



Department
for Environment
Food & Rural Affairs

Impact Assessment for the Water (Special Measures) Bill

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Final stage impact assessment

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The impact assessment for the Water (Special Measures) Bill has been issued a green fit-for-purpose rating by the Regulatory Policy Committee. Please find the full [Regulatory Policy Committee's opinion](#) on GOV.UK.

1. Summary of proposal

Summary and introduction of measures:

The Water (Special Measures) Bill ('the Bill') was introduced into Parliament on 4 September 2024. Concerns have been widely expressed about the performance of the water industry, particularly in relation to their record on pollution¹².

The Bill seeks to deliver on the Government's commitment to put failing water companies under special measures to clean up our water and seeks to ensure water companies are better held to account where they have failed to deliver for the environment and consumers. The Bill builds on Defra Secretary of State's immediate actions, announced on 11 July, to improve the performance of the water industry, putting consumers and the environment first³.

The Bill includes provisions to enable a series of measures to deliver on these commitments by:

- providing powers for Ofwat to make rules on remuneration and governance for water companies and requiring Ofwat to make rules:

¹ [Water \(Special Measures\) Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

² [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

³ [Government announces first steps to reform water sector - GOV.UK \(www.gov.uk\)](#)

- banning bonuses for persons holding senior roles where companies fail to meet required standards relating to consumer matters, the environment, financial resilience or criminal liability;
- introducing standards of fitness and propriety for water company executives;
- ensuring consumer representation on water company boards.
- extending the sentencing power of the Courts to include imprisonment in all cases where the Environment Agency, Natural Resources Body for Wales and Drinking Water Inspectorate investigations have been obstructed by individuals;
- enabling automatic penalties to be issued by the Environment Agency and Natural Resources Body for Wales for a defined list of offences;
- lowering the standard of proof for Environment Agency and Natural Resources Body for Wales civil sanctions to enable more rapid penalties to be issued for minor to moderate offences;
- requiring publication of near real-time data on discharges from emergency overflows;
- requiring water companies to produce annual pollution incident reduction plans;
- introducing a new power for the Environment Agency and Natural Resources Body for Wales to recover costs from water companies for enforcement activities;
- allowing for improved cost recovery for the Drinking Water Inspectorate;
- modification of water company licences to allow the recovery of any shortfall after government-funded water company administration; and
- ensuring His Majesty's Government (HMG) and Ofwat are notified ahead of any winding up petitions.

Throughout this impact assessment, these measures – and the clauses they are enabled by – are referred to by the titles outlined in [Annex A](#).

The Bill has been designed to deliver the following objectives to turn around the performance of the water industry as a first step in enabling long-term and transformative change across the water sector:

- **Drive forward water company behavioural change and increase accountability at a company and individual level** by providing Ofwat with new powers to set rules on performance-related pay and extending sentencing powers to deter future obstruction of Environment Agency (EA), Natural Resources Wales (NRW) and Drinking Water Inspectorate (DWI) investigations.
- **Strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions** by enabling automatic penalties to be issued for certain offences, introducing a lowered standard of proof for variable monetary penalties issued for certain offences, and allowing for improved cost recovery for the EA and DWI.
- **Hold companies to account for reducing pollution incidents by improving transparency** through the introduction of a duty on water companies to produce pollution incident reduction plans and a requirement to publish monitoring data from all emergency overflows.
- **Modernise the water industry Special Administration Regime (SAR) and ensure funding from the taxpayer is protected** by providing Secretary of State (SoS) and Welsh Ministers with the power to modify water company licences to recover a shortfall from individual water companies, and through ensuring that government and Ofwat will be notified of any winding-up petitions.

This document sets out the rationale for intervention as well as the intended change the Bill will drive and presents the predicted impacts for each measure as well as for the Bill as a whole.

The Bill is composed of new requirements, duties and powers that will be directly implemented through primary legislation or established through the implementation of associated secondary

legislation, which will give full effect to the Bill. Estimates of the likely impacts of these new requirements, duties and powers have been made where possible. In cases where the Bill seeks to meet an outcome through subsequent secondary legislation, an indicative analysis of the impacts is provided. Measures requiring secondary legislation that are subject to consultation will be subject to the necessary options appraisal following this. An analysis of the expected impacts of the secondary legislation will be completed when secondary legislation is introduced where impacts are projected to be above the de minimus. The indicative analysis contained in this impact assessment should therefore be used with caution as to not preclude the outcomes from forthcoming consultations. An implementation plan for these measures in Wales is for Welsh Government to consider and therefore the impacts considered are mainly focused on England.

Figures and text marked with an asterix (*) are subject to consultation.

2. Strategic case for proposed regulation

Rules about remuneration and governance

What is the problem? Environmental water industry performance is lagging overall while, at the same time, some water company executives have continued to take home significant bonuses. This is driving a lack of trust between consumers and the water industry.

What evidence is there to support this? The number of serious pollution incidents remains high, (e.g. rising from 44 to 47 between 2022 and 2023)⁴. Despite a decrease from 2011-2015, total pollution incidents have seen little improvement since 2015⁵. There have also been major enforcement cases against companies⁶. At the same time, public trust is low. In a recent survey by Ofwat, less than a quarter of respondents said they trust their water provider to do what is right for the environment⁷. Low public trust is likely to be exacerbated by reporting on company bonuses and planned bill increases. Despite reported performance issues, £5 million was paid out in bonuses in 2023/24⁸. Based on Ofwat's Draft Determinations, bills are due to rise by an average of £19 a year between 2025-2030⁹. This reflects a planned £88 billion of spending over Price Review 2024 (PR24).

Why is government action needed? To tackle these issues, a new legal framework is needed to hold companies and their executives accountable for remuneration and governance. Remuneration would cover performance related pay for water company executives to bring better alignment with company performance. Governance would cover the standards and structures executives are subject to. By providing Ofwat with new powers in this space, Ofwat can take strong action against companies and their executives when performance is poor. This in turn is expected to help secure improved public trust, by demonstrating that company executives are subject to robust governance requirements (e.g. standards of fitness and propriety) and involving consumers in decision-making. Currently, Ofwat lacks levers to implement these policies.

What harm/gaps would arise without action? Ofwat lacks a secure and direct power to do this at present, since it would need to set these additional rules around remuneration and governance

⁴ [The Environment Agency has published its annual Environmental Performance Assessment \(EPA\) report – Defra in the media \(blog.gov.uk\)](#)

⁵ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

⁶ [Thames, Yorkshire and Northumbrian Water face £168 million penalty following sewage investigation - Ofwat](#)

⁷ [Customer trust and satisfaction in water companies falling in latest Ofwat and CCW research - Ofwat](#)

⁸ Ofwat data

⁹ [Ofwat sets out record £88 billion upgrade to deliver cleaner rivers and seas, and better services for customers - Ofwat](#)

through general licence modifications. Licence modifications are subject to appeal to the Competition and Markets Authority by companies wholly or mainly in England, cannot be proceeded with without the agreement of companies wholly or mainly in Wales and take time to implement. In addition, without this additional intervention through legislation, there may be a continued perception of a lack of accountability due to the challenges of holding companies and executives accountable for poor performance. Public trust will also be at risk, for example, where executives receive bonuses that are not perceived to reflect company performance.

Pollution Incident Reduction Plans

What is the problem? Pollution incidents, for example from sewage spills, damage the environment and can pose a risk to human health. Pollution incidents (including serious incidents) remain unacceptably high. There is a lack of transparent, comparable information on the actions water companies are taking to mitigate these incidents. This impedes the ability of government, regulators and the public to assess performance of companies on a consistent basis.

What evidence is there to support this? In recent years the total number of water quality pollution incidents from sewerage and water supply assets have been increasing. Total pollution incidents from sewerage and water supply assets (category 1 to 3) increased to 2,174 in 2023 an increase from 2,026 in 2022, 1,883 in 2021 and 1,919 in 2020^{10,11,12}. This represented the second consecutive annual increase and highest number recorded since 2019. The number of serious incidents (category 1 and 2) in 2023 was 47, an increase from 44 in 2022¹³. This indicates that company action to reduce pollution incidents may be insufficient.

Why is further government action needed? Government intervention is required to set clear, enforceable expectations for sewerage undertakers to produce high quality plans that assess the impact the actions will have on reducing pollution incidents and regularly report progress of these actions. This will mean the plans are produced on a more frequent basis which in turn will lead to increased transparency and scrutiny over how water companies address pollution. Currently, EA does not have any recourse if water company plans do not meet the expectations set out in the non-statutory guidance. Providing a statutory duty will enable the EA to take enforcement actions do not comply with the duty.

What harm/gaps would arise without action? Whilst sewerage undertakers currently produce Pollution Incident Reduction Plans (PIRP) on a non-statutory basis, different undertakers produce them at different frequencies, the impact of the proposed actions is not always clear and there is no mechanism for regulators or the public to check that sewerage undertakers have taken the actions they have committed to in these plans. The policy will also ensure that PIRPs are more effective. Currently their quality can vary, and the information provided by each water company detailing interventions varies. A statutory duty will provide clear expectations to sewerage undertakers and, unlike voluntary measures, ensure that EA are able to use enforcement action to ensure that these duties are adhered to. Better quality information will improve our understanding of industry delivery and oversight of the follow up actions companies take to address the root causes.

¹⁰ Definition of pollution incident categories using the [Common Incident Category Scheme](#) (2016)

¹¹ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

¹² [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

¹³ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

Monitoring of Every Outlet

What is the problem? Discharges from emergency overflows are not fully monitored and there is limited incentive (and no requirement) for sewerage undertakers to regularly publish this information. By contrast, monitors have been installed on 100% of storm overflows, and there will be a duty on sewerage undertakers to publish discharge data from storm overflows in near real-time from 1 January 2025¹⁴. Emergency overflows are permitted at approximately 7,000 pumping stations in England¹⁵. Discharges from emergency overflows can cause ecological harm and pose a risk to public health given discharges of raw sewage can contain a high level of harmful pathogens, such as viruses and bacteria. This policy seeks to improve transparency around discharges of raw and partially treated sewage from emergency overflows.

What evidence is there to support this? In order to meet the duty publishing requirements, water companies must install monitors at their emergency overflows. There are costs associated with installing event duration monitors at emergency overflows and additionally flow monitors for overflows that operate as both emergency and storm overflows. The rollout of the installation of monitors on emergency overflows is to be introduced by way of Environment Agency permits, which is included in the Water Industry National Environment Programme (WINEP)¹⁶. The total direct costs to businesses associated with the installation of monitors at 50% of emergency overflows by 2030, and 100% by 2035, are expected to be between £440m - £660m. Given these associated costs, there is limited incentive without government action for water companies to increase installation of monitors to 50% of emergency overflows by 2030 and publish how often these overflows are discharging in near real-time.

Why is government action needed? Government intervention is required to ensure that sewerage undertakers collect & publish information on discharges from emergency overflows in a consistent and accessible manner and within an hour of a discharge occurring. This will increase transparency on the frequency and duration of these discharges, which will allow regulators and the public to scrutinize the data available and hold water companies to account for any misuse in emergency overflows.

What harm/gaps would arise without action? There is a gap in sewerage undertakers, regulators and the public's understanding of discharges from emergency overflows into waterways. This reduces the ability to prioritise action to reduce discharges and remediate their impact. Further information is outlined in the evidence base.

Obstruction Sentencing Power

What is the problem? The EA, NRW and the DWI provide 'boots-on-the-ground' investigations into water companies to ensure that they are meeting their duties. However, the regulators have faced challenges with companies 'obstructing' investigations, which may include actions such as providing false information, preventing access to a site, or removing samples. This behaviour may have undermined efforts to prosecute companies and executives for wrongdoing. It has also meant that offences may not be fully 'punished', because it is cheaper to obstruct than to face the full consequences of the law. In the EA's view, one driver for this obstructive behaviour is that the penalty for obstruction is lower than the penalty for environmental offences. While it is an offence to obstruct the EA, NRW and the DWI this offence is only punishable by a fine and not imprisonment; and there are no routes to prosecuting executives who directly obstruct investigations.

What evidence is there to support this? As an example, the EA has undertaken two prosecutions in recent years for obstruction in the water industry. In May 2024, Anglian Water was prosecuted

¹⁴ [The Environment Act 2021 \(Commencement No. 9 and Transitional Provisions\) Regulations 2024](#)

¹⁵ Internal Environment Agency data

¹⁶ [Water Industry National Environment Programme \(WINEP\)](#)

and fined for obstruction when they failed to comply with a requirement to provide records to the EA¹⁷. In 2019, the EA prosecuted five individuals from Southern Water for obstruction when they removed samples from the possession of EA officers, two of whom successfully appealed their convictions¹⁸.

Why is government action needed? To deter obstructive behaviour, and thereby enable regulatory investigations, the penalty for obstruction needs to be strengthened. This is necessary for bringing prosecutions against companies and individuals, holding them accountable for wrongdoing. Introducing a new consent, connivance and neglect provision in tandem will ensure that executives, for example, are held accountable for obstructive behaviour.

This intervention would also bring the water industry in line with other sectors. Investigatory agencies such as the Health and Safety Executive and the Serious Fraud Office already have imprisonment as the penalty for obstruction. These changes cannot be made without legislation, as they require updating the sentencing powers of the courts.

What harm/gaps would arise without action? Without intervention, companies may continue to obstruct the regulators. This would impair the ability of the regulators to conduct robust investigations, and thereby hold companies and executives accountable for wrongdoing.

Lowering the Standard of Proof

What is the problem? Whilst the regulators have range of powers to impose monetary and non-monetary sanctions against minor offences, to impose a monetary penalty they must prove to a criminal standard (“beyond reasonable doubt”) that an offence has occurred. This is resource intensive in comparison to the level of offence being enforced and size of the penalty issued, meaning financial penalties are often not used.

What evidence is there to support this? Minor and moderate offences make up the majority of water industry non-compliance, with 98% of pollution incidents in England in 2023 being classified as categories 3 and 4 harm¹⁹. One of the key existing enforcement and sanctions levers to target less serious offences is enforcement undertakings; however, the EA accepted just 5 enforcement undertaking offers in 2023²⁰.

Why is government action needed? Allowing penalties to be issued on a lower standard of proof, targeted at minor to moderate offences, enables the EA to impose quick and proportional penalties and ensures negative externalities resulting from water industry activity – across all seriousness levels – are appropriately enforced. This in turn would incentivise improved compliance and reduce instances of environmental harm.

What harms/gaps would arise without action? Without government intervention, minor to moderate offences can occur without penalty, or require lengthy, costly legal proceedings with no guarantee of success.

Automatic Penalties

What is the problem? As with the modification of standard of proof measure, in order to impose a civil penalty, regulators must prove it to a criminal standard of proof, making the process resource

¹⁷ [Anglian Water Services Ltd fined £50k in case brought by the Environment Agency – Creating a better place \(blog.gov.uk\)](#)

¹⁸ EA

¹⁹ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

²⁰ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

intensive. As such, regulators' current powers render them unable to quickly issue proportionate penalties for frequent minor to moderate offences with little or no environmental harm which can escalate into more serious offences if not addressed promptly.

What evidence is there to support this? Minor and moderate offences make up the majority of water industry non-compliance, with 98% of pollution incidents in England in 2023 being classified as categories 3 and 4 harm²¹.

Why is government action needed? Existing legislation provides for new financial sanctions to be introduced although it is worth noting that automatic penalties are not appropriate for all offence types. Amending existing legislation to enable the use of automatic penalties to a civil standard of proof for specific offences will strengthen the regulator's existing enforcement regime and drive improvements in environmental performance.

What harm/gaps would arise without action? If no action is taken to address the justice gap identified, minor-moderate offences will continue to occur which often escalate to more serious breaches that result in more significant environmental harm.

Cost Recovery Power

EA/NRW Cost Recovery Power

What is the problem? Current cost recovery powers are insufficient to enable the EA to recover their full costs related to water company enforcement. This means that the EA is funded through Grant in Aid (GiA) for their water company enforcement activity. Water companies are continuing to breach environmental obligations for which the EA investigate and undertake enforcement action.

What evidence is there to support this? The EA collects charges from operators in England through the EA (Environmental Permitting and Abstraction Licensing) (England) Charging Scheme (EPR Charging Scheme)²². The 2024 update to the EA water quality charges are funding the EA to scale up regulatory effort, and EA has committed to delivering 4,000 inspections by the end of 24/25 and 10,000 by the end of 25/26²³. The new charges provide an additional income of £55 million a year²⁴. Enforcement activities fall outside the current 'subsistence' scope and are government GiA funded.

Why is government action needed? EA water industry enforcement is currently funded through grant-in-aid funding from Defra, meaning the taxpayer ultimately pays the cost of any enforcement that the regulator undertakes. New legislation is required to give the EA the legal framework to update their charging schemes to cover water company enforcement costs.

What gaps/harm would arise without action? Without intervention, the EA will continue to be unable to recover their full costs related to their enforcement of water companies and will have to rely on government funding.

DWI Cost Recovery Power

What is the problem? The Security and Emergency Measures Direction (SEMD) is the direction which requires undertakers and licensees to maintain a water supply and/or sewerage system in the interests of national security or to mitigate the effects of any civil emergency which may occur. Oversight of SEMD was conferred from Defra to the Drinking Water Inspectorate (DWI) in 2022 giving them powers to exercise their functions in the context of civil emergencies in England and Wales. In executing these powers, the DWI is self-funded by the companies they regulate through the Water

²¹ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118111/water-and-sewerage-companies-in-england-environmental-performance-report-2023.pdf)

²² [Environmental permits and abstraction licences: tables of charges - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118111/environmental-permits-and-abstraction-licences-tables-of-charges-2024.pdf)

²³ [Inspection surge to crack down on water sector pollution - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/inspection-surge-to-crack-down-on-water-sector-pollution)

²⁴ [Water and sewerage companies in England: environmental performance report 2023, Section 11.2](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118111/water-and-sewerage-companies-in-england-environmental-performance-report-2023.pdf)

Quality and Supply (Fees) Order 2016²⁵. However, SEMD is not covered by the current Fees Order, meaning the DWI are not remunerated for their security and emergencies work.

