and six as they deal with planning applications for offshore wind, housing and transport respectively.

1. Do you think that the NSIP judicial review reforms should be extended to other planning regimes? Please explain your response with reference to the potential benefits and risks of doing so.

Yes, given the urgent need for action to resolve water scarcity further interventions are required to speed up the delivery of critical infrastructure and reduce costs. Water companies often rely on the standard TCPA framework for medium-scale, regional and connection-driven water infrastructure projects including water supply schemes.

Poole Water Recycling & Transfer, designed to reduce the amount of water abstracted from the highly sensitive and protected Hampshire Avon by discharging highly treated recycled water into the River Stour to allow for further abstraction downstream, is currently progressing through the TCPA framework making it more vulnerable to legal challenges than NSIP projects benefitting from the recent reforms. There is a risk this project designed with environmental protection and river conservation in mind is needlessly delayed. This type of additional legal risk will result in water companies undertaking additional work to minimise the risk and requires resource-constrained local planning authorities to be especially cautious when considering applications.

Despite some projects making use of the TCPA regime being smaller in scale they are often critical components of a larger-scale project such as a strategic reservoir. For this reason, the smaller scale projects can attract local opposition regarding localised environmental or community concerns, which can inadvertently stall wider strategic delivery. Slowing down the delivery of smaller scale projects has a hugely negative effect on delivering complex and strategic projects needed to build homes and allow businesses to expand. Even an unsuccessful judicial review can stall a project for 12-18 months e.g. Woodgate Hill to Prescot Reservoir Pipeline referenced on page 8.

In addition, because Cheddar 2 Reservoir does not meet the capacity and output thresholds to be automatically classified as a NSIP the strategically important reservoir is currently preparing for TCPA submission.¹⁸ It originally received permission through TCPA in November 2014 making a renewed application more practical, however, there is a risk that this leads to multiple judicial reviews which usually take advantage of procedural rather than substantive matters. To reduce the risk, regulators have required multiple Environmental Impact Assessments and proof of mitigation. These delays come at the same time as the UK faces stunted economic growth and a shortage of homes due to a lack of sufficient water infrastructure.

¹⁸ West Country Water and Environment (2025), [Cheddar 2 SRO public consultation](#)

As set out above, 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 the industry attempts to deliver the biggest programme of delivery in more than 100 years.

2. Do you agree that consideration for further judicial review reforms should be limited to ‘major infrastructure projects’ consented under the TCPA 1990 and the TWA 1992 and other ‘strategically important developments’ (as defined by this consultation)?

No, further judicial review reforms should apply to *all* water and wastewater projects. The rationale is that investment in a range of projects both small and large is urgently required to enable economic growth. If it is not possible to extend reforms to all water and wastewater projects, government must ensure those of the utmost significance quickly benefit from reforms. The government has committed to determining 150 major economic infrastructure projects by the end of this parliament. More clarity is needed to ensure strategic water and wastewater projects, for example those within the Regulators’ Alliance for Progressing Infrastructure Development (RAPID) pipeline are included within the definition of ‘major infrastructure projects’. We expect that these water and wastewater projects will be included within the list of at least 150 major economic infrastructure projects to be delivered by the end of this Parliament, but urgent clarification to confirm this is required.

Should it not be possible to extend reforms to beyond projects in the RAPID pipeline this should be put under review as there is a risk that smaller ‘feeder’ projects integral to larger-scale projects are delayed. Therefore, it is important the government remain open to further review to determine whether strategic infrastructure potentially falling outside the scope of the definition set out in the first paragraph of the consultation are not also being needlessly delayed due to the threat of legal challenge.

5. In your view, is there an issue with delays to ‘major infrastructure projects’ and ‘strategically important developments’ consented under the TCPA 1990 regime resulting from legal challenges? If so, please provide details (for example, how long does it take on average for a legal challenge against a decision to reach a conclusion; are there any specific cases of concern; what is the impact of the resulting delay).

Yes, the delivery of ‘major infrastructure projects’ and ‘strategically important developments’ water and wastewater projects consented under the TCPA 1990 regime have been slowed by the threat of legal challenge. An unsuccessful judicial review can stall a project for 12-18 months which, when combined with other factors and potential delays, could lead to delays in the availability of much needed water and wastewater services. Because of the current historic level of investment the water sector fears the risk will significantly grow in the months and years ahead. For context, under the 2019 Ofwat Price Review, £469 million was approved for development funding¹⁹; five years later under Price Review 2024, this increased to over £2 billion in approved development funding.²⁰ This historic level of investment resulting in more water and wastewater projects entering the TCPA framework is expected to continue under the 2029 Price Review meaning now is an opportune time to implement reform to minimise future delay.

