

# Water (Special Measures) Bill [HL]

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Environment, Food and Rural Affairs, have been ordered to be published as HL Bill 17—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Hayman of Ullock has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Water (Special Measures) Bill [HL] are compatible with the Convention rights.

## ENVIRONMENTAL STATEMENTS

Baroness Hayman of Ullock has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021.

In my view—

(a) the Water (Special Measures) Bill [HL] contains provision which, if enacted, would be environmental law, and

(b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.



# Water (Special Measures) Bill [HL]

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[AS INTRODUCED]

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[AS INTRODUCED]

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# B I L L

TO

Make provision about the regulation, governance and special administration of water companies.

**B**E IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## *Remuneration and governance*

### **1 Rules about remuneration and governance**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) For the italic heading before section 35A substitute “Remuneration and governance”. 5
- (3) After section 35A insert—
 

**“35B Rules about remuneration and governance**

  - (1) The Authority may issue rules about the arrangements made by relevant undertakers for—
    - (a) the remuneration of their directors and other persons, and 10
    - (b) their governance.
  - (2) The Authority must exercise its power under subsection (1) to issue rules which achieve the following effects—
    - (a) prohibiting a relevant undertaker from giving to persons holding senior roles performance-related pay in respect of any financial year in which the undertaker has failed to meet specified standards; 15
    - (b) requiring a relevant undertaker—
      - (i) to appoint persons to hold senior roles only if they meet specified standards as to fitness and propriety or in respect of other matters, and 20
      - (ii) to prevent persons from continuing to hold senior roles if they fail to meet such standards;

- (c) requiring a relevant undertaker to have arrangements in place for involving consumers in decisions of the undertaker that are likely to have a material impact on consumer matters.
- (3) Rules made for the purposes of imposing the prohibition mentioned in subsection (2)(a) (“the pay prohibition”)— 5
- (a) must include standards that relate to—
- (i) consumer matters,
- (ii) the environment,
- (iii) the financial resilience of undertakers, and
- (iv) the criminal liability of undertakers; 10
- (b) may include standards in relation to any other matters that the Authority considers appropriate;
- (c) may make provision designed to secure that performance-related pay that, if given by a relevant undertaker, would contravene the pay prohibition on the part of the undertaker, is not given by another person; 15
- (d) may provide that any provision of an agreement (whether made before or after the issuing of the rules) is void to the extent that it contravenes the pay prohibition;
- (e) may provide for a relevant undertaker to recover any payment made, or other property transferred, in breach of the pay prohibition. 20
- (4) For the purposes of subsection (2)(a)—
- (a) “performance-related pay” means any payment, consideration or other benefit (including pension benefit) the giving of which results from the meeting of any targets or performance standards on the part of the relevant undertaker or the person to whom such payment, consideration or benefit is given; 25
- (b) the reference to giving performance-related pay to a person holding a senior role includes— 30
- (i) giving such pay in respect of the person, and
- (ii) giving such pay in respect of services provided by the person other than in that role.
- (5) A person holds a “senior role” with a relevant undertaker for the purposes of subsection (2)(a) and (b) if the person— 35
- (a) is a chief executive of the undertaker,
- (b) is a director of the undertaker, or
- (c) holds such other description of role with the undertaker as may be specified.
- (6) Rules made for the purposes of subsection (2)(c) may include a requirement for persons representing the views of consumers to be members of a board, committee or panel of a relevant undertaker. 40
- (7) If the Authority considers that a relevant undertaker is contravening the rules, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction. 45

- (8) It is the duty of a relevant undertaker to comply with a direction given under subsection (7), and this duty is enforceable by the Authority under section 18.
- (9) Rules under this section may –
- (a) make different provision for different relevant undertakers or descriptions of undertakers; 5
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (10) The Authority may from time to time –
- (a) revise rules issued under this section, and 10
  - (b) issue the revised rules.
- (11) Rules issued under this section (including as revised under subsection (10)) may apply to agreements made before the rules (or revised rules) come into effect.
- (12) Nothing in subsection (2) limits other kinds of provision about remuneration and governance arrangements that may be contained in rules issued under subsection (1). 15
- (13) In this section –
- “chief executive”, in relation to a relevant undertaker, means an employee of the undertaker who, alone or jointly with one or more others, is responsible under the immediate authority of the board of directors for the conduct of the whole of the business of the undertaker; 20
  - “specified” means specified in rules under this section.

