

*These notes refer to the Water Industry (Financial Assistance) Bill
as brought from the House of Commons on 15th March 2012 [HL Bill 133]*

WATER INDUSTRY (FINANCIAL ASSISTANCE) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Water Industry (Financial Assistance) Bill as brought from the House of Commons on 15th March 2012. They have been prepared by the Department for Environment, Food and Rural Affairs (Defra) in order to assist the reader of the Bill and help to inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Water Industry (Financial Assistance) Bill will enable the Government to meet commitments it made in the *Autumn Statement 2011* and *Water for Life CM 8230* (the “*Water White Paper*”) published by the Government on 8th December 2011.

4. The Water Industry (Financial Assistance) Bill amends the Water Industry Act 1991 (WIA) by adding two sections after section 154. It will provide the power to allow the Secretary of State to provide financial assistance to water and sewerage undertakers (appointed under the WIA and commonly called “water companies”) and other water suppliers licensed under the WIA to secure a reduction in water and sewerage bills where desirable to do so. It will also create a power to allow the Secretary of State to give financial assistance in connection with the construction of water or sewerage infrastructure or the carrying out of works to existing water or sewerage infrastructure where the construction or works involve exceptionally large or complex works. The powers apply only in respect of water or sewerage undertakers whose areas are wholly or mainly in England.

TERRITORIAL EXTENT AND APPLICATION

5. The Bill extends to England and Wales.
6. The power in clause 1 may be exercised by the Secretary of State in relation to charges payable by customers in the areas of undertakers wholly or mainly in England.
7. The power in clause 2 may be exercised by the Secretary of State in relation to infrastructure that can be used by undertakers whose areas are wholly or mainly in England.
8. The areas of appointment of water and sewerage undertakers do not follow the national boundary. Under section 108 of, and paragraph 19 of Schedule 7 to, the Government of Wales Act 2006, the National Assembly for Wales has legislative competence in relation to “water supply” but not in relation to the “appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales.” The Government proceeds in accordance with a convention that it will not normally ask Parliament to legislate in relation to matters within the legislative competence of the National Assembly for Wales without the Assembly’s consent. Defra has obtained the agreement of the Welsh Ministers that no Legislative Consent Motion in the National Assembly for Wales is required for any provision in this bill.
9. The Bill does not extend to Scotland or Northern Ireland.

COMMENTARY

Clause 1 – Financial assistance to reduce charges

10. Clause 1 creates a power to give financial assistance to secure a reduction in charges for customers of water supply and sewerage services.
11. Under this clause the Secretary of State can provide assistance in any form, including grants, loans and guarantees, for the purpose of securing a reduction in charges for water supply or sewerage services. Assistance may be given to a relevant undertaker or licensed water supplier in any manner. It may be given directly or it may be given indirectly, in which case it would be administered by a relevant undertaker.
12. The power is discretionary and may be exercised for such reasons as the Secretary of State feels desirable. It may be exercised in respect of all customers in an undertaker’s area or a particular description of customers in such an area. The Secretary of State may make the assistance subject to terms and conditions.
13. In the *2011 Budget*, the Government committed to using public expenditure to support households who face water affordability pressures and households in areas with particularly

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high water charges. A commitment to make a payment to South West Water to reduce the charges of every South West Water household customer's water and sewerage bill by £50 was announced in the *Autumn Statement 2011*. The background was described in the *Water White Paper*. Here it was explained that:

“We have therefore decided to fund South West Water to enable it to cut bills by £50 per year for all household customers until at least the end of the next spending review period. This payment will be made transparently so it can be clearly demonstrated that all the benefit from this payment is passed through to customers. The Government will legislate to enable bills to be reduced from April 2013.”

Clause 2 – Financial assistance for major works

14. Clause 2 creates a power to give financial assistance in connection with the construction of water or sewerage infrastructure or the carrying out of works in respect of existing water or sewerage infrastructure, if that, or the combination of the two, involves works which are exceptionally large or complex. The intended use of the infrastructure must include use by water or sewerage undertakers in the exercise of their duties to maintain a water supply and provide sewerage services under the WIA, but the financial assistance is not limited to cases where the undertaker is carrying out the construction or works or will have exclusive use of the infrastructure. Under this clause the Secretary of State can provide assistance in any form, including grants, loans, guarantees and indemnities, the provision of insurance and by acquiring shares or securities in a body corporate.