What evidence is there to support this? In 2022 the DWI were delegated the responsibility for security and emergency work under section 208 of the Water Industry Act 1991 (WIA91)²⁶. Since then, the DWI has exercised functions under SEMD. Section 86ZA WIA91, which allows DWI to cost recover for its regulatory functions regarding water quality and sufficiency, does not extend to cost recovery for the SEMD work carried out by them, meaning that they are carrying out these functions without being properly remunerated.

What government action is needed? The fees which the DWI can recover are set by legislation. For the DWI to recover costs for the SEMD work they carry out from water suppliers, changes to both primary and secondary legislation are required. Without these changes the DWI will be unable to recover SEMD costs, impeding the growth and development of their SEMD work in a time of increasing risk to the water sector e.g. climate change, sufficiency, and security threats.

What gaps/harm would arise without action? Without these changes the DWI will be unable to recover SEMD costs, impeding the growth and development of their SEMD work. Currently only a small team of two full time employees are involved in this work for all companies in England and Wales. At a time of increasing risk to the water sector through increased security threats linked to geopolitical instability, as well as increasing natural hazards and sufficiency concerns linked to climate change enhanced scrutiny and regulatory intervention in this area is becoming increasingly important and will help ensure companies meet public expectations of uninterrupted and safe drinking water supplies.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

What is the problem? Currently, the SoS does not have the powers to require water companies to repay any shortfall incurred following a SAR. This differs from powers that exist under, for example, the energy SAR (Section 99, Energy Act 2011) where the SoS can modify the relevant company's licences to require the repayment of unrecovered SAR costs. Ofwat has powers to modify water industry company licenses, but use of these powers is resource intensive and can be challenged through the Competition and Markets Authority (CMA). The risk of challenge means these powers do not provide sufficient safeguard for government funds. Use of this power to recover SAR costs would also mean Ofwat making policy decisions about public resources more appropriate for government.

What evidence is there to support this? There is no equivalent legislative power for SoS to modify company licences in the water industry SAR compared to the energy sector. In November 2021 Bulb Energy Limited (Bulb) was taken into a SAR after falling into financial difficulties. The company has since been transferred out of SAR to Octopus Energy. Due to the exit arrangements agreed as part of this transfer, it has not yet been possible to calculate whether there is a shortfall. However, the Government has been clear from the start of this process that they will use a shortfall mechanism if necessary. On 3 October 2022, BEIS wrote to the Business, Energy and Industrial Strategy Committee as follows: "The Special Administration legislation enables the Government to recover any shortfall to the exchequer via the shortfall mechanism placed on suppliers. It is the Government's intention that any shortfall will be recovered in this way, but the timing of when that recovery begins, and the period over which the shortfall is recovered, are decisions that will be

²⁵ [Water Quality and Supply \(Fees\) Order 2016 - GOV.UK \(www.legislation.gov.uk\)](https://www.legislation.gov.uk)

²⁶ [Section 208 of Water Industry Act 1991 – GOV.UK \(www.legislation.gov.uk\)](https://www.legislation.gov.uk)

taken in due course, and in light of all relevant factors at that time”²⁷. This allowed government to proceed with the administration knowing that taxpayers’ money would be safeguarded and means they will be able to recover a shortfall if there is found to be one. Previous experience of CMA appeals shows they can be very expensive and resource intensive, which makes use of the Ofwat powers unsatisfactory.

Why is government action needed? It’s likely that government funding would be required during a water company SAR to fund the administration. Broadly speaking the funding provided by the Government is recouped at the exit of a SAR (for example, selling the company to new owners). However, there may be funding that is not fully recovered from the proceeds of a SAR. This will be taxpayers’ money, and it will be a government priority to recover it.

What harm/gaps would arise without action? Without this power the only option in the event of a shortfall at the end of a SAR would be a lengthy and resource intensive Ofwat licence modification process. There would be a risk that taxpayers’ money would not be recovered rather and that costs would not be contained within the water sector.

Winding-up petitions

What is the problem? There is no legal requirement for SoS or Ofwat to be notified in the event a water company or its creditors make a winding up petition to the court. There is also no statutory entitlement for SoS or Ofwat to be heard at the subsequent hearing. This means there is a risk, in the event of a water company insolvency, that government and Ofwat could be unaware that a water company was about to enter SAR. It could also mean government and Ofwat are unable to make their views and interests known to the court. It could increase the risk of a creditor funded SAR in which existing lenders could control reporting requirements and influence over the exit, diluting the public interest imperatives over the running of a SAR. Given the critical nature of water and wastewater services, it’s vital that government and Ofwat make the necessary preparations for a water company entering administration to ensure services are continued and environmental obligations are met.

What evidence is there to support this? There has never been a water industry SAR but this gap in the regime was identified as part of contingency planning conducted by Defra. The water regime has not been updated in line with other essential service sectors like energy.

Why is government action needed? While it’s likely that government and Ofwat would be notified and invited by the court to a winding up hearing, without a statutory requirement there is a residual risk that this doesn’t happen. Other SAR regimes like energy include this statutory requirement so the water SAR is currently an outlier in not including this. Such a requirement can only be introduced via primary legislation and, once it is, it will provide a safeguard against the risk of a SAR being triggered without Ofwat or government involvement.

What harm/gaps would arise without action? Without these guaranteed rights there is a risk of a SAR being triggered without government being notified and without the chance to be heard at court. Given the critical nature of water and wastewater services it’s vital that government is involved in the proceedings related to a potential administration to ensure the public interest is protected.

²⁷ [Business, Energy and Industrial Strategy Committee, Energy pricing and the future of the energy market: Responses to the Committee’s Third Report of Session 2022-23](#), Second Special Report of Session 2022-23, HC 761, October 2022.

3. SMART objectives for intervention

Through development of a Theory of Change for the Bill the following objectives were identified as the overarching intended outcomes:

1. **Drive forward water company behavioural change and increase accountability at a company and individual level** by providing Ofwat with new powers to set rules on performance-related pay and governance and extending sentencing powers to reduce the instances of obstruction in Environment Agency (EA), Natural Resources Wales (NRW) and Drinking Water Inspectorate (DWI) investigations.
2. **Strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions** by enabling automatic penalties to be issued, introducing a lowered standard of proof for investigations into certain offences, and allowing for improved cost recovery for the EA, NRW and DWI.
3. **Hold companies to account for reducing pollution incidents by improving transparency** through the introduction of a duty on water companies to produce pollution incident reduction plans and a requirement to publish monitoring data from all emergency overflows.
4. **Modernise the water industry Special Administration Regime (SAR) and ensure funding from the taxpayer is protected** by providing Secretary of State (SoS) and Welsh Ministers with the power to modify water company licences to recover a shortfall from the bill payers of individual water companies, and through ensuring that government and Ofwat will be notified of any winding-up petitions.

The below outlines how these objectives are going to be achieved through delivery of the measures covered by the Bill:

Rules about remuneration and governance

Policy objectives: Within Objective 1, the objective of this measure is to provide Ofwat with new rule-making powers on remuneration and governance with the outcome of supporting greater public trust; and encouraging improved environmental and operational performance by water companies. However, Ofwat is required to exercise its power to make rules in relation to prohibiting performance-related pay where specified standards are not met, applying a fit and proper persons test to those in senior roles and requiring consumer involvement in relevant company decision making.

Intended outcomes include poor performing companies being required to stop the payment of bonuses under defined circumstances (e.g. where standards specified in the rules in relation to the criminal liability of undertakers are not met); companies subjecting senior staff to more stringent assessments in terms of fitness and propriety, which may result in remedial action being taken against staff; involvement of consumers in decision-making. This may include consumer representation on company boards, committees or panels. This should result in improved higher executive accountability and governance of companies, which are the desired outcomes of Objective 1.

Indicators of success include an increase in public trust (e.g. as measured by public polls), and overall performance in the water sector (e.g. performance linked to environmental standards, financial resilience and consumer matters).

Pollution Incident Reduction Plans

Policy objectives: Within objective 3, the objective of this measure is to put PIRPs on a statutory footing, to ensure that every sewerage undertaker will publish a consistent and high-quality annual plan, setting out the actions they intend to take to reduce the frequency and severity of pollution incidents.

Intended outcomes include increased transparency and scrutiny of the water companies plans, reduction in the frequency and seriousness of pollution incidents, working towards achieving the desired outcomes of objective 3.

Indicators of success include the frequency and seriousness of pollution incidents being meaningfully reduced for a sustained period in the medium term onwards. This would indicate that sewerage undertakers are implementing these plans and the actions being implemented are effective at reducing pollution incidents. Additionally, regular publication of these plans may support different sewerage undertakers learning best practice from one another and improve public understanding and scrutiny of action to reduce pollution incidents. If sewerage undertakers develop a track record of delivering ambitious plans that meaningfully reduce pollution, this might manifest as improved trust in sewerage undertakers on this issue.

Monitoring of Every Outlet

Policy objectives: Within objective 3, the objective of this measure is to mandate the publication of near real-time information on the frequency and duration of all emergency overflows, this supports water companies', regulators and the public's understanding of discharges from emergency overflows.

Intended outcomes include regulators using this information to support assessment of compliance with legal requirements, and the public using this information to improve understanding on when there has been a recent discharge in their local area. Availability of near real-time data on the duration and frequency of discharges may help to inform the potential risks posed by these discharges in nearby waterways enabling improved public health outcomes. These would contribute to achieving objective 3.

Indicators of success include the use of online maps that show where discharges have occurred, like those used for storm overflows where discharge data is published in near real-time in a way that is readily understandable to the public, evidenced by public use. An additional indicator would be high quality data on discharges being used to support prioritization decisions for addressing the impact of emergency overflows.

Obstruction Sentencing Power

Policy objectives: The objective of the obstruction proposal is twofold: to ensure that the EA and DWI are able to deliver robust investigations by deterring companies and executives from obstructing; and for companies and executives to receive proportionate sentences if or when they do obstruct.

Intended outcomes: Based on discussions with the EA, the most likely outcome of this measure is that companies will be deterred from obstructive behaviour. This could have the secondary outcome of unblocking regulatory investigations, which may enable greater enforcement activity. In the long term, this could improve company performance. Where companies continue to obstruct the EA and DWI, an outcome may be greater sentences. This measure works towards achieving objective 1.

Indicators of success include a reduction in the number of prosecutions brought against individuals and companies for obstruction offences. Where obstruction does occur, a further indicator would be to see more severe sentences being handed out to companies and/or

prosecutions being brought against executives if obstruction results from their consent, connivance or neglect.

Lowering the Standard of Proof

Policy objectives: Within objective 2, the objective of this measure is to strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions by introducing a lowered standard of proof certain offences to ensure proportionate enforcement is taken against minor to moderate offending, in the form of financial penalties.

Intended outcomes include that non-compliance is being penalised appropriately; the public seeing that water companies are being held accountable for any wrongdoing; ensuring that regulator's powers are fit for purpose; ensuring that regulators can use resources to carry out enforcement more effectively; upholding the principle that the polluter pays and a reduction in pollution incidents.

Indicators of success include improved water quality and therefore improved environmental outcomes, the protection of public funds, improved water company performance, which would lead to improved relationships between the public, government and water companies and improved public trust - fulfilling the Government's commitment to have ambitious action plans.

Automatic Penalties

Policy objectives: Within objective 2, the objective of this measure is to strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions by enabling automatic penalties to be issued by the EA for specific water industry offences, with the aim of ensuring quick, proportionate enforcement action is taken against offenders that will deter future non-compliance. This measure will also address the justice gap identified for minor to moderate offences, ensuring the EA's powers are fit for purpose, and enabling the regulator to manage its resources effectively to carry out enforcement.

Intended outcomes include that non-compliance is being penalised appropriately; the public seeing that water companies are being held accountable for any wrongdoing through a reduction in the number of minor-moderate offences committed over time; ensuring minor-moderate offences do not escalate to more serious incidents over time that cause environmental harm; ensuring that regulators' powers are fit for purpose; ensuring that regulators can use resources to carry out enforcement more effectively; upholding the principle that the polluter pays and a reduction in pollution incidents. Through this measure, water companies will be incentivised to address minor to moderate offending before they escalate to more significant offences, with the penalties acting as a deterrent.

Indicators of success include improved water quality, water resource management and therefore improved environmental outcomes, the protection of public funds, improved water company performance, which would lead to improved relationships between the public, government and water companies and work towards improving the public's perception of water companies and their ability to operate without negatively impacting public health or the environment.

Cost Recovery Power

EA/NRW Cost Recovery Power

Policy objectives: Within objective 2, the objective of this measure is to strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions by allowing for improved cost recovery for the EA.

Intended outcomes are to ensure that the threat of enforcement is an effective deterrent to poor performance, ensure that polluters are held to account for breaches of environmental obligations, uphold the polluter pays principle and reduce the cost burden on the general taxation scheme. This will support improvements in water company performance and a reduction in pollution and environmental incidents from the water industry.

Indicators of success include the protection of public funds, greater proportion of regulatory costs are recovered, improved water company performance, and a reduction in pollution and environmental incidents from the water industry. transparency between water companies, government and the public.

DWI Cost Recovery Power

Policy objectives: Within objective 2, the objective of this measure is to strengthen the powers of the water industry regulators to carry out their regulatory and enforcement functions by allowing for improved cost recovery for the DWI.

Intended outcomes include DWI being able to recharge for all the security and emergency measures direction work they carry out to scrutinise water suppliers' compliance with their obligations and scale their capacity accordingly, ensuring that their powers as a regulator are fit for purpose, that regulators can use resources more effectively to carry out enforcement and reducing the cost burden on the general taxation scheme.

Indicators of success include the protection of public funds, improved water company performance and transparency between water companies, government and the public.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

Policy objectives: Within objective 4, the objective of this measure is to modernise the water industry special administration regime (SAR) to align it with other essential service sectors like energy. The measure will also ensure funding from the taxpayer is protected by providing Secretary of State and Welsh Ministers with the power to modify water company licences to recover a shortfall from individual water companies in the event government funding is not fully recovered at the end of a SAR.

Intended outcomes include Secretary of State being able to amend licenses to recover a SAR shortfall ensuring that the SAR is cost neutral for public funds. This should improve regulatory oversight of the sector by modernising the SAR regime.

Indicators of success include improved regulatory oversight and the protection of public funds.

Winding-up petitions

Policy objectives: Within objective 4, the objective of this measure is to modernize the water industry SAR to ensure funding from the taxpayer is protected through ensuring that government and Ofwat will be notified of any winding-up petitions.

Intended outcomes include that an insolvency SAR is never triggered without government or Ofwat being aware of it to make necessary preparations. This should improve the regulatory oversight of the sector by ensuring Ofwat and government are always aware of an imminent SAR and able to respond accordingly. By requiring companies to make this notification, transparency will be improved between the sector and government.

Indicators of success include transparency between water companies, government and the public and the protection of public funds.

4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

Rules about remuneration and governance

The preferred option is for Ofwat to be granted with a new power to set rules for water companies related to pay and governance. The preference is for this to be a general-purpose power, which Ofwat will be able to use to set requirements not listed in legislation. However, Ofwat will also have to issue rules in three defined areas.

Logical change process: Firstly, Ofwat will be required to issue rules to companies preventing them from making performance related payments to senior individuals in a given year, where companies have failed to meet required standards. These standards will be set by Ofwat, and must include consumer, environmental, financial resilience and criminal liability matters, but could also include other matters. Senior individuals will include directors, and other individuals specified by Ofwat. Within that context, these rules will apply to all agreements on pay for those in senior roles, even those agreements made before rules were issued and companies may be required to recover payment of performance related pay for financial year 24/25 if it is found to have not met Ofwat's rules.

Secondly, Ofwat will be required to set rules requiring companies to test whether senior individuals meet specified standards; and requiring companies to prevent the appointment of individuals to these roles where the test is not met. Standards will be specified by Ofwat, and must cover fitness and propriety, but could include other matters.

Thirdly, Ofwat will be required to issue rules to companies obligating them to involve consumers in decision-making that is likely to impact them. This could include a requirement for consumer representation on company boards, committees or panels, but may cover other matters.

Before issuing rules, Ofwat will need to consult with relevant groups, including the SoS, Welsh Ministers, the Consumer Council for Water, water companies and groups representing water companies, and other groups (e.g. Environmental Non-Governmental Organisations). Ofwat will be able to revise rules, after notifying relevant groups.

Where companies fail to comply with rules, Ofwat will be empowered to direct them to do, or not do, specific actions. It will be for Ofwat to decide what a potential direction will include, and this may vary depending on the nature of any rule-breach. Companies will be required to comply with any direction from Ofwat. If they do not, Ofwat will be able to take enforcement action against companies (e.g. issuing fines and enforcement orders), as they are with breaches of other requirements enforced by Ofwat.

