

WATER (SPECIAL MEASURES) BILL

Memorandum from the Department for Environment, Food and Rural Affairs to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Water (Special Measures) Bill (“the Bill”). The Bill was introduced in the House of Lords on 4 September 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The purpose of the Bill is to enhance the water industry regulation framework to improve the performance of the water industry and ensure that water companies are delivering for customers and the environment. The Bill aims to do this through introducing new measures to strengthen the powers of the water industry regulators, to better hold water companies and their executives to account for wrongdoing, to increase transparency around the operation of sewage overflows, and to modernise the existing Special Administrations Regime for the water industry.
3. The Bill is structured in 1 part and 13 clauses. The Bill contains 8 clauses that include legislative delegated powers, which are set out in the main body of this memorandum and summarised in Annex A. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.
4. This memorandum also refers to other powers in the Bill which do not confer powers to make delegated legislation, but which involve Parliamentary scrutiny or relate to administrative functions that may be of interest to the Committee. These are listed and summarised separately in Annex B.

Summary of regulation making powers in the Bill

5. The Bill prescribes several changes to enhance the current water industry regulatory framework. However, certain aspects of this enhanced framework will need to be determined and amended under the Bill to ensure the provisions keep pace with changes across the water industry. The provision of delegated powers, subject to appropriate scrutiny and safeguards, is proposed to enable government to react effectively to new pressures on the water industry, evolving expectations of water bill payers, and identification of new issues following enhanced monitoring and data collection around the performance of water companies.

6. The delegated powers in the Bill fall into four thematic categories. The provisions which fall into each category are listed below:

I) provisions which create new delegated powers to give effect to new environmental policy:

- a. Clause 1 – Rules about remuneration and governance;
- b. Clause 3 – Emergency overflows;
- c. Clause 6 – Automatic penalties for certain offences;
- d. Clause 7 – Abstraction and impounding: power to impose general conditions.

II) existing delegated powers which will be amended by the Bill to give effect to new environmental policy:

- a. Clause 8 – Charges in respect of Environment Agency and Natural Resources Body for Wales functions;
- b. Clause 9 – Drinking Water Inspectorate: functions and fees.

III) powers to make provision allowing Ministers to issue directions which must be complied with:

- a. Clause 2 – Power of direction to specify matters to be included in a Pollution Incident Reduction Plan.

IV) general provisions which are required for the Bill to have effect:

- a. Clause 13(3) and (4) – Power to bring provisions into force through commencement regulations (England and Wales respectively).

Henry VIII powers

7. There are no Henry VIII powers being taken in this Bill.

Abbreviations

EA – Environment Agency

DWI – Drinking Water Inspectorate

NRBW – Natural Resources Body Wales

The 1995 Act – The Environment Act 1995

The RES Act – Regulatory Enforcement and Sanctions Act 2008

The WIA 91 – The Water Industry Act 1991

The WRA 91 – The Water Resources Act 1991

C. DELEGATED POWERS

Analysis of delegated powers by clause

Clause 1 – Rules about remuneration and governance

Power conferred on: Ofwat (also known as the Water Services Regulation Authority)

Power exercised by: No statutory procedure

Parliamentary Procedure: None

Context and Purpose

8. New sections 35B to 35D of the Water Industry Act 1991 (“WIA 91), as introduced by clause 1, allow Ofwat to set rules in relation to remuneration and governance, and then set out requirements for those rules in relation to performance related pay, fitness and propriety of directors and chief executives, and consumer representation.
9. Under new section 35C, before issuing rules Ofwat must consult on the draft rules with a number of relevant persons, including the Secretary of State.
10. This provision aims to respond to increasing public criticism of the performance of water companies and ensure there is greater accountability for directors and chief executives.

Justification for taking the power

11. The power will ensure that Ofwat are able to set rules to hold companies and their directors and chief executives to account for poor performance, and to enable consumers to be more involved in decisions. As the independent regulator, Ofwat requires flexibility to be able to design the rules as they see fit.