### **35C Rules under section 35B: procedure** 25

- (1) Before issuing rules under section 35B, the Authority must –
- (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are –
- (a) the Secretary of State; 30
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) each relevant undertaker likely to be materially affected by the rules;
  - (e) a person whose functions are or include representing relevant undertakers in respect of interests of the undertakers that are likely to be materially affected by the rules; 35
  - (f) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period within which relevant persons may make representations about the proposed rules. 40
- (4) This section is subject to section 35D.

**35D Rules under section 35B: minor or urgent variations**

- (1) This section applies if the Authority proposes to issue revised rules under section 35B and, in the view of the Authority, the revision or each of the revisions proposed to be made is –
- (a) a revision for which consultation is unnecessary, or 5
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 35C does not apply to the proposed revised rules.
- (3) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of – 10
- (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to the relevant persons mentioned in section 35C(2). 15
- (5) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.” 20
- (4) Rules issued for the purposes of section 35B(2)(a) of the Water Industry Act 1991 (as inserted by subsection (3)) may make provision about performance-related pay in respect of the financial year beginning 1 April 2024 (and subsequent financial years). 25

*Sewage discharges***2 Pollution incident reduction plans**

Before section 95 of the Water Industry Act 1991 insert –

**“94EA Pollution incident reduction plans (England)**

- (1) Each sewerage undertaker whose area is wholly or mainly in England must, before 1 April in each calendar year, prepare and publish a pollution incident reduction plan. 30
- (2) A pollution incident reduction plan is a plan for how the undertaker intends to reduce the occurrence of pollution incidents that are attributable to its sewerage system. 35
- (3) For the purposes of this section, references to pollution incidents that are attributable to the sewerage system of an undertaker –
- (a) are references to discharges from any structure or apparatus comprised in that system of any content which may be harmful to health or the quality of the environment, but 40



- (b) do not include references to discharges of treated effluent in accordance with an environmental permit (including any conditions to which it is subject).
- (4) A pollution incident reduction plan must address in particular—
- (a) the frequency with which pollution incidents have occurred during the preceding calendar year, 5
  - (b) the seriousness of those incidents and their causes,
  - (c) the steps the undertaker has taken to maintain any structure or apparatus comprised in its sewerage system which has been the cause of any such incidents, 10
  - (d) the measures the undertaker intends to take or continue for the purpose of reducing the occurrence of pollution incidents,
  - (e) the impact that the undertaker considers the measures will have in furthering that purpose,
  - (f) the likely sequence and timing for implementing those measures, 15
  - (g) an assessment of the progress achieved in implementing measures specified in previous plans published under this section, and
  - (h) any other matters specified by the Secretary of State in directions. 20
- (5) The Secretary of State must consult the Environment Agency before giving directions under subsection (4)(h).
- (6) A sewerage undertaker must have regard to any guidance given by the Environment Agency about the preparation and publication of a pollution incident reduction plan. 25
- (7) The Environment Agency must consult the Authority and the Secretary of State before giving guidance of the kind mentioned in subsection (6).
- (8) The first pollution incident reduction plan required by this section must be published by a sewerage undertaker before 1 April in the calendar year after the one in which this section comes into force. 30
- (9) In this section—
- “environmental permit” means a permit granted under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016; 35
  - “sewerage system” has the same meaning as in Chapter 1A of Part 2 (see section 17BA(7)).

