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Environment Bill: briefing for Commons Committee

November 2020

Part 5 – Water (Clauses 75 to 89)

Part 5 of the Environment Bill 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, **Clause 81 on water quality must be amended as it could undermine the health of the water environment if enacted in its current form.** A number of other clauses would also benefit from strengthening.

Several helpful amendments have been proposed on Part 5. **We set out below which amendments we support and why we believe these are necessary.**

Clause 75 – Water resources management plans, drought plans and joint proposals (amendments 9, 130)

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. If used, this power would place regional plans on a statutory footing, embedding a more strategic approach to the management and development of water resources. Currently, planning on a regional rather than a company basis is non-statutory, and adherence of company Water Resources plans to these overarching regional proposals is an expectation, rather than a duty. **The government should set out the circumstances under which the Secretary of State would use these powers, and how adherence to regional plans will otherwise be encouraged.**

The current drafting of the clause also significantly weakens requirements for consultation during plan preparation. 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 currently consult prior to plan preparation, including the Environment Agency. Deletion of Section 37B from the Act would water down consultation rights for stakeholders, removing the right for "any person" to make representations about the plans. Such a reduction in engagement covering all those with a stake in water management would be a step backwards in the ambition to deliver holistic management of the water environment.

These sections will be replaced by Section 39F enabling regulation which "may" make provision about preparation of plans, consultation and representations. Positively, this section relates to Drought Plans, Water Resources Management Plans and any Joint Proposals. We support **amendment 9** which would require the Secretary of State to make regulations about the procedure for preparing and publishing plans and **amendment 130**, which would ensure that consultation rights for stakeholders could be created under such regulations. **We seek confirmation that such regulations will be made to set out new consultation requirements replacing those omitted by deletion of the above clauses and hope that this part of the bill can be clarified during Committee stage.**

Amendment 9 would tighten the clause by requiring the Secretary of State to make provisions setting out the procedure for preparing and publishing water resources management plans, drought plans and joint proposals, (as opposed to the current wording of "may make provision").

Amendment 130 would allow these provisions to include a requirement for persons or bodies representing the interests of those likely to be affected by a plan to be consulted during plan preparation. This requirement should be included in the bill and be as clear as possible, to ensure that full consultation with stakeholders always takes place.

Stakeholder consultation is key to making water plans as effective as possible by ensuring all aspects are covered. These amendments would help ensure such consultation happens on water resources management plans, drought plans and the newly created joint proposals.

Clause 76 – Drainage and sewerage management plans (amendments 200, 131)

Clause 76 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. This new requirement is very welcome, enabling a strategic approach to be taken to wastewater management, putting it on a par with drinking water management.

Amendment 200 would add a requirement for these new plans to address "the quality and impact of the discharges of the undertaker's drainage system and sewerage system". Currently not all discharges from the system are monitored, meaning that the duration, content and impact of discharges is not fully understood, so it is difficult to ensure that investment to reduce pollution is being targeted most effectively. This amendment could give effect to the ambitions and recommendations of the Defra Storm Overflows Taskforce established this year, and could see improved monitoring, investigation and action being delivered under the strategic framework of the new plans.

As with clause 75, some strengthening of the clause is required to guarantee stakeholder consultation rights. **Amendment 131** would add a requirement to include persons or bodies representing the interests of those likely to be affected by a plan, when consulting during its preparation. This helpful amendment could be undermined however, as there is no requirement, only an ability, to make the regulations (Clause 94C(1)) that would set out this process. This requirement should be included in the bill and should be as clear as possible, to ensure that full consultation with stakeholders always takes place. For the plans to have best effect, this should include local authorities and others with an interest in wider wastewater management.

Stakeholder consultation will be key to making the new drainage and sewerage management plans as effective as possible, and the above amendment would help to ensure that such consultation happens, but **we seek assurance that the regulations to ensure that consultation is undertaken, will indeed be put in place.**

Clause 80 – Water abstraction, no compensation for certain licence modifications (amendments 132 + 133 + 134)

Clause 80 amends the Water Resources Act 1991 to improve the way that abstraction is managed. The clause gives the Environment Agency the power 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 Water Environment (Water Framework Directive) Regulations to be achieved.

Section 61 of the Water Resources Act 1991 set a clear precedent for the removal of licenses without compensation for water company licenses, a process which is nearly complete. Clause 80 extends these provisions beyond the water industry to all licence holders.

This additional Environment Agency power to act on licenses causing environmental harm is welcome. 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 by the Agency before that time, budgetary constraints will significantly limit the Agency's scope to act. 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 eight years, putting threatened habitats and public water supplies at risk.

