GREENER UK

Wildlife and Countryside LINK

Environment Bill: briefing for Lords Committee

1 July 2021

Part 5: water (Clauses 77 to 91)

This briefing is on behalf of the environmental coalitions Greener UK and Wildlife and Countryside Link and covers Part 5 of the bill. This sets out welcome changes to water management, enabling more strategic thinking to protect our water environment, and greater consideration of how water management can contribute towards wider environmental targets. However, several of these clauses would benefit from strengthening and clarifying. **In particular**, **Clause 82 on water abstraction should be amended to allow earlier protection from damaging levels of abstraction and the proposed powers in Clause 83 must be more tightly prescribed.**

We set out the background to the clauses below and describe proposed amendments that would strengthen or undermine them.

Clause 77: Water resources management plans, drought plans & joint proposals

These water industry plans enable a long term, strategic approach to the management of water resources. In 2020, the Environment Agency published a National Framework for Water Resources, setting out England's long term water needs. Already 14,000 million litres of water are abstracted by water companies for public supply every day, yet without action, by 2050 a further ~3,500 million litres per day will need to be found. The scale of action needed to ensure resilient water supplies, and to protect and improve the environment which provides those supplies, is therefore, substantial.

Regional Plans embed a more strategic approach to the management and development of these water resources, identifying opportunities for companies to work collaboratively on solutions that meet each region's need. Government guidelines create the expectation that companies will "work in regional groups to meet the challenge and together develop a cohesive set of plans". However, the water resources management plans and drought plans produced by individual companies have not always reflected that regional approach. Clause 75 amends the Water Industry Act 1991 to enable the Secretary of State to direct two or more water companies to prepare and publish joint proposals and, if used, this power would place regional plans on a statutory footing. **The government should set out the circumstances under which the Secretary of State would use these powers, and how company adherence to regional plans will otherwise be ensured.**

In combining and condensing the requirements currently set out in relation to these different types of plans, detailed sections requiring consultation during plan preparation will be lost. Deletion of Sections 37A(8) relating to Water Resources Management Plans and 39B(7) regarding Drought Plans removes the list of statutory consultees that water companies must consult prior to plan preparation, and deletion of Section 37B further waters down consultation rights for stakeholders. Reduced engagement would make the government's ambition to deliver holistic management of the water environment more difficult to deliver, as this requires collaboration between all those with a stake in water management. **Amendments 160A, 160B & 160C** would place specific requirements upon water companies to engage stakeholders in the development of plans and are **extremely welcome.**

If these amendments are not adopted, provisions within Clause 77 (specifically Clause 39F(3)) would enable the minister to make replacement provisions on stakeholder engagement by regulation. A similar approach has been taken previously (such as through the Water Resources Management Plan Regulations 2007) but as a power rather than a duty. **We seek confirmation that such regulation will be made, requiring consultation and setting out a comprehensive list of stakeholders to be consulted with.**

Clause 78: Drainage and sewerage management plans, and related new clauses

While the management of water supplies has long been subject to statutory requirements for long term, strategic planning, the same is not the case for wastewater. This has contributed to the chronic underinvestment in drainage and sewerage infrastructure that underlies issues such as the vast number of sewage discharges into rivers recorded last year.

Clause 78 inserts new sections into the Water Industry Act 1991 which will require each sewerage undertaker to prepare, publish and maintain a drainage and sewerage management plan (DSMP). This new requirement is very welcome, enabling companies to take the strategic approach to wastewater management that is so clearly needed, but **several helpful amendments would provide for a more comprehensive framework**.

Amendment 162A would give these plans an **environmental objective** by adding an explicit purpose to the section describing a drainage and sewerage management plan; the plans would be required to set out how the sewerage undertaker will manage and develop its drainage system and sewerage system "for the purpose of delivering improvements for customers and the environment", ensuring that environmental benefit is recognised as a legitimate outcome of DSMPs, and that investment to achieve this will be supported by the industry's economic regulator Ofwat.

