

Water (Special Measures) Bill: Briefing for Lords Committee Stage 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.

At Lords Second Reading on 9th October peers welcomed the Water (Special Measures) Bill but made it clear that, as a tool for addressing pollution from the water sector, it requires sharpening.¹ Peers also stressed that pollution from the water sector is just one of a number of pressures on freshwater and coastal environments. The acknowledgement on the 9th by the Bill Minister, Baroness Hayman of Ullock, that *“the Bill alone is not enough to fix our water system; it is only an immediate down payment on the wider reform”* is welcome. Link looks forward to the progression of the Government’s new water review and its consideration of those wider reforms.

A number of amendments have subsequently been tabled for Committee Stage which would strengthen the Bill as a means of addressing detrimental water sector impacts on the environment.² These include amendments to:

1. Require companies to implement the pollution incident reduction plans proposed by clause 2 rather than simply a duty to have a plan (amendment 32).
2. Ringfence water company fines for the Water Restoration Fund, to be used exclusively for water restoration (amendment 72).
3. Place a climate change and nature duty on Ofwat, to enable it to focus more on nature and climate impacts from the water sector (amendment 91).

We urge peers to attend Committee Stage from 28th October and to speak in favour of these necessary improvements to the Bill. **Link strongly supports the below amendments:**

Amendment 32: Implementing pollution incident reduction plans

Tabled by Baroness Parminter and the Duke of Wellington

Currently, clause 2 requires water companies to prepare and publish a pollution incident reduction plan, but it does not require the plan to be implemented. It merely sets out measures that companies ‘intend to take’. After so many years of underinvestment and non-compliance by water companies, a requirement simply to have a plan is unlikely to be sufficient.

¹[https://hansard.parliament.uk/lords/2024-10-09/debates/BC0D6C71-4A7F-43EC-BD5B-B1897796B651/Water\(SpecialMeasures\)Bill\(HL\)](https://hansard.parliament.uk/lords/2024-10-09/debates/BC0D6C71-4A7F-43EC-BD5B-B1897796B651/Water(SpecialMeasures)Bill(HL))

² See amendment list here:

<https://bills.parliament.uk/publications/56560/documents/5231>

At Second Reading, the Bill Minister set out the reasoning behind the Government's decision not to legally require water companies to implement the pollution incident reduction plans. Baroness Hayman of Ullock stated that *"these plans should be seen as part of the broader package of powers for regulators"* and that *"to implement the plan would make enforcement more difficult, we believe, as it would cut across the wider legal requirements for pollution reduction"*.

It is difficult to understand how a requirement to implement a pollution incident reduction plan would cut across other requirements. The Water Industry Strategic Environmental Requirements (WISER) strategic document, authored by Natural England and Environment Agency in 2022, sets out the mosaic of statutory and non-statutory environmental obligations on water companies, and includes mention of pollution incident reduction plans as a possible means of discharging pollution reduction obligations.³ The reference in the WISER document to these plans specifically mentions that they should be implemented; the document is clear that pollution incident reduction plans should serve an active, implementation-focussed role within a wider regulatory landscape. The onus is on Ministers to explain why this approach from enforcement agencies would create issues for enforcement if carried through into the Bill. It is also important to note that WISER makes clear that pollution incident reduction plans are already a part of the enforcement landscape, albeit on an optional basis. Making an existing optional requirement a statutory one, with a duty to implement, is a constructive rather than disruptive innovation.

Specifying that a requirement on private companies should be implemented is a well-established practice. To give a recent example, the Consumer Duty applied by the Financial Conduct Authority to financial firms in 2023 includes a specific requirement on companies to adopt and see through implementation plans.⁴ Similarly the Environment Act 2021 is explicit that the plans taken forward under its provisions should be implemented, from species conservation strategies to Defra's own storm overflow discharge reduction plan.⁵

This tried and tested approach should be applied to pollution incident reduction plans in this Bill. **Amendment 32**, tabled by Baroness Parminter and the Duke of Wellington, would achieve this by requiring a water company to take all reasonable steps to implement their pollution incident reduction plans. The associated two further amendments from Baroness Parminter (**amendments 39 and 40**) would give the Environment Agency powers to enforce this implementation requirement. **Amendment 31**, tabled by Baroness Bakewell of Hardington Mandeville and Baroness Pinnock, would have a similar effect.

