

WATER (SPECIAL MEASURES) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Water (Special Measures) Bill [HL] as brought from the House of Lords on 27 November 2024 (Bill 141).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1. The Water (Special Measures) Bill [HC] seeks to deliver on the Government's manifesto to put failing water companies under special measures and seeks to ensure water companies are better held to account where they have failed to deliver for the environment and customers.
2. The Water (Special Measures) Bill [HC] would enable government and the regulators to achieve the commitments outlined in the 2024 Labour manifesto:
 - To block the payment of bonuses to executives who pollute waterways;
 - To bring criminal charges against persistent law breakers;
 - To impose automatic and severe fines for wrongdoing; and
 - To ensure independent monitoring of every outlet.
3. The Water (Special Measures) Bill [HC] includes provisions to:
 - ban bonuses for persons holding senior roles where companies fail to meet required standards relating to consumer matters, the environment, financial resilience or criminal liability;
 - introduce a fit and proper person test for water company executives;
 - ensure consumer representation in water company decision making;
 - require water companies to regularly report on their planned financial structuring to Ofwat.
 - require sewerage undertakers to set out in their drainage and sewerage management plans, the use that is to be made of nature-based solutions, technologies and facilities within their drainage and sewerage systems;
 - extend the sentencing power of the Courts to include imprisonment in all cases where the Environment Agency, Natural Resources Body for Wales and Drinking Water Inspectorate investigations have been obstructed by individuals;
 - enable automatic penalties to be issued by the Environment Agency and Natural Resources Body for Wales for a defined list of offences;
 - lower the standard of proof for Environment Agency and Natural Resources Body for Wales civil sanctions to enable more rapid penalties to be issued for minor to moderate offences;
 - require Ofwat to have regard to the Environment Act 2021 and Climate Change 2008 targets when carrying out their functions;
 - require publication of near real-time data on discharges from emergency overflows;
 - require water companies to produce annual pollution incident reduction plans and report on the implementation of these plans each year. The Chief Executive will be required to approve these plans prior to publication and will be held liable for this duty. The environmental regulators will consider companies' record implementing these plans when carrying out its regulatory functions;
 - introduce a new power for the Environment Agency and Natural Resources Body for

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Wales to recover costs from water companies for enforcement activities;

- allow for improved cost recovery for the Drinking Water Inspectorate;
- modify water company licences to recover shortfall in the event of insolvency or serious breach by a water company; and
- ensure HMG and Ofwat are notified ahead of any winding up petitions.

Policy background

4. The water industry was privatised in 1989 pursuant to the Water Act 1989. The regulatory regime for the privatised water industry is principally set out in the Water Industry Act 1991, and amendments made to that Act (notably in 2003 and 2014). Water abstraction licensing was introduced in the 1960s; the licensing regime is principally set out in the Water Resources Act 1991 and enables regulators to act to protect the environment and the needs of water users.
5. Concerns have been widely expressed about the performance of the water industry, particularly in relation to their record on pollution¹. The Labour Party manifesto for the 2024 General Election promised to put failing water companies under special measures to clean up water. This Bill is intended to address those concerns and fulfil that commitment. The measures in the Bill aim to turn around the performance of the water industry as a first step in enabling long-term and transformative change across the water sector. The Government intends to bring forward secondary legislation to implement the measures in the Bill as soon as possible, subject to legislative timetables, with the ambition of ensuring the relevant provisions are in place ahead of the next water industry asset management period.
6. The Bill will set out measures which aim to:
 - strengthen the power of the water industry regulators;
 - ensure water companies and their executives are held to account;
 - enable independent monitoring of every outlet by requiring data from emergency overflows to be published within an hour of a discharge occurring. This will require companies to install and operate monitoring equipment at all emergency overflows, and for the near real time data on their operation to be scrutinised by the independent regulator;
 - provide greater transparency around water company actions to tackle pollution incidents; and
 - modernise the existing special administrations regime for the water industry, strengthening the Government's control in this space and bringing the regime in line with special administration regimes in other sectors.

