

Water (Special Measures) Bill: Briefing for Lords Report stage November 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.

15.11.24

Executive summary

At Lords report stage of the Water (Special Measures) Bill on 20th November, Link urges peers to support amendments to maximise the potential of the legislation to reduce water pollution. These include proposals for a new clause after clause 6 to ringfence all environmental water company fines for the Water Restoration Fund, and a new clause after clause 12 to allow special administration to be used as ultimate sanction for polluting water companies

Link also welcomes a series of Government amendments to the Bill which respond to points raised at [Committee stage](#). These 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.
- A new clause after clause 3 to require water companies to address Nature-based solutions use within their drainage and sewerage management plans. This will help to increase the use of Nature-based solutions, although a greater focus on their deployment to address pollution and provide water management services could be helpful.
- A new clause before clause 8 to give 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, although a stronger duty than ‘have regard’ could do more to boost environmental regulation. Baroness Jones of Moulscroomb has tabled an amendment that would provide this stronger duty on Ofwat.

Overall these amendments sharpen the impact of the Bill and increase its contribution to the recovery of freshwater and coastal ecosystems.

Amendments we support

New clause after clause 6: Water Restoration Fund

To be tabled for Report soon, see Committee stage [amendment 72](#)

This 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. This would ensure that all fines for activities that pollute water are used to support projects that directly address the damage caused.

This practical measure would help deliver on Defra's commitment to *'make the polluter pay'* in the water sector.¹ The polluter pays principle this refers to states that payments from polluters should always *'restore or redistribute the costs of environmental damage'*.² The current set up of the Water Restoration Fund, set up by the previous administration *'to channel environmental fines and penalties into projects that improve the water environment'*,³ is not sufficient to ensure this.

The Fund is without legal status, and without this, its hypothecated income is largely at the pleasure of the Treasury. At least 20% of water company fines for 22-23 failed to make it into the Fund's first year⁴, a trend that looks set to continue. Concerningly, 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.⁵ 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.

It is notable that, when responding to the Committee stage amendment which proposed ringfencing of environmental fines for the Water Restoration Fund, the Bill Minister highlighted that *"Defra is continuing to work with His Majesty's Treasury regarding the reinvestment of water company penalties and fines, because while the Budget has of course now been announced, decisions have not yet been taken on all departmental spending."*⁶

This implies that the Treasury continues to take an active interest in the deployment of funds from water company fines, and sees a close relationship between those funds and departmental spending

¹ [Speech](#) from the Secretary of State, September 2024

² See the Government's [Environmental Principles Policy Statement](#)

³ [Plan for Water](#) 2023

⁴ 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.

⁵ See [Link letter to the Prime Minister](#), August 2024

⁶ [Hansard](#) of third day of Committee stage

needs. This is far from comprehensive application of the polluter pays principle and its direction to spend all funds from polluters directly on addressing the damage caused. By failing to do this, the Government risks allowing the costs of the pollution to be borne by wider society, not the polluter, in direct contravention of the polluter pay principle as set out in the Government's Environmental Principles Policy Statement

Link understands that the Committee stage amendment tabled by Baroness Bakwell of Hardington Mandeville ringfencing the Water Restoration Fund will be tabled for Report stage soon.⁷ By adopting this amendment, the Government can apply the polluters pay approach fully to the water sector. One of the legacies of the Bill should be legally secured guarantee that sanctions for water pollution are always used to help repair the damage caused.

New clause after clause 12: Special administration for breach of environmental and other obligations

Tabled by Baroness Jones of Moulsecoomb

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. The new clause tabled by Baroness Jones 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.⁸

In responding to a Committee stage version of this amendment, the Bill Minister suggested that *"lowering the statutory threshold for special administration on performance grounds would be inappropriate and could impact the investability of the water sector"*.⁹ In considering this argument, it is important to note that the primary factor inhibiting investment in the water sector is concern about the 'sewage scandal' and the ability of the sector to show improved performance. Until there is widespread confidence that the sector can get a proper grip on pollution, investment prospects will be uncertain. Measures such as the proposed clarification of special administration rules for pollution, providing an additional deterrence for chronic sewerage failures, would actively build that confidence.

Government amendments to clause 2: Implementing pollution incident reduction plans

Tabled by Baroness Hayman of Ullock

As introduced, the Bill required water companies to prepare and publish a pollution incident reduction plan, but made no mention of implementation.