Ofwat is already able to issue certain requirements to companies. For example, Ofwat is able to modify the licences of water companies to impose certain conditions on companies. Ofwat has used these powers to strengthen the regulatory ring-fencing licence requirements over time, including, for example, to require companies to declare or pay dividends only in accordance with dividend policies that meet certain requirements. If companies breach these licence conditions they can face enforcement action. Without legislative backing, proposed licence modifications in this area may be challenged by English companies and appealed via the Competition Markets Authority and may be

prevented by Welsh companies refusing to provide consent. This policy will therefore strengthen Ofwat's powers.

There is precedent in other sectors for issuing requirements on remuneration and governance. For example, companies in the financial services and healthcare sectors are subject to requirements on the fitness and propriety of staff^{28,29}. In addition, Ofwat already have powers to restrict bonuses to ensure consumers do not pay for executive bonuses in cases where performance standards have not been met. These rules will further strengthen Ofwat's powers to fully block the payment of bonuses, whether they are paid for by consumers or shareholders.

If this policy is successful, Ofwat will be able to use their new powers to issue rules on remuneration and governance; fitness and propriety; and consumer representation. Companies will be required to comply with these rules. For example, companies will no longer be able to issue bonuses where they fail to meet specified standards. In the short-term, this may result in companies being required to pause bonuses. However, in the medium-term, the potential sanction of bonus withdrawal could strengthen incentives on company executives and directors to comply with standards. This may encourage companies to improve performance, alongside providing assurance to the public that where bonuses are paid, companies are compliant.

Companies will also be required to vet directors and executives in relation to standards of fitness and propriety, or other matters, issued by Ofwat. This may result in companies requiring some individuals to take remedial action (e.g. training), where they fail tests. Where there are significant concerns about an individual's conduct, permanent removal by the relevant company may be required.

Companies will also be required to involve consumer views in decision-making. This will provide assurance to the public that their interests are reflected in company decision-making; and may lead to improved decision-making on consumer matters.

Pollution Incident Reduction Plans

The preferred option is to introduce a duty for sewerage undertakers to publish an annual PIRP which meets the criteria defined in the Bill. Sewerage undertakers will be required to set out the frequency and seriousness of pollution incidents of the previous year, together with the actions that sewerage undertakers propose to take to ensure that these incidents are reduced in subsequent years.

Logical change process: Sewerage undertakers already publish PIRPs on a non-statutory basis. As there is no statutory basis for these plans, there is no consistency between the water companies plans. Each company takes a different approach to how it presents information and there is no requirement to publish plans as frequently as our preferred option. This makes it difficult for the public and regulators to compare plans and hold undertakers to account for delivery.

This duty will require that water companies produce PIRPs annually in a way which aligns with a set list of requirements included in the Bill (and any others required by the Environment Agency or Secretary of State). These requirements include that sewerage undertakers must report on the likely impact of proposed actions and on the progress of fulfilling their actions, enabling the public and regulators to scrutinise the undertaker's actions and hold them to account for delivery.

²⁸ [Financial Services and Markets Act 2000 \(legislation.gov.uk\)](#)

²⁹ [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014 \(legislation.gov.uk\)](#)

Monitoring of Every Outlet

The preferred option is to introduce a duty for sewerage undertakers to publish discharges from emergency overflows in near real-time (within an hour of a discharge occurring). The data must be made publicly available in an accessible and understandable format. Water companies will be required to comply with the duty for 50% of emergency overflows by 2030 and 100% of emergency overflows by 2035.

Logical change process: If the policy is successful, sewerage undertakers will install monitors at emergency overflows so that data will be published in near real-time at 50% of discharges by 31 March 2030, and 100% of sites by 31 March 2035. These timescales align with the 5-yearly investment cycles for the water industry.

Regulators, water companies, researchers, the public and other stakeholders will be able to access the near real-time data on emergency overflows to improve transparency and understanding around the frequency and duration of these discharges. This will help to better inform future policy decisions on reducing discharges from overflows and will improve public knowledge of the impact of emergency overflows in their local watercourses.

Obstruction Sentencing Power

The preferred option is to amend and strengthen existing sentencing and liability provisions for obstruction offences. The preferred option is made up of three elements.

Logical change process: Firstly, obstruction offences against the EA, NRW and the DWI will become triable either way, meaning that they can be heard in either the Magistrates' or Crown Court.

Secondly, the sentencing options available to either court will be increased for obstruction offences against the EA, NRW and the DWI. On summary conviction, the penalty will include an unlimited fine or a term of imprisonment not exceeding the general limit in the Magistrate's Court, or both. Upon conviction on indictment, the penalty will include an unlimited fine or a term of imprisonment not exceeding 2 years, or both.

Thirdly, this option will introduce a corporate liability provision. Therefore, if an obstruction offence is committed with the consent or connivance of, or is attributable to the neglect of, company executives or other relevant individuals, they will also be liable.

Obstruction against the EA, NRW and the DWI is already an offence within the Environment Act 1995 (EA95) and the WIA91 respectively. This option seeks to increase the sentencing options available to the court on conviction. Obstruction of the EA's emergency seizure powers, for example, already includes the possibility of a 2-year custodial sentence. In Scotland, there is also the possibility of a custodial sentence for up to 12 months for obstructing the same powers.

There is precedent for corporate body liability provisions which sit across water regulation. For example, in section 210 of the WIA91 and regulation 41 of the Environmental Permitting Regulations 2016³⁰³¹.

There is also precedent for imprisonment in other sectors when obstructing investigatory bodies' investigations. The Criminal Justice Act 1987, for example, makes it an offence to intentionally obstruct a Serious Fraud Office investigation. Similar powers exist for obstructing an investigation carried out by the Health and Safety Executive, which includes a prison sentence not exceeding 51 weeks in England and Wales as set out in the Health and Safety at Work Act 1974³².

³⁰ [Water Industry Act 1991 \(legislation.gov.uk\)](#)

³¹ [The Environmental Permitting \(England and Wales\) Regulations 2016 \(legislation.gov.uk\)](#)

³² [Health and Safety at Work etc. Act 1974 \(legislation.gov.uk\)](#)

If this policy is successful, there will be consistency of sentencing across obstruction proceedings, and it will bring water industry regulation in line with other sectors. The increase in sentencing powers, if successful, will deter future obstructive behaviour, by increasing the cost of law-breaking. This could result in more effective EA and DWI investigations, by reducing obstacles to information gathering. In the long-term this could encourage improved performance from the sector by ensuring low-level offending is appropriately investigated and stopped before it can develop into something more significant. As this is primarily a policy designed to be a deterrent, the impact of obstruction on the criminal justice system and regulators should decrease.

Lowering the Standard of Proof

The preferred option is for ministers to be able to confer powers on the regulators to issue monetary penalties ‘on the balance of probabilities’ for breaches of specified water industry offences.

Logical change process: This will be achieved through applying an interpretative gloss to the existing Regulatory Enforcement and Sanctions Act (RES Act) 2008 powers so that the power may be exercised as if “on the balance of probabilities” appeared instead of “beyond reasonable doubt” in relation to specified offences³³. The power will then be implemented by way of regulations to allow the regulators to impose penalties on a lower standard of proof.

The EA are already able to impose monetary penalties when satisfied ‘beyond reasonable doubt’ that a breach of a specified offence has occurred. Penalties to a lower evidentiary standard will sit alongside and complement existing enforcement options, including prosecution and unlimited penalties imposed on the criminal standard of proof.

The measure will ensure that the regulators have the right tools to take quick and proportionate action against water industry offences and, in particular, minor to moderate offences. In turn, this may encourage improved performance from companies and address minor to moderate offending before it results in serious offending.

Automatic Penalties

The preferred option is for regulators to be subject to a duty to issue automatic penalties “on the balance of probabilities” for specific water industry offences listed in secondary legislation.

Logical change process: The Bill will introduce a duty for the EA and NRW to impose automatic penalties for the specified offences, apart from where exceptions specified in the Bill apply.

Alongside the duty on the regulators to impose the penalties, the existing provisions for FMPs will be amended through a ‘gloss’ to the Regulatory Enforcement and Sanctions (RES) Act 2008 to enable them to be imposed “on the balance of probabilities”.

The Bill will also introduce a new delegated power for the list of offences for which automatic penalties can be applied to be specified through secondary legislation. Existing delegated powers under the Pollution Prevention and Control Act 1999 and the RES Act 2008 will be used to impose deemed conditions on environmental permits to enable automatic penalties to apply (where required); introduce automatic penalties under the relevant regulations for the identified offences; and set the monetary value of the penalty. The Bill will also introduce a new delegated power for deemed abstraction and impoundment license conditions to be imposed under the Water Resources Act 1991 to enable automatic penalties to apply (where required).

³³ [Regulatory Enforcement and Sanctions Act \(RES Act\) 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Regulators are already able to issue FMPs as civil sanctions under the RES Act 2008, but they are not currently available for most water industry offences. In addition, the current penalty value for a business is £300, and penalties must be imposed on the criminal standard of proof “beyond all reasonable doubt”.

There is precedent for introducing a duty on regulators to impose penalties on operators as opposed to introducing a discretionary power. Under Article 47(2) of the Greenhouse Gas Emissions Trading Scheme Order 2020, the regulator (including the EA and National Resources Wales (NRW)) must impose a civil penalty on a person in relation to certain offences.

The EA are already able to impose monetary penalties when satisfied ‘beyond reasonable doubt’ that a breach of a specified offence has occurred. Penalties to a lower evidentiary standard will sit alongside and complement existing enforcement options, including prosecution and unlimited penalties imposed on the criminal standard of proof.

If the policy is successful, the regulators will have the right tools to take quick and proportionate action against water industry offences, which will encourage improved compliance from companies through a deterrent effect and address ‘minor to moderate offending’ before it results in serious offending.

Cost Recovery Power

EA/NRW Cost Recovery Power

The preferred option is for the cost recovery powers of the regulators (EA and NRW) to be expanded so that they are able to introduce new charging schemes to recover costs associated with their enforcement functions in relation to water company activities.

Logical change process: The environmental regulators for the water industry (EA and NRW) will be required to publish a new charging scheme that will detail new charges for recovering costs using this expanded power. The EA and NRW operate separate environmental permitting and abstraction licensing regimes with separate corresponding charging schemes. Each regulator will be responsible for the ongoing operation of their cost recovery powers, with water companies in England paying their charges to the EA, and water companies in Wales paying their charges to NRW. The charges will be set by the regulators and will set out the amount, and when charges will be payable by water companies. The charges will apply from the date specified in any new charging scheme published.

Furthermore, the Public Bodies Act 2011 encourages regulators to recover costs from regulated industry where possible. This applies to both the EA and DWI cost recovery powers.

Before publishing any new charge scheme, the regulators proposals will be subject to consultation with water companies and any other interested stakeholders; and require approval from HM Treasury and the SoS for Environment, Food and Rural Affairs prior to their implementation, in England, and by Welsh Ministers prior to implementation in Wales.

There is precedent in other regulatory regimes for the EA to make charging schemes in relation to their “functions”, which in the view of the EA can be interpreted to include enforcement costs³⁴. The EA and NRW already have similar powers for use in regulation of the waste sector following the introduction on new powers in the Environment Act 2021. These new powers will further strengthen the regulators’ ability to ensure that regulatory enforcement remains an effective deterrent to poor performance.

³⁴ Environment Act 1995, section 41

DWI Cost Recovery Power

The preferred option is for the cost recovery powers of the DWI to be expanded so that they can recover costs for the SEMD 2022 work they undertake.

Logical change process: The DWI can recover costs for regulatory work they undertake in relation to water suppliers, except for their duties relating to SEMD, which were introduced in 2022.

The DWI's work on SEMD since 2022 has already led to a notable increase in company performance against and focus on SEMD regulatory requirements. However, the DWI's SEMD team is currently limited. Introducing cost recovery powers would enable the DWI to devote more resources to holding companies to account for poor performance in relation to security and resilience of water supplies. This could include more audits of water companies SEMD preparedness, investigating emergency disruption events or security incidents, or engaging specialist technical consultants where DWI do not have relevant expertise in-house. This in turn should drive positive outcomes for consumers by enhancing company resilience to emergency or security events.

This is expected to act as a deterrent for poor performance by water companies in relation to their activities to ensure security and resilience of water supplies. Additionally, the DWI will have the legislative power to recover all SEMD costs from water suppliers, ensuring their cost recovery powers are in-line with the full list of their enforcement responsibilities and the Public Bodies Act 2011 which encourages regulators to recover costs from regulated industry where possible.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

The preferred option is for a new power to be introduced for the SoS to modify water company licenses to recover SAR shortfall costs and recoup public funds. This would occur in the event government funding is called upon to financially support a water company through a SAR, but where that funding cannot be recovered fully following the end of the SAR (marked by the sale or rescue of the company). The shortfall recovery mechanism will safeguard against the risk of a shortfall that could arise at the end of the SAR.

This change will align the water industry SAR with existing energy SAR legislation for other regulated sectors. S.169 of the Energy Act 2004 introduced the power for the SoS to modify energy supplier licenses following a SAR to recover costs.

If the policy is successful, any shortfall in government funds at the end of a SAR will be recovered from water companies and the SAR will be cost neutral for government. Once a company has been transferred or rescued and all payments settled, a shortfall may crystallise which will settle an amount that needs to be recovered. The power will then give SoS flexibility to design a recovery mechanism after considering representations made by water sector stakeholders in a consultation. Depending on the size and nature of the shortfall and considering views in the sector, government may choose to recover the shortfall from a single, some, or all water companies. Following consultation with water sector stakeholders, SoS will modify water company licences to require the recovery of the costs. The additional charge will be transferred from water companies to government.

Winding-up petitions

The preferred option is for the existing winding up petition procedure for a water industry SAR to be written into primary legislation, thus ensuring that water companies and their creditors have a statutory obligation to inform the Government and Ofwat of insolvency.

Existing SAR regimes, such as energy, include a statutory requirement (s.60 Energy Act 2004 & s.371 of the Financial Services and Markets Act 2000) for government and the regulator to be notified of a winding up petition, and a right to be heard at court.

Logical change process: If the policy is successful, government and Ofwat will be notified if a water company or its creditors make a winding up petition to the court, ensuring there will never be an occasion where a SAO is granted by the court without government and Ofwat being aware that such a process has been triggered. This will give government the time to make final preparations including readying representations for the court hearing. Government and Ofwat will also have a right to be heard at the court hearings related to the petition. By creating a guaranteed right to be heard, the provisions will mean government is always able to input into the approach to the administration, making sure the public interest is clearly established in these proceedings.

5. Summary of long-list and alternatives

Rules about remuneration and governance

Alternative options considered: Alongside primary legislation, we explored the use of licence modifications to implement rules on remuneration and governance. Ofwat are able to set rules for companies on remuneration and governance through modifications to water company licence conditions. The benefit of this approach is that it does not require legislation to implement. The disadvantage, however, is that licence modifications can be challenged by key water sector stakeholders through the CMA. Without a legislative backing, any licence modification linked to remuneration and governance could potentially be challenged. This would hinder the effectiveness of rules in achieving the policy outcomes on improved accountability and performance.

SamBA and medium-sized business scope: This measure is intended to apply to water and sewerage undertakers, some of which may qualify as small and medium-sized businesses. Impacts on small and medium sized businesses are not expected to be disproportionate. Even where undertakers qualify, however, they should be subject to the same requirements as larger undertakers, given the criticality of the services they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed. Further engagement and consultation will help shape the guidance for medium sized business.

Pollution Incident Reduction Plans

As shown in the 2023 results from the EA's annual Environmental Performance Assessment of water companies, the number of pollution incidents has remained high, rather than trending towards zero incidents³⁵. This demonstrates a need for government intervention to set a clear expectation for water companies to take action that meaningfully reduces pollution incidents. The legislative timeline for delivering on the Bill did not allow for a full long-listing process.

Alternative options considered: Consideration was given to how the current regulatory environment could be built on to encourage sewerage undertakers to reduce pollution incidents, and to improve transparency and accountability. Consideration was given to how the Government could impose actions on the sewerage undertaker to reduce pollution incidents. However, we were mindful to avoid duplicating existing legal requirements, which could create confusion and complexity. It was concluded that sewerage undertakers should identify the actions they need to take to comply with legal requirements themselves. This enables undertakers to harness their in-depth knowledge of their infrastructure to develop an effective and targeted plan, rather than creating new targets or requirements which might add complexity and delay improvements.

However, we believed it was important that regulators could review the plans and take enforcement if the plans did not meet statutory criteria. For this reason, we decided to create a statutory

³⁵ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118111/water-and-sewerage-companies-in-england-environmental-performance-report-2023)

obligation to publish a plan that met certain criteria. The current voluntary approach does not set out criteria in statute. This option has the benefit of allowing regulators to focus on scrutiny of plans. Regulators already have tools, such as permit conditions and enforcement notices to require sewerage undertakers to take specific measures when appropriate.

Consideration was given to the most effective way for sewerage undertakers to develop plans, for example, whether in response to individual pollution incidents, enforcement action or (as proposed) on a regular and company-wide basis. It was considered that regular, company-wide plans were more likely to address systemic issues and carry learning from individual incidents to the wider system.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers, which do not qualify as small and micro businesses. Some undertakers may qualify as medium-sized businesses by employee number. Even where undertakers qualify as medium-sized businesses the policy intention is that all undertakers should be subject to the same requirements as larger undertakers, given the criticality of the services they provide and the public interest in reducing pollution incidents. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed at this stage. Further engagement and consultation will help shape the guidance for medium sized business.

Monitoring of Every Outlet

Given that this measure is intended to deliver on a government commitment outlined in the 2024 Labour manifesto, upon which this government was elected, a formal options assessment process was not followed, however alternative options were assessed alongside the preferred approach. This measure was identified as it aligns with the approach used for publishing near real-time data for storm overflows.