¹[Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/Water_and_sewerage_companies_in_England_environmental_performance_report_2023.pdf)

Legal background

7. The Bill makes provision for new policy to improve the regulation of water and sewerage companies and to extend the powers of the regulators: Ofwat, the Environment Agency, Natural Resources Body for Wales and the Drinking Water Inspectorate. The following significant legislation is referenced or amended by this Bill:
 - Water Industry Act 1991
 - Environment Act 1995
 - Environment Act 2021
 - Environmental Permitting (England and Wales) Regulations 2016
 - Regulatory Enforcement and Sanctions Act 2008
 - Security and Emergency Measures (SEMD) Direction 2022
 - Water Resources Act 1991
 - Water Act 2014
 - Water Act 2003
8. Otherwise, the relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

9. Clause 15 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law. The extent of a Bill can be different from its application. Application refers to where it has practical effect.
10. The Bill forms part of the law of England and Wales and, subject to a few exceptions, applies to England and Wales. Clause 12 applies to England only while clause 13 applies to Wales only.
11. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of Senedd Cymru without their consent. Other than clause 12, all clauses of the Bill touch on matters that are devolved to Wales. Legislative consent is being sought in relation to those clauses.
12. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Water (Special Measures) Bill Provisions

Clause 1: Rules about remuneration and governance

13. This clause inserts provisions into the Water Industry Act 1991 (“the 1991 Act”) that will enable

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Ofwat to make rules about pay and governance in the water industry and require it to do so on three topics.

14. Ofwat already has a wide power to set conditions of individual water company appointments and licences, but changes to those conditions require case-by-case consideration and the procedure for them can be cumbersome (including rights of appeal to the Competition and Markets Authority). This clause seeks to establish a single set of rules to apply to water companies generally across the industry, which can be made and revised more easily than individual conditions.
15. The first topic that the rules will have to address is performance-related pay (new section 35B(2)(a)). The rules will set standards that companies will have to meet in a financial year in order to be able to make awards of performance-related pay to chief executives and directors for that year. Those standards will be worked up by Ofwat following consultation, but they will have to include standards relating to consumer matters, the environment, financial resilience and criminal liability (new section 35B(3)(a)).
16. The clause allows the new rules to override employment contracts (potentially including existing contracts) and may require the recovery by companies of performance-related pay awarded in breach of the restrictions: new section 35B(3)(d) and (e). The rules will apply from the current financial year: subsection (4) of the clause.
17. The second mandatory topic for the rules is the fitness and propriety of chief executives and directors (new section 35B(2)(b)). Ofwat will use the rules to set standards of fitness and propriety (and potentially other types of standards) which chief executives and directors will have to meet in order to be appointed or stay in post.
18. While the bonus and fitness rules will apply principally to chief executives and directors (as reflected in the above explanation), Ofwat will have the power to extend them to cover other senior roles within water companies: new section 35B(5).
19. The third mandatory topic is consumer involvement in corporate decision-making (new section 35B(2)(c)). Companies will be required to put in place arrangements for involving consumers in the wide range of decisions that have a material effect on consumer interests (the term "consumer matters", used in the clause, is defined in section 27A(13) of the 1991 Act). The precise nature of those arrangements will be for Ofwat to determine when it draws up the rules, but new section 35B(6) gives examples of what they might include.
20. The fourth mandatory topic relates to requiring water companies to report not less than annually on financial structuring (new section 35B(2)(d)). Companies will be required to report to Ofwat on actual or planned financial structuring or restructuring, including debt levels, commercial strategy and any associated risks, including to the long-term sustainability of company operations. The precise nature of this requirement will be outlined by Ofwat in their rules.
21. The rules will be enforced first by Ofwat directions and then, if the directions are not complied with, the existing enforcement machinery provided by sections 18 to 22 of the 1991 Act (which involves the giving of enforcement orders enforceable by the courts). Ofwat will have a wide discretion about which steps to tell a company to take to bring itself back into compliance with the rules.

