

Water (Special Measures) Bill: Briefing for Lords Second reading October 2024

This briefing is on behalf of Wildlife and Countryside Link ([Link](#)), the largest nature coalition in England, bringing together 86 organisations to campaign for the natural world.

The Water (Special Measures) Bill introduces measures to reduce pollution from water companies, including requirements on water companies to adopt pollution incident reduction plans and new powers for regulations to impose sanctions on polluting water companies.¹

These measures are welcome as a first step. Much more comprehensive action is required to restore England's water ecosystems. Sewage pollution is just one pressure: agricultural pollution, chemical pollution and over-abstraction all pose severe risks to rivers, lakes, seas and small waters.

The review into water health, announced by the Secretary of State for the Environment, Food and Rural Affairs on 5th September, has the potential to address these wider issues.² It is important that the review is independent, rapid, and considers the adequacy of governance and funding support for comprehensive solutions to freshwater quality and biodiversity decline, such as catchment partnerships.³

To maximise the potential of the Water (Special Measures) Bill, within a wider water recovery toolkit, the Government must increase the environmental ambition of the Bill. This can be achieved through strengthened pollution reduction duties on water companies, statutory backing for the use of water company fines for environmental purposes and a new environmental duty for the water regulator, Ofwat.

At Lords Second Reading on 09.10.24, we urge Peers to advocate for the following amendments:

1. **Clause 2 should be amended to require all water companies to implement Pollution Reduction Plans.** Currently the requirement is simply to have a plan and it does not extend to water-only companies.
2. **Pollution reduction plans should prioritise nature-based solutions.** Currently, water companies invest very little in natural solutions, continuing to favour carbon-intensive engineered approaches.
3. **The Bill should make provision that water company fines should always be invested in environmental projects through the Water Restoration Fund.** Currently, some fines are absorbed into general Treasury funds.

¹ <https://bills.parliament.uk/publications/56099/documents/5020>

² <https://www.gov.uk/government/speeches/steve-reed-speech-on-the-water-special-measures-bill>

³ <https://catchmentbasedapproach.org/about/>

- 4. The Bill should give Ofwat a statutory duty to contribute to meeting climate and nature-recovery targets.** The Bill does nothing to strengthen the regulator's role for nature. Its duties are currently overwhelmingly economic, including promoting shareholder profit. An environmental duty would empower Ofwat to take a stronger environmental role.

Stronger duties on water companies to implement pollution incident reduction plans

Despite progress in tackling some of the easier-to-address pollution issues, overall water companies have failed to invest in the significant infrastructure upgrades needed to reduce pollution. This failure to invest has led to pollution levels remaining stubbornly high.⁴

To help tackle pollution incidents, Clause 2 would create a duty on water companies to prepare and publish an annual pollution incident reduction plan. However the duty is tied only to plan preparation and publication; there is no requirement to implement the provisions once the plan is published. This is confirmed in the enforcement section of the clause (94EB Section 94EA: enforcement and sanctions) which gives the Environment Agency powers to sanction a failure to prepare and publish a plan, but makes no mention of enforcement following a failure to implement.

This risks creating another weak duty which allows water companies to make pollution reduction commitments which are then not delivered. Clause 94A of the Environment Act 2021 imposed a duty on water companies to prepare, publish and maintain a drainage and sewerage management plan, including proposed mitigation of environmental risks from sewage systems.⁵ The duty did not include an implementation element. Although still bedding in, these drainage and sewerage management plans have failed so far to make a noticeable difference to pollution levels, due in part to the lack of an implementation requirement. Transparency and public opinion alone do not guarantee action by private companies; enforceable legal mechanisms are needed to drive change.

The Government should amend Clause 2 to add a clear duty to implement pollution incident reduction plans, with associated sanctions for failing to do so, to avoid these plans becoming dead letters. Struggling waterways need sustained, monitored action, rather than just another plan.⁶

The proposed content of each pollution reduction plan, set out in 94EA (4), could also be strengthened. The current wording goes into detail on pollution incidents and their prevention, but fails to mention the environmental consequences of such incidents. Plan makers should be encouraged to identify

⁴https://www.wcl.org.uk/docs/assets/uploads/The_state_of_pollution_in_rivers_Briefing_note_Feb_2024_1.pdf

⁵<https://www.legislation.gov.uk/ukpga/2021/30/part/5#:~:text=%E2%80%9C94ADrainage%20and%20sewerage%20management,drainage%20and%20sewerage%20management%20plan.>

⁶ An addition to Clause 2 could state that a cap should be applied to water company requests for finance to support plan implementation within the Price Review. This would avoid the strengthened duty becoming a ratchet for water companies to request significant amounts of additional revenue from consumers.

particular environmental risks from pollution incidents, such as fish kills and damage to protected sites and protected landscapes, and be required to specify steps to mitigate these environmental risks.