Alternative options considered: One approach which could have been considered to ensure monitoring of every outlet is the introduction of a duty for the EA to install and operate monitors at every emergency overflow. However, the EA is not resourced to do this and developing such a programme would have represented a disproportionate cost to taxpayers' money. The costs of installation of monitors may be in excess of £500million as this impact assessment explains. Another option would be to reduce the publication requirement from within an hour to monthly/annual reporting. However, this would have reduced the usefulness of the information provided to the public and resulted in varying publication requirements for emergency overflow data and storm overflow data. We wanted to ensure consistency with the real time monitoring duty for storm overflows, as companies have recently rolled out these monitors and will be able to use learning from this work programme to inform the installation of monitors at emergency overflows.

SaMBA and medium-sized business scope: This measure is intended to address sewerage undertakers. This includes some small sewerage undertakers, which do qualify as small and micro businesses. However, no sewerage undertakers that are considered to be small, micro or medium-sized businesses currently operate an emergency overflow. If this changes in the future, it will be important that discharges are monitored in the same way, due to the importance of this data to inform water companies, regulators and the public. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Obstruction Sentencing Power

Alternative options considered: We also explored piecemeal changes to existing legislation on obstruction. For example, making obstruction punishable by imprisonment, but not triable in the Crown Court. However, the impact of this option is likely to be limited. For example, if imprisonment were made a potential penalty for obstruction, but the offence was not triable in the Crown Court, the maximum sentence available would be 6 months. This would be less likely to deter offending than a longer sentence that could be awarded in the Crown Court.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers and licensees. The majority of permits and licences will be held by large and very large organisations; however, we do expect a limited number of micro or small sized New Appointments and Variations (NAVs) to be within scope. Even where companies qualify as medium, small or micro businesses, however, they should be subject to the same requirements as larger companies, given the criticality of the services that they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Lowering the Standard of Proof

Given that this measure is intended to deliver on a government commitment outlined in the 2024 Labour manifesto, upon which this government was elected, a formal options assessment process was not followed, however alternative options were assessed alongside the preferred approach.

Alternative options considered: Consideration was given to whether to create a new discretionary financial penalty regime or amend existing powers within the RES Act 2008. The approach to amend existing powers was pursued following expert advice in order to reduce duplication in the statute book. It was also considered whether to limit the measure to offences committed by water companies (mainly large and very large organisations). This was pursued in line with the scope and ambition of the Bill.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers and licensees. The majority of permits and licences will be held by large and very large organisations; however, we do expect a limited number (5) of micro or small sized New Appointments and Variations (NAVs) to be within scope of the modified standard of proof penalties. Even where undertakers qualify as medium-sized or small and micro-sized businesses, they should be subject to the same requirements as larger undertakers, given the criticality of the services that they provide. In determining an appropriate value for a Variable Monetary Penalty, the EA will additionally consider the size of the defendant company to ensure the penalty size is appropriate. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Automatic Penalties

Given that this measure is intended to deliver on a government commitment outlined in the 2024 Labour manifesto, upon which this government was elected, a formal options assessment process was not followed, however alternative options were assessed alongside the preferred approach.

Alternative options considered: Whilst FMPs reform is the preferred option, reforming Fixed Penalty Notices (FPNs) was also considered for automatic penalties. However, the criminal evidentiary standard that is required for FPNs to be issued could not be changed, which made it an unsuitable option to pursue as it impedes the ability for the EA to issue penalties 'automatically'. Creating a new penalty regime from scratch was also considered, but not pursued, in order to reduce duplication in the statute book and simplify the processes for businesses as much as possible. A consultation will be conducted on the offences that would be specified for automatic penalties, alongside the value of the penalties.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers and licensees. The vast majority of permits and licences will be held by large and very large organisations; however, we expect a very small minority of undertakers or licensees to qualify as medium-sized or small and micro-sized businesses. Even where these qualify, they should be subject to the same requirements as larger undertakers, given the criticality of the

services that they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Cost Recovery Power

EA/NRW Cost Recovery Power

Given that this measure is intended to deliver on a government commitment outlined in the 2024 Labour manifesto, upon which this government was elected, a formal options assessment process was not followed, however alternative options were assessed alongside the preferred approach.

Alternative options: The alternative option to new cost recovery powers is for funding for enforcement activities to be sought through GiA funding, as is the current approach. This would mean that the regulators would have to continue to rely on government funding to deliver their water company enforcement activity, limiting their ability to scale up their enforcement response. A voluntary levy was not formally evaluated as an alternative but would be unlikely to provide the sustainable funding necessary for its enforcement activities and would be inconsistent with a similar extension of its charging powers under the Environment Act 2021 as proposed here, in relation to waste operations. The Secretary of State, or Welsh Minister in Wales, and HM Treasury are required to approve charging schemes, in consultation with affected parties.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers and licensees. The vast majority of permits and licences will be held by large and very large organisations; however, we expect a very small minority of undertakers or licensees to qualify as medium-sized or small and micro-sized businesses. Even where these qualify, they should be subject to the same requirements as larger undertakers, given the criticality of the services that they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

DWI Cost Recovery Power

Given that this measure is intended to deliver on a government commitment outlined in the 2024 Labour manifesto, upon which this government was elected, a formal options assessment process was not followed, however alternative options were assessed alongside the preferred approach. The legislative timeline for delivering on the Bill did not allow for a full long-listing process.

Alternative options: For the DWI, the alternative option to their new cost recovery powers is to continue with business as usual. This would mean the DWI would have to continue providing regulatory oversight of SEMD without being able to recharge. This would prevent the DWI from scaling their SEMD work. The other alternative option was to implement a voluntary levy for SEMD work. This option was not taken forward as it was considered not suitable or proportionate to sustainably fund the necessary regulatory activities, and not in line with the legislative precedent of other DWI cost recovery powers.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers and licensees. The vast majority of permits and licences will be held by large and very large organisations; however, we expect a very small minority of undertakers or licensees to qualify as medium-sized or small and micro-sized businesses. Even where these qualify, they should be subject to the same requirements as larger undertakers, given the criticality of the services that they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Water Industry Special Administration Regime

Shortfall recovery mechanism

The preferred approach was shortlisted during engagement with regulators, legal advisors and other government departments. This was a process aimed at identifying gaps in the special administration regime as it has never been used. The new power identified as the preferred option exists in other SAR regimes such as energy and was identified as an important deficiency in the water regime. This preferred option is deemed to more effectively achieve the strategic objective of protecting taxpayers in the event of a water company going into administration.

Alternative options considered: Consideration was given to Ofwat's existing powers to modify water company licences, using Ofwat's price control mechanisms or relying on contractual consent in a rescue/transfer exit from a SAR in which the new or rescued entity agreed to repay a shortfall. All these options are open to appeal through the CMA, and it is not clear how any requirement to repay a shortfall would have effect after a potential transfer of the company out of a SAR. None of these options therefore provide an adequate safeguard for government funds. These options were rejected because this doesn't meet the strategic objective of protecting taxpayers in the event of a water company going into administration.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers, which do not qualify as small and micro businesses. Some undertakers may qualify as medium-sized businesses by employee number. Even where undertakers qualify as medium-sized businesses, however, they should be subject to the same requirements as larger undertakers, given the criticality of the services they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

Winding-up petitions

A full long-listing process was not followed, as this measure was identified during contingency planning for a potential water company SAR aimed at identifying gaps in the regime as it has never been used. This was a procedural update to ensure consistency with other SAR regimes like energy and improve the transparency between companies, government and the public.

Alternative options considered: The alternative would be the current approach whereby government would rely on the discretion of creditors to be notified of a winding up petition and on that of the court as to whether they would be heard in subsequent proceedings. This option was rejected because it doesn't meet the strategic objective of improving the transparency between companies, government and the public.

SaMBA and medium-sized business scope: This measure is intended to address water and sewerage undertakers, which do not qualify as small and micro businesses. Some undertakers may qualify as medium-sized businesses by employee number. Even where undertakers qualify as medium-sized businesses, however, they should be subject to the same requirements as larger undertakers, given the criticality of the services they provide. Therefore, any exclusion for small and micro businesses, or medium-sized businesses has not been proposed.

6. Description of shortlisted policy options carried forward

SaMBA

Each of the shortlisted measures apart from SAR will be undertaking some form of either consultation or secondary legalisation. At this stage further consideration will be given to the impact on medium, small and micro sized businesses. Regulators may also produce guidance where the impact on medium, small and micro sized businesses will be considered further to ensure they are not disproportionate.

Rules about remuneration and governance

Shortlisting appraisal: The main alternative option considered during short-listing was relying on Ofwat's existing powers to modify licence conditions to introduce stronger requirements on remuneration and governance. For example, Ofwat could choose to insert conditions in licences limiting payment of bonuses under certain circumstances; or requiring companies to implement a fit and proper person test. However, these powers were not deemed to be sufficient to deliver the Government's objectives. Ofwat's licence modification power is primarily intended to support economic regulation of water companies, and is therefore appealable to the CMA, rather than to issue rules on remuneration and governance. For this reason, the preferred approach of legislation was deemed more appropriate.

Small and micro business assessment (SaMBA) and medium-sized business impacts and mitigations: Impacts on small and medium sized businesses are not expected to be disproportionate, as all water and sewerage undertakers should be subject to the same, robust requirements, given the criticality of services they provide.

Pollution Incident Reduction Plans

Shortlisting appraisal: The preferred approach was shortlisted during engagement with regulators. Consideration was given to the broad approach and options for variations of that approach were assessed on their merits, for example, the frequency and contents required in a PIRP. It was concluded that an annual plan was appropriate to provide a mechanism for sewerage undertakers to provide regular updates on the progress of the actions they have committed to, and to reflect on the trend in frequency and seriousness of pollution incidents from year-to-year. This was decided on the basis of feasibility for WaSC to produce PIRPs without creating excessive or duplicate reporting requirements³⁶. Further detail on the options consider is provided is in the evidence base.

SaMBA and medium-sized business impacts and mitigations: Impacts small and micro businesses are expected to be small. The measures required in these plans will be proportionate to the number of pollution incidents the sewerage undertaker is responsible for. Further guidance and consultation will consider how to minimise the impact on smaller sewerage undertakers.

Monitoring of Every Outlet

Shortlisting appraisal: The preferred approach was shortlisted during engagement with regulators. This included considering how best to align the duty for near real-time publication of discharge data from emergency overflows with the pre-existing duty for near real-time publication of discharge data from storm overflows. It was concluded that maximising alignment between these duties – and ensuring that all sewage overflows were covered by one of these duties – would best meet our policy objective of monitoring of every sewage outlet and maximise the usefulness of the information for water companies (to inform prioritisation of mitigation activities), regulators (to assess performance and hold companies accountable) and the public (to hold companies accountable and help to inform decisions on when to use waterways downstream of discharges).

SaMBA and medium-sized business impacts and mitigations: It is expected that impacts to small sewerage undertakers (largely New Appointments and Variations - NAVs, which are typically

³⁶ <https://www.ofwat.gov.uk/wp-content/uploads/2021/06/EPA-methodology-version-9-May-2021.pdf>

small sewerage licensees providing water and/or sewerage services) will be small given they operate a small number of emergency overflows. Further guidance will determine how undertakers need to implement this duty, where guidance and consultation will consider small and medium sewerage undertakers.

Following a request for information from nine of the sewerage undertakers listed by Ofwat, nine confirmed they do not operate any emergency overflows. Therefore, these nine businesses will not be in scope for the duty to publish discharges in near real-time.

Water companies will need to install monitors on emergency overflows to fulfil this duty and ensure that these are independently accredited in line with EA's Monitoring Certification Scheme (MCERTS) for equipment, personnel, and organisations. As such, there will be involvement of organisations that provide certification, as well as organisations for inspection of the MCERTS sites, and any contractors that may become involved with the installation of monitors on emergency overflows. These organisations may benefit from the increase in installation and certification of monitors, some of which may be in scope of SaMBA and medium-sized businesses.

Obstruction Sentencing Power

Shortlisting appraisal: The preferred approach was shortlisted during engagement with regulators and appraisal of the rationale. Obstruction was highlighted as an issue which hindered effective investigations. Different types and mixtures of penalties were considered, to reduce the likelihood of obstruction. Alternatives explored include:

- Making imprisonment a sentence.
- Making obstruction offences triable either way.
- Creating a new consent, connivance and neglect provision for obstruction.

During appraisal, it was decided that a combination of these would deliver the most effective results due to existing legal precedent and the expected combined impact on company behaviour. Strong precedent exists both already within the water sector, and with other similar investigatory bodies. The EA's view is that strengthening potential sentences attached to obstruction by making imprisonment a possibility, making the offence triable in the Crown Court, and enabling executive liability, would be most likely to deter future obstruction.

SaMBA and medium-sized business impacts and mitigations:

The approach is limited to offences committed within the regulated water industry which is mainly made up of large and very large organisations. Some water companies may be micro, small or medium sized business by employee numbers. The intention of the policy is that all aspects of the water industry, whether undertakers or licensees, should be held accountable for wrongdoing regardless of size. Defra expects that this measure will deter offending, therefore impacts for all companies are likely to be small. The policy intends that as all water and sewerage undertakers should be subject to the same, robust requirements, given the criticality of services they provide.

Lowering Standard of Proof

Shortlisting appraisal: The preferred approach was shortlisted following engagement with regulators and appraisal of the impacts and benefits of different approaches. This included considering, for example, restricting the changes to only FMPs or Variable Monetary Penalties (VMPs); this approach was not taken forward on the basis that VMPs are necessary to allow for a range of suitable offences to be covered by the penalty, and FMPs are necessary to allow for automatic penalties.

SaMBA and medium-sized business impacts and mitigations: Please refer to Section 5.

Automatic Penalties

Shortlisting appraisal: The preferred approach was shortlisted following consideration of novel and existing civil and criminal penalties that would enable the regulators to impose automatic penalties for water industry offences. These included FMPs, FPNs and creating a new type of civil penalty. FPNs require a criminal standard of proof which would render the regulator unable to issue penalties at speed, a defining feature of automatic penalties. A new civil penalty was also found to be unsuitable as it would duplicate regimes that already exist in the statute book and require additional familiarisation for businesses. Reforming FMPs was selected as the most appropriate route to enable automatic penalties as they require a set value, provide for a notice of intent to allow companies to make representations in response to a penalty and, following legislative amendments, can be issued on the civil rather than criminal standard of proof to allow them to be issued quickly.

The offences that automatic penalties apply to must be identified through unambiguous evidence of offending to enable the regulators to be able to quickly impose the penalty and must cause no, or limited, environmental harm to limit the need for lengthy investigation. A proposed list of offences will be consulted on publicly before being confirmed in secondary legislation, due to the level of operational detail required.

The value of automatic penalties must be proportionate to the size of operator and the type of offence. Legislation requires that the monetary value of penalties must be consulted on publicly before being confirmed in secondary legislation.

SaMBA and medium-sized business impacts and mitigations: Please refer to Section 5.

Cost Recovery Power

EA/NRW Cost Recovery Power

Shortlisting appraisal: The preferred option for EA/NRW cost recovery was shortlisted following consideration of non-legislative routes for cost recovery. Non-legislative routes were considered unsuitable as they do not offer the same transparency, independence, equity, sustainability and public confidence as fees for water companies that are already set through a published scheme under section 41 of the EA95. The EA secured a similar extension under the Environment Act 2021 of its charging powers as proposed here, in relation to waste operations. As per the current position under the EA95, the exact mechanism to implement the measure requires the EA to consult with affected parties and seek SoS and HM Treasury approval.

SaMBA and medium-sized business impacts and mitigations: This measure is intended to address water and sewerage undertakers and licensees. The vast majority of permits and licences will be held by large and very large organisations; however, we expect a very small minority of undertakers or licensees to qualify as medium-sized or small and micro-sized businesses. Even where these qualify, they should be subject to the same requirements as larger undertakers, given the criticality of the services that they provide. Impacts on smaller businesses are not expected to be disproportionate, as all water and sewerage undertakers should be subject to the same, robust requirements.

DWI Cost Recovery Power

Shortlisting appraisal: The preferred option for DWI cost recovery was shortlisted during engagement with regulators and appraisal of the rationale. For the DWI's cost recovery powers, non-legislative routes were not applicable as the regulator's fees are set through the primary and secondary legislation. As referenced in section 5, two alternative legislative approaches were considered. Firstly, amendments to section 208 of the WIA91, but these were found to create further complications, such as a second statutory instrument required solely for the collection of SEMD

fees. Secondly, amending just section 86ZA of the WIA91 was also considered but this would have meant covering activities for which there is no statutory power to appoint DWI to carry out.

SaMBA and medium-sized business impacts and mitigations: This measure is intended to address water and sewerage undertakers and licensees. The vast majority of permits and licences will be held by large and very large organisations; however, we expect a very small minority of undertakers or licensees to qualify as medium-sized or small and micro-sized businesses. Even where these qualify, they should be subject to the same requirements as larger undertakers, given the criticality of the services that they provide. Impacts on smaller businesses are not expected to be disproportionate, as all water and sewerage undertakers should be subject to the same, robust requirements, given the criticality of services they provide.

Water Industry Special Administration Regime

Shortfall Recover Mechanism

Shortlisting appraisal: This option was shortlisted following consideration of the current approach, which relies on Ofwat's existing powers under Chapter I of Part II of the WIA91 to recover a potential SAR shortfall. However, use of these powers requires significant resources, and it can be a slow process when recovery of a shortfall would be an urgent government priority. Any modification made through these powers can also be challenged through the CMA. The option for water sector stakeholders to challenge a modification through this route leaves considerable risk that taxpayers' money would not be adequately safeguarded. Given the nature of the funds being recovered, it was also decided that the decision making would not be correctly allocated under the current approach. It's right that the power to recover taxpayers' money should sit with government.