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22. Ofwat will be required to publish their first set of rules (under new section 35B of the 1991 Act) within six months of this Act coming into force. The rules will not take effect until the Secretary of State has made a Statutory Instrument to bring them into effect. This statutory instrument will be subject to the affirmative procedure.
23. New sections 35C and 35D provide for consultation about the rules, except in cases involving minor or urgent variations. The procedure is modelled on existing procedures followed by Ofwat when making codes or rules about bulk supplies: see sections 40C and 40G of the 1991 Act.

Clause 2: Pollution incident reduction plans

24. This clause inserts provisions into the Water Industry Act 1991 (“the 1991 Act”) that will require sewerage and water supply undertakers to publish an annual pollution incident reduction plan by 1 April each year and establishes the matters the plans must address.

New section 205A: Duty to prepare and publish plans

25. A pollution incident reduction plan is a plan for reducing the occurrence of pollution incidents attributable to an undertakers’ sewerage or water supply system. Pollution incidents are discharges that may be harmful to health or the environment. However, this excludes treated effluent that is discharged in accordance with environmental permits.
26. These plans will be required to address the frequency, seriousness and causes of pollution incidents and the measures (and timing of these measures) that undertakers intend to take to reduce the occurrence of pollution incidents. Undertakers must also assess the impact that the planned measures will have on reducing pollution incidents and set out the measures and timing for implementing those measures: subsection (4)(a) – (f) of the new section.
27. Ministers (the Secretary of State for undertakers wholly or mainly based in England or the Welsh Ministers for undertakers wholly or mainly based in Wales) will be able to issue directions on other matters that the plans must address, subject to consultation with the environmental regulator (Environment Agency for undertakers wholly or mainly based in England or Natural Resources Wales for undertakers wholly or mainly based in Wales) before the directions are issued (new section 205A(4)(g) and (5)). The undertaker will need to have regard to guidance produced by the environmental regulator in producing these plans. The environmental regulators will produce this guidance in consultation with the relevant Minister and Ofwat.
28. The undertaker will need to publish its first plan before 1 April in the calendar year after the one in which this duty comes into force. The undertaker must publish a statement alongside the plan that confirms the chief executive has personally approved the plan.

New section 205B: Implementation reports

29. The undertaker must publish an implementation report alongside the pollution incident reduction plan each year (new section 205B). In this implementation report, the undertaker must set out the extent to which it succeeded in implementing planned measures in the preceding year. Where the undertaker failed to implement those measures during that year, it must set out the reasons for that failure and how it intends to avoid repeating the failure in future years.

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New section 205C: Enforcement and sanctions

30. New section 205C provides that undertakers that fail to comply with this duty may be prosecuted and liable to a fine. Where the undertaker fails to comply with this duty, the chief executive will also have committed an offence and may be personally prosecuted and liable to a fine. The chief executive may use the defence provided in new section 205C(3) that they took all reasonable steps to avoid the failure. However, the burden of proof is on the chief executive to demonstrate the defence.
31. The environmental regulators will be responsible for enforcing this duty and may issue civil sanctions.
32. Where, in deciding how to exercise its functions in relation to an undertaker, the environmental regulator considers the undertaker's record in complying with its legal obligations concerning pollution, it must also consider the undertaker's record in implementing measures set out in its pollution incident reduction plans. This means that the environmental regulator may consider the extent to which the undertaker implemented its plan when considering its enforcement response to a pollution incident or its schedule of investigations.

Clause 3: Emergency overflows

33. This clause inserts new Chapter 5 (emergency overflows) into Part 4 (sewerage services) of the Water Industry Act 1991 ("the 1991 Act") after Chapter 4 (storm overflows). Chapter 5 includes two new sections to require reporting on discharges from emergency overflows and establishes the meaning of "emergency overflow".
34. Although this clause provides a statutory definition of emergency overflow for the first time, the concept of emergency overflow is not new. Emergency overflows have been permitted for many years under the Environmental Permitting Regulations 2016 (and preceding regulations). The purpose of this clause is to ensure that discharges from emergency overflows are reported within an hour of starting and finishing.