¹⁹ Ofwat (2019), [PR19 Final Determinations](#), P4

²⁰ Ofwat (2025), [RAPID: securing customers' future water supplies in AMP8](#)

One example of delay is when United Utilities received planning permission from Bury Council for the Woodgate Hill to Prescott Reservoir Pipeline in November 2008. Soon after a claim for judicial review was made by Britannia Hotels alleging statutory notice requirements were unmet. Nearly a year later, in October 2009, the High Court dismissed the claims ruling that notice requirements were in fact met, thus meaning the project was delayed by a year.²¹

Reducing the number of permission attempts

7. Should the CPRC be invited to remove the paper permission stage for other planning decisions? If so, do you agree that this change should be limited to ‘major infrastructure projects’ and other ‘strategically important developments’ only?

Yes, the Civil Procedure Rule Committee should be invited to remove the paper permission stage for other planning decisions. Yes, assuming critical water infrastructure projects as set out above in response to Question 2 are included for the time being it should be limited to ‘major infrastructure projects’ and other ‘strategically important developments’ until there is a time to assess whether it should be extended further. The list of major economic infrastructure projects should be clearly defined and published.

8. Should the removal of the right of appeal for ‘totally without merit’ cases be extended to other planning decisions? If so, should this change be limited to ‘major infrastructure projects’ and other ‘strategically important developments’?

Yes, despite requiring primary legislation the right of appeal for ‘totally without merit’ cases should be extended to other planning decisions. No, there is no reason to limit it to ‘major infrastructure projects’ and other ‘strategically important developments’ because as the consultation notes it does not have judicial resource implications.

‘Significant Planning Court Claim’ designation

9. Should the CPRC be invited to amend PD 54D to formally designate ‘major infrastructure projects’ and other ‘strategically important developments’ as Significant Planning Court Claims?

Yes, greater clarity and certainty would be welcomed. The Civil Procedure Rule Committee should amend Practice Direction 54D (PD 54D) to formally designate ‘major infrastructure projects’ and other ‘strategically important developments’ as Significant Planning Court Claims. PD 54D designation would provide helpful target timescales and assurances that each case is reviewed by the Planning Liaison Judge to ensure it is allocated to a judge with an appropriate level of expertise. It would also allow greater transparency against the target timescales for Significant Planning Court Claims. For water companies, with responsibility for the delivery of major infrastructure projects, the absence of any formal assurance over judicial review timescales can be difficult to accommodate and plan for when the impacts of delay, such as the need to avoid seasonal working constraints, can have a disproportionate and non-linear effect on delivery of a project. In practice, major infrastructure projects are typically already handled as Significant Planning Court Claims, therefore, there is little risk in formalising this designation.

²¹ Bury Council (October 2009), [Planning Control Committee Report for Decision](#), P3

Case management conference

10. Should the CPRC be invited to amend the PD 54D to encourage the use of case management conferences following the grant of permission to apply for judicial review in other types of planning cases? If so, should this change be limited to ‘major infrastructure projects’ and other ‘strategically important developments’ consented or should it be extended more widely to all planning cases?

Because of the critical need to accelerate water infrastructure projects set out within the context of our submission, Water UK supports PD 54D encouraging the use of case management conferences to apply for judicial review cases involving water infrastructure. Water UK calls for this be expanded to all water infrastructure projects so that they are fast tracked toward a final hearing given the serious risks of the delivery of water infrastructure being delayed. In many cases smaller water infrastructure projects are integral to larger more strategic projects, and for that reason they can be susceptible to judicial review.

Target timescales in the High Court

11. Should the CPRC be invited to extend the target timescales for NSIP judicial reviews in the High Court to ‘major infrastructure projects’ and other ‘strategically important developments’? Please explain your response with reference to any potential risks and resources implications.

Yes, Water UK supports extending the target NSIP timescales to other ‘major infrastructure projects’ and ‘strategically important developments’. The benefits of accelerating delivery, especially for much-needed water infrastructure, outweighs the smaller risk of the unintended consequences. Uncertainty over judicial review timelines creates disproportionate costs and programme delays that extend well beyond the court process itself. For developers, this can disrupt seasonal work or delay critical third-party contributions, causing a disproportionate setback to the project start. Applying target timescales would preserve the efficiencies gained from removing the paper permission stage, ensuring these time savings are fully realised and not lost during the hearing process.

Target timescales in the Court of Appeal

12. Should the CPRC be invited to extend the target timescales for NSIP appeals in the Court of Appeal to ‘major infrastructure projects’ and other ‘strategically important developments’? Please explain your response with reference to any potential risks and resources implications.

Yes, Water UK supports consistency with target timescales of NSIP appeals being applied to ‘major infrastructure projects’ and ‘strategically important developments’ given the urgency to deliver critical water infrastructure. Rapid delivery is required despite potential resource implications which should be considered secondary to the risk of not delivering water infrastructure required to respond to population change, climate change and the need for economic growth.