

Blueprint for Water coalition

Briefing on the Water Bill

House of Commons, Second Reading, October 2013

Last year's chaotic weather saw a groundwater drought leading to hosepipe bans, at the same time that we experienced heavy rainfall and flash floods. Such extremes are becoming the norm, and they highlight the importance of sustainable water management.

That is why the Blueprint for Water coalition believes that the Water Bill must be used to introduce reforms that ensure: **sustainability** and **resilience** of the water industry; **protection** of the freshwater environment, and; **fairness** for customers.

There is much that the Blueprint for Water coalition welcomes in the Water Bill:

- Ending of compensation to water companies for changes to their abstraction licenses;
- Provision to enable water companies to construct and maintain sustainable drainage systems;
- A statutory underpinning for the Strategic Policy Statement to Ofwat;
- The introduction of retail competition - a move that could support greater water efficiency in the non-domestic sector;
- Removal of *Network Infrastructure Authorisation* proposed in the Draft Bill. This reduces risk that competition will have a negative impact on the cost of capital, but does nothing to address the threat of increased abstraction (see amendment 1 below);
- Revisions to the process of charging developers for water and sewerage infrastructure –this could be linked to a scheme that applies variable charges according to scarcity;
- Transfer of supply pipe responsibility from customer to company – this should help drive down leakage.

However, the Blueprint for Water coalition believes more must be done in this Water Bill to address fundamental issues facing the industry and the water environment. We therefore seek amendments that will:

- 1. Create a framework for a sustainable abstraction regime.** The opportunity must be taken to introduce a legislative framework for abstraction reform, giving the Government powers to reform the abstraction regime from 2015, according to the principles set out in the Water White Paper. This would remove the risk that upstream competition and water trading will lead to massive over-abstraction.

2. **Regulate for a sustainable water sector.** Ofwat's secondary duty to promote sustainable development should be elevated to a primary duty.
3. **Broaden the proposed resilience duty on Ofwat.** The proposed resilience duty should be broadened to encompass all threats to the industry (including financial threats) that may risk customer service and supply. It should also reflect the vital role the industry plays in improving the resilience of the environment and society.
4. **Give customers the right to choose universal metering in their area.** Red tape should be removed from water companies to allow customers - no matter where they live - the option of compulsory metering, supported by appropriate tariffs.
5. **Introduce a consistent, risk-based approach to regulating watercourse management and modification.** This would clarify the situation around watercourse management and modification for those undertaking work, while offering better protection to the environment.

1. Create a framework for a sustainable abstraction regime

Our current abstraction licensing system is failing to protect the environment today and is not fit to face the challenge of climate change and future demand. The Bill risks exacerbating damage by introducing water-trading and upstream competition without tackling the fundamental problems of over-allocation of water rights.

We recommend introducing a legislative framework for abstraction reform from 2015 by amending those parts of the Bill which deal with the transition of abstraction licensing to environmental permitting (clause 26 and schedule 6). By adopting the principles set out in the White Paper this will bring the achievement of sustainable water resources management – and its contribution to achieving sustainable development – into law.

We also propose amendments to clause 26 that would create a timetable for consultation on abstraction reform and ensure that the views of all stakeholders were sought prior to the introduction of the reforms.

The Water White Paper set out a compelling case for systemic change of abstraction controls, with clear goals for the design of the regime, which included the need for abstraction licences to signal availability, reflect the value of water, protect the environment and drive efficient use.

We support the principle, set out in the White Paper. That said, we are extremely concerned that the Government has delayed legislation on abstraction reform until the next Parliament, which is likely to result in greater uncertainty and a more expensive transition for abstractors.

Action is all the more urgent given provisions in the Bill to open up competition in the industry and introduce a trading scheme for licenses¹. Without the safeguard of abstraction reform there will be nothing to prevent sleeper licences in sensitive areas being re-activated, or sewage effluent being diverted from catchments where it currently maintains summer river flow. This is no paper risk: the Environment Agency estimate that nearly 40% of water company abstraction volume is not used² and that 18% of catchments are over-licensed *already*³. If these fundamental problems are not addressed the trading of water will see more rivers under stress and drying out, more fish kills and more habitat lost for wildlife during peak demand and/or drought.

2. Regulate for a sustainable water sector

We believe considerations of sustainability should be at the heart of water industry– not a secondary consideration as dictated by the current legislation.

We recommend elevating Ofwat's secondary sustainable development duty to a primary duty with the inclusion of a simple amendment to the Water Industry Act 1991.

Ofwat has a duty to 'contribute to the achievement of sustainable development'. However, this is a secondary duty, which means that it is ignored if it interferes with Ofwat's primary duty (i.e. if there are significant financial implications for companies). The practical effect of this, as seen in the Price Review 2009, is that Ofwat is forced to strike out investments to deliver demand management in 'over abstracted' areas or areas where such investments aim to address supply deficits which exist beyond the five year planning horizon.

Giving Ofwat a primary duty on sustainable development would align it with Ofgem, whose primary sustainable development duty has been critical in driving cultural change, both within the regulator and across the energy industry.

In addition, a primary sustainable development duty on Ofwat will be vital in managing the threat of increased abstraction posed by the Bill's proposals to open up and regulate the water and sewerage markets (particularly the trading in unused capacity within water abstraction licences and the supply of 'spare water' to water undertakers). We do not believe that the resilience duty achieves what a primary sustainability duty would achieve.

3. Broaden the resilience duty on Ofwat proposed in the Bill

We welcome the idea that Ofwat should have a duty to promote resilience. However the definition given in the Bill is too narrow, ignoring the full range of threats facing the industry and the vital role it plays in improving resilience of the environment, communities and businesses.