#### **94EB Section 94EA: enforcement and sanctions**

- (1) The duty of a sewerage undertaker under section 94EA(1) is enforceable by the Environment Agency. 40

- (2) A sewerage undertaker which fails to comply with the duty imposed by section 94EA(1) is guilty of an offence and liable on summary conviction, or on conviction on indictment, to a fine.
- (3) The offence under subsection (2) is to be treated as a relevant offence in relation to the Environment Agency for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions).” 5

### 3 Emergency overflows

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In Part 4 (sewerage services), after Chapter 4 (storm overflows) insert—

#### “CHAPTER 5

10

#### EMERGENCY OVERFLOWS

#### 141F Reporting on discharge from emergency overflows

- (1) Where there is a discharge from an emergency overflow of a sewerage undertaker, the undertaker must publish the following information—
- (a) that there has been a discharge from the emergency overflow; 15
  - (b) the location of the emergency overflow;
  - (c) when the discharge began;
  - (d) when the discharge ended.
- (2) The information referred to in subsection (1)(a) to (c) must be published within an hour of the discharge beginning; and that referred to in subsection (1)(d) within an hour of it ending. 20
- (3) The information must—
- (a) be in a form which allows the public readily to understand it, and
  - (b) be published in a way which makes it readily accessible to the public. 25
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
- (a) the Minister, or
  - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Minister. 30
- (5) The Minister may by regulations made by statutory instrument make provision for exceptions from the duty under this section (for example, by reference to descriptions of emergency overflows, frequency of discharge or the level of risk to water quality). 35
- (6) Before making regulations under this section the Minister must consult such persons as the Minister considers appropriate.

- (7) The Minister may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the appropriate legislature.
- (8) In this section—
- “appropriate legislature” means— 5
- (a) in the case of regulations made by the Secretary of State, both Houses of Parliament;
- (b) in the case of regulations made by the Welsh Ministers, Senedd Cymru;
- “the Minister” means— 10
- (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
- (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales. 15
- (9) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under this section as it applies to regulations made by the Secretary of State.

#### **141G Section 141F: meaning of “emergency overflow”**

- (1) In section 141F, references to an emergency overflow of a sewerage undertaker are to any structure or apparatus (an “overflow”) which— 20
- (a) is comprised in the sewerage system of the undertaker,
- (b) discharges content from the system into inland waters, underground strata or the sea, and
- (c) meets the condition in subsection (2) or (3). 25
- (2) The condition in this subsection is that the overflow discharges content as result of an emergency event of the following descriptions—
- (a) electrical power failure at sewage disposal works;
- (b) mechanical breakdown at sewage disposal works;
- (c) rising main failure; 30
- (d) blockage of a sewer downstream of sewerage disposal works.
- (3) The condition in this subsection is that an environmental permit authorises the use of the overflow and—
- (a) the overflow is identified as an emergency overflow in the permit in accordance with its conditions as they had effect immediately before the day on which this section comes into force, or 35
- (b) the overflow is authorised under the permit to be used in such emergency events (whether or not of a kind mentioned in subsection (2)(a) to (d)) as are specified or described in the permit in accordance with such conditions. 40
- (4) In this section—

“environmental permit” means a permit granted before the coming into force of this section under Chapter 2 of Part 2 of the Environmental Permitting (England and Wales) Regulations 2016;

“sewerage system”, in relation to a sewerage undertaker, has the same meaning as in Chapter 1A of Part 2 (see section 17BA(7)).” 5

- (3) In section 213 (power to make regulations), in subsection (1) for “or 141DB” substitute “, 141DB or 141F”.

### *Sanctions*

## **4 Impeding investigations: sentencing and liability** 10

- (1) In section 110 of the Environment Act 1995 (offences of impeding investigation by environmental regulator) –

(a) after subsection (3C) insert –

“(3D) Subsection (3E) applies to an offence under subsection (1) or (2) if the exercise or performance of a power or duty to which the offence relates – 15

(a) was that of a person authorised by the Agency or the Natural Resources Body for Wales, and

(b) was in respect of the operations of –

(i) a water undertaker or sewerage undertaker, or 20

(ii) a water supply licensee or sewerage licensee within the meaning of the Water Industry Act 1991.