Justification for the procedure

12. The Department considers that Ofwat must be capable of setting rules and updating them promptly if required over time. The Department’s view is that Ofwat should be able to set rules without any parliamentary procedure, as is the case for other rules it issues e.g. under s40E of the WIA 91. Ofwat, before issuing rules, must consult relevant persons set out in new section 35C(2).

Clause 2 – Power of Direction to specify matters to be included in a Pollution Incident Reduction Plan

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary Procedure: None

Context and Purpose

13. New section 94EA(1) of the WIA 91, introduced by clause 2 of the Bill, places a duty on sewerage undertakers to prepare and publish an annual Pollution Incident Reduction Plan. A Pollution Incident Reduction Plan is a plan for how the sewerage undertaker will reduce the occurrence of pollution incidents that are attributable to its sewerage system. The aim of this duty is to require sewerage undertakers to review the pollution incidents that have occurred in previous years, and put together action plans that are designed to address these incidents through new processes and ensure they do not reoccur in future. The duty also requires water companies to publish this review.
14. This clause includes a power of direction included at new section 94EA(4)(h) to specify any matters to be included in a Pollution Incident Reduction Plan, in addition to those set out at subsection (4)(a) to (g).

Justification for taking the power

15. The Department considers this power to be justified on the basis that it would ensure that the contents of a Pollution Incident Reduction Plan can be extended to matters which the Secretary of State considers ought to be included. The key material to be included within a Pollution Incident Reduction Plan is set out on the face of the legislation, including requirements to include information as to the frequency and seriousness of pollution incidents, together with an assessment of the measures required to prevent such incidents from reoccurring. This power is therefore only considered to be an ancillary power, where the measures included in the Pollution Incident Reduction Plan do not effectively capture the nature and seriousness of pollution incidents. The power is accompanied by a duty for the Secretary of State to consult with the EA prior to making a direction.

Justification for the procedure

16. This power is intended to be used exceptionally, and only in circumstances where the Secretary of State considers water companies to have failed to include material relevant to the function and purpose of a Pollution Incident Reduction Plan.
17. There is no parliamentary procedure required for giving directions under the WIA 91, and the Department does not consider that the nature of the direction proposed would require a departure from that position.

Clause 3 – Emergency Overflows

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

18. New section 141F, as inserted by clause 3, requires sewerage undertakers to publish information related to discharge activities at emergency overflows, which are types of apparatus which operate in an emergency event. The operation of emergency overflows seeks to ensure that incidents such as electrical power failures at sewage disposal works do not result in wastewater discharging through other types of water outlets such as taps or drains. The purpose of this provision is to improve transparency around the operation of emergency overflows, supporting regulators in ensuring that the use of these overflows is not relied on in non-emergency circumstances.
19. The delegated power in subsection (5) of new section 141F will allow Ministers to create narrow exceptions for these requirements in circumstances where it may not be feasible to install the appropriate monitoring technology. The provision is intended to reflect a similar delegated power taken in relation to section 81 of the Environment Act 2021, which enables the Secretary of State to create an exception in relation to non-emergency storm overflow assets, considered necessary for similar reasons.

Justification for taking the power

20. The Department's view is that this power is necessary to ensure that the duty does not have unintended consequences, for example in circumstances where the installation of relevant monitoring technology would be infeasible. A further example would be where data is no longer needed, for example where an emergency overflow is due to decommissioned or where there is a provably low discharge rate.

Justification for the procedure

21. The Department's view is that the regulations prescribing exemptions to the duty are likely to be of particular interest to Parliament and therefore has proposed that the regulations be subject to the draft affirmative resolution procedure, reflecting the procedure adopted for regulations made under section 81 of the Environment Act 2021.