We support **amendments 132, 133** and **134** which would collectively amend the 2028 date to 2021. **Amendment 132** changes the 2028 date specified on line 1 of page 78, **amendment 133** changes the 2028 date specified on line 34 of page 78, and **amendment 134** changes the 2028 date specified on line 7 of page 79.

Further clarification could then ensure that the new date would not impose unrealistic time pressures on water abstractors. 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, whilst enabling swift action on the mounting environmental harm caused by damaging abstraction.

Clause 81 – Water quality: powers of Secretary of State (amendment 135)

Clause 81 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.

Whilst there is some justification for a power to make technical updates to regulations, this clause potentially provides a licence for the Secretary of State to weaken standards for the chemical status of our waters via secondary legislation. It is particularly concerning in light of Sir James Bevan's recent speech which suggested possible reform of the way in which the status of our waters is considered. At the heart of the Directive is the principle that the water environment is a system, and all parts of that system need to be in good working order for it to operate effectively. That principle remains true; the clarity of the "one out, all out" rule should not be abandoned, and any weakening of chemical standards would be a backward step in light of growing public concern about water pollution, and

new data showing the extent of water quality failures across England; not a single surface water assessed (rivers, lakes, canals, estuaries and coastal waters) now achieves the standard of 'Good Status'.

We therefore strongly support amendment 135, which goes some way towards addressing this significant risk. The amendment would ensure that any changes to water quality regulations would be subject not to the negative procedure (as is the case currently in the bill), but to the super affirmative procedure, as defined in Section 18 of the Legislative and Regulatory Reform Act 2006. This would give stakeholders the right to input into any water quality regulations changes, including UKTAG (the technical advisory group that currently advises on standards, which should retain a lead role in this process). It would also legally require the Secretary of State to have regard to that input, ensuring that targets and standards are only altered in line with scientific advice and following appropriate stakeholder consultation.

A robust binding legal assurance of non-regression of environmental standards would give further assurance on this point. The government still has the opportunity to give such assurance through the bill, which would be warmly welcomed by the environmental sector and many other stakeholders. Similarly, **it would be very helpful if members of the Committee would seek an assurance that, when exercising their powers under clauses 81-85, the Secretary of State will always follow the recommendations of the UKTAG so that decisions on water quality standards are based on sound scientific advice.**

We suggest that a metric based on "elements improved" is developed to aid with reporting progress against delivery of existing water targets, acknowledging improvements by illustrating each step on the journey towards achieving good or high status without implying that the waterbody achieves an overall clean bill of health. Building from this, the government should introduce a new long term target in the Environment Bill framework for "clean waters" of the highest quality, giving the public confidence in the highest standards of water quality and creating a goal for continuing ecological improvement.

Land drainage – clauses 86-89

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 could be environmentally damaging. In line with the biodiversity duty set out in the Natural Environment and Rural Communities Act 2006, which this bill proposes to enhance, IDBs must ensure that their work conserves and enhances biodiversity, and is planned in the context of wider catchment management. This will ensure that the intended public benefit is delivered. **New Clause 18** would further strengthen this requirement, ensuring that IDBs' activities will contribute to the achievement of environmental targets set through the bill.

In particular, the enhanced biodiversity duty and new clause will ensure that the activities of IDBs are compatible with the aspirations of the England Peat Strategy, currently in development. Restoring and maintaining wetness in peat soils is a key requirement in halting the vast emissions of carbon from degraded peatlands, and will be an essential component of meeting net zero carbon targets. Support for land managers to transition to wetter forms of farming on peat soils must therefore be available under the new Environmental Land Management Scheme which will deliver the public goods for public money approach set out in the Agriculture Act 2020.

Further measures relevant to water management

Clauses 49 and 50 – Part 3 of the Bill

Clauses 49 and 50 in Part 3 of the bill concern resource efficiency and, given that water is a vital resource, will impact on water management. A changing climate and population growth are placing increasing demands on our water resources. More action is needed to encourage us all to use water more efficiently, and **it would be helpful for the government to set out how clauses 49 and 50 could be used to introduce a mandatory water labelling scheme linked to minimum water efficiency standards.**

Progress towards achieving a proposed Environment Bill water target on reducing water use will be extremely difficult without the use of such approaches; whilst the water industry is able to take direct action on leakage, domestic and business consumption are more difficult to reduce in the absence of universal metering, high water efficiency standards in new buildings and labelling schemes to inform customer choice.

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On behalf of Greener UK and Wildlife & Countryside Link

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