SaMBA and medium-sized business impacts and mitigations: No impacts are expected on small and micro businesses. Impacts on medium-sized businesses are not expected to be disproportionate, as all water and sewerage undertakers should be subject to the same, robust requirements, given the criticality of services they provide.

Winding-up petitions

Shortlisting appraisal: This option was shortlisted following consideration of the current approach, which relies on existing arrangements whereby close contact with a distressed company should create the expectation that creditors would notify government if they intended to make a winding up application. Similarly, the court currently has discretion about who to invite to make representations at the winding up hearing; given the likelihood of the court considering Ofwat and government as interested parties, relying on this discretion was an option. However, while this would have avoided legislative changes and the slightly increased administrative burden of the proposed requirements for notice, the costs associated with the risk of government and Ofwat not being involved in proceedings were too high. While it is unlikely, if the Government and Ofwat were excluded from such proceedings it could lead to a SAR being triggered without the opportunity for government to make public interest heard in court. Given these risks, these procedural rights are necessary to create a protection against this eventuality.

SaMBA and medium-sized business impacts and mitigations: No impacts are expected on small and micro businesses. Impacts on medium-sized businesses are not expected to be disproportionate, as all water and sewerage undertakers should be subject to the same, robust requirements, given the criticality of services they provide.

7. Regulatory scorecard for preferred option

Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating Note: Below are examples only									
Description of overall expected impact	<p>It is expected that the measures within the Bill will lead to improved enforcement, increased accountability and improved company performance in the water sector. The Bill supports a package of measures the Government is delivering that will lead to fewer environment incidents and then ultimately improve environmental outcomes.</p> <p>The cost impacts will fall largely on water companies. These costs include cost of regulator enforcement recovery, improved monitoring and adjusted penalty systems.</p>	Uncertain Based on all impacts (incl. non-monetised)									
Monetised impacts	<p>A more detailed summary table can be found preceding the evidence base.</p> <p>Monetised impacts for regulatory provisions only:</p> <table border="1"> <thead> <tr> <th colspan="3">NPV over appraisal period</th> </tr> <tr> <th>Low</th> <th>Central</th> <th>High</th> </tr> </thead> <tbody> <tr> <td>-£429,360,851</td> <td>-£537,979,136</td> <td>-£644,757,164</td> </tr> </tbody> </table>	NPV over appraisal period			Low	Central	High	-£429,360,851	-£537,979,136	-£644,757,164	Negative Based on likely £NPSV
NPV over appraisal period											
Low	Central	High									
-£429,360,851	-£537,979,136	-£644,757,164									
Non-monetised impacts	<p>Non-monetised costs/benefits are covered in the below tables and evidence base.</p> <p>The measures within the Bill will lead to improved enforcement, increased accountability and improved company performance in the water sector.</p> <p>The introduction of new penalties also has the potential to alter investor confidence for non-compliant companies.</p>	Positive									
Any significant or adverse distributional impacts?	<p>None are expected.</p> <p>If there are distributional impacts not flagged below for businesses and households, please specify.</p>	Neutral									

(2) Expected impacts on businesses											
Description of overall business impact	Overall, the Bill impacts largely on the companies within the water industry. The largest impacts include the cost of regulator enforcement recovery, improved monitoring and adjusted penalty systems. The cost of each measure in the Bill is outlined in the evidence base.	Negative									
Monetised impacts	Monetised impacts for regulatory provisions only: <table border="1" data-bbox="459 542 1169 750"> <thead> <tr> <th colspan="3">NPV over appraisal period</th> </tr> <tr> <th>Low</th> <th>Central</th> <th>High</th> </tr> </thead> <tbody> <tr> <td>-£429,360,851</td> <td>-£537,979,136</td> <td>-£644,757,164</td> </tr> </tbody> </table>	NPV over appraisal period			Low	Central	High	-£429,360,851	-£537,979,136	-£644,757,164	Negative Based on likely business £NPV
NPV over appraisal period											
Low	Central	High									
-£429,360,851	-£537,979,136	-£644,757,164									
Non-monetised impacts	See the evidence base below.	Neutral									
Any significant or adverse distributional impacts?	See the evidence base below. The impacts of the Bill will largely be on the Water Industry and is not expected to have any significant impacts on particular company which would alter the regional impacts. No adverse distributional impacts are expected.	Neutral									

(3) Expected impacts on households		
Description of overall household impact	<p>Some costs of the Bill may be passed onto households indirectly as the policy does not mandate costs are passed on. This will be determined by Ofwat. Ofwat, the independent economic regulator, sets the revenue allowances companies can recover through bills to consumers. Ofwat will consider whether and what type of costs that the regulators may propose to charge water companies are appropriate to be passed on in part or full to consumers, taking account of its statutory duties including the duty to secure that water companies are able to finance the proper carrying out of their functions, which includes being able to recover legitimately incurred costs from consumers.</p> <p>Indicative modelling shows that if the total costs were additional to current spending plans, then the difference in the average water bill would likely be less than £5 per year or 1% of average bills compared to a counterfactual of no intervention.</p>	Neutral
Monetised impacts	The impact on households is outlined in the evidence base. EANDCH has not been estimated as the costs to industry might be passed on, but the policy measures do not mandate the costs being passed on.	Neutral Based on likely household £NPV
Non-monetised impacts	<p>This measure will help to protect the Water Environment and improve regulation of the Water Industry. Better regulation will improve environmental performance of Water Companies.</p> <p>The Bill supports a package of measures the Government is delivering that will lead to fewer environment incidents and then ultimately improve environmental outcomes.</p>	Neutral
Any significant or adverse distributional impacts?	No significant distribution impacts are expected. The measure may see increase costs passed onto households via Water bills, but there is no significant difference regional difference in the illustrative expected Bill impact.	Neutral

Part B: Impacts on wider government priorities

Category	Description of impact	Directional rating
<p>Business environment:</p> <p>Does the measure impact on the ease of doing business in the UK?</p>	<p>The measures will impose cost to the water industry, though this is not expected to impact on the wider existing market structure. The Bill aims to improve water company performance and creates a clear and consistent regulatory landscape which could result in a more investable industry. On the other hand, the introduction of new penalties has the potential to reduce investor confidence as this will directly impact water company net incomes and may lead to uncertainty in the market. Therefore, this may negatively impact investor sentiment. Investors have raised concerns about the punitive nature of the measures within the bill, meaning investors may have to bear more risk. This may negatively impact the ability of companies to raise finance. On the measures within Clause 1, Ofwat will consult ahead of implementing rules on remuneration and governance, so will be able to account for investor concerns.</p> <p>Further detail is outlined in the evidence base.</p>	<p>Uncertain</p>
<p>International Considerations:</p> <p>Does the measure support international trade and investment?</p>	<p>This measure is not expected to have any significant impacts on international trade.</p> <p>The introduction of new penalties has the potential to alter investor confidence in the water industry however the EA will consult on the development of the penalties. This is balanced by the assumption that broader improvements to performance of water companies resulting from the Bill could create a more investable industry.</p>	<p>Uncertain</p>
<p>Natural capital and Decarbonisation :</p> <p>Does the measure support commitments to improve the environment and decarbonise?</p>	<p>This measure will help to protect the Water Environment and improve the state of the UK's natural capital. The measure will ensure Water Companies take steps to protect the environment.</p> <p>The measure is not expected to significantly impact greenhouse gas emissions.</p>	<p>Supports</p>

8. Monitoring and evaluation of preferred option

The structure of the evaluation will be a Post-Implementation Review (PIR), which will be carried out collectively across all measures five years after the introduction of the first measure. A PIR is deemed suitable due to the measures being minor changes to secondary legislation at limited cost to government.

The impact of the measures will be principally explored using pre-existing metrics on company performance, company compliance and environmental metrics such as the number of pollution incidents. There is a challenge in confidently identifying the causal impacts of these measures as they will be universally applied simultaneously for all water companies, regulators and stakeholders. Additionally, there will be considerable public attention on the water sector as the result of an independent review which may impact company performance. This wider context means that the PIR will be theory-based and focus on establishing the extent to which the measures were implemented successfully. This is to provide confidence in causality. This methodology has been decided upon with consideration of the recommendations of the Magenta Book.

Successful implementation will be assessed using interviews with Ofwat, EA, NRW, DWI and water companies, after 1 and 5 years, including questions on barriers and facilitations to delivery.

Value for money will be assessed through change in government funding required by the regulators for water company enforcement as well as cost of implementation compared to benefits from improved performance and environmental outcomes.

A full list of the metrics considered for each Objective is set out below.

Evaluation questions for the Post-Implementation Review

- Were the measures delivered as intended?
- What worked well, or less well, for whom and why?
 - What were the barriers and facilitators to delivery?
- Did the measures achieve the expected outcomes?
 - To what extent can the outcomes be attributed to the intervention? How confident can we be that the intervention caused the observed changes?
 - How much can be attributed to external factors?

Existing or forthcoming evidence sources utilised for monitoring

Objective 1 - Rules about remuneration and governance / Obstruction Sentencing Power

- Industry Outcomes inc. environmental standards, consumer matters, financial resilience and criminal liability. Examples of current regulatory monitoring include:
 - Metrics within EA's Environmental Performance Assessment (EPA)³⁷
 - Ofwat's monitoring financial resilience report
 - Consumers measures of experiences (CMEX)
- Performance-related pay
 - Ofwat monitor this through disclosures made by companies in annual performance reports
- Number of prosecutions for obstruction
 - Number of prosecutions for impeding regulator investigations which is publicly available information.
- Perceived water company accountability
 - Ofwat currently regularly conducts surveys to understand public views³⁸

Objective 2 – Lowering the Standard of Proof / Automatic Penalties / Cost Recovery Power

- Levels of non-compliance in the water industry
 - Although not currently published, the Environment Agency have records of compliance against licence conditions
- Environmental performance statistics
 - Metrics within EA's Environmental Performance Assessment (EPA)³⁹
 - Pollution events (broken down by categorisation)
 - Compliance on permit condition figures
 - Ofwat data regarding water company performance⁴⁰.
- Degree to which enforcement is fit-for-purpose
 - EA will periodically review the size and shape of the enforcement service to ensure it is proportional and meets costs. This may include reviewing the charging scheme to ensure it meets needs.
- Perceived higher water companies' accountability
 - Ofwat currently regularly conducts surveys to understand public views⁴¹.

³⁷ <https://www.gov.uk/government/news/tougher-regulation-as-data-shows-water-companies-underperforming>

³⁸ <https://www.ofwat.gov.uk/about-us/customer-research/customer-views-and-preferences/> Example- research may change in future

³⁹ <https://www.gov.uk/government/news/tougher-regulation-as-data-shows-water-companies-underperforming>

⁴⁰ <https://www.ofwat.gov.uk/regulated-companies/company-obligations/outcomes/water-company-performance-report-2022-23/>

⁴¹ <https://www.ofwat.gov.uk/about-us/customer-research/customer-views-and-preferences/> Example- research may change in future

Objective 3 – Monitoring of Every Outlet / Pollution Incident Reduction Plans

- Reduction in pollution incidents
 - Assessing the quality and robustness of the EA's regular review of Pollution Incident Reduction Plans. The EA records this through its annual Environmental Performance Assessment (EPA). If successful, the reduction in pollution incidents should lead to improved environmental and public health outcomes. Metrics linked to these can also be observed via regular reporting via the EPA. As the duty requires sewerage undertakers to report on progress made against actions in previous plans, review of the plans themselves can be used to assess sewerage takers' progress implementing these plans.
- Monitoring of overflows
 - Updated reports from water companies on coverage of overflows by monitors.
- Availability of overflow data
 - Demonstrated through publishing of overflow data from all companies in an accessible format.
- Greater incentive for water companies to reduce discharges in response to public pressure
 - Increased pressure from high number of media articles on sewer discharges, particularly with reference to the overflow data.
 - Consistency or an increase of media articles over the 5 years will show that pressure on water companies has been maintained or increased.

New evidence sources required for monitoring

Objective 1 - Rules about remuneration and governance / Obstruction Sentencing Power

- Successful implementation of measures
 - Assessed by interviews with Ofwat, EA, NRW, DWI and water companies, after 1 and 5 years
 - This should include questions on barriers and facilitations to delivery
- Perception of change in executive accountability
 - Assessed by interviews with Ofwat at 5 years

Objective 2 – Lowering the Standard of Proof and Automatic Penalties / Cost Recovery Power

- Successful implementation of measures
 - Assessed by interviews with Ofwat, EA, NRW, DWI and water companies, after 1 and 5 years
 - This should include questions on barriers and facilitations to delivery
- Cost effectiveness
 - Value of funds regulators recover from water companies relative to costs associated with enforcement activity
 - Change in government funding required by the regulators for water company enforcement.
 - GiA funding that is required following the introduction of these measures

Objective 3 – Monitoring of Every Outlet / Pollution Incident Reduction Plans

- Successful implementation of measures
 - Assessed by interviews with Ofwat, EA, NRW, DWI and water companies, after 1 and 5 years

- This should include questions on barriers and facilitations to delivery
- Public use of information on pollution incidents
 - Number of hits on published data
 - Survey of data users as to its usability

Objective 4 – Water Industry Special Administration Regime

- Successful implementation of measures
 - Assessed by interviews with Ofwat, EA, NRW, DWI and water companies, after 1 and 5 years
 - This should include questions on barriers and facilitations to delivery

External factors

The main external factor that could influence the success of these measures is water company behaviour. Currently there is a justice gap for minor to moderate offending, for which there is not sufficient deterrence to prevent. An objective of these measures is to provide deterrence for minor to moderate offending. If water companies continue to offend at the minor to moderate level to the same extent, then these measures may need to be re-examined.

Unintended consequences

Unintended consequences could include executive base pay increases to counter any performance related pay restrictions, unnecessary administrative costs, reduced attractiveness of water executive roles on the labour market, impacting investor confidence, water company financial resilience and increases to consumer bills.

Mitigation

To minimise unintended consequences for businesses and households before the implementation of these measures, the regulators' proposals will be subject to consultation with water companies and any other interested stakeholders; and require approval from HM Treasury and the SoS for Environment, Food and Rural Affairs prior to their implementation, in England, and by Welsh Ministers prior to implementation in Wales.

9. Minimising administrative and compliance costs for preferred option

Administrative burdens of complying with regulations will be minimised by:

Rules about remuneration and governance

Ofwat will be required to consult before issuing rules, which will include considering proportionality and impacts for companies.

Pollution Incident Reduction Plans

This measure builds on plans that sewerage undertakers already produce on a non-statutory basis. Therefore, it is expected the added administration costs, including familiarisation costs, will be small.

The EA will issue guidance to ensure that sewerage undertakers are clear about what they need to do to comply with this duty.

We expect there to be an increased resourcing burden on the EA to assess and review the PIRPs at regular intervals. However, this workstream will be made easier by the requirements in the legislation for consistent information to be provided by water companies. This will allow for greater standardisation of review processes.

Monitoring of Every Outlet

The requirements for this duty will mirror the pre-existing requirements for monitoring storm overflows. This will reduce the administrative and familiarisation costs of complying with this duty. Ofwat and the EA will continue to work with sewerage undertakers to support them in rolling out this duty. Government will also issue supporting guidance where required.

Obstruction Sentencing Power

This proposal will not create additional regulatory burden or influence administrative and compliance costs. It amends existing legislation to increase the options available to the Courts during the sentencing of obstruction offences.

Lowering the Standard of Proof

This measure does not create new offences and relies on applying an interpretative gloss existing powers enabled by the RES Act 2008 for civil sanction penalties. Relevant businesses are already familiar with the approach towards VMPs which rely on RES Act powers, reducing familiarisation time. We expect the measure to be used largely as an alternative pathway for existing, non-monetary, civil sanctioning powers. As such we consider there to be minimal to no administrative burden introduced to businesses.

Government will consult before laying secondary legislation that will specify the offences the measure can apply to and the maximum penalty value, giving the opportunity for any concerns over administrative burdens to be raised. The regulators are also required to consult on their sanctions and enforcement guidance, giving a second opportunity for stakeholders to raise any concerns over administrative burdens.

Automatic Penalties

As this measure involves amendments to an existing civil sanction regime and does not introduce any new offences, we expect there to be minimal administrative burden for water companies. Government will consult before laying secondary legislation that will specify the offences and penalty value, providing an opportunity for any concerns around administrative burdens to be raised.

The regulators are also required to consult before any changes are made to their public enforcement guidance, providing a second opportunity for stakeholders to raise concerns around administrative burdens.

Cost Recovery Power

EA/NRW Cost Recovery Power

The EA already have cost recovery processes in place for their regulatory functions. The EA will be required to consult with affected parties on detailed charge proposals and seek SoS and HM Treasury approval prior to the introduction of new charges. This will give stakeholders the opportunity to raise any concerns over administrative burdens. The approach to amend existing

charging powers reduces familiarisation costs as water companies and regulators are already familiar with the broad approach of cost recovery.

DWI Cost Recovery Power

The DWI already have cost recovery processes in place for their regulatory functions and the inclusion of SEMD will not add a new administrative process for water companies and licensees. Rather SEMD will be incorporated into the current fees collection process.

To ensure minimal impact to business the DWI have committed to working with water suppliers prior to the introduction of new fees or future structure.