Amendments 162 & 163 would embed within DSMPs the requirement to continually improve the sewerage system and reduce the harm caused by wastewater management, and **amendment 163A** would encourage sewerage undertakers to actively employ nature-based solutions to meet their obligations under the DSMP Clause. **Amendment 164** would end the automatic 'right to connect', enabling water companies to decline new connections to the sewerage system where this would cause environmental harm, and could pave the way for a whole range of activities designed to reduce loadings to wastewater treatment works.

In response to the significant public and political support for the proposals contained within Philip Dunne's Sewage (Inland Waters) Bill, the government confirmed that measures to reduce sewage discharges from storm overflows will be put into law. This is welcome, yet government **amendment 165** falls far short of the ambition of the private member's bill, focusing on the production of an action plan, reporting against it, and the publication of water company data. It also provides several exemptions and could fail to provide the swift and strategic action required to end the harm caused by storm overflows.

A series of additional **amendments 166 to 175A inclusive** would add further weight to the government's commitments by placing a duty on water companies to take all reasonable steps to ensure that untreated sewage is not discharged into inland waters. This duty would require that water companies plan strategically to eliminate the harm caused to public health and the environment by sewage discharges from combined sewer overflows (CSOs), storm tanks and other outlets.

The use of grey water systems (wastewater re-use), blue-green flood risk management systems, and other nature-based solutions would keep excess surface water out of sewers, and the involvement of Catchment Partnerships would ensure local input to storm overflow reduction plans. Rainfall-related criteria would be set for all CSOs, clearly demonstrating when they are operating outside of storm conditions, and thus identifying where action to tackle overflows is most needed.

Related **New Clause 194A** on amending drainage provisions would require the Secretary of State to amend the drainage provisions of the Water Industry Act 1991 to ensure they remain fit for purpose in support of water quality, flood management and climate resilience goals. It would embed a greater range of purposes in the drainage provisions and better enable the water industry to contribute to the achievement of a range of objectives under Government's 25 Year Environment Plan.

In addition, the full text of the Sewage (Inland Waters) Bill has been put forward as an amendment to the Environment Bill, along with other measures intending to reduce reliance upon private sewerage systems, due to the negative environmental impact these can have. The original bill had significant cross party support and contains a helpful menu of options which the Secretary of State would be required to consider to further improve the management of wastewater, complementing the amendments tabled by the government and others as described above.

In line with its own amendments, the government will publish a plan by September 2022 to reduce sewage discharges from storm overflows (**amendment 171** would bring this date forward) and will report to Parliament on progress with implementation; **it is crucial that this action plan directs the industry to make appropriate investment during the upcoming Price Review period (2025-2030) to bring all CSOs to 'satisfactory' standard and to remedy the most frequently-spilling CSOs.**

Clause 82: Water abstraction, no compensation for certain licence modifications

The 1945 Water Act and 1963 Water Resources Act formed the basis of earlier systems for managing water resources, licensing abstractions from surface water and groundwater bodies, but doing so with limited consideration of the impacts of this upon their ecology. In the late 1980s the consequences of this approach became apparent, as numerous chalk streams began to dry up completely.

Subsequent schemes have sought to identify and amend the most damaging and unsustainable licences, but a barrier to tackling this environmental damage has been the need to pay compensation to licence holders when those damaging licences are amended or revoked. Through the Water Act 2003, the government removed the requirement to pay compensation to the holders of licences causing 'serious damage', but this is an extremely high bar and is rarely invoked, and so in practice provides little protection to our beleaguered water environment. In recognition of this, the Water Act 2014 removed the requirement (under Section 61 of the Water Resources Act 1991) to pay compensation for water company licence changes altogether, setting a clear precedent for the removal of damaging licenses without compensation.

For water company licenses, this process is now nearly complete. **Yet in 2020, data revealed that nearly a fifth of surface waters, and over a quarter of groundwaters still do not have enough water to protect the environment, and to meet the needs of fish and other aquatic life.**

In addition, five per cent of surface water bodies and 15 per cent of groundwater bodies are at future risk, where existing licence holders not currently using their licences in full could legitimately increase abstraction, causing damage to the environment. This is because for non-water-company licences, the requirement to pay compensation is preventing the alteration of all but the most severely damaging licences.