Finally, the clause specifies that pollution incident reduction plans must be produced by sewerage undertakers. This means that companies that provide only water services (rather than water and sewerage services) will not need to produce pollution incident reduction plans. As 5 of the 16 regional water companies in England & Wales are water only, this is a missed opportunity for plans to cover 31% of the water sector.⁷ These companies operate in some of the most ecologically sensitive areas of the country, with their areas of operation including a large proportion of England's globally rare chalk streams. Ofwat has stated that *'we recognise that water only companies can be responsible for serious pollution incidents and intend to hold them to account.'*⁸ Given the pollution that water only companies can produce, for example as a result of drinking water treatment, they should be required to prepare, publish – and implement – pollution incident reduction plans.

Increased requirements on water companies to use nature-based solutions

When water companies develop pollution incident reduction plans under the legislation, it is important that they utilise nature-based solutions wherever possible. Traditional engineering, using concrete, steel and chemicals, can improve sewerage infrastructure and reduce pollution, but this comes at a high carbon cost.⁹ Habitat restoration projects, known in this context as nature-based solutions, offer an environmentally friendly alternative, capable of reducing pollution with minimal carbon emissions whilst boosting nature recovery.¹⁰ Pioneering partnerships between water companies and nature organisations have shown how effective habitat restoration, from recovered wetlands and to new woodland, can be in reducing freshwater pollution.¹¹

Whilst some pioneers have embraced nature-based solutions, generally water company take up of this form of infrastructure improvement has been limited. The Bill should address this by specifying that pollution incident reduction plans should utilise nature-based solutions wherever possible and feasible through a 'nature-first' approach, and by requiring Ofwat to publish guidance encouraging the use of nature-based solutions across the sweep of water company activities.

⁷ <https://commonslibrary.parliament.uk/constituency-information-water-companies/#:~:text=may%20be%20different>

⁸ <https://www.ofwat.gov.uk/wp-content/uploads/2024/07/Overview-of-SES-Waters-PR24-draft-determination.pdf> p6

⁹ <https://www.nature.com/articles/s41561-021-00690-8>

¹⁰ https://www.wcl.org.uk/docs/WCL_Briefing_Nature_Based_Solutions_Water_December_2023.pdf

¹¹ <https://www.unitedutilities.com/globalassets/documents/pdf/pr24---unlocking-nature-based-solutions-to-deliver-greater-value.pdf> p10-11

Legal assurance that water company fines will fund environmental enhancement

As well as ensuring plans to reduce pollution are actually implemented, the Bill should seek to ensure that the environment is appropriately recompensed for harms from pollution. This means that funds from water company fines for pollution incidents should always be invested in environmental projects designed by experts to restore fresh and marine waters to good health.

In 2022, the previous Government announced that money from water company fines imposed by Ofwat and those arising from Environment Agency prosecutions, would in future be spent on environmental enhancement, rather than going into general Treasury funds.¹² The new Government has also committed to this in principle and the Water Restoration Fund, applying revenue from fines, to environmental projects, is now in place.¹³ These laudable commitments have however not yet been universally applied; £168 million of proposed fines from Thames Water, Yorkshire Water and Northumbrian Water in August 2024 have yet to be ringfenced for environmental purposes.¹⁴

The Government should give legislative weight to the long-standing promise to ringfence fines for environmental purposes and amend the Bill so that it requires all water company fines from Ofwat and Environment Agency action to be channelled into the Water Restoration Fund.

An environmental duty for Ofwat

There is a surprising omission amidst the Bill's regulatory provisions; no reforms are proposed to Ofwat as the water regulator. Over recent years a number of reports have recommended reforms. Both the Environmental Audit Committee in the Commons¹⁵ and the Industry and Regulators Committee in the Lords¹⁶ have recommended that Ofwat be given stronger guidance to regulate for environmental objectives. These calls redoubled in early 2024 when the previous Government imposed a duty on Ofwat to have regard to desirability of promoting economic growth.¹⁷ This change meant that Ofwat now has a number of legally binding economic duties (including those in the Water Industry Act 1991) but no corresponding environmental counterparts.

This is out of balance with the overwhelmingly environmental character of public concerns about the water sector. This imbalance makes it harder for Ofwat to take enforcement action against polluting

¹² <https://www.gov.uk/government/news/water-company-fines-to-be-channelled-into-environmental-improvements>

¹³ <https://www.gov.uk/government/publications/water-restoration-fund-guidance-for-applicants/about-the-water-restoration-fund>

¹⁴ See https://inews.co.uk/news/water-companies-fines-fix-sewage-spills-treasury-3223071?srsId=AfmBOooVUsYjSdvqYohNqQ_FNs-YqDLhiNTgcJrtQTioNlfgDIT0Og63 & https://www.wcl.org.uk/docs/WCL_Blueprint_Letter_Ofwat_Penalties_Aug_2024.pdf