Clause 6 – Automatic penalties for certain offences

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

22. Regulators (which includes the Environment Agency (“EA”) and Natural Resources Body for Wales (“NRBW”)) can issue unlimited Variable Monetary Penalties for moderate-to-severe offences, but these usually require lengthy investigations as they tend to be issued for more serious offences. There are limited powers to issue Fixed Monetary Penalties which could be issued more rapidly for frequent, minor-to-moderate offending. Currently, the cap for fixed penalties issued is small (less than £1,000), the evidential burden is high (criminal rather than civil), and regulators are unable to issue these penalties in the water sector. This has been identified as a gap in regulators’ enforcement capabilities.
23. Clause 6 requires regulators to impose automatic penalties unless an exception applies. The list of specific water industry offences for which the automatic penalties can be issued will be set out in regulations using a new delegated power in the Bill. A duty is considered necessary to ensure penalties can be issued quickly and uniformly.
24. In a related strand of work, existing delegated powers contained in the Pollution Prevention and Control Act 1999 will be used to impose deemed conditions on environmental permits. This work will allow automatic penalties to be applied where water companies breach conditions of their environmental permits under the Environmental Permitting (England and Wales) Regulations 2016.

Justification for taking the power

25. The Department considers a delegated power to be justified as it aligns with the model set out at Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (“RES Act”), which prescribes the offences to which sanctions created under the Act may be applied. This model is considered to provide an appropriate means by which the application of automatic penalties can be properly and effectively applied by the EA and NRW on an ongoing basis.
26. Additionally, the power will permit penalties to be employed against offences intended to be ‘deemed’ into environmental permits. As such, it will offer the Secretary of State the opportunity to review the list of offences to which automatic penalties can be applied where the behaviour and nature of offences committed by the industry evolve.

Justification for the procedure

27. The Department’s view is that making provision for imposition of civil sanctions in respect of specified offences is a matter that warrants close Parliamentary scrutiny and time for debate, and so has proposed that the regulations are subject to the affirmative procedure.

Clause 7 – Abstraction and impounding: power to impose general conditions

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

28. The Water Resources Act 1991 (“WRA 91”) provides for the licensing of abstraction and impounding activities. Abstraction and impounding licences may be issued under the WRA 91 subject to conditions.
29. Clause 6 provides that abstraction and impounding offences under sections 24 and 25 of the WRA 91 may be subject to the duty to impose a Fixed Monetary Penalty, if specified in regulations made under clause 6. The purpose of clause 7 is to enable those regulations to specify abstraction and impounding offences where such offences are committed by breaches of standardised conditions that will apply across abstraction or impounding licences.
30. Accordingly, clause 7 inserts a new delegated power into the WRA 91 (section 46B: Power to impose general conditions with respect to licenced activity by water companies) to enable the Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) to make regulations securing that water industry licences for abstraction and impounding have effect subject to conditions or rules of general application.

Justification for taking the power

31. The new WRA 91 power reflects powers in subsequent Acts regarding environmental permitting; the Pollution Prevention and Control Act 1999 and the Water Act 2014. The Department’s view is that a similar power is needed in the WRA 91 to enable more effective enforcement of water industry abstraction and impounding licences. The new power will enable the Secretary of State and the Welsh Ministers to apply new general rules and conditions to licences and therefore identify such rules and conditions as appropriate for enforcement by way of a Fixed Monetary Penalty under clause 6.
32. Consistent with existing powers, the Department’s view is that it is appropriate to specify general rules or conditions in secondary legislation. Such rules or conditions would be enforced by the EA or the NRW and may require amendment from time-to-time to reflect developments in enforcement practices and any changes in water industry behaviour. If primary legislation were required on each occasion that a new condition or rule were amended, removed or added, this would be unduly onerous and impede effective enforcement.
33. The power is limited to the narrow purpose of making provision to secure that water industry licences have effect subject to conditions specified in, or rules specified in or made under, regulations. The form and content of licences is otherwise subject to section 46 of the WRA 91.

Justification for the procedure

34. The Department proposes that regulations made under the new WRA 91 power will be subject to the negative procedure. The Department considers that the exercise of such a narrow, limited power to set out the detail of general conditions and rules to be enforced by the relevant agency does not warrant close Parliamentary scrutiny. This is consistent with the procedure applied to precedent powers, for example section 61 of (and paragraph 8 of Schedule 8 to) the Water Act 2014, which are also subject to the negative procedure.