This creates unfairness, where a minority of licence holders with damaging licences can profit at the expense of the environment, while other licence holders operate within environmental limits.

Clause 82 further amends the Water Resources Act 1991, extending the Environment Agency's power to other abstractors. The Agency will be able to remove or change environmentally damaging licences without the need to pay compensation, and to do the same with "excess headroom" (unused capacity) within licences, to enable the objectives of various environmental regulations to be achieved.

This power is extremely welcome, and necessary, both to protect the environment, and to ensure that newer abstractors are not disadvantaged. **However, the timescale proposed in the bill is too long** as the changes will apply to licences "revoked or varied on or after 1 January 2028". With compensation remaining payable on any licence changes imposed before that time, budgetary constraints will significantly limit the Agency's scope to act, since abstractors are unlikely to give up abstraction rights voluntarily and forfeit potential compensation payments. This means that over-abstracted rivers and groundwater-dependent habitats will continue to suffer for at least a further seven years, putting threatened habitats and public water supplies at risk.

We support **amendments 176A, 180A & 187ZA which would collectively amend the 2028 date to 2023.** The Environment Agency's Abstraction Plan (2017) looks to support a stronger catchment focus to managing abstraction, "bringing together the Environment Agency, abstractors and catchment partnerships to identify and implement local solutions to existing pressures and to prepare for the future.". A catchment approach can bring wider benefits and is welcomed – for example, boosting water storage & allowing additional abstraction at the highest flows may remove the need for abstraction during low flows, when it is more damaging. Yet, if catchment solutions have been exhausted, there is no benefit in being unable to take action to protect the water environment until 2028.

The power to amend licences should be made available from 2023; and should be promptly employed where no catchment solutions exist. Variations to licences could be made, setting out a reasonable compliance period for changes to be put in place before the abstractor would be in breach of the new conditions. This would give fair notice to abstractors, (the original purpose of the 2028 date), while enabling swift action on the mounting environmental harm caused by damaging abstraction.

We also support **amendment 179A** which adds to the range of 'environmental objectives' / description of damages that would allow licences to be modified. The current clause would permit licence changes to support the achievement of objectives under various Water Environment (Water Framework Directive) Regulations; this takes a relatively narrow view of ecological health. The government's consultation on these proposals also identified that abstraction should be considered unsustainable where it damaged Sites of Special Scientific Interest (SSSIs). The amendment would enable changes where licences are preventing the conservation and enhancement of SSSIs, and where abstraction is causing low flow limits to be breached for chalk rivers and principal salmon rivers.

This would bring the powers in line with the ambitions of the 'enhanced scenario' of the Water Resources National Framework, which will see water companies seeking to achieve a higher level of protection for these more sensitive habitats; - without this comparable approach for non-water-industry licences, any environmental gains made by the industry are liable to be undermined.

We **strongly resist any moves to weaken Clause 82**, such as via **amendments 176 to 187** tabled by Lord Carrington, which would remove the power to alter licences without the need to pay compensation (a limitation which is currently preventing environmental harm from being ended) and restrict the circumstances under which a licence could be removed or modified (even though compensation would remain payable). **We are strongly opposed to these amendments and maintain that the ability to modify licences without compensation should be brought forward to protect the environment, including vulnerable chalk streams.**

Clause 83: Water quality: powers of Secretary of State

Clause 83 gives the Secretary of State a wide ranging power to amend the regulations that implement the EU Water Framework Directive, particularly relating to the chemical pollutants that should be considered under the regulations, and the standards to be applied to them. The Commons Public Bill Committee debated the merits of this power, raising concerns around the signal this clause sends in light of the government's persistent refusal to commit to non-regression of environmental standards, and around the lack of opportunity for stakeholder involvement in any decision making.

The minister responded to these concerns by confirming that, in consultation with the Environment Agency, updates to the list will be based on the latest science and monitoring data, and that these currently suggest a potential increase in the number of substances that will be subject to the provisions of the implementing regulations, rather than a reduction. We support **amendments 188A, B & C** which would give additional reassurance, requiring the Secretary of State to establish an advisory group to provide technical advice on water quality standards, to seek expert advice including from the Office for Environmental Protection, and to follow the affirmative procedure for any changes proposed, in light of the significant public interest in water quality.