15. The power is discretionary and may be exercised for such reasons as the Secretary of State feels desirable. The Secretary of State may make the assistance subject to terms and conditions.

16. The *Autumn Statement 2011* stated that the Government will, subject to affordability, consider using transparent forms of guarantee to support specific projects where this provides best value for money for taxpayers and users, recognising that the private sector cannot always bear every risk. This commitment was in line with Government confirmation in a November 2011 statement to Parliament that it was willing in principle to provide contingent financial support for exceptional risks in the construction of the Thames Tunnel, a sewerage infrastructure project designed to reduce the amount of untreated waste water being discharged into the River Thames.

FINANCIAL EFFECTS

17. It is not possible to give a definitive figure for expenditure. Two policies have to date been announced, each of which may lead to the exercise of powers in this Bill.

18. Clause 1 - The *Water White Paper* stated that the Government would fund South West Water to enable it to cut bills by £50 per year for all household customers until the end of the

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next spending review period. The Government will enable bills to be reduced from April 2013. Based on initial estimates, this policy will cost no more than £40 million per annum.

19. The power is not a tax raising provision. Any tax implications in the hands of recipients of the financial assistance are dependent on the way the powers are used.

20. This might be handled as payments to water companies to reduce the charges to their customers and funding agreements will ensure that a company receives no benefit from the payments. The water industry is regulated so mechanisms are already in place to ensure all benefits are passed to customers.

21. Clause 2 - The Government's November 2011 Statement to Parliament outlined circumstances in which the power in clause 2 might be used in relation to the construction of the Thames Tunnel. The Government stated that it was willing in principle to provide assistance in the form of contingent financial support for exceptional project risks but wished to ensure that the likelihood and impact of these risks were minimised. This support cannot therefore be monetised. The project costs for the Thames Tunnel were estimated to be £4.1 billion at 2011 prices, excluding financing costs but including £0.9 billion for risk and optimism bias.

22. The power is not a tax raising provision. Any tax implications in the hands of recipients of the financial assistance are dependent on the way the powers are used.

PUBLIC SECTOR MANPOWER

23. No changes in the staff of Government departments and their agencies are expected as a result of this Bill.

SUMMARY OF THE IMPACT ASSESSMENT

24. As the Bill is concerned solely with public expenditure, no Impact Assessment has been undertaken.

EUROPEAN CONVENTION OF HUMAN RIGHTS

25. The mere taking of the powers does not engage Convention rights. To the extent that any Convention rights are engaged in exercise of the powers, Defra believes that the powers can be exercised compatibly. Article 1 of Protocol 1, Article 6, Article 8 and Article 14 were considered in particular.

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26. Neither the taking of the powers in clauses 1 and 2, nor the exercise of either interferes with any property rights under Article 1 of Protocol 1. They also do not constitute the determination of civil rights (or any other determination) under Article 6. To the extent that the exercise of the power could lead to an undertaker seeking personal information from customers wishing to demonstrate eligibility for a reduction in bills, and thereby potentially engaging Article 8 (right to a private life), the information sought would be required to be proportionate. Therefore Defra believes there would be no interference with Article 8 rights. In addition therefore, no substantive Articles would be engaged, or sufficiently engaged, to trigger Article 14 (that the rights and freedoms set out in the Convention shall be enjoyed without discrimination).

27. The Parliamentary Under-Secretary of State, Lord Taylor of Holbeach, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Water Industry (Financial Assistance) Bill are compatible with the Convention rights.”

PARLIAMENT ACT 1911

28. The Bill has been certified by the Speaker of the House of Commons as a Money Bill under section 1 of the Parliament Act 1911. The progress of the Bill in the House of Lords is therefore subject to that section. Consequently, if the current session lasts at least one more month and the Bill is not passed by the House of Lords without amendment within that time, it may nonetheless be presented for Royal Assent.

COMMENCEMENT

29. Clauses 1 and 2 will come into force two months after Royal Assent.

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