Water Industry Special Administration Regime

Shortfall Recover Mechanism

Implementing a shortfall recovery mechanism will incur some administrative costs for water companies.

We will use the statutory consultation process to ensure that all relevant water sector stakeholders are heard and able to input into the design of the mechanism.

Winding-up petitions

This measure will create a small administrative burden for creditors to notify government and Ofwat if they make a winding up petition. However, it is likely they will be in close contact with both if a water company is close to insolvency and so it should not be too onerous to give formal notice of a winding up petition.

We will ensure that the sector is clear about the form in which this notice must be given, and all relevant stakeholders are aware of the new requirement.

Declaration

Department:

Department for Environment, Food and Rural Affairs

Contact details for enquiries:

Water (Special Measures) Bill team - WSMBteam@defra.gov.uk

Minister responsible:

Emma Hardy

I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed:



Date:

24/10/2024

Summary: Analysis and evidence

For Final Stage impact assessment, please finalise these sections including the full evidence base.

Price base year:

2023/24

PV base year:

2025

Summary table of Net Present Value impact estimates

Measure	Impact	NPV over 10-year appraisal period		
		Low	Central	High
Rules about remuneration and governance	Familiarisation costs	£3,201*	£17,703*	£42,849*
Pollution incident reduction plans	Familiarisation costs	£17,050	£22,233	£27,415
	Plan production cost	£1,850,000	£3,701,000	£3,701,000
Monitoring of every outlet	Familiarisation costs	£500,000	£500,000	£500,000
	Monitor installation cost	£426,990,600	£533,738,200	£640,485,900
Obstructing sentencing power	Imprisonment costs	£0	£465,441	£930,882
	Familiarisation costs	£337	£1,517	£3,372
Lowering the Standard of Proof	Familiarisation costs	£5,057*	£17,701*	£40,459*
Automatic Penalties	Familiarisation costs	£5,057*	£37,930*	£91,033*
Cost recovery power*	EA CRP Familiarisation costs	£12,761	£102,088	£191,414
	DWI CRP familiarisation costs	£12,761	£102,088	£191,414
	Costs of EA enforcement chargeable to WCs	TBC*	TBC*	TBC*
	Costs of DWI enforcement costs chargeable to WCs	TBC*	TBC*	TBC*
SAR shortfall recovery mechanism	Familiarisation costs	£1,067	£5,603	£13,341

Please note in relation to this table:

- Familiarisation costs in relation to the production of PIRPs are constant across central and high estimates because it is expected that 0.5 FTE to 1 new individual per Water Company would be needed to fulfil this requirement. For the central estimate we have assumed 1 extra FTE per Water Company would be required.

- Familiarisation costs in relation to the emergency overflows measures are constant because the number of overflows to which new reporting requirements will apply is already established. While the costs of new monitoring equipment may vary – as reflected in the monitor installation costs - the familiarisation costs are assumed to be constant.
- Where costs are marked with an *, this is because the costs will be largely informed by the results of consultations which have not yet taken place.
- Where costs are noted as 'TBC', these will be confirmed once further analysis has been completed.

Summary table of Net Present Value impact estimates for Regulatory Provisions only

Measure	Impact	NPV over appraisal period		
		Low	Central	High
Rules about remuneration and governance	Familiarisation costs	£3,201*	£17,703*	£42,849*
Pollution incident reduction plans	Familiarisation costs	£17,050	£22,233	£27,415
	Plan production cost	£1,850,000	£3,701,000	£3,701,000
Monitoring of every outlet	Familiarisation costs	£500,000	£500,000	£500,000
	Monitor installation cost	£426,990,600	£533,738,200	£640,485,900
Total		£429,360,851	£537,979,136	£644,757,164

Evidence base

Figures and text marked with an asterix (*) are subject to consultation.

Problem under consideration, with business as usual, and rationale for intervention

Rules about remuneration and governance

Currently, public trust in the water sector is low. A recent report by Ofwat indicated less than a quarter (23%) of consumers trust their water provider to do what is right for the environment⁴². Furthermore, environmental performance in the sector has been poor. The number of serious pollution incidents remains high and has risen in recent years (e.g. from 44 to 47 between 2022 and 2023)⁴³. In the longer-term, between 2009 and 2022, total pollution incidents have also seen little improvement⁴⁴. Improved accountability within water companies through new rules on remuneration and governance aims to help regain public trust and improve performance by water companies. Bonus restrictions for executives of water companies that perform poorly will increase the private costs of poor performance for key decision makers and internalise some of the cost of negative externalities that water company poor performance creates for wider society. The implementation of specific tests to appoint new senior water company employees and assess the performance of existing employees will ensure that water company executives meet certain standards of fitness and propriety. In other sectors where standards of fitness and propriety have been implemented, this has been found to support higher professional standards and support senior accountability⁴⁵. The involvement of consumers in decision making through consumer representation on company boards, committees or panels aims to ensure that consumers are given a voice in decision making, improving alignment between public and private interests and reducing the information asymmetry.

Pollution Incident Reduction Plans

Pollution incidents caused by sewerage undertakers, for example from sewage spills, damage the environment and pose a risk to human health. Evidence from the EA's annual Environmental Performance Assessment shows that pollution incidents (including serious incidents) remain unacceptably high (these were 2174 and 47 respectively in 2023)⁴⁶, despite the expectation that water companies seek to reduce serious pollution incidents to zero. Sewerage undertakers' lack of recent progress reducing pollution incidents demonstrates a need for Government intervention to set a clear expectation for sewerage undertakers to take action that meaningfully reduces pollution incidents. This measure will build on the pre-existing non-statutory expectation for sewerage undertakers to produce Pollution Incident Reduction Plans (PIRPs) by providing a statutory duty to produce the plans annually and with accompanying statutory guidance to improve consistency in plans between companies. A clear, enforceable duty to produce these plans will ensure that companies produce robust plans that meet the statutory criteria. This will help to improve information available to the regulators which reduces information asymmetry, allowing for better scrutiny of pollution incidents and Water and Sewerage Company (WaSC) actions.

The key stakeholders affected by this duty are sewerage undertakers, who will have a new statutory duty to produce PIRPs. However, if these plans are successful then the wider public will be

⁴² [Customer trust and satisfaction in water companies falling in latest Ofwat and CCW research - Ofwat](#)

⁴³ [The Environment Agency has published its annual Environmental Performance Assessment \(EPA\) report – Defra in the media \(blog.gov.uk\)](#)

⁴⁴ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

⁴⁵ [Evaluation of the Senior Managers and Certification Regime \(bankofengland.co.uk\)](#)

⁴⁶ [Water and sewerage companies in England: environmental performance report 2023](#)

positively impacted as they will benefit from the reduced risk from a meaningful reduction in the frequency and seriousness of pollution incidents.

Monitoring of Every Outlet

Water pollution is a 'negative externality, discharges from emergency overflows in the sewage network can contribute to water pollution. Water pollution imposes a negative cost to the environment as it causes ecological harm. It can impose a negative cost to public health given that water pollution can introduce harmful pathogens to the environment, such as viruses and bacteria. This policy will increase the monitoring of emergency overflows and seeks to improve transparency around discharges of raw and partially treated sewage to waterbodies.

Of the 570,000 km-long English sewer network, 100,000 km is made of old, combined systems that were standard until the 1960s⁴⁷. They collect rainwater from impermeable surfaces like roads (also known as surface water or run off) and wastewater from toilets, bathrooms, and kitchens in the same pipes, directing it to wastewater treatment works.

In 2023, 10 WaSC reported 14,530 storm overflows in England in a system with over 62,000 miles of combined sewers. These are distinct from emergency overflows. Emergency overflows are permitted at approximately 7,000 pumping stations in England. Emergency overflows should operate infrequently as they are designed to operate in the event of pumping station failures, such as electrical power failures. However, these incidents, although fewer than those from storm overflows, may indicate that there are serious faults in the sewerage system and have gained significant attention, such as the February 2024 discharge into Lake Windermere⁴⁸. Permit conditions for emergency overflows set out minimum key protection measures to avoid the likelihood of an emergency discharge due to power or plant failure⁴⁹. These measures include standby power requirements, such as a connection for a mobile generator, and for sites that do not meet the minimum storage requirement, a permanent standby generator or a duplicate power supply. Although generators can reduce likelihood of a discharge in response to power failures, discharges can still occur in response to other pumping station failures, such as mechanical breakdowns, rising main failure or a blockage downstream.

Event duration monitoring of storm and emergency overflows provides transparency around the frequency and duration of discharges, while flow monitoring can be used to distinguish whether the discharge was in response to rainfall or from an emergency event where an overflow is used as both a storm overflow and an emergency overflow. Water quality monitoring can provide data on the impact of discharges to our watercourses. Information from the combination of these types of monitors can inform policy interventions to reduce pollution, direct intelligent investment across the wider system, and help to inform public water-use as well as enforcement activity.

As of December 2023, event duration monitors are now in place at 100% of storm overflows. Water companies are currently required to provide annual data from event duration monitors for storm overflows to the Environment Agency as part of permit requirements, and from 1 January 2025, water companies will be required to publish information from these monitors in near real-time in an accessible format. However, emergency overflows are not fully monitored and there is no requirement for water companies to publish data on discharges from emergency overflows regularly. As such, there is insubstantial data on discharge events from emergency overflows for regulators and sewerage undertakers to assess when considering whether emergency overflows are operating

⁴⁷ [Sewage pollution in England's waters, House of Lords Library](#)

⁴⁸ <https://inews.co.uk/news/sewage-spills-nature-spots-uk-2895955>

⁴⁹ [Water companies: environmental permits for storm overflows and emergency overflows - GOV.UK \(www.gov.uk\)](#)

in line with permit conditions. This creates a lack of transparency with the public in an area of great interest. The proposed measure will help to address this information gap.

The current monitoring implemented by sewerage undertakers for storm overflows, and the publishing requirements introduced by this policy for emergency overflows, does not show how pollutants entering watercourses change the receiving water quality. To further improve our understanding of the specific impacts of discharges on water quality, a separate policy (set out in Section 82 of the Environment Act 2021) introduces requirements for continuous water quality monitoring upstream and downstream of storm overflows and sewage disposal works.

The causes of discharges from storm and emergency overflow use are varied and often complex. Various government bodies (Ofwat, the EA, NRW, Defra and the Welsh Government) are all playing their part in helping to solve the problem of their overuse.

For example, the EA and NRW regulate the use of storm and emergency overflows and can grant permits for them in certain circumstances, such as where minimum key protection measures are met for new or altered emergency overflows. Ofwat set performance targets for wastewater companies related to the management of storm overflows.

Furthermore, Ofwat and the EA are currently running one of the biggest ever investigations into the use of storm overflows⁵⁰.

The number of permitted emergency overflows as of August 2024 per company is listed in the table below⁵¹. We note that the number of permitted emergency overflows is not static, as water companies may surrender or apply for new permits from the Environment Agency, and therefore, the figures provided in the table below may not be the most recent numbers.

Number of Permitted Emergency Overflows by WaSC

Company	Number of Permitted Emergency Overflows
Southwest	624
Severn Trent	1,291
Thames	96
Wessex	607
Yorkshire	860
Anglian	1,421
Northumbrian	597
Southern	510
United Utilities	948
Total	6,954

⁵⁰ <https://www.ofwat.gov.uk/about-us/ofwat-and-the-environment/pollution-and-water-quality/storm-overflows-explainer/>

⁵¹ Data based on information provided from WaSC to Environment Agency and subject to revision.

Obstruction Sentencing Power

The current penalties for obstruction of a regulator’s investigations are not strong enough to effectively deter water company employees from obstructing investigations. This is evidenced by the six prosecutions for obstruction of EA investigations (2024 Anglian Water case, and 5 Southern Water employee cases, 2 of which were successfully appealed). It is assumed that the individuals were attempting to reduce the likelihood that Southern Water would be successfully prosecuted for discharging untreated sewage into controlled coastal waters⁵². This suggests that currently the benefits to water companies and employees from obstructing investigations may sometimes be expected to be higher than the existing penalties. Increasing the possible punishment to a maximum sentence of two years in prison is likely to provide a much larger deterrent, by increasing the cost of obstruction, such that these outweigh the benefits of obstruction (i.e. reduced likelihood of prosecution).

Lowering the Standard of Proof and Automatic Penalties

Environmental civil sanctions allow the regulator to make polluters pay for offences under environmental legislation due to negative externalities caused by activities that result in significant social costs. Whilst the regulators have powers to impose a range of monetary and non-monetary civil sanctions against offenders (FMPs, VMPs, and non-monetary sanctions such as stop notices and restoration notices), to impose a monetary penalty it must prove to a criminal standard (“beyond reasonable doubt”) that an offence has occurred, even if in relation to a minor offence. This is resource intensive in comparison to the seriousness of offence being enforced and size of the penalty imposed.

Minor and moderate offences make up the majority of water industry non-compliance, with 98% of pollution incidents in England in 2023 being classified as categories 3 and 4 harm⁵³. Without government intervention, these offences will likely continue to occur without penalty, or require lengthy, costly legal proceedings with no guarantee of success. Allowing penalties to be issued on a lower standard of proof, coupled with the new, automatic fixed penalties regime targeted at minor to moderate offences, will enable a more efficient allocation of resources, allowing the regulators to impose quick and proportionate penalties and ensure negative externalities resulting from water industry activity – of all seriousness levels – are appropriately enforced. This in turn is likely to incentivise improved compliance and reduced instances of environmental harm, reducing social costs.

Cost Recovery Power

EA/NRW Cost Recovery Power

The water industry sector continues to underperform. Despite the 2023 results of the EA’s Environmental Performance Assessment showing a small sector improvement in star ratings compared to 2021 and 2022, 5 of the 9 water companies are requiring improvement⁵⁴.

The 2024 update to the EA water quality charges is funding the EA to scale up regulatory effort, and the EA has committed to delivering 4,000 inspections by the end of 24/25, and 10,000 by the end of

⁵² [Environment Agency v WATER Southern \(judiciary.uk\)](#)

⁵³ <https://www.gov.uk/government/publications/water-and-sewerage-companies-in-england-environmental-performance-report-2023/water-and-sewerage-companies-in-england-environmental-performance-report-2023>

⁵⁴ [Water and sewerage companies in England: environmental performance report 2023 - GOV.UK \(www.gov.uk\)](#)

25/26^{55 56}. Legislative limitations on the EA and NRW cost recovery powers means that enforcement activities cannot be currently funded by permit charges and are government GiA funded.

Currently, regulators rely on the use of GiA to fund regulatory activities where costs cannot be recovered from operators, including most of the EA's water company enforcement activity. This means that the extent of the regulators' enforcement activities is constrained by the level of funding they receive from government rather than by the environmental and health impacts that enforcement aims to address.

Government intervention is required because the EA have taken their charging powers as far as they can within the existing legislation. New legislation is required to give the regulators the legal framework to update their charging schemes to cover water company enforcement costs. Government intervention is needed to ensure that regulatory enforcement becomes a more effective deterrent to environmental offending by ensuring the regulator is sustainably funded and resourced to carry out enforcement action against water companies where environmental obligations are breached. This will ensure that water companies bear the costs of enforcement action costs that is taken in response to their failings, and that the regulators are able to recover their full costs.

DWI Cost Recovery Power

Similarly, the DWI cannot recover costs for the enforcement related to their requirements under the SEMD, through which the DWI regulate the protection of our national infrastructure and ensure plans are in place to continue water supply and sewerage functions during a civil emergency. The absence of a cost recovery capability severely restricts the resource the DWI can direct to this work. In the context of a heightened threat landscape for utilities in the UK, this is a key risk that requires enhanced scrutiny and regulatory intervention. Without these changes the DWI will be unable to recover SEMD costs, impeding the growth and development of their SEMD work in a time of increasing risk to the water sector e.g. climate change, sufficiency, and security threats.

Government intervention is also required because the fees the DWI can recover are set by legislation, and currently do not include fees for enforcement activities relating to the SEMD. For the DWI to recover costs for the SEMD work they carry out from water suppliers, changes to both primary and secondary legislation are required. This measure ensures that the DWI are remunerated for all the SEMD work they carry out to scrutinise water suppliers' compliance with their obligations and review their current fee structure to spread the cost of regulation more fairly amongst water suppliers.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

In the unlikely event that a SAR is required, it is likely that government funding would be required to fund a water company SAR. Funding would be needed to cover both operational and capital expenditure (for example, maintaining and upgrading critical infrastructure) as well as for paying the cost of the special administrator appointed by the court to run the company. Broadly speaking, the funding provided by government is recouped at the exit of a SAR (for example, as a result of selling the company to new owners). However, there may be a risk that taxpayers' money is not fully

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[Environmental permits and abstraction licences: tables of charges - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/environmental-permits-and-abstraction-licences-tables-of-charges)

⁵⁶ [Inspection surge to crack down on water sector pollution - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/inspection-surge-to-crack-down-on-water-sector-pollution)

recovered from the proceeds of a SAR. Currently the SoS does not have the powers to require water companies to repay any shortfall incurred by taxpayers following a SAR. This differs from powers that exist under, for example, the energy sector SAR where the SoS can modify the energy supplier licences to require the repayment of unrecovered SAR costs for taxpayers. This means there is currently a risk to HMG funds and taxpayer money if a water industry SAR was triggered.

Relying on Ofwat's existing powers was considered unfavourable because use of these powers requires significant resources, and it can be a slow process when recovery of a shortfall would be an urgent government priority. Any modification made through these powers can also be challenged through the CMA. The option for water sector stakeholders to challenge a modification through this route leaves considerable risk that taxpayers' money would not be safeguarded by these powers. Given the nature of the funds being recovered, it is also right that the power to recover taxpayers' money should sit with government, rather than Ofwat as would be the case currently.

