

*This article is by Nick McDonald and is published by British Water in Cascade UK, its monthly e-magazine.*

January 2009

## Property

### The Planning Act 2008 - What does it mean for the water industry?

**The Planning Act 2008 received Royal Assent on 26 November 2008, bringing in a comprehensive new regime for significant infrastructure projects, which will apply to some of the larger developments undertaken by water companies. In addition, the Act also brought in the new Community Infrastructure Levy.**

#### The New Infrastructure Projects Regime

An Infrastructure Planning Commission (IPC) will be set up to consider and determine applications for large infrastructure projects. The IPC will be an independent body, similar in nature to the Planning Inspectorate, with professionals from a variety of backgrounds making up the Commissioners. Although there are provisions allowing the Secretary of State to decide applications in some circumstances, it is intended that the IPC will determine the majority.

The Government will produce National Policy Statements (NPSs), which will establish the national case for infrastructure development and set the policy framework for IPC decisions. It is anticipated that NPSs will be sector-based, with statements being produced to match up with the categories of relevant projects. Currently the Government intends to produce one NPS in relation to water infrastructure, covering water supply and waste water treatment.

The specified projects which the IPC will determine are known as Nationally Significant Infrastructure Projects (NSI Projects). They are defined by way of development categories and then size criteria. The categories most likely to be relevant to the water industry are:

- The construction of a dam or reservoir in England by a water undertaker which will hold at least 10m<sup>3</sup> of water. An alteration to a dam or reservoir which will lead to an additional 10m<sup>3</sup> of water being held also qualifies;
- The transfer of raw water between river basins or water undertakers' areas, in England, where the transfer is expected to exceed 100m<sup>3</sup> per year; and
- The construction of a wastewater treatment plant in England which is expected to have the capacity to serve a population of over 500,000 people. An alteration to a plant increasing capacity by the same amount is also caught.

The list of categories can be amended by the Secretary of State. Receipt of 'development consent' under the new regime will replace most of the numerous consents and orders required for major developments. This includes planning permission, listed building consent, compulsory purchase order and other consents under the Pipelines Act 1962 and Highways Act 1980.

#### Community Infrastructure Levy

The Act also introduces the Community Infrastructure Levy (CIL), which local planning authorities can bring in within their area. CIL is a levy on developments, calculated by reference to their size, for example the number of residential units or the floorspace of a new office block. The levy is then used in accordance with the authority's CIL charging schedule on specified infrastructure projects, such as new roads, transport facilities, schools, sports or medical facilities, open spaces, flood defences or affordable housing.

There are two main ways in which CIL is likely to be relevant to water companies. Firstly, many companies have significant land holdings which are no longer required for the purposes of their undertaking and which may be suitable for redevelopment. These projects could be affected by the imposition of CIL – the Act provides that CIL may be payable by the owner, developer or a third party and further clarification on this is expected in Regulations – the possibility of CIL being payable by the water company or any buyer or developer needs to be considered up front.

Secondly, flood defences are already listed in the definition of "infrastructure" in the Act and, although water and sewerage infrastructure is not currently in the list, it could be brought within the definition through Regulations. Water companies may benefit from engaging with the local planning authority's consultation on the CIL charging schedule, in order to try and ensure that new flood defence, water or sewerage infrastructure required is provided for in the schedule. This would be more likely to apply to larger developments (such as significant redevelopment projects or eco towns), which will require major new flood defence, water or sewerage infrastructure.

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## What next?

The Government has promised consultation on draft Regulations, which will provide a lot of the detail on the new regime and CIL. The Government must also consult on and pass parliamentary scrutiny requirements in relation to the draft NPS. Before CIL can be charged, the local authority will need to subject their CIL proposals to consultation with developers and the local community, and testing by an independent person.

For further information on this topic please contact

### Nick McDonald

Solicitor

DDI: +44 (0) 113 368 7689

Email: [nick.mcdonald@pinsentmasons.com](mailto:nick.mcdonald@pinsentmasons.com)

### Mark Lane

Partner

DDI: +44 (0) 20 7490 6214

Email: [mark.lane@pinsentmasons.com](mailto:mark.lane@pinsentmasons.com)

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Should you have any questions please contact Mark Lane ([mark.lane@pinsentmasons.com](mailto:mark.lane@pinsentmasons.com)) or Nick McDonald ([nick.mcdonald@pinsentmasons.com](mailto:nick.mcdonald@pinsentmasons.com)) who will be able to assist you further.

**This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.**

LONDON BIRMINGHAM BRISTOL LEEDS MANCHESTER EDINBURGH GLASGOW DUBAI BEIJING SHANGHAI HONG KONG

T 0845 300 32 32

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