Link strongly supports these amendments, which would bring pollution incident reduction plans in line with standard practice and give the plans more purchase in everyday water company decision making.

³<https://www.gov.uk/government/publications/developing-the-environmental-resilience-and-flood-risk-actions-for-the-price-review-2024/water-industry-strategic-environmental-requirements-wiser-technical-document>

⁴ <https://www.fca.org.uk/publications/multi-firm-reviews/consumer-duty-implementation-plans>

⁵ <https://www.legislation.gov.uk/ukpga/2021/30/contents>

We urge the Government to listen, adopt the amendments and ensure that pollution incident reduction plans are actually implemented. This is required to prevent pollution incident reduction plans becoming dead letters, prepared, published but then left to gather dust.

Amendment 30: Water only companies

Tabled by Baroness Bakewell of Hardington Mandeville and Baroness Pinnock

A further surprising omission from clause 2 is any mention of the water-only companies that make up nearly a third of the water sector in England and Wales.⁶ The wording of the clause applies pollution incident reductions plan requirements only to sewerage undertakers, meaning that water companies who only provide clean water do not have to publish plans. This is a missed opportunity to tackle pollution from water-only companies, which have been responsible for significant chemical and wider pollution in recent years.⁷

Amendment 30, tabled by Baroness Bakewell and Baroness Pinnock to page 4, line 30 of clause 2 would correct this, applying the pollution incident reduction plan requirement to water undertakers as well as sewerage undertakers. This would help address pollution from water only companies, broadening the positive impact of the Bill.

Amendment 37: Nature-based solutions

Tabled by Baroness Jones of Moulsecoomb

The current specifications for the contents of pollution incident reduction plans, set out between 4) and 8) in clause 2, miss opportunities to include measures in each plan which will maximise outputs for nature. One of these is the role that restored habitats, known in this context as nature-based solutions, can play in tackling pollution. Healthy natural habitats can act to filter out some pollutants; new research suggests that wetlands near sewage plants have the potential to remove up to 90% of nitrogen pollution from sewage.⁸ Such nature-based solutions provide a range of further benefits on-top of the pollution reduction, from boosting nature recovery to helping to store carbon.⁹ Despite these environmental advantages, take-up of nature based solutions across the water sector remains limited.¹⁰

Amendment 37, tabled by Baroness Jones, would require companies to consider the potential to deploy nature-based solutions when drawing up each and every pollution incident reduction plans. This

⁶ <https://www.ofwat.gov.uk/households/your-water-company/contact-companies/>

⁷ See for examples: <https://www.portsmouthwater.co.uk/2019/10/31/potential-contamination-due-to-fly-tipping/> & <https://www.theguardian.com/environment/2023/nov/28/forever-chemicals-found-in-drinking-water-sources-across-england> & <https://www.ofwat.gov.uk/wp-content/uploads/2024/07/Overview-of-SES-Waters-PR24-draft-determination.pdf> (p6)

⁸ <https://www.wwt.org.uk/news-and-stories/news/could-specially-engineered-wetlands-help-clean-up-the-uks-polluted-waterways/>

⁹ https://www.wcl.org.uk/docs/WCL_Briefing_Nature_Based_Solutions_Water_December_2023.pdf

¹⁰ <https://www.wcl.org.uk/water-company-scorecard-press-release.asp>

legal imperative will increase the deployment of nature-based solutions, to the benefit of pollution reduction, nature recovery and net zero efforts.

Amendment 72: Water Restoration Fund

Tabled by Baroness Bakewell of Hardington Mandeville and Earl Russell

At Second Reading a number of peers suggested that the Bill could be used to bolster the Water Restoration Fund, the pot set up by the previous administration *'to channel environmental fines and penalties into projects that improve the water environment'*¹¹. **Amendment 72**, tabled by Baroness Bakewell of Hardington Mandeville and Earl Russell would achieve this, inserting a new Water Restoration Fund clause into the Bill after clause 6. The new clause would require the Secretary of State to pass regulations to put the Water Restoration Fund into law and to require all water company fines from breaches of the environmental provisions of the Water Resources Act 1991, the Pollution Prevention and Control Act 1999 and Water Act 2014 to be paid into the Fund.