New section 141F Reporting on discharges from emergency overflows

35. Sewerage undertakers will be required to report in near real time (within an hour) on the fact of a discharge from an emergency overflow, together with location and information as to when the discharge began and ended. An emergency overflow is defined at new section 141G.
36. Information on discharges from emergency overflows must be reported within one hour of the discharge starting, and within one hour of it finishing. Additionally, the information to be published must be in a format which is both easily understandable and easily accessible by the public. Ofwat will be responsible for bringing enforcement proceedings against undertakers which fail to comply with the duty, relying on existing functions set out in section 18 of the 1991 Act (which involves the giving of enforcement orders enforceable by the courts).
37. The Secretary of State will have a power to make regulations that set out exceptions to the requirements to publish information under section 141F, subject to a consultation requirement. The regulations are to be made by statutory instrument under the draft affirmative resolution procedure: new subsections (5), (6) and (7).

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New Section 141G: meaning of “emergency overflow” in section 141F

38. New section 141G sets out the definition of an emergency overflow. It provides that the duty in section 141F should apply where there is an emergency overflow of a description set out in subsection (2) or where an environmental permit has been issued which describes the overflow as capable of being relied on in emergency (subsection (3)).
39. A ‘sewerage system’ as specified in subsection (1) is defined by way of section 17BA(7) of the 1991 Act, and includes the system of public sewers, the facilities for emptying or draining it, facilities for dealing with its contents, and the lateral drains that the undertaker is required to maintain. An ‘environmental permit’ is a permit granted under the Environmental Permitting (England and Wales) Regulations 2016.

Clause 4: Nature-based solutions

40. This clause inserts provisions into the Water Industry Act 1991 (“the 1991 Act”) that will require sewerage undertakers to explain in their drainage and sewerage management plans, the use that is to be made of nature-based solutions, technologies and facilities within their drainage and sewerage systems.
41. A drainage and sewerage management plan is the plan for how the sewerage undertaker will manage and develop its drainage system and sewerage system so as to be able, and continue to be able, to meet its obligations under Part IV of the 1991 Act.
42. The drainage and sewerage management plan must address a number of specific matters, including:
 - the capacity of the undertaker’s drainage and sewerage systems; an assessment of the current and future demands on the systems;
 - the resilience of the systems; the measures the undertaker proposes to take or continue (and the sequence and timing of those measures) to meet its obligations under Part IV of the 1991 Act and relevant environmental risks;
 - and how those risks are to be mitigated.
43. The new provisions will now additionally require sewerage undertakers to explain the role that nature-based solutions will play within their drainage and sewerage systems in their drainage and sewerage management plans.
44. The new requirement (s.94A(3)(ea)) will be enforceable under existing powers in s.18 of the 1991 Act.

Clause 5: Impeding investigations into water companies: sentencing and liability

45. This clause amends the sentencing and liability provisions for offences related to impeding investigations under section 110 of the Environment Act 1995 and section 86 of the Water Industry Act 1991 (“the 1991 Act”) of the Environment Agency, the Natural Resources Body for Wales and the Drinking Water Inspectorate. These amendments are restricted to water and

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sewerage undertakers and licensees.