The objective of introducing this power is to ensure that a water SAR does not impact public funds and therefore the taxpayer if the Government chooses to allocate costs to the water sector. This power will only impact the water sector if a company enters a SAR and if there is also a shortfall in SAR administration costs. The distribution of these costs should they arise, across the water sector will be dependent on the design of the licence modification implementing shortfall recovery mechanism. The success of the shortfall recovery mechanism in averting costs to the taxpayer will depend on sufficient assets being available following the conclusion of a SAR. Government funding ranks near the top of the priority list of costs to be settled at the end of a SAR and so it's likely public funding will be recovered but there may be an occasion where proceeds are insufficient to recoup Government funding of the SAR. The ability of the Government to recover funding in this situation would depend on where in the list of water company creditors the Government resides in terms of repayment priority.

Winding-up petitions

There is currently no legal requirement for SoS or Ofwat to be notified in the event a water company or its creditors make a winding up petition to the court. There is also no statutory entitlement for SoS or Ofwat to be heard at the subsequent hearing. This means there is a risk of asymmetric information being shared with government and Ofwat in the event of a water company insolvency which, in turn, may mean that government and Ofwat could be unprepared for a water company to enter special administration. This could result in market failure. It could also mean government and Ofwat are unable to make their views and interests known to the court, with the special administration guided by creditors' interests rather than for public benefit. Given the critical nature of water and wastewater services, it is vital that government and Ofwat make the necessary preparations for a water company falling into administration to ensure services are continued and environmental obligations are met.

While it is likely that government and Ofwat would be notified and invited by the court to a winding up hearing, without a statutory requirement there is a residual risk that this does not happen. Other SAR regimes like energy include this statutory requirement, so the water sector SAR is currently an outlier in not including this. Such a requirement can only be introduced via primary legislation and, once it is, it will provide a water-tight safeguard against the risk of a SAR being triggered without Ofwat or government involvement. Through this power, the Government and Ofwat will be able to make successful representations to court ensuring appointment of preferred administrator in the event of a creditor triggered insolvency SAR. The power should also increase transparency between water companies, government and Ofwat.

Policy objective

Please refer to Section 3 of this Impact Assessment.

Description of options considered

Rules about remuneration and governance

Alternative options were considered as part of the policy development:

Option 0: Business as usual

Under the business-as-usual option, Ofwat would have the capacity to impose any additional requirements on bonuses; the leadership of companies; or the inclusion of consumers in decision-making. Existing bonus requirements (e.g. preventing companies from funding bonuses from consumer bills where companies fail to meet expectations) would continue. No requirements exist for water and sewerage undertakers on fitness and propriety. The Companies Act 2006 provides fundamental governance requirements across multiple sectors, including the water sector. However, this Act also does not require standards on fitness and propriety.

Option 1: Ofwat to use their existing licence condition power

An alternative would be for Ofwat to use their powers to modify license conditions to issue strengthened requirements on bonuses; the leadership of companies; or the inclusion of consumers in decision-making, instead of legislating. This could potentially deliver similar effects to the preferred option (option 2). However, there is a risk that companies would challenge strengthened requirements, since licence condition changes can be appealed to the CMA. There would also be no obligation on Ofwat to introduce requirements in these areas using their existing powers.

Option 2: New rule-making power on remuneration and governance

Under the preferred option, Ofwat would be granted a new power to set rules on remuneration and governance and would be required to issue rules in the specific areas of: bonuses; fitness and propriety; and consumer involvement in decision-making. This option is preferred because it would impose obligations on Ofwat to deliver requirements in the specified areas and cannot be appealed to the CMA.

Pollution Incident Reduction Plans

Alternative options were considered as part of the policy development:

Option 0: Business as usual

Under the business-as-usual option, the expectations for sewerage undertakers to produce PIRPs would continue on a non-statutory basis. This would mean that sewerage undertakers could continue to publish plans at different frequencies and in different formats. Pollution incidents, including serious incidents remain unacceptably high and have not reduced in the last four years, despite targets for them to significantly reduce. It is unlikely that this option would lead to the desired reduction in pollution incidents.

Option 1: Strengthen the expectations of PIRPs on a non-statutory basis (do minimum)

Under the do minimum option, the Government would communicate its expectation to sewerage undertakers that they increase the frequency of PIRPs to produce them on an annual basis and provide additional (non-statutory) guidance on what the plans should contain. This could potentially give similar effects to the preferred option (option 2). However, there would be no legal obligation for produce these plans and the regulator would have no legal basis to ask sewerage undertakers to

change their plans if they do not meet expectations or are inconsistent with other companies' plans. This may mean that sewerage undertakers do not prioritise producing these plans and may effectively equate to a continuation of business as usual – with similar impacts.

Option 2: Place PIRPs on a statutory footing (preferred)

Under the preferred option, sewerage undertakers would have statutory duty to produce annual PIRPs. This option is preferred because the clear statutory duty enables the regulator (EA) to use its enforcement approach to ensure that all sewerage undertakers produce a plan that meets the specific criteria.

Monitoring of Every Outlet

Alternative options were considered as part of the policy development for how to deliver the manifesto commitment:

Option 0: Business as usual

Under the business-as-usual option, monitors would be installed at 25% of emergency overflows during Price Review 24 (2025 – 2030) as part of existing commitments previously set in the Water Industry National Environment Programme (WINEP). However, there would be no additional requirement for water companies to make this information available to the public in near real-time and in an accessible and understandable format. This will limit the usefulness of the information provided.

Option 1: Require publishing of discharges from monitors installed at 25% of emergency overflows by 2030, and 100% by 2035

Under this option, there would be a new requirement for water companies to publish discharges in near real-time from emergency overflows in an accessible and understandable format. However, this requirement would only be for the 25% of emergency overflows that would require monitor installation by 2030 under existing WINEP commitments. This would mean that it would take longer for discharge information to become available and rolling out 75% of monitors in 2030 – 2035 may present delivery challenges.

Option 2: Require publishing of discharges from monitors installed at 50% of emergency overflows by 2030, and 100% by 2035 (preferred)

Under this option, the requirement to publish discharges in near real-time would be extended to 50% of all emergency overflows by 2030. This option will require water companies to go beyond the existing commitments for installation of monitors at emergency overflows during Price Review 24, allowing for a greater coverage of discharges being available to the public by 2030.

Obstruction Sentencing Power

Alternative options were considered as part of the policy development:

Option 0: Business as usual

Under the business-as-usual option, existing sentences for obstruction offences would remain the same. This would mean obstruction of EA investigations (except with respect to their emergency powers under s109 of the EA95) would only be punishable by a fine and would not be triable in the Crown Court. Executives would also not be liable where obstruction occurred with their consent or connivance or was attributable to their neglect). With this option, there is a material risk companies would continue to obstruct EA, NRW and DWI investigations because the cost of obstruction-related prosecutions would likely be lower than the cost of prosecution under other offences.

Option 1: Piecemeal approach (e.g. making obstruction punishable by imprisonment, but not triable in the Crown Court)

An alternative option would be to strengthen the sentences attached to obstruction offences in a piecemeal way. This could include, for example, making obstruction punishable by imprisonment but not triable the Crown Court. However, the impact of this option is likely to be limited. For example, if imprisonment were made a potential sentence for obstruction, but the offence was not triable in the Crown Court, the maximum sentence available would be 6 months imprisonment. This would be less likely to deter offending than a longer sentence that could be imposed in the Crown Court.

Option 2: Integrated approach (i.e. making obstruction punishable by imprisonment, triable in the Crown Court, and enabling prosecutions to be brought against executives)

Under the preferred option, obstruction of EA and DWI investigations would be made punishable by imprisonment up to 2 years; triable in the Crown Court; and enable prosecutions to be brought against executives. This option is preferred because it is most likely to deter obstruction, and there is legal precedent for these measures being used elsewhere in water legislation and other sectors.

Lowering the Standard of Proof

A full long-listing process was not followed, as this measure is intended to deliver on a government manifesto commitment. However, alternative options were considered as part of the policy development.

This includes considering:

- If a measure in the Bill was necessary to achieve this policy objective or if the objective could be achieved through other levers. However, as civil sanction powers are set out in primary legislation, a measure which amended these, or created new powers, would similarly have to be conducted in primary legislation. Non-legislative options would not achieve the policy objective to address the justice gap for minor to moderate offending.
- Whether the Bill should create a completely new discretionary financial penalty regime or to rely on amendment of existing civil sanctioning powers within the RES Act 2008; the approach to rely on modification of existing civil sanctioning powers is preferable, in line with expert advice on reducing duplication in the statute book and simplify the civil penalties regime.
- The measure should cover VMPs and/or FMPs. Limiting this measure to VMPs only would not allow for automatic penalties to be issued, whilst limiting this measure to FMPs only would restrict the use of the penalty to offences suited to a penalty of the fixed value – limiting the ability of the measure to meet policy objectives.

Option 0: Business as usual

Under the business-as-usual option, the regulators would have to continue to prove to a criminal standard (beyond reasonable doubt) that water companies have committed minor to moderate offences, for which the preferred option of modifying the standard of proof (option 1) would be applicable.

Option 1: Modification of standard of proof power (preferred option)

Under the preferred option, the regulators would be able to issue FMPs and VMPs using the civil standard of proof (“on the balance of probabilities”) for water industry offences, which would address the justice gap for minor to moderate offending.

Option 2: New bespoke, discretionary financial penalty regime

This option was not taken forward based on expert advice on reducing duplication in the statute book and simplifying the civil penalties regime.

Option 3: Modification of standard of proof power for VMPs only or FMP only

This option was not taken forward as limiting this measure to VMPs only would not allow for automatic penalties to be issued, whilst limiting this measure to FMPs only would restrict the use of the penalty to offences suited to a penalty of the fixed value – limiting the ability of the measure to meet policy objectives.

Automatic Penalties

A full long-listing process was not followed, as this measure is intended to deliver on a government manifesto commitment. However, alternative options were considered as part of the policy development.

This includes considering:

- If a measure in the Bill was necessary to achieve this policy objective or if the objective could be achieved through other levers. However, as civil sanction and enforcement powers are set out in primary legislation, a measure which amended these, or created new powers, would similarly have to be conducted in primary legislation. Non-legislative options would not achieve the policy objective to address the justice gap for minor to moderate offending.
- Whether the Bill should create a completely new fixed financial penalty regime or to rely on amendment of existing civil sanctioning powers within the RES Act 2008; the approach to rely on modification of existing civil sanctioning powers is preferable, in line with expert advice on reducing duplication in the statute book and simplify the civil penalties regime.
- The measure should cover FMPs only. VMPs would not be appropriate for automatic penalties as they would require regulators to determine the value of the penalty each time an offence was committed, delaying the process and limiting the ability of the measure to meet policy objectives.

Option 0: Business as usual

Under the business-as-usual option, the EA/NRW would have to continue to prove to a criminal standard (beyond reasonable doubt) that water companies have committed minor to moderate offences and would not be able to impose automatic penalties.

Option 1: FMP reform (preferred option)

Under the preferred option regulators would be able to issue reformed FMPs for specific water industry offences. These FMPs would use a civil standard of proof (“on the balance of probabilities”), the value would be increased to ensure they are proportionate to the offences committed and are substantial enough to deter future non-compliance, and they will be limited to specific water industry offences with limited or no environmental harm that allow for unambiguous evidence of offending. Such reforms would address the justice gap for minor to moderate offending.

Option 2: New discretionary financial penalty regime

This option was not taken forward based on expert advice to reduce duplication in the statute book and simplifying the civil penalties regime.

Option 3: Enabling automatic penalties for VMPs, as well as FMPs

This option was not taken forward as including VMPs in this measure would require regulators to determine the value of a penalty each time an offence was committed. This would delay the process to issuing a penalty, preventing it from being automatic and therefore not meeting policy objectives.

Cost Recovery Power

EA/NRW Cost Recover Power

A full long-listing process was not followed, as this measure is intended to deliver on a government manifesto commitment.

Option 0: Business as usual

Under the business-as-usual option the certain EA/NRW enforcement activities would continue to rely on government funding, as is the current model.

Option 1: EA/NRW Cost Recovery Power

Under the preferred option the regulators will be able to recover costs from water companies for enforcement activities. This measure was identified in ensuring the regulators are resourced to carry out enforcement action against water companies.

Option 2: Voluntary levy

This option was not taken forward as it was considered not suitable as it does not offer the same transparency, independence, equity, sustainability and public confidence as a statutory provision to fund the necessary enforcement activities, and not in line with the legal precedent of other cost recovery powers.

DWI Cost Recovery Power

For the DWI's cost recovery, a full long-listing process was not followed, as this measure can only be delivered through amendments to primary and secondary legislation. Consideration was given to the approach, and whether it was proportionate and had legal precedent. Using this methodology a shortlist of three options was considered.

Option 0: Business as usual

Under the business-as-usual option the DWI will not be able to recover costs for the enforcement related to their requirements under the SEMD, through which the DWI regulate the protection of our national infrastructure and ensure plans are in place to continue water supply and sewerage functions during a civil emergency.

Option 1: DWI Cost Recovery Power

Under the preferred option, the DWI will be allowed to charge for verification and enforcement activity to secure compliance with Directions made under S208 regarding security and emergency measures they undertake.

Option 2: Voluntary levy

This option was not taken forward as it was considered not suitable or proportionate to sustainably fund the necessary regulatory activities, and not in line with the legislative precedent of other DWI cost recovery powers.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

This option was shortlisted following consideration of the current approach, which relies on Ofwat's existing powers under Chapter I of Part II of the WIA91 to recover a potential SAR shortfall. However, use of these powers requires significant resources, and it can be a slow process when recovery of a shortfall would be an urgent government priority.

Option 0: Business as usual

Relying on Ofwat's existing powers to recover a potential SAR shortfall would require a lengthy and resource intensive process which may not successfully safeguard taxpayers' money as the recovery mechanism would be open to challenge through the CMA.

Option 1: Shortfall recovery power

Under the preferred option, a new power for SoS to modify water company licences to recover a SAR shortfall from water consumers will ensure that taxpayers' money will be safeguarded in the event of a water company insolvency. This power exists in other SAR regimes such as energy and was identified as an important deficiency in the water regime.

Winding-up petitions

This option was shortlisted following consideration of the current approach, which relies on existing arrangements whereby close contact with a distressed company should create the expectation that creditors would notify government if they intended to make a winding up application. However, while this would have avoided legislative changes and the slightly increased administrative burden of the proposed requirements for notice, the costs associated with the risk of government and Ofwat not being involved in proceedings were too high. This was a procedural update to ensure consistency with other SAR regimes like energy.

Option 0: Business as usual

Relying on existing arrangements leaves a residual risk that government and Ofwat are not notified of a winding up petition being made, and are not invited to be heard at court, as both actions would be left to the discretion of the water company or court.

Option 1: Winding up petition procedural changes

Under the preferred option, this risk will be eliminated by creating a statutory requirement for government and Ofwat to be notified of a winding up petition before a court can make an SAO and establishing a guaranteed right for government and Ofwat to be heard at court.

Summary and preferred option with description of implementation plan

Rules about remuneration and governance

How will the option be given effect? Primary legislation is needed to provide Ofwat with new powers to issue rules on remuneration and governance. Ofwat will need to consult during the Bill's passage on the implementation of their new powers. Ofwat intend to undertake a policy consultation in October 2024, which will test policy thinking regarding the rules. Ofwat will then undertake a statutory consultation after Royal Assent ahead of the implementation of the rules, which will consult on the final proposed content for the rules.

How will the intervention achieve policy objectives? Through implementation, Ofwat will consider the impacts on the water industry and ensure policy takes account of its statutory duties including relating to proportionality and achieves objectives.

When will the arrangements come into effect? Subject to consultation, the intention is for the rules on remuneration which relate to the banning of bonuses to come into effect in time to apply to bonuses awarded in relation to 2024-25. The other rules on governance are intended to come into effect during the summer of 2025.

Who will be responsible for ongoing operation and enforcement? Ofwat will then be responsible for the ongoing operation and enforcement new rules.

Does the approach enable flexibility? Yes, Ofwat will have the power to amend the rules, following additional consultation (unless amendments are made under the urgency provisions or where consultation is unnecessary provided in provisions under new Section 35D). This will ensure the rules can be updated to reflect changes in consumer expectations and new environmental requirements on water companies, among other things.

Pollution Incident Reduction Plans

Primary legislation (via this Bill) is needed to create a statutory duty for sewerage undertakers to produce an annual PIRP. The duty will commence by regulations. The EA intend to publish guidance prior to the duty taking effect. Sewerage undertakers will be responsible for publishing a compliant PIRP each year. The EA will be the enforcement agency for this duty. The EA will be able to update its guidance to take into account lessons learned as sewerage undertakers develop experience producing annual PIRPs.

Monitoring of Every Outlet

Primary legislation (via this Bill) is needed to create a statutory duty for sewerage undertakers to publish discharge data from emergency overflows in near real-time (within an hour). The duty will be phased in through commencement regulations (secondary legislation) to align with the rollout of monitors installed at emergency overflows. Sewerage undertakers will be responsible for publishing this data and the installation of monitors necessary to enable this. Ofwat will be the enforcement agency for this duty. The measure includes powers to create exemptions from the duty, using secondary legislation, if there are compelling reasons why it would not be appropriate to monitor specific types of emergency overflows – for example overflows that are due to be decommissioned very shortly.