(3E) The person guilty of the offence is liable –

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or to a fine, or both; 25

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.”;

(b) in subsection (4), after “above” insert “(except one to which subsection (3E) applies)”;

(c) in subsection (5), after “above” insert “(except one to which subsection (3E) applies)”;

(d) after subsection (5H) insert –

“(5I) Where an offence to which subsection (3E) applies is committed by a body corporate and – 35

(a) is committed with the consent or connivance of a relevant officer, or

(b) is attributable to the neglect of a relevant officer, the relevant officer also commits the offence. 40

(5J) In subsection (5I), “relevant officer” means –

- (a) a director, executive, manager, secretary or other similar officer of the body corporate concerned,
  - (b) if the affairs of the body are managed by its members, a member exercising functions of management, or
  - (c) any person purporting to act in a capacity within paragraph (a) or (b).” 5
- (2) In section 86(6) of the Water Industry Act 1991 (offences of impeding investigation by drinking water inspector) –
  - (a) after “fails” insert “without reasonable excuse”;
  - (b) for the words from “on summary conviction” to the end substitute “\_ 10
    - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or to a fine, or both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.” 15
- (3) The amendments made by this section have effect only in relation to offences committed on or after the day on which this section comes into force.

## 5 Civil penalties: modification of standard of proof

- (1) This section is about the powers to provide for fixed monetary penalties or variable monetary penalties conferred by sections 36 and 62 of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”). 20
- (2) In relation to an offence within subsection (3) that is committed by a water company, the powers may be exercised as if “on the balance of probabilities” appeared instead of “beyond reasonable doubt” in sections 39(2) and 42(2) of the 2008 Act. 25
- (3) The offences are those under –
  - (a) any of the following provisions of the Water Resources Act 1991 –
    - (i) section 24(4) (unlicensed abstraction or related works or contravening abstraction licence); 30
    - (ii) section 25(2) (unlicensed impounding works or contravening impounding licence);
    - (iii) section 25C(1) (contravening abstraction or impounding enforcement notice);
    - (iv) section 80 (contravening drought order or permit); 35
    - (v) section 201(3) (contravening water resources information notice);
  - (b) regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities etc);
  - (c) regulations under section 61 of the Water Act 2014 (regulation of water resources etc). 40
- (4) An order that provides for variable monetary penalties in reliance on subsection (2) must provide for the amount of those penalties not to exceed an amount specified in the order.

- (5) In this section, “water company” means –
- (a) a water undertaker or sewerage undertaker, or
  - (b) a water supply licensee or sewerage licensee within the meaning of the Water Industry Act 1991.

**6 Automatic penalties for certain offences** 5

- (1) Subsection (2) applies if the Environment Agency or the Natural Resources Body for Wales (“the relevant agency”) is satisfied that it has the power to impose a fixed monetary penalty on a water company in respect of a specified offence committed by the company.
- (2) The relevant agency must impose the penalty unless – 10
- (a) the relevant agency considers that there are exceptional circumstances that mitigate the culpability of the company, or
  - (b) alternative enforcement action (see subsection (6)) is in contemplation or in progress.
- (3) A “specified offence” is an offence specified in regulations made by statutory instrument by – 15
- (a) the Secretary of State, in relation to the duty of the Environment Agency, or
  - (b) the Welsh Ministers, in relation to the duty of the Natural Resources Body for Wales. 20
- (4) The only offences that may be specified are those within section 5(3) (offences to do with pollution control, abstraction, impounding, drought etc).
- (5) The specification of such an offence may be limited to cases of a particular description.
- (6) In subsection (2)(b), “alternative enforcement action” means – 25
- (a) criminal proceedings, or
  - (b) the imposition of a variable monetary penalty.
- (7) Regulations made under or by virtue of Part 3 of the 2008 Act may provide for the grounds of appeal referred to in section 40(6)(c) of that Act not to extend to the relevant agency’s decision to impose a fixed monetary penalty so far as that decision concerns the application of subsection (2)(a). 30
- (8) The procedure required by section 40 of the 2008 Act (procedure for imposing fixed monetary penalties) is otherwise to be followed, in respect of a penalty proposed or imposed further to the duty in subsection (2), in a way that is consistent with that duty. 35
- (9) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of –
- (a) both Houses of Parliament, in the case of regulations made by the Secretary of State; 40
  - (b) Senedd Cymru, in the case of regulations made by the Welsh Ministers.

