

Water (Special Measures) Bill: Briefing for Commons 2nd reading December 2024

This briefing is on behalf of the [Blueprint for Water](#) Group within Wildlife and Countryside Link ([Link](#)). Link is the largest nature coalition in England, bringing together 86 organisations to campaign for the natural world.

The Water (Special Measures) Bill introduces a range of measures designed to reduce pollution from water companies, including requirements on water companies to adopt pollution incident reduction plans and new powers for regulations to impose sanctions on polluting water companies. The Bill was significantly improved for climate and nature in the House of Lords and we are grateful to the cross-party group of peers who pressed environmental amendments, and to Defra for accepting these changes.¹ Key Lords stage improvements include:

- Amendments to clause 2 to apply pollution incident reduction plans to water only companies and to require all plans to be accompanied by implementation reports. These measures will help ensure that the plans have real-world impacts.
- Clause 4, which requires water companies to address Nature-based solutions (NBS) use within their drainage and sewerage management plans. This will help to increase the use of high quality NBS to improve water quality, unlocking co-benefits for habitat restoration and carbon sequestration. Link believes the Bill could be amended further to require water companies to consider more NBS use for drought and flood resilience (see below).
- Clause 9, which gives the water regulator Ofwat a duty to have regard to the need to contribute to the achievement of environmental targets. This will enable the regulator to focus more on nature and climate impacts from the water sector. The ongoing Water Commission should consider further embedding these environmental considerations within water regulation.²

These measures render the Bill a more effective sewage pollution reduction tool, but further enhancements could still be made. Two significant improvements suggested by the Lords, to legally ringfence all water company fines for the Water Restoration Fund and to improve water company transparency, were rejected by the Government. MPs could usefully ask Ministers to reconsider these positions. It is also important to remind the Government that sewage pollution is just one of many man-made pressure points on overloaded freshwater systems and coastal waters. Whilst still retaining its primary focus on water companies, the Bill could be further amended to also provide a springboard for action to address one of these additional pressure points; chemical pollution.

At Commons 2nd reading on 16th December, Link asks MPs to advocate for:

¹ See Link Lords report stage [briefing](#)

² See Link [letter](#) to the Chair of the Water Commission

A ringfenced Water Restoration Fund

In September the Secretary of State for the Environment, Food and Rural Affairs made a welcome commitment to ‘*make the polluter pay*’ in the water sector.³ The ‘polluter pays’ principle this refers to states that payments from polluters should always ‘*restore or redistribute the costs of environmental damage*’.⁴ The problem for the Government is that the water sector restoration mechanism it is relying on, the Water Restoration Fund (WRF), is not currently sufficient to ensure that the polluter always pays.

The WRF was set up by the previous Government in 2022 with the laudable intention of channelling ‘*environmental fines and penalties into projects that improve the water environment*’.⁵ The WRF was intended to embody the polluters pay principle; financial sanctions on water companies that pollute would be used to rectify the environmental damage they caused. This has not yet transpired in full. The first instalment of the WRF was announced in June this year, and was meant to capture water company fines from 2022-23. Despite this, at least 20% of water company fines for 22-23 failed to make it into the Fund,⁶ a trend that looks set to continue. Despite multiple opportunities to do so, the Government is yet to confirm whether over £140 million of water company fines proposed in 2024 will be entered into the Fund in full.⁷

The problem lies in a legislative absence, namely that the WRF and protocols for which funds go into it are not set out in law. Without legislative protection, the Fund has proved vulnerable to raids by the Treasury. Two years on from the establishment of the WRF, water company fines are still going to general Treasury funds.