The case for this regularisation is strong, as the Water Restoration Fund is without legal foundation and is currently failing to capture the full extent of water company fines. The Fund came into being earlier in 2024, with an initial pot of at £11 million, drawn from fines levied on water companies between 2022 and 2023.¹² Figures provided by the previous administration in late 2023 state that in those years, the total amount of fines levied on water companies by the Environment Agency stood at over £13.5million.¹³ The Angling Trust has suggested that the actual sum is much higher, potentially by a factor of five.¹⁴ It would be helpful if Peers were able to ask the Minister for a comprehensive list of relevant fines imposed on water companies since 2022.

Whatever the precise sum, it is clear that even in its first year, the Fund has failed to receive all of the fine revenue arising from environmental breaches. There are significant concerns that this gap is growing further; the new Government is yet to confirm whether over £140 million of water company fines proposed in 2024 will be entered into the Fund in full.¹⁵

This is a direct consequence of the Fund's non-statutory character; in the absence of legal imperative, revenue from fines can end up in alternate destinations. After decades when all water company fines went into general Treasury funds, precedents can be hard to break, especially in times of straightened public finances.

¹¹ <https://www.gov.uk/government/publications/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water>

¹² <https://www.gov.uk/government/publications/water-restoration-fund-guidance-for-applicants/about-the-water-restoration-fund#other-funding-schemes>

¹³ <https://questions-statements.parliament.uk/written-questions/detail/2023-09-07/198378>

¹⁴ <https://anglingtrust.net/2024/04/12/angling-trust-criticises-the-governments-new-water-restoration-fund-as-inadequate-and-demands-more-robust-measures-to-deter-polluters/>

¹⁵ [https://www.wcl.org.uk/docs/WCL Blueprint Letter Ofwat Penalties Aug 2024.pdf](https://www.wcl.org.uk/docs/WCL%20Blueprint%20Letter%20Ofwat%20Penalties%20Aug%202024.pdf)

By accepting Baroness Bakewell's amendment, the Government can future proof the Water Restoration Fund and ensure that one of the legacies of the Bill is a legally secured guarantee that sanctions for water pollution are always used to help repair the damage caused and begin to restore the natural environment. Link understands that the future of the Water Restoration Fund is *'being carefully examined'* by Ministers.¹⁶ This examination should speedily lead to legal ringfencing, through the Bill.

Amendment 91: Climate change and nature duty for Ofwat

Tabled by Baroness Willis of Summertown, Baroness Parminter, Baroness Young of Old Scone and Lord Randall of Uxbridge

This new clause would give Ofwat a clear duty to contribute to the delivery of targets set under the Environment Act 2021 and the Climate Change Act 2008, enabling the regulator to direct more of its activity towards tackling pollution from water companies.

Such a duty is currently missing from Ofwat's governance. Ofwat's current primary duty, set under section 2 of the Water Industry Act 1991, is to *'further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition'*. Section 3 of the 1991 Act goes on to state that Ofwat's work to further the conservation of flora and fauna should only be undertaken as far as is *'consistent'* with the primary consumer objective.¹⁷ This clear subordination of environmental considerations to economic ones was not corrected by the introduction of a muddled resilience objective in 2014¹⁸ and was actively exacerbated by the 2024 imposition of a new statutory growth duty on Ofwat to have regard to the desirability of promoting economic growth.¹⁹

The imbalance has led to the water regulator focussing on a perceived consumer priority of lower bills, at a time when consumer demand for a focus on environmental protection has never been higher.²⁰ The Price Review 2024 process, governing water company spending between 2025 and 2030, has seen Ofwat limit proposals for widescale freshwater restoration, with just 22% of water company budgets earmarked for environmental spend.²¹ This is despite sustained polling showing that the public wants to see