- (10) In this section—
- “the 2008 Act” means the Regulatory Enforcement and Sanctions Act 2008;
  - “fixed monetary penalty” means a fixed monetary penalty provided for under or by virtue of Part 3 of the 2008 Act (see section 39 of that Act);
  - “variable monetary penalty” means a variable monetary penalty so provided for (see section 42 of the 2008 Act);
  - “water company” has the meaning given by section 5(5).

*Regulation of abstraction and impounding* 10

**7 Abstraction and impounding: power to impose general conditions**

In the Water Resources Act 1991, after section 46A insert—

**“46B Power to impose general conditions with respect to licensed activity by water companies**

- (1) The appropriate national authority may by regulations make provision for the purpose of securing that water industry licences under this Chapter have effect subject to—
  - (a) conditions specified in the regulations, or
  - (b) rules of general application specified in or made under the regulations.
- (2) A condition or rule to which a licence is subject by virtue of regulations under this section is to be treated for the purposes of this Chapter as a provision of the licence.
- (3) For the purposes of this section, a licence under this Chapter is a “water industry licence” if it is held by—
  - (a) a water undertaker or a sewerage undertaker, or
  - (b) a water supply licensee or sewerage licensee within the meaning of the Water Industry Act 1991;
 and a reference to such licences includes those granted before the coming into force of this section.
- (4) In this section, “the appropriate national authority” means—
  - (a) the Secretary of State, in relation to England;
  - (b) the Welsh Ministers, in relation to Wales.
- (5) Section 219 (general provision about regulations) applies to the power of the Welsh Ministers under this section as it applies to that of the Secretary of State, with the necessary modifications (including the substitution of “Senedd Cymru” for “either House of Parliament” in subsection (1)).”

*Regulatory functions and charges***8 Charges in respect of Environment Agency and NRBW functions**

In section 41 of the Environment Act 1995 (powers of environmental regulators to make charging schemes)–

(a) in subsection (1), after paragraph (s) insert– 5

“(t) as a means of recovering costs incurred by it in performing water industry enforcement functions, the Agency or the Natural Resources Body for Wales may require the payment to it by water companies of such charges as may from time to time be prescribed;” 10

(b) after subsection (1A) insert–

“(1B) In paragraph (t) of subsection (1)–

“water companies” means–

(a) water undertakers and sewerage undertakers, and 15

(b) water supply licensees and sewerage licensees within the meaning of the Water Industry Act 1991;

“water industry enforcement functions” means functions performed for the purpose of assessing or securing compliance by water companies (within the above meaning), or responding to failures on their part to comply, with any provision made by– 20

(a) section 94EA of the Water Industry Act 1991 (pollution incident reduction plans for England), 25

(b) Chapter 2 of Part 2 of the Water Resources Act 1991 (water abstraction and impounding),

(c) Chapter 3 of that Part (drought orders and drought permits), or

(d) the Environmental Permitting (England and Wales) Regulations 2016 (regulation of certain facilities and activities).” 30

**9 Drinking Water Inspectorate: functions and fees**

(1) The Water Industry Act 1991 is amended as follows.