⁷ [Committee stage](#) amendment 72

⁸ [List of amendments](#), 14.11.24

⁹ [Hansard](#) of Committee day 3

Peers made clear at Committee stage that this omission undermined the efficacy of the Bill. Recent decades have seen a number of well-intentioned environmental plans legislated for, only to flounder due to insufficient provisions to link objectives with the actions needed to achieve them. In freshwater policy, River Basin Management Plans were introduced in 2009 to try and meet Water Framework Directives (WFD) objectives. Concerns about largely voluntary implementation requirements were raised at the time.¹⁰ The past fifteen years have borne out these concerns; despite excellent work by those involved in drawing up the plans, their recommendations have largely not been implemented and have served mainly as aspirations, untethered from every day decision making.¹¹ The 2015 WFD targets the plans were introduced to work towards have been comprehensively missed. A 2024 Office for Environmental Protection report on WFD measures highlighted a *'lack of clear governance arrangements to implement RBMPs'* as a key factor behind the failure.¹²

The Government has now heeded these warnings from the recent past, and tabled a series of amendments to clause 2 to prevent pollution incident reduction plans going the way of River Basin Management Plans. The amendment to page 5, line 38 requires water companies to publish annual reports on the extent to which it has succeeded or failed to implement the measures in its pollution incident reduction plan. The amendment also requires each report to include a section setting out actions to be taken to ensure that any failures to implement are not repeated. An associated amendment to page 5, line 29 requires water company CEOs to publish a statement personally approving their company's pollution incident reduction plan. Further enforcement amendments to page 6, lines 1-3 and 4 makes CEOs personally liable for an offence if pollution incident reduction plan duties, including the new implementation report requirement, are not met.¹³

These amendments effectively tie pollution incident reduction plans to actual actions to deliver them, ensuring that they will not become dead letters. We urge peers to support the Government amendments.

Government amendments to clause 2: Water only companies

Tabled by Baroness Hayman of Ullock

This amendment expands the requirement to prepare and publish pollution incident reduction plans to the five water only companies (WOCs) in England and Wales. These companies provide only clean water provision services, as opposed to both clean water provision and sewerage services, and comprise a third of the water sector (5 out of 16 companies).¹⁴

¹⁰ See 2008 [Parliamentary Office of Science & Technology briefing](#)

¹¹ See [example 2009 plan](#)

¹² [OEP report](#) on WFD measures, May 2024

¹³ [List of amendments](#), 14.11.24

¹⁴ [Ofwat list of water companies](#)

The Bill as introduced omitted WOCs from pollution incident reduction plan requirements. This was concerning as serious pollution can come from water-only companies.

Category 1 and 2 pollution incidents, defined by their significant impact on the environment, people, and property, are treated by Ofwat as serious pollution. All water companies submitted data on category 1 and 2 pollution incidents to Ofwat as part of the Price Review 24 (PR24) process. WOCs reported 14 category 1 and 2 incidents between 2014 and 2023. Although water and sewerage companies (WASCs) are responsible for a larger proportion of overall incidents, WOCs do add a noticeable share. For example in 2022-23, out of a total of 51 serious pollution incidents, 2 came from water only companies – 4%. These PR24 figures confirm that WOCs are responsible for serious pollution incidents.¹⁵ Notable pollution incidents at water supply stage (from WASCs, but illustrating the potential for problems at this stage) include the pollution of clean water supplies in Brixham this summer, an incident of such severity that the town was subject to a boil water order for several days,¹⁶ and the tragic Camelford pollution incident of 1988, which cost several lives.¹⁷

In light of this evidence, Link welcomes the Government’s decision to amend clause 2 (with a series of technical amendments to lines 28, 29,30, 35 and 37 of page 4 and to lines 9, 24, 31, 37, 38, 40 and 41 of page 5) to require WOCs to deliver pollution incident reduction plans. The amendments would also ensure that the water supply services from WASCs are covered by pollution incident reduction plans, a coverage the current sewerage-focussed wording on clause 2 does not guarantee. We ask peers to support the amendments.

Government amendment

New clause after clause 3: Nature-based solutions

Tabled by Baroness Hayman of Ullock

At Committee stage a number of peers raised the potential for water companies to do more to deploy Nature-based solutions (NBS) to tackle pollution in a way that also contributes to nature recovery and net zero efforts.¹⁸ In response, the Bill Minister suggested that this was falling into place, pointing towards Ofwat’s allocation of over £2 billion for investments in NBS in the Price Review 24 (PR24) process.

It is important to highlight that this £2 billion allocation represents just 2% of the total PR24 allocations, a settlement that will permit some water companies to offer very few nature-based solutions.¹⁹ Water company adoption of NBS has been geographically patchy and there is no sign yet of the industry

¹⁵ Figures taken from Link analysis of [PR24 documents](#)

¹⁶ [Hansard](#) of debate on Brixham pollution, May 2024

¹⁷ [Inquiry](#) into Camelford pollution of 1988, published in 2013

¹⁸ See Link [briefing](#) on Nature-based solutions

¹⁹ Link [research](#) on PR24

adopting this approach on the scale needed to deliver significant benefits for nature recovery, and to provide economies of scale needed to make NBS deployment cheaper across the board.

As such, it is welcome to see the Government's new clause to require water companies to address the use of NBS within their drainage and sewerage management plans. Under the Environment Act, water companies are legally required to publish and maintain drainage and sewerage management plans. The amendment means that water companies will have a statutory duty to regularly consider potential of NBS to provide water quality and management services within their drainage and sewerage systems.