The Bill could provide a solution. During Lords stages, Baroness Bakewell of Hardington Mandeville and the Duke of Wellington tabled amendments to 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 environmental provisions to be paid into the Fund. In the words of Baroness Bakewell, making the case for the amendments: “*It is necessary, due to the appalling performance of the water industry, for the public to be able to see just where the money from fines is going and how it is being used to improve the service they are paying for in their water and sewerage bills...There are undoubtedly going to be large fines coming down the line which water companies will have to pay. These fines cannot just evaporate into the ether so that customers cannot see what is being done with the money.*”⁸

³ [Speech](#) from the Secretary of State, September 2024

⁴ See the Government’s [Environmental Principles Policy Statement](#)

⁵ [Plan for Water](#) 2023

⁶ The Fund came into being in 2024, with an initial pot of at [£11 million](#), drawn from fines levied on water companies between 2022 and 2023. 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](#). The Angling Trust has [suggested](#) that the actual 22-23 sum is much higher, potentially by a factor of five.

⁷ See [Link letter to the Prime Minister](#), August 2024

⁸ See [Hansard](#) for Lords report stage, 20th November 2024

The Bill Minister in the Lords rejected the report stage amendments, arguing that *“defining a water restoration fund in law would instil inflexibilities regarding the scope of the fines available to include within the fund and how the money gathered from fines could be spent.”*

These objections are not insuperable. A new WRF clause to the Bill could make clear that fines of any size levied on water companies as sanctions for environmental breaches could go into the Fund. Similarly the clause could state that WRF funds could be spent on projects that improve water quality and further freshwater/coastal habitat restoration.

The Bill provides a tailor-made opportunity for the Government to put its polluter pays principles into action, and to ringfence environmental fines for the WRF. This is necessary to ensure the Fund fulfils the purpose for which it was established, to make polluters pay and to demonstrate to the public that this is the case.

Enhanced water company transparency

Clean water and nature recovery campaigners have for years struggled to access comprehensive and up-to-date data on sewage pollution. Provisions in the Environment Act (to be extended by measures proposed in clause 3 of this Bill) are slowly improving the amount of data made available, but there remains swathes of material which water companies fail to make public.

The water company approach of only releasing what is explicitly required by law has led to campaigners having to fight tooth and nail for data deemed outside the regulatory minimum. To give a recent example, campaigners to clean up Lake Windermere have had to submit and win an Information Commissioners Office (ICO) complaint order to access water company data on the amount of phosphorus detected in the lake. The water company concerned deemed this data to be operational and non-regulatory, despite phosphorus pollution being the major threat to Windermere’s environment.⁹

Water companies, defined as public authorities by case law¹⁰, are covered by Environment Information Regulations (EIR) 2004, intended to give the public access to environmental information held by public authorities. Despite this some water companies still try to delay and evade their EIR responsibilities, using a variety of excuses, and refuse to proactively publish data.¹¹

During Lords stages, Baroness Boycott sought to amend the Bill to address this, tabling amendments that would reinforce water company EIR responsibilities, require them to provide operational data and make it easier to hold companies to account for not doing do on a proactive basis. These transparency

⁹ See ICO [decision notice](#)

¹⁰ See write up of [2015 ruling](#)

¹¹ See for example WildFish [write up](#) of recent case

amendments were rejected by the Government, on the grounds that they could add complexity to existing information release systems.¹²

This argument overlooks the complexity and burden (borne mainly by civil society and the ICO) created by the current requirement to fight for every piece of non-regulatory data. A comprehensive duty on water companies to release more environmental data, more proactively, would replace the current system of piecemeal disputation with fair and clear rules on data release. This would enhance the quantity and quality of data available to those seeking to understand and reverse declines in freshwater and coastal habitats, aiding that work.

MPs could usefully ask Ministers to build on clause 3 of the Bill with further measures to improve the environmental transparency of the water sector.