46. The clause will expand the options available to the court during the sentencing of offences under section 110(1) and (2). These offences will be triable in either the Crown or Magistrates' Court and the sentencing powers will be increased to include an unlimited fine and imprisonment with a term not exceeding the general limit on summary conviction or 2 years for conviction on indictment.
47. Currently the maximum sentence for obstruction of a requirement under section 108, which details the Environment Agency and Natural Resources Body for Wales' investigatory powers, was an unlimited fine – not imprisonment – and the offence could only be heard in the Magistrates' Court.
48. Subsection (1)(b) and (c) of the clause will amend subsections (4) and (5) of section 110 of the Environment Act 1995, creating exemptions where new subsection (3E) applies. Section 110(4) details the current maximum penalty for an offence under section 110(1); section 110(5) details the current maximum penalty for an offence under section 110(2) and (3).
49. The clause will also introduce a corporate liability provision (new sections 5I and 5J) in section 110 of the Environment Act 1995. If an obstruction offence is committed with the consent or connivance of, or is attributable to the neglect of, company executives or other relevant individuals, for example a Chief Executive Officer, they will also be liable.
50. For example, where a data request is made, or samples collected, under section 108 of the Environment Act 1995, and it can be demonstrated that there has been a failure to comply, an officer of the company may be responsible for such failure if they are considered to be acting with consent, connivance or by way of neglect. This form of corporate body liability provision sits elsewhere in water regulation. For example, in section 210 of the 1991 Act and regulation 41 of the Environmental Permitting Regulations 2016. The new subsection (5J) provides the definition of a 'relevant officer' in relation to offences committed by the body corporate.
51. The clause will also amend the penalty for obstruction offences committed against the Drinking Water Inspectorate through an amendment of section 86(6) of the 1991 Act. Section 86(3) places a duty on companies to provide assistance and information during investigations. The sentencing powers will be increased to mirror those in section 110 of the Environment Act 1995. The penalties will be increased, on summary conviction, to imprisonment for a term not exceeding the general limit or to a fine, or both; and on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
52. To align with the increase in sentencing powers, a 'reasonable excuse' defence will be inserted into section 86(6) of the 1991 Act so that culpability and the maximum penalty is equal to section 110(2) of the Environment Act 1995.
53. Subsection (3) of the clause clarifies that the amendments only have effect in relation to offences committed on or after the day on which this clause comes into force.

Clause 6: Civil penalties: modification of standard of proof

54. This clause relates to powers granted to the Secretary of State and Welsh Ministers to provide in *These Explanatory Notes relate to the Water (Special Measures) Bill as introduced to the House of Commons on 27 November 2024 (HC Bill 141)*

secondary legislation for fixed monetary penalties and variable monetary penalties under sections 36 and 62 of the Regulatory Enforcement and Sanctions Act 2008.

55. This clause allows the imposition of fixed and variable monetary penalties for water industry offences as if “on the balance of probabilities” appeared in sections 39(2) and 42(2) of the 2008 Act, instead of “beyond reasonable doubt”. The power is made available only in relation to offences committed by a water company (defined in the clause as an offence committed by a water or sewerage undertaker, or a water supply or sewage licensee) and specified in secondary legislation, to be made by the Secretary of State or Welsh Ministers. For offences committed by a water supply or sewerage licensee, this applies only in relation to their licensed activities; wider business activities unrelated to the licensing regime are not included. The secondary legislation must also prescribe a cap on the amount that may be imposed by the regulator when imposing a variable monetary penalty to this modified standard of proof (subsection (4)).

Clause 7: Automatic penalties for certain offences

56. This clause imposes a duty on the environmental regulators (the Environment Agency for England, and the Natural Resources Body for Wales) to impose automatic penalties for specified offences committed by a water company (as defined in clause 6). The offences that may fall within scope will be set out in secondary legislation (subsections (3) to (5)) and can include offences made under the Water Resources Act 1991, the Water Act 2014 and the Pollution Prevention and Control Act 1999, relating to abstraction, impounding or drought offences, or pollution control offences (clause 5(3)).
57. Exceptions to the duty to apply an automatic penalty include circumstances where the regulator determines that exceptional circumstances apply which mitigate the company’s culpability. This could include circumstances where breaches occur for reasons outside the water company’s control, such as IT failures or where there has been third-party interference with company assets. Exceptions are also applied where more serious action is contemplated, such as criminal proceedings or variable monetary penalties.
58. Regulations applying the new duty will have to make provision that follows the procedure set out at section 40 of the Regulatory Enforcement and Sanctions Act 2008 when applying a procedure for imposing a penalty, effectively requiring regulators to issue a notice of intent (section 40(2)(a) of the 2008 Act), as well as offering the company the opportunity to make representations about the proposed penalty (section 40(2)(c)). Water companies may be prevented from making an appeal against the regulator’s determination as to whether exceptional circumstances apply which mitigate their culpability – subsection (7).