Clause 8 – Charges in respect of Environment Agency and Natural Resources Body for Wales functions

Power conferred on: EA and NRBW

Power exercised by: Charging scheme

Parliamentary procedure: No parliamentary procedure

Context and purpose

35. Under section 41 of the 1995 Act, the EA and NRBW can create charging schemes in respect of a wide range of their functions.
36. Clause 8 amends section 41 to enable the EA and NRBW to recover from water companies (as defined in the clause) more of their enforcement costs when performing their functions relating to regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016 (prohibition of unlicensed water discharge or groundwater activity), new section 94EA of the WIA91 (pollution incident reduction plans for England), and relating to the provisions contained in Chapters 2 and 3 of Part 2 of the WRA 1991 (water abstraction and impounding; drought orders and drought permits).

Justification for taking the power

37. The provisions in clause 8 extend an existing delegated power, rather than creating a new delegated power.
38. The EA and NRBW already have powers through the 1995 Act to create charging schemes in respect of a wide range of functions. Clause 8 extends those powers to ensure that EA and NRBW can recover enforcement costs from water companies. The extension of this existing power ensures the cost recovery powers of EA and NRBW are aligned to their full range of enforcement activities, as is the case for other charge funding schemes such as for waste enforcement.
39. The EA and NRBW propose charging schemes as the respective environmental regulators in England and Wales. Any charging scheme proposed must be approved by the Secretary of State or Welsh Ministers respectively (section 42 of the 1995 Act). Prior to this approval, the EA and

NRBW must consult on their proposals and the Secretary of State is required to consider any representations made during the consultation. HM Treasury must also consent to the creation of a new charging scheme. The Department considers that these existing safeguards are sufficient, in line with the existing legislative framework.

Justification for the procedure

40. The procedure for the existing delegated power in the 1995 Act is not affected by the expansion of the power as enabled by this Bill.

Clause 9 – Drinking Water Inspectorate: functions and fees

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative resolution procedure

Context and purpose

41. Under section 86ZA of the WIA 91, the Secretary of State and Welsh Ministers may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed under section 86. The Water Quality and Supply (Fees) Order 2016 is the statutory instrument which lays out specific functions and fees attributed to those functions.
42. Clause 9 amends section 86 of the WIA 91 to extend the purposes for which inspectors may be appointed to include functions relating to directions given by the Secretary of State under section 208 of the WIA 91. The clause also amends section 86ZA to clarify that a fee may be charged both for a specific occasion where a power is exercised and to cover the general exercise of the function over a period of time.
43. The purpose of the amendments is to ensure that fees can be charged where the Drinking Water Inspectorate (“DWI”) undertakes functions, such as ensuring compliance, concerned with directions under section 208 of the WIA 91 (directions in the interest of national security).

Justification for taking the power

44. The provisions in clause 9 extend an existing delegated power, rather than creating a new delegated power.
45. Clause 9 extends the existing power in the WIA 91 to enable the DWI to recover costs from water companies that relate to national security directions. This will ensure the cost recovery powers of the DWI are aligned to their full range of regulatory functions, as is the case for other charge funding schemes such as for waste enforcement activities.

Justification for the procedure

46. The procedure for the existing delegated power in the WIA 91 is not affected by the expansion of the power as enabled by this Bill.

Clause 13, subsections (3)-(8) – Commencement

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: None

Context and Purpose

47. Clause 13(3)-(6) and (8) contains a series of standard powers for the Secretary of State and Welsh Ministers to bring the Bill into force by commencement regulations. As set out in subsection (2) of clause 13, a number of provisions come into force on the day on which the Act is passed, but subsection (3) specifies that clauses 1, 2 and 3 come into force on such day as the Secretary of State appoints. Corresponding powers are provided for Welsh Ministers in respect of clauses 1 and 3. Subsection (7) enables the provisions in clause 3 to be partially commenced where it is appropriate to phase the introduction of new requirements on water companies, allowing the Secretary of State and Welsh Ministers to draw on the knowledge of the EA and NRBW respectively when exercising their powers.