¹ Schedule 8 Clause 3(3) & 32(2) specifically empower the Secretary of State to introduce a trading scheme for abstraction licences.

² Ofwat, Environment Agency (2012) *The case for Change – reforming abstraction management in England*, www.environment-agency.gov.uk/research/planning/135501.aspx.

³ Environment Agency (2008) *Water Resources in England and Wales – current state and Pressures*, www.environment-agency.gov.uk/research/planning/135501.aspx.

We propose amending the wording of clause 22 to create a much more inclusive definition of resilience. The wording is designed to ensure that Ofwat takes a more rounded view of threats to water company resilience and the role companies play in delivering resilience to the natural environment.

The Water Bill includes a clause that is intended to give Ofwat a primary duty to promote resilience in the water industry. Resilience is a new concept in environmental and economic regulation, but as a concept has considerable merit. However, the definition given in the Bill is at best limited, and at worst damaging, because it frames resilience exclusively in terms of a company's ability to provide water and sewerage services to customers.

In so doing, the clause fails to acknowledge the vital role that the industry play in securing the resilience of the natural environment by, for example, reducing abstraction and pollution pressures, and engaging in catchment management. This is particularly worrying given that Ofwat's current sustainable development duty is a secondary one, suggesting that level of service would be given priority over environmental impact.

Resilience is also an important consideration in the way companies choose to structure and finance themselves. For example, questions have been raised as to whether very high levels of debt undermine a company's ability to absorb financial shock.

4. Give customers the choice to introduce universal metering in their area

We believe all customers, not Government, should decide whether their company should move to universal metering, supported by appropriate tariffs.

We propose amending the Water Industry Act 1999⁴ to give powers to customers to decide, through the water company engagement and planning processes, whether compulsory metering is the best option for their community.

Giving water undertakers such a power would also enable the scrapping of the 'water stress' and 'water scarcity' systems and the repeal of section 144B (1)(c) and both the 1999 and 2007 Prescribed Conditions Regulations - reducing unnecessary regulation still further.

Widespread metering, with tariffs to protect the vulnerable, provides a vital foundation for fair, affordable, sustainable and reliable water supplies. There is clear evidence of the benefits of metering both to customers and to the water environment, and without metering the significant reductions in leakage and per capita consumption we need are unlikely to come about.⁵ Current red tape means that only water companies with areas designated as in 'Serious Water Stress' can install meters on a universal basis. This means that customers outside the designated areas are denied the option of widespread metering when it would be in their best interests in terms of addressing affordability issues and limiting bill rises.

⁴ For further details, please see: White, E. (2008) *House of Commons Standard Note: Water Metering*, www.parliament.uk/briefing-papers/SN01509.pdf.

⁵ Walker A. (2009) *The Independent Review of Charging for Household Water and Sewerage Services: final report*; www.fairnessontap.org.uk.

This situation is at odds with the Government's policy of giving customers a bigger role in deciding the outcomes of price-setting for water. We believe this role should include choice over compulsory metering. Most importantly, it would meet the Government's stated position: 'we will not impose a blanket approach to metering across the country. We believe that water companies are best placed to find the appropriate solution in discussion with their customers.'⁶

5. Introduce a consistent, risk-based approach to regulating watercourse management and modification

We recommend that amendments are introduced to the Water Bill to clarify the situation around watercourse management and modification for those undertaking work, while offering better protection to the environment.

The Bill contains provisions for the Secretary of State to bring forward regulations that would see Land Drainage consenting integrated into the Environmental Permitting Regime. This regime differs radically from the current land drainage consenting systems, because it allows different levels of control to be applied according to *risk*. These controls range from bespoke permits, to standard permits, to exemptions from the requirement to hold a permit if specified conditions are satisfied.

The Blueprint for Water coalition recognises the administrative and environmental limitations of the current system, and supports reform that targets controls in a more proportionate and effective way.

Unfortunately, the Bill's proposals fail to address the most fundamental flaw in the current system - the differing levels of protection applied to 'Main River' (administered by the Environment Agency) and 'Ordinary Watercourse' (administered by Local Authorities and Internal Drainage Boards). These definitions date back to the original system, which was designed solely to control flooding and did not reflect the environmental sensitivity of a river or ditch. As a result, we are in the anomalous position of offering sensitive habitats and species found in Ordinary Watercourses considerably less protection than their counterparts on Main River. Moreover, the patchwork of different administrative regimes and bylaws that define what may or may not require consenting is complex and confusing for those who wish to undertake work on the ground.

We are seeking amendments that would result in a single risk-based approach applied to all watercourses. This would ensure consistency of environmental protection, and reduce uncertainty about which regime applies in which location. Such an approach would also satisfy obligations under the EU Water Framework Directive and so reduce the current risk of infraction.

⁶ Defra (2011) *Water for Life*, www.official-documents.gov.uk/document/cm82/8230/8230.pdf, p.51.

About the Blueprint for Water

The Blueprint for Water is a unique coalition of environmental, water efficiency, and fishing and angling organisations that is calling on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2015 (www.blueprintforwater.org.uk). The Blueprint for Water is a campaign of Wildlife and Countryside Link.

This briefing is supported by the following nine organisations:

- Amphibian and Reptile Conservation
- Angling Trust
- Buglife – The Invertebrate Conservation Trust
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- The Rivers Trust
- The Wildlife Trusts
- Wildfowl and Wetlands Trust
- WWF-UK

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