Clause 8: Abstraction and impounding: power to impose general conditions

59. This clause amends the Water Resources Act 1991 to insert a new section 46B to confer on the Secretary of State (in relation to England) and Welsh Ministers (in relation to Wales) a new power to impose conditions or general rules into water industry licences (as defined in the clause) for water abstraction and impoundment activity. The new section 46B will enable the use of the provisions set out in clause 6

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regarding breaches of such conditions and general rules in water industry abstraction and impoundment licences.

Clause 9: Requirement for Ofwat to have regard to climate change etc

60. This clause amends section 2 of the Water Industry Act 1991 to require Ofwat when exercising its powers and duties to have regard to the Secretary of State's duty to meet specified environmental targets. This includes the net zero emissions target in section 1 of the Climate Change Act 2008 and duties in section 5 of the Environment Act 2021 (when regulating companies wholly or mainly in England).
61. This new duty will require Ofwat to consider, when making relevant regulatory decisions, how the water industry can contribute towards meeting these environmental targets.

Clause 10: Charges in respect of Environment Agency and NRBW functions

62. This clause amends section 41(1) of the Environment Act 1995 in order to extend existing powers to make charging schemes to recover costs from water companies (as defined in the clause). The schemes are produced by the Environment Agency and Natural Resources Body for Wales to enable them to recover their costs of performing functions in relation to the Environmental Permitting (England and Wales) Regulations 2016, water abstraction and impounding, drought orders and drought permits under Chapters 2 and 3 of Part 2 of the Water Resources Act 1991, and pollution incident reduction plans for England under section 94EA of the Water Industry Act 1991.
63. The effect of the clause is to extend the existing legislation to allow the recovery of costs by the Environment Agency and Natural Resources Body for Wales incurred in performing water industry enforcement functions. This includes allowing fees to be charged to water companies for enforcement relating to unauthorised assets, or in breach of a permit, and duties relating to pollution incident reduction plans for England. This clause enables fees to be charged to water undertakers and sewerage undertakers; and to water licensees and sewerage licensees only in relation to their licensed activities, excluding their other unrelated wider business activities.

Clause 11: Drinking Water Inspectorate: functions and fees

64. This provision relates to the functions of the Drinking Water Inspectorate, the agency responsible for regulating the safety of public drinking water supplies in England and Wales. The Drinking Water Inspectorate's functions include monitoring and auditing water suppliers responsible for providing drinking water to ensure that regulatory requirements are adhered to, investigating possible breaches of those standards, and providing advice to the public and government on drinking water safety.
65. The clause amends section 86(1) of the Water Industry Act 1991 ("the 1991 Act") to extend the

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purposes for which inspectors of water quality may be appointed to include functions related to national security directions under section 208 of the 1991 Act.

66. This clause also makes amendments to section 86ZA (charging of fees by Drinking Water Inspectorate) to provide greater flexibility in how fees are charged for regulatory work. This means the Drinking Water Inspectorate could charge fees when individual functions are completed or charge a fee for all functions completed in a particular period of time.

Clause 12: Modification by Secretary of State of water company's appointment conditions etc to recover losses

67. This clause inserts new sections 12J and 12K into the 1991 Act. Section 12J will enable the Secretary of State to modify the conditions of appointment of water and/or sewerage undertakers whose area is wholly or mainly in England (referred to here as water companies) to ensure that any shortfall following the provision of financial assistance by the Secretary of State to a company in special administration can be made good. Appointments are colloquially referred to as licences.
68. The Secretary of State currently has the power to issue licences under section 11 of the 1991 Act but not to modify the conditions after they have been issued, as that power sits with Ofwat. However, this change will allow the Secretary of State to make modifications in these specific and very limited circumstances only.
69. The modifications can require a water company to raise amounts of money determined by the Secretary of State from its consumers, and to pay those amounts to the Secretary of State to make good any shortfall and may include a requirement that amounts be held on trust pending payment to the Secretary of State. The Secretary of State may also make incidental or consequential modifications considered necessary or expedient.
70. The Secretary of State can modify the licence of the water company that has been placed in special administration, or any other water company in England.
71. The drafting anticipates that the Secretary of State may provide financial assistance under section 153 of the 1991 Act in relation to a water company in administration as part of the Water Industry Special Administration Regime ('WISAR', provided for by sections 23-25 of the 1991 Act) which it may not, absent these provisions, be able to fully recover. This shortfall is described as an 'SAO loss' and includes any loss or expense incurred as a result of, or otherwise in connection with, the giving of the assistance.
72. Money received by the Secretary of State must be paid into the Consolidated Fund.
73. New section 12K requires the Secretary of State to fulfil certain procedural requirements before modifying licence conditions under section 12J.
74. Notice must be given that the Secretary of State proposes to make modifications. The modifications and their effect must be set out along with reasons for making them and providing a time period of at least 42 days for representations to be made about the proposed modifications. The notice must be published in an appropriate manner so those likely to be affected are aware of it and it must be sent to each water company whose licence conditions are to be modified,