¹⁶ <https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/7196>

¹⁷ <https://www.legislation.gov.uk/ukpga/1991/56/contents>

¹⁸ <https://www.legislation.gov.uk/ukpga/2014/21/notes/division/5/1/3?view=plain>

¹⁹ https://www.wcl.org.uk/docs/assets/uploads/April_24_Briefing_Draft_Economic_Growth_Regulatory_Functions_Amendement_Order_2024_accompanying_Statutory_Guidance.pdf

²⁰ <https://www.wildlifetrusts.org/news/new-poll-finds-most-people-think-main-parties-falter-nature-and-climate-crises-run-general>

²¹ <https://www.ofwat.gov.uk/pr24-draft-determinations-press-notice/> (£19.6 from current proposed £88 billion PR24 total).

See also very low proposed spending on nature based solutions:

<https://www.wcl.org.uk/water-company-scorecard-press-release.asp>

freshwater restoration prioritised above all other objectives²² and Consumer Council for Water research which found strong consumer appetite to pay more to address freshwater pollution.²³

The eccentricity of outdated governance objectives putting the regulator out of touch with the views of the people it is regulating for must be resolved. **Amendment 91** would achieve this, amending the Water Industry Act 1991 to require Ofwat to contribute as much as possible to the achievement of nature recovery targets set under the Environment Act 2021 and to climate mitigation and adaptation targets set under the Climate Change Act 2008. The amendment would retain the existing consumer duty on Ofwat, putting it on an equal footing with the new environmental duty. **Amendments 84 and 85**, tabled by Baroness Jones of Moulsecoomb, would achieve similar outcomes, respectively removing the 2024 growth duty from Ofwat and giving Ofwat a primary duty to protect the environment.

At Second Reading, the Bill Minister suggested that Defra's imminent review of water was the right place to consider such proposed changes to Ofwat's governance. Link disagrees with this assessment. Whilst the review is welcome, it is just that – a review. Any changes that could come from it concerning Ofwat governance would need legislation in order to be enacted, potentially kicking the can a considerable distance down the road.

In the Water (Special Measures) Bill, the Government has live legislation expressly designed to improve the regulation of water companies. It provides an excellent opportunity to act on long-standing concerns about Ofwat's governance being no longer fit for purpose in the face of environmental decline.²⁴ The currently parliamentary moment is also timely. Legislating for a climate and nature duty for Ofwat early in this Parliament would allow benefits to accrue ahead of looming environmental deadlines falling at the end of the Parliament, including the 2030 achievement date for the Environment Act target to halt the decline in species abundance. A duty that came into force on Ofwat in 2025 would build environmental objectives into work on the next price review from the start, as well as applying climate and nature considerations into yearly in-period determinations²⁵ and everyday decision making.

The Government should seize the moment and adopt amendment 91 to enshrine climate and nature considerations within water regulation, along with the related **amendment 1**, tabled by Baroness Willis of Summertown and Baroness Young of Old Scone, which would make the climate and nature duty a core purpose of the Bill. This pair of amendments would bring Ofwat governance up to date with the overwhelmingly environmental nature of the challenges facing water supply.

²² <https://www.ciwem.org/the-environment/a-deep-dive-into-public-perceptions-of-the-uk%E2%80%99s-water-sector>

²³ <https://www.ccw.org.uk/news/people-prepared-to-pay-more-to-increase-the-role-of-nature-in-tackling-water-challenges/>

See also: <https://www.ccw.org.uk/publication/water-matters-2024/>

²⁴ https://www.wcl.org.uk/docs/Growth_Duty_Ofwat_freshwater_pollution_impacts.pdf

²⁵ <https://www.ofwat.gov.uk/regulated-companies/price-review/in-period-odi-determinations/>

Link also supports other environmental amendments to the Bill, including:

Amendment 32: National Parks

Tabled by Baroness Bakewell of Hardington Mandeville

This amendment would further sharpen up the pollution incident reduction plans proposed by clause 2, requiring each plan to specifically consider how to tackle pollution in National Parks and the Broads. With every lake, river and stream in England's National Parks polluted, action is urgently required to bring freshwaters in these areas up to the environmental standard the public expects of protected landscapes.²⁶ By requiring specific consideration within pollution incident reduction plans, **amendment 32** would help drive the actions required to address freshwater pollution within National Parks and the Broads.