(2) For the italic heading before section 86, substitute “Drinking Water Inspectorate”. 35

(3) In section 86 (appointment and functions of inspectors)–

(a) for the heading substitute “Appointment and functions of inspectors”;

(b) in subsection (1)–

(i) omit the “and” after paragraph (a); 40



- (ii) after paragraph (b) insert “; and
  - (c) arrangements for assessing and securing compliance, and responding to failures to comply, with directions (or any particular direction) under section 208.” 5
- (4) In section 86ZA (charging of fees by inspectors), after subsection (3) insert—
  - “(3A) A fee may be made chargeable under this section in relation to—
    - (a) a specific instance in which the function is exercised, or
    - (b) the exercise of the function more generally during a particular period of time (which need not be limited to its exercise in relation to the person charged with the fee).” 10

*Special administration orders*

**10 Modification by Secretary of State of water company’s appointment conditions etc to recover losses**

After section 12I of the Water Industry Act 1991 insert— 15

**“12J Modification by the Secretary of State: special administration orders**

- (1) This section applies in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Secretary of State may make modifications of the conditions of the company’s appointment so that they include conditions requiring or enabling the company—
  - (a) to modify the charges it imposes on any persons to whom it provides services in the course of carrying out its functions so as to raise such amounts as may be determined by or under the conditions, and 25
  - (b) to pay the amounts so raised to the Secretary of State for the purpose of making good any SAO loss.
- (3) In subsection (2) “SAO loss” means so much of any loss or expense—
  - (a) which is incurred by the Secretary of State (whether before or after the coming into force of this section) in the giving of relevant financial assistance, and 30
  - (b) which the Secretary of State does not expect (apart from the exercise of the powers under this section) to recover.
- (4) In subsection (3) “relevant financial assistance” means financial assistance of any description given under section 153 in connection with a special administration order made in respect of—
  - (a) the company whose appointment is modified, or
  - (b) any other company which holds or held an appointment under this Chapter and whose area is or was wholly or mainly in England. 40

- (5) Sums received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (6) A condition of appointment included under subsection (2)(b) may require amounts to be held on trust pending their payment to the Secretary of State. 5
- (7) The reference in subsection (3)(a) to loss or expense incurred in the giving of relevant financial assistance includes loss or expense incurred as a result of, or otherwise in connection with, the giving of the assistance.
- (8) The power of the Secretary of State to modify under this section the conditions of a company's appointment includes power to make such incidental or consequential modifications of the conditions of any appointments under this Chapter as the Secretary of State considers necessary or expedient. 10
- 12K Modifications under section 12J: procedural requirements** 15
- (1) Before making any modifications under section 12J, the Secretary of State must give notice—
- (a) stating that the Secretary of State proposes to make the modifications,
  - (b) setting out the proposed modifications and their effect, 20
  - (c) stating the reasons why the Secretary of State proposes to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (2) That time must not be less than 42 days from the date of publication of the notice. 25
- (3) A notice under subsection (1) must be given—
- (a) by publishing the notice in a way the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and 30
  - (b) by sending a copy of it to—
    - (i) each company holding an appointment under this Chapter the conditions of which the Secretary of State proposes to modify,
    - (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Secretary of State considers are likely to be materially affected by the modifications, 35
    - (iii) the Authority,
    - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Secretary of State considers are likely to be materially affected by the modifications, and 40