Clauses 88 to 91: Land drainage

These clauses remove barriers to the creation of new Internal Drainage Boards (IDBs); local public bodies which manage water levels in certain areas, for land drainage and flood management purposes. However, without appropriate safeguards, such work can be environmentally damaging, impacting biodiversity and (through the excessive drainage of soils which allows carbon stores to be oxidised), contributing to climate change through the release of CO_2.

This bill proposes to enhance the biodiversity duty set out in the Natural Environment and Rural Communities Act 2006, requiring public bodies not just to conserve but to enhance biodiversity. As bodies which carry out management of the environment, it is of course correct that IDBs be subject to such a requirement. A recent National Audit Office report into IDBs noted that environmental expertise is lacking within many, despite existing general duties with respect to the natural environment under the Land Drainage Act 1991, and other environmental legal obligations. As such, **any moves to suggest that IDBs need not be subject to the strengthened biodiversity duty provision of this bill must be immediately quashed.**

Best practice sharing amongst Drainage Authorities must be supported by the industry body ADA so that those IDBs already delivering environmental benefit can support the remainder, with all IDBs ensuring that their work conserves and enhances biodiversity and is planned in the context of wider catchment management. This would ensure that the intended public benefit of the creation of IDBs is delivered.

New Clause 189: Water Metering, and related new clauses

We strongly support new Clause 189 which calls for the introduction of water efficiency standards for water-using appliances and the removal of restrictions upon universal metering of water company customers. Recent research by Waterwise demonstrated that mandatory water labelling would deliver significant water savings and that if linked to changes in Building Regulations as proposed here, providing significant water savings within new developments, would have the greatest cost benefit ratio of all scenarios considered, at 1:200. Research already shows that customers paying for their water via a meter use between 12 and 22 per cent less than those that pay by rateable value. Given the pressures on water resources nationally, the measures proposed here are not only welcome, but necessary.

Similarly **New Clauses 192 to 194** on water and development are helpful in drawing attention to the impacts of housing development upon the water environment and highlighting the role that nature based solutions can play in tackling water pollution and flooding issues. **Clause 194AA** achieves a similar objective with regard to flooding, requiring consideration of measures that will help mitigate or reduce flood issues.

New Clause 189A: A Water Strategy

This clause would place a welcome duty on the government to prepare a Water Strategy for England. The strategy would set out the government's vision, objectives, priorities and policies for achieving 'clean and plentiful water' in England in accordance with the aims of the 25 Year Plan for the Environment, and provide a commitment for appropriate resourcing, addressing the critical investment shortages in monitoring and compliance.

The current poor state of the water environment is due to many complex and interacting pressures, which means that despite efforts to improve the status of England's waters, there has been continuous failure to deliver meaningful improvements – with no waterbodies in good condition; we are 'running to stand still'.

A strategy would set out new, holistic approaches to improving the water environment that consider parameters such as natural function (high water quality, hydrological function, connectivity) and parts of the water environment not previously prioritised (headwaters, ponds), to help improve the status of our water environment as a whole and support the recovery of biodiversity across waters and wetlands, to make our systems more resilient.

It would build on the ethos of the 'Catchment-based Approach', which identifies that action to improve waters is most effective when planned holistically and at a large scale (an approach championed by **New Clause 188D** which seeks to ensure that Catchment Partnerships have the means to ensure that their catchment is managed to the highest environmental standards possible).

However, it would go beyond the focus on particular waterbodies which are targeted for improvement under existing River Basin Management Plans, to provide an overarching framework that recognises the importance, and interconnected nature, of all parts of the water environment. Interim targets and long term goals that focus on catchment 'function' would complement the targets on particular pollutants and water use that are due to be set under the bill's target setting framework.

For more information, please contact:

Ruth Chambers, senior parliamentary affairs associate, Greener UK
e: rchambers@green-alliance.org.uk
t: 020 7630 4524

On behalf of Greener UK and Wildlife & Countryside Link

GREENER UK