The Government should also consider requiring water companies to implement specific pollution incident reduction measures in designated nature sites, including SSSIs, SACs, MCZs and others, given that these sites need to be restored to better condition across the board if the target to protect 30% of land and sea for nature is to be achieved.

Amendment 55: National Parks

Tabled by Baroness Bakewell of Hardington Mandeville, Earl Russell and Baroness Willis of Summertown
Complementing amendment 32, **amendment 55** would require water companies to adhere to and deliver stronger environmental objectives and duties within National Parks and the Broads, with additional protections for iconic and ecologically significant waterways like Lake Windermere, England's largest lake.

Amendment 78: Water regulator obligations

Tabled by Baroness Parminter, Baroness Bakewell of Hardington Mandeville, Lord Randall of Uxbridge and Baroness Jones of Moulsecoomb

Amendment 78 is complementary to the climate change and nature duty for Ofwat amendment. It would clarify the consumer objective on the regulator, setting out that Ofwat should work to ensure consumers have access to clean and wholesome drinking water, delivered alongside a range of consumer goals, in line with public opinion about what the water sector should prioritise. In combination with the proposed new climate change and nature duty, this updated consumer objective would underpin a more fit-for-purpose system of water regulation.

Amendment 87: Environmental Information Regulations

Tabled by Baroness Boycott, Baroness Parminter, Baroness Boycott, Lord Whitty

Amendment 87 would remove some of the difficulties that the public experience in getting access to real-time and operational data held by the water companies pursuant to their roles as sewerage undertakers under the Water Industry Act 1991. It would also enable any failure to proactively

²⁶ <https://www.cnp.org.uk/support/campaigns/end-water-pollution/>

publish such data to be referred to the Information Commissioner. The amendment would achieve this by clarifying that water companies are public authorities for the purpose of the Environment Information Regulations 2004, a status currently based on case law only.²⁷

Amendment 90: Water Resources Management Plans general duty

Tabled by Baroness Browning

Amendment 90 would require water companies to make provision for effective water resources management, and to report on that management every six months. The increased focus on water management the amendment would secure is needed to address the over-abstraction depleting water supplies across England. **Amendment 89**, also tabled by Baroness Browning, would further preserve water supplies, by strengthening reporting requirements on companies abstracting water.

Amendment 99: Special administration for breach of environmental obligations

Tabled by Baroness Jones of Moulsecoomb and Lord Sikka

Special administration, a mechanism provided under existing legislation, enables the government to assume control of failing water companies. This regime can currently be triggered if a water company becomes insolvent or fails to carry out its statutory functions or licensed activities, including to maintain and manage sewer infrastructure appropriately. To date, this mechanism has not been used to respond to chronic sewerage failures, even when the resulting pollution has caused significant environmental damage. **Amendment 99** would make clear that special administration can and should be used as ultimate sanction for polluting water companies, providing a further incentive to water companies to reduce pollution incidences.

Link also understands that peers are keen to explore how water companies can be required to monitor and take action to address pollution from harmful chemicals, including per- and polyfluoroalkyl substances (known as PFAS or forever chemicals). Research has found that PFAS pollution lingers and accumulates across freshwater and marine systems²⁸, with harms leaching across to food products that enter the human food chain.²⁹ Action to address these harms through the Water (Special Measures) Bill would be welcome.

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²⁷<https://www.bevanbrittan.com/insights/articles/2015/uppertribunaldecidesthatwatercompaniesarepublicauthorities/>

²⁸ <https://www.mcsuk.org/news/pfas-in-sewage/>

²⁹ <https://www.wcl.org.uk/hair-blood-of-uk-politicians-and-environmentalists-polluted-by-chemicals.asp>



This briefing is supported by the following members of Link:

- The Rivers Trust
- The Wildlife Trusts
- River Action
- Surfers Against Sewage
- Angling Trust
- Marine Conservation Society
- River Restoration Centre
- Freshwater Habitats Trust
- Institute of Fisheries Management
- Campaign for National Parks
- Buglife