A strategy to address and recover the costs of chemical pollution

At the British Water Conference in November, the Chief Inspector of the Drinking Water Inspectorate and the Chief Executive of the Environment Agency told delegates they were limited in what they could direct water companies to do on chemical contaminants in water and called for a new strategy to address chemical pollution.¹³

The environmental and public health risk posed by chemical pollution in England's waters has been overlooked, compared to the well-understood dangers of sewage pollution. Not a single river in England has achieved good chemical status, with chemical pollution also affecting estuaries and coastal waters. Wildlife and Countryside Link and Rivers Trust research published in May 2023 found harmful cocktails of chemicals present at over 80% of sites tested, harming mammals, fish and invertebrates alike.¹⁴ Chemical pollution harms people too – evidence links exposure to chemicals used in everyday life to a wide range of health conditions, from diabetes to breast cancer.¹⁵

Unlike sewage pollution, chemical pollution is not primarily the fault of water companies. Manufacturing processes can release harmful chemicals into water systems, and water companies are not fully resourced to treat this pollution from source. The manufacturer is the primary polluter but mechanisms to compel them to pay are extremely limited. The lack of such mechanisms has created a growing disparity between sewage and chemical pollution; the primary polluter in the first instance (water companies) are at long last being required to pay through a series of legislative interventions including this Bill, whilst the primary polluter in the second (manufacturers using harmful chemicals) continue to pollute with relative impunity.¹⁶

¹² See [Hansard](#) of Lords committee stage, 30th October 2024

¹³ See [report](#) in ENDS, 26th November 2024

¹⁴ See Link and Rivers Trust [research](#), May 2023

¹⁵ See CHEMTrust [material](#)

¹⁶ See Link chemical pollution [research paper](#), June 2024

The Bill should address this disparity, act on the recent recommendations of Drinking Water Inspectorate and springboard a new strategy to tackle chemical pollution. An amendment could be tabled to the Bill to require the Secretary of State to publish a strategy on chemical pollution, addressing chemical pollution at source so that it does not enter the waste water system in the first place and including measures to allow water companies to recover from manufacturers the costs of treating chemical pollutants once they have entered the water environment. Such measures could adopt the approach taken in the EU's new Urban Wastewater Treatment Directive 2024, which introduces extended producer responsibility to manufacturers of pharmaceutical and cosmetic products, requiring them to cover 80% of the costs of the treatment needed to remove micro-pollutants from urban wastewater.¹⁷

Such an amendment should be within the scope of the Bill as it relates to the regulation of water companies, who would be the primary beneficiaries of mechanisms to recover chemical treatment costs from manufacturers. Link would be grateful if MPs could explore the development of a chemical pollution cost-recovery mechanism through the Bill.

Further commitments on Nature-based solutions

At Lords report stage, the Bill was amended by the Government to require water companies to do more to deploy habitat restoration as a Nature-based solution (NBS) within their drainage and sewerage management plans, to help tackle pollution whilst also contributing to nature recovery and net zero efforts.¹⁸ This amendment of the Bill is welcome, but NBS can also play a useful role in the provision of other water company services, beyond pollution reduction. Restored wetlands and regenerated soils can hold onto water for sustained periods, helping with drought resilience.¹⁹ Similarly woodland and scrub can help slow down the flow of water, preserving water infrastructure in the face of flooding. A further amendment to the Bill could require water companies to deploy NBS where appropriate for drought and flood resilience, as well as within sewerage plans.

Lords stages also saw discussion of another form of NBS, Sustainable Urban Drainage systems (SUDs). SUDs are a form of water management for developments, which use natural drainage systems to move runoff water from built areas. Schedule 3 of the Flood and Water Management Act 2010 was introduced drive up use of SUDs but over a decade on has yet to be implemented.²⁰ An attempt to amend the Water (Special Measures) Bill to finally deliver on Schedule 3 was rejected by the Government in the Lords, with the promise that they would enact the schedule separately and soon.²¹ MPs could usefully remind Ministers of this promise. Ministers could also be asked to put on the record that they expect the Environment Agency to encourage NBS use for drought and flood resilience wherever appropriate.

Link would be delighted to work with MPs on drafting and tabling amendments for subsequent stages of the Bill.

For assistance with this, or for any questions on the above, please contact:

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