Justification for taking the power

48. This power will enable the Secretary of State and Welsh Ministers to commence those provisions of the Bill not included in subsections (2) and (5) at an appropriate time.
49. Subsection (7) will allow provision to be made in commencement regulations by reference to the regulator's (EA or NRBW) determination of the phased introduction of new requirements on water companies to report in near-real time on discharges from emergency overflows (as introduced by clause 3) so that the requirements are deliverable when considering supply chain constraints. The purpose of this provision is to ensure that the regulator can establish criteria for prioritising the sites at which the duty in clause 3 can be properly applied, noting the significant costs associated with procuring and installing infrastructure required to ensure compliance with the duty, taking account of matters such as proximity to sites with particular ecological sensitivity or overflows which have any geographic barriers to installing monitors such as land access issues. Such matters would require reliance on the regulator's expertise.

Justification for the procedure

50. Consistent with common practice, commencement regulations under this clause are not subject to any parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; commencement by regulation enables the provisions to be brought into force at the appropriate time.

Department for Environment Food and Rural Affairs
4 September 2024

Annex A – Summary of Legislative Delegated Powers

Clause	Power conferred	Parliamentary procedure
Clause 1	A power conferred on Ofwat to make rules for water companies about remuneration and governance.	None
Clause 2	A power conferred on the Secretary of State to make directions to specify any additional matters to be included in a Pollution Incident Reduction Plan.	None
Clause 3	A power conferred on the Secretary of State or Welsh Ministers to make regulations which will provide narrow exceptions to the requirement for water companies to report monitoring data from monitors at emergency overflows in near real time.	Affirmative resolution procedure
Clause 6	A power conferred on the Secretary of State or Welsh Ministers to make regulations about the list of specific water industry offences for which the new automatic penalty regime will apply.	Affirmative resolution procedure
Clause 7	A power inserted into the Water Resources Act 1991 and conferred on the Secretary of State or Welsh Ministers to make provision in regulations for conditions or rules of general application to apply to abstraction and impounding licences.	Negative resolution procedure
Clause 8	An extension to existing powers conferred on EA and NRW through section 41 of the 1995 Act to recover enforcement costs from water companies	None
Clause 9	An extension to an existing power conferred on the Secretary of State in section 86ZA of the Water Industry Act 1991 to enable the DWI to recover the costs of exercising its functions.	Negative resolution procedure
Clause 13, subsections (3) and (4)	Powers conferred on the Secretary of State and Welsh Ministers to bring the Bill into force by commencement regulations.	None

Annex B – Non legislative powers taken

Clause 2(2) – Power to issue statutory guidance in relation to Pollution Incident Reduction Plans

Power conferred on: Environment Agency

Power exercised by: Issuing guidance

Parliamentary Procedure: None

Context and Purpose

51. New section 94EA(6) requires sewerage undertakers to have regard to guidance issued by the EA when carrying out their duty under section 94EA(1) to prepare and publish an annual Pollution Incident Reduction Plan. This is in addition to provisions included at section 94EA(4) which outline what the plans must contain.

52. It is anticipated that the EA will develop public guidance, including detail as to the best practices for developing and presenting information for the purposes of the Pollution Incident Reduction Plan in relation to matters such as best practices or technological methods for recording certain types of pollution incidents. The Department considers it to be justified to mandate that sewerage undertakers pay regard to any such guidance published.

Justification for taking the power

53. The Department is of the view that it is necessary that the EA has a means of informing sewerage undertakers of its expectations as the environmental regulator, and has a means of influencing the way in which the duty is complied with. The Department accepts that sewerage undertakers may disagree with the regulators' views, and therefore mandatory rules are not considered appropriate in the circumstances.

54. It is necessary to enable EA to supply water companies with detailed guidance, rather than setting this detail out on the face of the Bill, to ensure that the detailed guidance remains relevant in the face of changing expectations on the water industry and new technological developments, among other things.

Justification for the procedure

55. The guidance cannot create new law or amend existing law, and so the Department considers that parliamentary oversight is not necessary.

Clause 5 – Civil penalties: modification of standard of proof

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

56. Clause 5 makes a non-textual amendment to sections 39(2) and 42(2) of the RES Act such that those powers (which enable the EA and NRBW to impose fixed and variable monetary penalties) may be exercised so as to enable the EA and NRBW to apply a civil standard of proof for offences committed by water and/or sewerage undertakers or by water and/or sewerage licensees. The Department intends to rely on delegated powers conferred by sections 36 and 62 of the RES Act to specify the offences which fall within scope of the provision. The purpose of this provision is to support effective enforcement of water industry offences by enabling the EA and NRBW to issue penalties using a standard of proof that is proportionate to the offence.