- (v) the Council.
- (4) The Secretary of State must consider any representations which are duly made.
- (5) If after complying with subsections (1) to (4) the Secretary of State decides to proceed with making the modifications, the Secretary of State must— 5
- (a) publish the decision and the modifications in a way the Secretary of State considers appropriate for bringing them to the attention of persons likely to be affected by the modifications, 10
- (b) state the effect of the modifications,
- (c) state how the Secretary of State has taken account of any representations duly made, and
- (d) state the reason for any differences between the modifications and those set out in the notice under subsection (1). 15
- (6) Each modification has effect from the date specified by the Secretary of State in relation to that modification.
- (7) The date specified may not be less than 56 days from publication of the decision to make the modification, unless—
- (a) the Secretary of State considers it necessary or expedient for the modification to have effect before the 56 days expire, and 20
- (b) the consultation condition is satisfied.
- (8) The consultation condition is that the notice under subsection (1) relating to the modification stated—
- (a) the date from which the Secretary of State proposed that the modification should have effect, 25
- (b) the Secretary of State’s reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
- (c) why, in the Secretary of State’s view, that would not have a material adverse effect on any person holding an appointment under this Chapter.” 30
- 11 Modification by Welsh Ministers of water company’s appointment conditions etc to recover losses**
- After section 16B of the Water Industry Act 1991 insert— 35
- “16C Modification by the Welsh Ministers: special administration orders**
- (1) This section applies in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.
- (2) The Welsh Ministers may make modifications of the conditions of the company’s appointment so that they include conditions requiring or enabling the company— 40

- (a) to modify the charges it imposes on any persons to whom it provides services in the course of carrying out its functions so as to raise such amounts as may be determined by or under the conditions, and
  - (b) to pay the amounts so raised to the Welsh Ministers for the purpose of making good any SAO loss. 5
- (3) In subsection (2) “SAO loss” means so much of any loss or expense—
  - (a) which is incurred by the Welsh Ministers (whether before or after the coming into force of this section) in the giving of relevant financial assistance, and 10
  - (b) which the Welsh Ministers do not expect (apart from the exercise of the powers under this section) to recover.
- (4) In subsection (3) “relevant financial assistance” means financial assistance of any description given under section 153 in connection with a special administration order made in respect of— 15
  - (a) the company whose appointment is modified, or
  - (b) any other company which holds or held an appointment under this Chapter and whose area is or was wholly or mainly in Wales.
- (5) A condition of appointment included under subsection (2)(b) may require amounts to be held on trust pending their payment to the Welsh Ministers. 20
- (6) The reference in subsection (3)(a) to loss or expense incurred in the giving of relevant financial assistance includes loss or expense incurred as a result of, or otherwise in connection with, the giving of the assistance. 25
- (7) The power of the Welsh Ministers to modify under this section the conditions of a company’s appointment includes power to make such incidental or consequential modifications of the conditions of any appointments under this Chapter as the Welsh Ministers consider necessary or expedient. 30

#### **16D Modifications under section 16C: procedural requirements**

- (1) Before making any modifications under section 16C, the Welsh Ministers must give notice— 35
  - (a) stating that they propose to make the modifications,
  - (b) setting out the proposed modifications and their effect,
  - (c) stating the reasons why they propose to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made. 40
- (2) That time must not be less than 42 days from the date of publication of the notice.
- (3) A notice under subsection (1) must be given—

- (a) by publishing the notice in a way the Welsh Ministers consider appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
- (b) by sending a copy of it to—
- (i) each company holding an appointment under this Chapter the conditions of which the Welsh Ministers propose to modify, 5
  - (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Welsh Ministers consider are likely to be materially affected by the modifications, 10
  - (iii) the Authority,
  - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Welsh Ministers consider are likely to be materially affected by the modifications, and 15
  - (v) the Council.
- (4) The Welsh Ministers must consider any representations which are duly made. 20
- (5) If after complying with subsections (1) to (4) the Welsh Ministers decide to proceed with making the modifications, the Welsh Ministers must—
- (a) publish the decision and the modifications in a way they consider appropriate for bringing them to the attention of persons likely to be affected by the modifications, 25
  - (b) state the effect of the modifications,
  - (c) state how the Welsh Ministers have taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (1). 30
- (6) Each modification has effect from the date specified by the Welsh Ministers in relation to that modification.
- (7) The date specified may not be less than 56 days from publication of the decision to make the modification, unless— 35
- (a) the Welsh Ministers consider it necessary or expedient for the modification to have effect before the 56 days expire, and
  - (b) the consultation condition is satisfied.
- (8) The consultation condition is that the notice under subsection (1) relating to the modification stated— 40
- (a) the date from which the Welsh Ministers proposed that the modification should have effect,
  - (b) the Welsh Ministers' reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and 45

- (c) why, in the Welsh Ministers' view, that would not have a material adverse effect on any person holding an appointment under this Chapter."