¹⁵ <https://committees.parliament.uk/publications/8460/documents/88412/default/>

¹⁶ <https://publications.parliament.uk/pa/ld5803/ldselect/ldindreg/166/16602.htm>

¹⁷ <https://www.theguardian.com/environment/2024/apr/24/tory-duty-on-ofwat-protects-profits-over-reducing-sewage-pollution-experts-say>

water companies, as the latter now have the ability to try and challenge enforcement as the imposition of undue economic costs, contrary to Ofwat's economic growth duty.¹⁸ The Water (Special Measures) Bill provides an opportunity to correct this threat to the effective regulation of the water industry, by legislating for Ofwat to have an environmental duty to address the preponderance of economic duties on it.

Such an environmental duty could require Ofwat to take all reasonable steps to contribute to:

- The achievement of targets set under sections 1 to 3 of the Environment Act 2021.
- The achievement of targets set under Part 1 of the Climate Change Act 2008.
- The delivery of the programme for adaptation to climate change under section 58 of the Climate Change Act 2008.

The specific and active duty would empower Ofwat to take robust enforcement action against water companies who damage the environment, by achieving a more appropriate balance between economic and environmental considerations and providing a statutory justification for environmentally ambitious regulation. It would also drive an increase in the contribution the water sector as a whole makes to the achievement of the Government's climate and nature missions.

A new duty could also remove the outdated economic growth duty the previous Government imposed on Ofwat, and amend the duties on the regulator contained in section 2 of the Water Industry Act 1991.¹⁹ These include a duty to '*secure reasonable returns on capital for water undertakers*', a profit imperative wholly out of sync with the environmental challenges in the water sector. The Bill could replace this with a more appropriate economic injunction to secure public value, recognising the essential economic value of healthy freshwater ecosystems for human wellbeing.

Reforms to the duties upon Ofwat would make the work of the regulator more compatible with the public interest, and more aligned to the Government's wider environmental priorities.

Further comments on clauses in the Bill

In addition to making the case for the above strengthening additions to the Bill, we would be grateful if peers could ask Ministers for clarification on the following parts of the legislation.

Clause 1 (Remuneration and governance)

The clause gives Ofwat the power to prevent performance-related pay awards to senior water company staff, if the company has breached key standards, including environmental standards. These environmental standards are however not defined on the face of the Bill, with the explanatory notes

¹⁸https://www.wcl.org.uk/docs/assets/uploads/April_24_Briefing_Draft_Economic_Growth_Regulatory_Functions_Amendment_Order_2024_accompanying_Statutory_Guidance.pdf

¹⁹ <https://www.legislation.gov.uk/ukpga/1991/56/section/2>

saying that they will be set by Ofwat through consultation in due course.²⁰ It would be helpful if Ministers could give an early indication of their plans for their content for environmental standards, to allow for early engagement, and to set out how the standards will interact with existing legislation. For example, that performance-related pay awards should not be granted if companies are not compliant with existing legislation. The same clause also opens up the possibility of consumer representatives sitting on water company boards. Given the overwhelmingly environmental character of governance concerns about water companies, a case could be made for also requiring environmental experts to be included on boards, along with consumer representatives. Ministers could be asked for their view on this proposal.

Clause 3 (emergency outflows)

The measures in the clause to require water companies to publish more data on spills from more emergency outflows will boost transparency. However the new rules require only the duration of each spill to be reported. This duration data does not capture the volume or concentration of the spill, an important aspect which can drive the severity of the environmental harm caused. Ministers should explain why volume reporting requirements have not been imposed, and state if they would be willing to consider amending the clause to include them.

Clauses 10-12 (special administration orders)

These clauses enable the Government to better recover losses incurred through the special administration process (when Government takes over a failed water company's functions, to ensure that core services are not disrupted). The Water Industry (Special Administration) Regulations 2024²¹ governing this process are ambiguous when it comes to the environment. It is unclear whether special administration can be imposed as the ultimate sanction for water company pollution. Similarly, when special administration is in place, it is not clear whether environmental services are amongst the core services that have to be maintained.²² Ministers could be asked about the Government's appetite to clarify these parts of the special administration process through the Bill, including setting out the conditions under which special measures would be imposed for environmental failure.

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²⁰ <https://bills.parliament.uk/publications/56100/documents/5022>

²¹ <https://www.legislation.gov.uk/uksi/2024/205/contents/made>

²² [https://hansard.parliament.uk/Lords/2024-02-19/debates/FC10E1FA-B991-4A82-B30C-7E9FCC81EFDA/WaterIndustry\(SpecialAdministration\)Regulations2024](https://hansard.parliament.uk/Lords/2024-02-19/debates/FC10E1FA-B991-4A82-B30C-7E9FCC81EFDA/WaterIndustry(SpecialAdministration)Regulations2024)

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