Justification for taking the power

57. The Department does not propose to take new powers in relation to this measure, but rather to apply amendments to existing powers set out in the RES Act in order to ensure that the relevant policy objectives are met. This is to avoid having to apply lengthy and intensive procedural requirements to low level environmental offences, in such circumstances where it is considered disproportionate to do so. The Department considers the framework established under the RES Act provides the Government with a broad discretion to determine when civil penalties can be imposed. Taking this approach permits the proposed penalty framework to be applied in a way which permits the policy objective to be met, noting that a number of other sectors have adopted similar approaches in respect of civil sanctions applied under the RES Act model.

58. The power provided is limited to a narrow list of offences set out on the face of the Bill. It would be inappropriate to set out each of the circumstances in which the EA and NRBW apply the civil standard for these offences, as it would result in a fixed power which would not adapt to address ongoing and evolving concerns with the industry's conduct. Parliamentary scrutiny of the circumstances in which the amended standard of proof will be applied is considered to be appropriate and desirable.

Justification for the procedure

59. Sections 61 and 62 of the RES Act sets out the affirmative procedure for statutory instruments made under this section, and the Department does not see any basis for departing from this position.

Clauses 10 and 11 – Modification by Secretary of State or Welsh Ministers of water company's appointment conditions etc to recover losses

Power conferred on: The Secretary of State and the Welsh Ministers

Power exercised by: Amending water company licences

Parliamentary Procedure: None

Context and Purpose

60. Clause 10 inserts new sections 12J and 12K into the WIA 91 to allow the Secretary of State to make modifications to water company ('undertakers') conditions of appointment. Specifically, it allows the Secretary of State to modify the charges undertakers impose on customers to recover any shortfall in the recovery of sums of financial support which the government had provided to water undertakers and/or their administrators in the course of administration under the Water Industry Special Administration Regime (SAR) (under section 153 of the WIA 91).
61. Clause 11 inserts sections 16C and 16D into the WIA 91 to confer the same power to Welsh Ministers.

Justification for taking the power

62. A water company special administration is an exceptional event. There has not been one in the 35 years since water company privatisation. During that time, SARs have been updated or introduced in other sectors, leaving the water industry SAR out of step with equivalent essential service sectors. Introducing this power aligns the regime with sectors such as energy where the Secretary of State has wide powers to recover unmet costs through licence modifications (see section 169 Energy Act 2004, for example).
63. Government funding is usually required during a SAR to cover the costs of the special administration. Government would aim to recoup all of its financial assistance at the end of a SAR (and HMG/Welsh Government funding ranks highly in the post-SAR repayment hierarchy). However, if there were to be a shortfall in the insolvent estate to pay all administration expenses (i.e. the water company sold for less than government put in) under existing legislation the Secretary of State/Welsh Ministers do not have powers to modify undertaker licences to ensure repayment of the financial assistance provided. This means there is currently a risk to HMG/Welsh Government funds if a SAR was triggered.

Justification for the procedure

64. If it is used, the power is intended to allow the Secretary of State/Welsh Ministers to modify the conditions of a specific undertaker's appointment in a manner specific to the circumstances of that company and the outcome of a given administration. A similar licence-modification approach is taken by sections 168 and 169 Energy Act 2004 in respect of gas and electricity licences.
65. As a result, a power in a manner of those already provided for Ofwat under the WIA 91 (section 12A) is appropriate and a Parliamentary procedure is considered disproportionate and unnecessary. No Parliamentary procedure is provided for the exercise by Ofwat of its powers to modify the conditions of undertakers' appointments. Instead, these clauses include procedural

requirements subject to certain minimum timescales: the Secretary of State must publish an intended modification in such a way as to make it known to those who would be affected by it; solicit representations from those persons; consider those representations; and publish the modification with an explanation of the reasons for its variance, if any, from the modification originally proposed.