We ask peers to support this Government amendment. There is however potential for the Bill to be further amended to directly require NBS to be deployed where appropriate in pollution incident reduction plans. Under the Government amendment, water companies could consider the potential for NBS and then reject it, as long as the reasoning set out in the drainage and sewerage management plan, to the duty 'to address' would be met. A more directional amendment, such as that proposed by Baroness Jones of Mouluscoomb at committee stage to include NBS measures within pollution incident reduction plans could complement the 'address' duty with a more active requirement.²⁰ Similarly the Government amendment, confined as it is to drainage and sewerage, does not touch upon how NBS's can also provide water storage and drought prevention services for water companies.

Government amendment:

New clause before clause 8: Requirement for Ofwat to have regard to climate change etc

Tabled by Baroness Hayman of Ullock and Baroness Willis of Summertown

This new clause follows extensive discussion at Committee stage of amendments designed to correct the imbalance of legal duties currently on Ofwat, prioritising economic considerations over environmental concerns. As peers set out at Committee, the Water Industry Act 1991 currently places a primary 'consumer objective' on Ofwat, and permits the regulator to only work on environmental matters as far as is 'consistent' with the primary consumer objective.²¹ This economic focus, exacerbated by the imposition of an economic growth duty on Ofwat, has led Ofwat to neglect environmental regulation over recent years, despite extensive evidence showing that consumers want to see water restoration prioritised above all other regulatory objectives.²²

The new clause tabled by the Bill Minister would empower Ofwat to respond to the consumer demand for a more environmental focus to water regulation, enacting recommendations from the Lords Industry and Regulators Committee²³ and from the Commons Environmental Audit Committee²⁴. The new clause amends Section 2 of the Water Industry Act (where Ofwat's primary duties are set out) to

²⁰ See amendment 37 from [marshalled list](#) of Committee amendments

²¹ [Water Industry Act 1991](#)

²² See for example [polling](#) commissioned by CIWEM in 2024

²³ Industry and Regulators Committee water and sewerage regulation [inquiry](#)

²⁴ EAC Water Quality in rivers [inquiry](#)

give Ofwat a new duty to have regard to the need to contribute to the achievement of nature recovery targets set under the Environment Act 2021 and to climate mitigation targets set under the Climate Change Act 2008.

This is a step forward, and Link encourages peers to vote for the Government amendment. It should not however be viewed as ‘job done’ for factoring environmental considerations into water regulation. The new duty in the Water Industry Act is additional, and while it helps even up the balance between economic and environmental duties on the regulator, it does not wholly correct it. It leaves the existing primacy of the duty to ‘*further the consumer objective*’ within section 2 of the Water Industry Act untouched, and adds a comparatively weak ‘*have regard*’ environmental duty below it.²⁵ The Committee stage amendment tabled by Baroness Willis of Summertown proposed stronger wording requiring Ofwat to take ‘all reasonable steps to contribute to’ the achievement of Environment Act and Climate Change Act targets. The Government amendment also contains a caveat, stressing that the Ofwat contribution towards the targets should come from activities Ofwat itself deems relevant to the targets. This could allow the regulator to minimise its contributions, opening a door to functional non-compliance with the duty.

It would be helpful if peers could ask the Minister at the despatch box to clarify that Ofwat should apply the duty to the broad sweep of its activities. Peers could also usefully highlight that this step should form the start, not the end, of strengthening environmental regulation and point towards the potential for the Water Commission led by Sir Jon Cunliffe to propose reforms to build on this one.

Baroness Jones of Moullescoomb has also tabled an amendment which would provide a stronger duty. The proposed **new clause after clause 9: Giving the Authority a primary duty to protect the environment** would put a duty to ‘*further the environmental objective*’ at the top of section 2 of the Water Industry Act.²⁶ This environmental objective would include contributions to achieving Environment Act targets and would have parity to the consumer objective on Ofwat. We ask peers to show strong support for this amendment as well, to demonstrate to the Government that reforms to Ofwat duties can and should go further.

Note on Government amendments

Although they could go further in some areas, overall the package of Government amendments tabled on 13th November will significantly improve the impact of the Bill for nature. Link is grateful to Baroness Hayman of Ullock as Bill Minister for listening and acting on suggestions made by peers at Second Reading and Committee stage. Link is also very grateful to all the peers who worked to improve the Bill at those stages, and to the Peers for the Planet network for supporting this work.

²⁵ Section 2 of the [Water Industry Act 1991](#)

²⁶ [List of amendments](#), 14.11.24

For questions or further information please contact:

Matt Browne, Director of Policy & Advocacy, Wildlife and Countryside Link E: matt@wcl.org.uk

Eleanor Ward, Senior Policy Officer, Wildlife and Countryside Link E: eleanor@wcl.org.uk

Link's Committee stage briefing for the Bill can be found [here](#).

This briefing is supported by the following members of Link:

River Action

The Angling Trust

ZSL

Institute of Fisheries Management

Freshwater Habitats Trust

Surfers Against Sewage

Marine Conservation Society

The Wildlife Trusts

15.11.24