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other water companies whose interests may be affected, Ofwat, certain persons representing the interests of water companies (such as Water UK) and the Consumer Council for Water.

75. The Secretary of State must consider any representations made and if a decision is made to proceed with the licence modifications the decision and the modifications must be published, the effect of the modifications must be set out, as well as explaining how the representations were taken into account and any changes between the modifications initially proposed.
76. Licence modifications come into effect from a date specified by the Secretary of State not less than 56 days after the publication of the decision to make the modification, unless giving them earlier effect is considered to be necessary or expedient and the notice of intention to modify licence conditions stating the earlier date, gave reasons for the shorter time period and explained why this would not have a material adverse effect on a water company.

Clause 13: Modification by Welsh Ministers of water company's appointment conditions etc to recover losses

77. Clause 13 introduces new sections 16C and 16D into the 1991 Act, which will have an equivalent effect to sections 12J and 12K for the purposes of water companies whose area is wholly or mainly in Wales. Sections 16C and 16D create powers and procedural requirements for the Welsh Ministers in the same terms as those created for the Secretary of State in sections 12J and 12K, although note that section 16C does not refer to the Consolidated Fund since section 120 of the Government of Wales Act 2006 will have the effect of directing the sums collected to the Welsh Consolidated Fund.

Clause 14: Winding up petitions

78. Clause 14 amends section 25 of the 1991 Act to provide that on an application for the winding up of an undertaker, a court may not exercise its powers unless the Secretary of State or the Welsh Ministers (as the case may be, see subsection (4)) and Ofwat have been given notice of the petition and at least 14 days have passed - new subsection (2).
79. Subsection (3) is inserted into section 25 of the 1991 Act to require that the Secretary of State or the Welsh Ministers and Ofwat are entitled to be heard at the hearing of a winding up petition and any other hearings in relation to Part IV ('Winding up of companies registered under the Companies Acts') of the Insolvency Act 1986.
80. The Secretary of State or the Welsh Ministers (depending on the company subject to the petition) and Ofwat are defined as the persons ('relevant persons') to whom the provisions described above apply.

Clause 15: Extent, commencement, transitional provision and short title

81. Clause 15 sets out the extent of the Bill. Annex A provides further information. The clause will come into force on the day this Bill is passed, as will the other clauses listed in subsection (2).

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82. Those provisions which will come into force on such day as the Secretary of State may by regulations appoint are set out in subsection (3). Corresponding powers are provided for Welsh Ministers. Commencement regulations may also make transitional or saving provision and different provision for different purposes or places.
83. Those provisions in the Bill which will come into force two months after the day this Bill is passed are set out in subsection (5).
84. Subsection (7) permits commencement regulations to make reference to criteria established by regulators (the Environment Agency for assets wholly or mainly in England, Natural Resources Body for Wales for those in Wales), established to identify the categories of asset which the duty should first apply to.
85. Consultation that takes place prior to this Bill being passed will meet any consultation requirement arising from the provisions of the Bill - subsection (9). For example, under new section 35C of the Water Industry Act 1991, as inserted by clause 1, Ofwat has a duty to consult on rules that it proposes to issue under section 35B. Consultation undertaken prior to the Bill being passed will meet that requirement by virtue of subsection (9).
86. Finally, this clause confirms the short title of the Bill.