## 12 Winding-up petitions

In section 25 of the Water Industry Act 1991 (power to make special administration order on winding-up petition) – 5

- (a) the existing text becomes subsection (1);  
 (b) in that subsection for “an application” substitute “a petition”;  
 (c) after that subsection insert –

“(2) But the court may not exercise its powers on the petition unless – 10

- (a) notice of the petition has been served on the relevant persons, and  
 (b) a period of at least 14 days has passed starting with the day on which those notices were served (or, if served on different days, the later of those days). 15

(3) The relevant persons are entitled to be heard –

- (a) at the hearing of the petition, and  
 (b) at any other hearing of the court in relation to the company under or by virtue of Part 4 of the Insolvency Act 1986. 20

(4) In this section “relevant person” means the Authority and –

- (a) in the case of a petition that relates to a relevant undertaker whose area is wholly or mainly in Wales, the Welsh Ministers; 25  
 (b) in any other case, the Secretary of State.”

### *Final*

## 13 Extent, commencement, transitional provision and short title

- (1) This Act extends to England and Wales.
- (2) The following provisions come into force on the day on which this Act is passed – 30
- (a) this section;  
 (b) section 5 (civil penalties: modification of standard of proof);  
 (c) section 6 (automatic penalties for certain offences);  
 (d) section 7 (abstraction and impounding: power to impose general conditions); 35  
 (e) section 8 (charges in respect of Environment Agency and NRBW functions);  
 (f) section 9 (Drinking Water Inspectorate: functions and fees).

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- (3) The following provisions come into force on such day as the Secretary of State may by regulations appoint—
- (a) section 1 (rules about remuneration and governance), so far as relating to undertakers whose areas are wholly or mainly in England;
  - (b) section 2 (pollution incident reduction plans); 5
  - (c) section 3 (emergency overflows), so far as relating to undertakers whose areas are wholly or mainly in England.
- (4) The following provisions come into force on such day as the Welsh Ministers may by regulations appoint—
- (a) section 1 (rules about remuneration and governance), so far as relating to undertakers whose areas are wholly or mainly in Wales; 10
  - (b) section 3 (emergency overflows), so far as relating to undertakers whose areas are wholly or mainly in Wales.
- (5) The following provisions come into force two months after the day on which this Act is passed— 15
- (a) section 4 (impeding investigations: sentencing and liability);
  - (b) section 10 (modifications by Secretary of State of water company’s appointment conditions etc to recover losses);
  - (c) section 11 (modifications by Welsh Ministers of water company’s appointment conditions etc to recover losses); 20
  - (d) section 12 (winding-up petitions).
- (6) The power to make regulations under this section includes power to make—
- (a) different provision for different purposes or areas;
  - (b) transitional or saving provision.
- (7) In relation to the coming into force of section 3, regulations under this section may make provision by reference to matters determined by— 25
- (a) the Environment Agency, so far as relating to undertakers whose areas are wholly or mainly in England;
  - (b) the Natural Resources Body for Wales, so far as relating to undertakers whose areas are wholly or mainly in Wales. 30
- (8) Regulations under this section are to be made by statutory instrument.
- (9) A duty to consult under or by virtue of this Act may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (10) This Act may be cited as the Water (Special Measures) Act 2024.

# Water (Special Measures) Bill [HL]

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[AS INTRODUCED]

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## B I L L

TO

Make provision about the regulation, governance and special administration of water companies.

*Baroness Hayman of Ullock*

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Ordered to be Printed, 4th September 2024.

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