Financial implications of the Bill

87. The Bill is not expected to give rise to increased spending out of public funds. Additional enforcement work will be needed as a result of the Bill on the part of Ofwat and the Environment Agency, but the Government's intention is to ensure that the costs are met from charges payable by the water industry.

Parliamentary approval for financial costs or for charges imposed

88. The additional enforcement costs referred to in the preceding paragraph are thought to be either small enough or sufficiently closely tied to existing functions so as not to require the cover of a money resolution.
89. A ways and means resolution will be required to authorise the higher charges that may be imposed:
 - on water companies under clauses 10 and 11, and;
 - on consumers under clauses 12 and 13.

Compatibility with the European Convention on Human Rights

90. Section 19(1) of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill

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with the European Convention on Human Rights (ECHR) (as defined in section 1 of that Act).

91. In the opinion of The Right Honourable Steve Reed OBE MP, Secretary of State at the Department for Environment, Food and Rural Affairs, the provisions of the Water (Special Measures) Bill are compatible with the Convention rights and he has made a statement to this effect.
92. While the Bill does make provision which engages with Article 6 of the Convention, the right is not considered to have been breached as a result of these provisions. In particular, clauses 1, 6 and 7 determine the circumstances in which civil rights and obligations will be established. Article 6 is not considered to be breached in relation to any of these clauses, as the circumstances in which they will be implemented will largely be set out by way of secondary legislation and will be subject to procedural safeguards such as consultation, rights of appeal and limitations on the circumstances in which they can be used.
93. Provision relating to remuneration of water company executives is also not considered to result in “deprivation” within the meaning of Article 1 of Protocol 1 to the Convention, as the provision relates to future income. Such income will only constitute a possession once it has been earned.
94. No other ECHR rights are relevant.

Environment Act 2021 Section 20 Statement

95. The Right Honourable Steve Reed OBE MP, Secretary of State at the Department for Environment, Food and Rural Affairs, is of the view that the Bill as introduced into the House of Commons contains provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. A statement that the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law has been made.

European Union (Withdrawal) Act 2018

96. The Right Honourable Steve Reed OBE MP Secretary of State at the Department for Environment, Food and Rural Affairs, is of the view that the Bill as introduced into the House of Commons does not contain provisions which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

97. The following document is relevant to the Bill and can be read at the stated location:
 - The Water (Special Measures) Bill Policy Statement is available on the GOV.UK website.

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Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	Yes	No	N/A	No	N/A
Clause 2	Yes	Yes	Yes	No	N/A	No	N/A
Clause 3	Yes	Yes	Yes	No	N/A	No	N/A
Clause 4	Yes	Yes	Yes	No	N/A	No	N/A
Clause 5	Yes	Yes	Yes	No	N/A	No	N/A
Clause 6	Yes	Yes	Yes	No	N/A	No	N/A
Clause 7	Yes	Yes	Yes	No	N/A	No	N/A
Clause 8	Yes	Yes	Yes	No	N/A	No	N/A
Clause 9	Yes	Yes	Yes	No	N/A	No	N/A
Clause 10	Yes	Yes	Yes	No	N/A	No	N/A
Clause 11	Yes	Yes	Yes	No	N/A	No	N/A
Clause 12	Yes	No	No	No	N/A	No	N/A
Clause 13	No	Yes	Yes	No	N/A	No	N/A
Clause 14	Yes	Yes	Yes	No	N/A	No	N/A
Clause 15	Yes	Yes	Yes	No	N/A	No	N/A

Subject matter and legislative competence of devolved legislatures

The subject matter of the Bill relates to the water industry, including the regulation of water companies. As subject areas, these matters are within the legislative competence of Senedd Cymru. In relation to Wales, these matters are not in the list of reserved matters listed within Schedule 7A to the Government of Wales Act 2006 and not within an exception listed therein, and not otherwise outside the legislative competence of Senedd Cymru (see section 108A of that Act).

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WATER (SPECIAL MEASURES) BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Water (Special Measures) Bill [HL] as brought from the House of Lords on 27 November 2024 (HC Bill 141).

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