Obstruction Sentencing Power

How will the option be given effect? Primary legislation is needed to strengthen the sentences attached to enforcement. No consultation will be needed.

How will the intervention achieve policy objectives? Strengthening the penalty attached to obstruction will deter companies from obstructing investigations; and ensure that where obstruction does occur, companies and executives receive a proportionate sentence.

When will the arrangements come into effect? This policy will come into effect when the Bill comes into force.

Who will be responsible for ongoing operation and enforcement? The Courts will be responsible for administering sentences. The EA and DWI will decide when to bring prosecutions against offences, as they do already in line with their enforcement policies⁵⁷.

Does the approach enable flexibility? This policy does not mandate any actions. It will be for the Courts to decide the appropriate sentence for obstruction.

Lowering the Standing of Proof and Automatic Penalties

How will the option be given effect? Secondary legislation is needed to implement penalties to the civil standard of proof and introduce automatic penalties. The Government will consult during the Bill's passage on:

1. The offences the regulators can impose a penalty for on the balance of probabilities and for which automatic penalties will apply to.
2. The monetary value of an automatic penalty.
3. A cap for the maximum size of the new variable monetary penalty available to the civil standard of proof.

Alongside regulations, the regulators must additionally consult on updates to their guidance about the use of civil sanctions that sets out their methodology for the use of these penalties, including how they will determine the value of new VMPs to be issued. We expect this will use the guidelines for environmental offences published by the Sentencing Council to determine an appropriate level of variable monetary penalties.

When will the arrangements come into effect? This policy will come into effect when secondary legislation takes effect.

Who will be responsible for ongoing operation and enforcement? Regulators will be responsible for ongoing operation and enforcement, with monitoring of the use of civil penalties to be conducted through existing civil sanctions monitoring processes that require regular publication of the penalties imposed.

Does the approach enable flexibility? Through the consultation, government will carefully consider the impacts on the water industry and ensure that the penalties provide an appropriate deterrent to drive improved performance. Government will be responsive to views received in the consultation in shaping secondary legislation to implement the measures.

⁵⁷ [Environment Agency enforcement and sanctions policy - GOV.UK \(www.gov.uk\)](http://www.gov.uk), [Enforcement Policy – Drinking Water Quality Regulation - Drinking Water Inspectorate \(dwi.gov.uk\)](http://dwi.gov.uk)

Cost Recovery Power

EA/NRW Cost Recovery Power

The preferred approach is to extend existing cost recovery powers to provide the EA and NRW with the ability to enable recovery of their costs in relation to water company enforcement activity. The intervention is intended to ensure that regulatory enforcement remains an effective deterrent by ensuring the regulators are appropriately and sustainably resourced to carry out enforcement action against water companies where obligations are breached. The EA and NRW cost recovery powers will be introduced through primary legislation, although specific criteria and details of the charges will be set out later in regulators charging schemes which are subject to consultation with affected parties, and approval from SoS and HM Treasury.

The EA and NRW operate separate environmental permitting and abstraction licensing regimes with separate corresponding charging schemes. Each regulator will be responsible for the ongoing operation of their cost recovery powers, with water companies in England paying their charges to the EA, and consumers in Wales paying their charges to NRW. Streamlined routes for regulators to implement the power through their charging schemes have been provided by the Bill, such as the ability to satisfy charge consultation duties in part or full before Royal Assent and early commencement of the relevant provisions. The EA is currently working on the implementation of the new provisions subject to consultation with affected parties and SoS and HM Treasury approval of charge proposals. The approach to implementation enables the regulators to periodically review their charges and delivery processes within existing well-established safeguards.

DWI Cost Recovery Power

The preferred approach is to make legislative amendments which will allow for the DWI to fully charge for verification and enforcement activity to secure compliance with Directions made under S208 regarding security and emergency measures they undertake. The intervention will ensure that the Secretary of State can confer powers on the Chief Inspector of Drinking Water, by way of an Order, to charge fees also in respect of SEMD work changes are required in The Water Quality and Supply (Fees) Order 2016. The timeline for amendments to the Fees Order has yet to be confirmed making it difficult to confirm when the DWI will be able to begin recovering costs for SEMD work they undertake. The DWI will be responsible for ongoing operation and administration of fee collection from water companies. SEMD fee collection will be incorporated into the current fees system operated by the DWI.

The flexibility provided through the Bill to restructure fees charged to water companies will be subject to a consultation with industry and no timeline has yet been confirmed for when a fee restructure will be pursued.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

The preferred approach is to introduce a power for Secretary of State (SoS) and Welsh Ministers to modify water company licences to recover a shortfall in administration expenses at the end of a SAR from water consumers. This power is intended to align the water industry SAR with other regimes like energy, and to safeguard taxpayers' money in the event a SAR is triggered. The power will be introduced through primary legislation. This will be a flexible power that allows the Government to choose whether to use it at all and how to design the shortfall recovery mechanism if the decision is made to use it. This could mean recovering a shortfall from an individual water company or spreading recovery of costs from across the sector. If the power is ever used, government must consult with the sector and consider views before a shortfall recovery mechanism is put into effect.

Winding-up petitions

The preferred approach is to introduce procedural rights for government and Ofwat in the event that a water company's creditors pursue a winding up petition. The provisions in the Bill will make clear that Ofwat and government must be notified of the winding up petition before the court can make an SAO and will also give Ofwat and government guaranteed rights to be heard at any subsequent court hearings. These rights are intended to align the water industry SAR with other regimes like energy and ensure that government and Ofwat are aware that a SAR may be triggered and are able to make representations to court. These rights will be introduced through primary legislation. As guaranteed rights, these provisions do not involve discretion but are replicating rules tested in the energy sector. NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden).

All costs and benefits have been assessed over a 10-year period (2025-2034) and presented in 2023/24 prices where monetised, and a 2025 present value base year. All costs and benefits have been discounted using the HM Treasury Green Book recommended 3.5%⁵⁸.

Rules about remuneration and governance

Benefits

Improved environmental performance

The prohibition of companies making performance-related payments to executives in years where companies fail to meet required standards provides higher accountability for water company executives. Company poor performance on consumer matters, the environment, financial resilience and criminal liability will result in higher private costs for executives, which should incentivise decision making that results in better outcomes for consumers and the environment. This payment restriction would internalise some of the externalities that wider society faces through water company poor performance by increasing the private costs to executives. There may also be a temporary reduction in costs to water companies, where bonuses are paused. However, a potential unintended effect of the measure is that base pay would increase to compensate for the possibility of reduced performance-related payments. If this were to occur, then the performance improvement that the measure is intended to bring would be reduced.

Improved financial and organisational performance

Alongside internalising the externalities that wider society faces, stronger rules on remuneration and governance may also encourage more robust management of water companies. Senior managers may be subject to various biases and incentives that hinder effective decision-making, that robust governance rules could help to correct⁵⁹. Potentially, this may have long-term benefits for companies' financial performance.

Costs

Reduced attractiveness of executive roles

The restriction on performance-related payments where companies fail to meet required standards could reduce the attractiveness of executive roles in the water industry. This may be a contributing push factor in experienced executives leaving the industry and it could also make it more difficult to attract new candidates to fill roles. This effect could potentially have an impact on the performance of the sector in a number of ways. It could lead to reduced productivity as future executives may not have as much expertise or experience. There could be an increase in costs as companies need to

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https://assets.publishing.service.gov.uk/media/6645c709bd01f5ed32793cbc/Green_Book_2022_updated_links.pdf

⁵⁹ [cost-benefit-analysis.pdf \(fca.org.uk\)](https://www.fca.org.uk/cost-benefit-analysis.pdf)

invest more in training of new employees and hiring costs. It could also lead to a slowdown in innovation as knowledge is lost from the industry and new executives familiarise themselves with new roles. However, similar rules exist in a number of other sectors – such as energy and financial markets – and these sectors have adapted to their introduction⁶⁰. There is no reason to expect that the water sector would fair differently. Furthermore, the Bill does not completely prohibit bonuses being paid; if performance meets the required standards – as would be expected for high-performing executives – bonuses will still be given. It is only in the event of failure to meet a specified standard that bonus payments will be restricted.

Ofwat monitoring costs

Ofwat already monitor a variety of elements of company performance, and mandate companies to produce reports that include water company performance against a variety of key metrics. Bonuses are also monitored by Ofwat, and companies publish executive bonuses in their annual reports and financial statements. Under this measure, there would be an additional resource cost to Ofwat to monitor the relationship between the specified standards and bonuses and enforce restrictions should breaches of the rules issued by Ofwat occur.

Time spent on fitness and propriety test

Water companies will need to spend employee time assessing and demonstrating that executives meet a fitness and propriety test. There are similar criteria for senior management in the financial services sector, where firms are required to assess if individuals performing Senior Management Functions (SMFs) and Certification Functions are fit and proper for their roles as part of the Senior Managers and Certification Regime⁶¹. However, costs in the water sector may differ, as companies will not need to seek Ofwat's approval for specific appointments, but instead demonstrate they have been complying with Ofwat's rules.

Search costs

Under this measure, companies would be required to test whether water company directors meet standard of 'fitness and propriety' and prevent the appointment of individuals in these roles where standards are not satisfied. This may rule out potential directors that could have been selected under the status quo and therefore slightly narrow the pool of potential candidates. A narrower pool of candidates can make it more challenging for water companies to fill vacancies, potentially leading to a prolonged recruitment process. An extended search could consume more recruiter time, increasing labour costs. Additionally, companies may need to invest more in advertising job openings to attract suitable candidates.

Familiarisation costs

Upon introduction of new rules on remuneration and governance, water company employees will face familiarisation costs. This includes the time taken to understand the new regulations and adapt practices to comply with the new rules.

Defra assumes that executive directors and 5-20 support staff will need to spend 30 minutes-3 hours familiarising themselves with the new measure. There are 35 executive directors in the water industry, and they have a mean base pay of £331,000 per year (2023/24 prices)⁶². It is assumed that they work 40-60 hours per week which gives an hourly wage of £106-159. 22% non-wage costs are then added to cover additional employer costs such as national insurance contributions and pensions etc., which amounts to £129-£194 per hour⁶³. This hourly wage is multiplied by the

⁶⁰ [Evaluation of the Senior Managers and Certification Regime \(bankofengland.co.uk\)](https://www.bankofengland.co.uk/evaluation-of-the-senior-managers-and-certification-regime)

⁶¹ [Senior Managers and Certification Regime | FCA](https://www.fca.org.uk/consumers/senior-managers-and-certification-regime)

⁶² Ofwat correspondence

⁶³ RPC guidance

https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

expected number of hours to familiarise themselves with the system and the number of executive directors impacted.

Defra assumes that 80-320 other staff will need to familiarise themselves with the new rules about remuneration and governance (5-20 staff across 16 water companies). It is assumed that each member of staff will take between 0.5-3 hours to familiarise themselves. Ranges has been used as this assumption comes with high uncertainty. It is assumed that the affected staff have an hourly wage of £19.18 plus 22% non-wage costs which makes £23 per hour (2023/24 prices)⁶⁴. There may be further familiarisation costs associated with establishing and monitoring new systems and processes to be compliant with the proposed rules.

When considering the familiarisation costs of both executive directors and support staff, it is estimated that the one-off familiarisation costs will be between £3,201-£42,849* in 2023/24 prices.

Table 1: Estimated familiarisation costs for rules about remuneration and governance

	Low	Central	High
Familiarisation costs	£3,201*	£17,703*	£42,849*

We will be consulting on cost implications and impacts on businesses further as part of our consultation on regulations and will refine this estimate through a secondary impact assessment.

Pollution Incident Reduction Plans

Benefits

Reduction in the frequency and seriousness of pollution incidents

These plans provide a framework for sewerage undertakers to implement actions that meaningfully reduce the frequency and seriousness of pollution incidents. The extent to which these actions reduce pollution incidents will depend on the combined effectiveness of the individual actions that sewerage undertakers successfully implement. The benefits are, therefore, difficult to quantify. Reducing the frequency and seriousness of pollution incidents will reduce the environmental and human health impact of these incidents.

Costs

Cost of producing the plan each year

The main cost of this measure will be the employee time required for sewerage undertakers to develop the plan, review progress and receive approvals as required via their internal governance routes prior to publication each year. Currently, sewerage undertakers produce PIRPs at different frequencies (approximately once every 1-5 years).

For the ongoing cost of pollution incident plans, it is assumed by Defra that each Water company will need to employ an extra employee in order to ensure plans adhere with the new guidance. This is assumed to cost £48,000 per FTE based on the same expected wages as the rules about remuneration and governance measure (see previous section).

To estimate the cost of producing a plan a range is used where either all WaSC will need one extra staff member or only half the WaSC will need one extra staff member. As companies currently already produce pollution incident plans it is difficult to ascertain whether extra staff will be needed. The total cost is expected to range from £215,280 to £430,560 dependent on how much extra staff costs WaSC will face. The range of costs is based on an increase of either 4.5 FTE or 9 FTE. The

⁶⁴ ONS earnings by industry 2023 provisional SIC 64

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyindustry2digitsicashetable5>

measure will also mean an increase in burden on the regulator in order to review and scrutinise the plans.

Familiarisation costs

The familiarisation costs for the measure will be reading the guidance and establishing processes to produce a robust compliant plan. These costs are difficult to estimate as WaSC are already producing pollution incident reduction plans (albeit to different requirements). Hence assumptions by Defra have been made on how much employee time will be spend considering new guidance on PIRPs.

Is it assumed that Executive Directors may need to spend 1-3 hours familiarising themselves with the new law and the associated guidance. Using the same expected wages as the rules about remuneration and governance measure (see previous section), there are 35 executive directors in the water industry, and they with an assumed wage cost of £127-£191 per hour. This hourly wage is multiplied by the expected number of hours to familiarise, and the number of executive directors impacted.

It is assumed that, around 40 support staff will need to spend 8 hours familiarising themselves with the new guidance and understand the requirements for future pollution incident reporting plans. As above, it is assumed that they have an hourly wage of £19.18 plus 20% non-wage costs which makes £23 per hour (2023/24 prices) ⁶⁵.

When considering the familiarisation costs of both executive directors and support staff, it is estimated that the one-off familiarisation costs will be between £17,050 and £27,414 in 2023/24 prices.

Table 2: Cost to WaSC of Pollution Incident Reduction Plans

Type of cost	Low	High
Yearly cost of implementation		
Yearly cost of implementation	£215,280	£430,560
Familiarisation costs		
One off Familiarisation cost (Support Staff)	£3,680	£7,360
One off Familiarisation cost (Executive staff)	£13,370	£20,055
Total Familiarisation cost	£17,050	£27,415

The estimated cost to water companies of requiring them to produce an annual PIRP (contrasted with the current frequency that they publish PIRPs) are expected to be small. It is anticipated that these costs will not be significant enough to require any additional revenue allowance from Ofwat.

Monitoring of Every Outlet

Benefits

This measure will ensure greater transparency around discharges from emergency overflows, which will provide more data to regulators and the public to hold water companies to account. With near real-time publishing of discharges, action may be taken sooner if monitors show excessive spills at an emergency overflow. This in turn will benefit households that partake in recreation at or near the water environment. As the raw sewage in overflow discharges can contain high levels of harmful

⁶⁵ An assumed to cost £48,000 per FTE ONS earnings by industry 2023 provisional SIC 64 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyindustry2digitsicashetable5>

pathogens, such as viruses and bacteria, these discharges can pose a risk to the health of recreational users of waters. In addition, these discharges can also jeopardise the economic activity around bathing waters, which are predominantly coastal in England and Wales.

Water and coastal environments are important for the wider public. According to Natural England's Monitor of Engagement with the Natural Environment, 15% of visits to nature were to a beach or a river/canal⁶⁶. The water environment plays a key part of the tourism industry, for example it is estimated that in 2007 the economic output directly attributable to seaside tourism totalled £3.4bn⁶⁷.

There is a high degree of public interest in these issues and, as such, there may be a societal intrinsic value in having cleaner waters. There is less robust evidence on the 'social harm' caused by discharges from overflows. However, research conducted by Consumer Council for Water (CCW) in December 2021 found that untreated sewage is now seen as the biggest cause of river pollution in the eyes of the public. This has overtaken litter, fly tipping and business waste/chemicals since May 2021⁶⁸.

There may be societal value in establishing the principle of eliminating harmful discharge of raw sewage, beyond the measurable ecological and public health outcomes. Monitoring can ensure individuals have the relevant information about potential discharges in their local area. This measure will also offer benefits to biodiversity that will be further explored in subsequent assessments.

Costs

Cost of Monitoring

This policy measure directly impacts WaSC, as they will need to invest in and install monitors at sites with emergency overflows. The cost will be dependent on the number of emergency overflows in the network within the WaSC region, and the type of monitoring that needs to be undertaken. Costs are based on what funding is set during the price review process. The amount of funding available is set by Ofwat through its final determinations and will be subject to further changes during the price review process. The costs included in this IA are therefore indicative at this point and should not preclude the outcomes of the price review process and further policy development.

The assessment of costs for this measure has been based on cost information provided by both Ofwat and WaSC. Information from consultation with Ofwat and WaSC has been used to estimate the cost of implementing monitoring at emergency overflows, though the exact cost will be determined once WaSC undertake more detailed planning within the price review period. In addition, individual WaSC may have different planned rates of rollouts over the next ten years which may impact on costs.

The costs of installing monitors at emergency overflows can vary considerably depending on the nature of the outlet. For example, emergency overflows also operating as storm overflows will require flow monitors in addition to event duration monitors. This is necessary to allow regulators to distinguish between when the discharge has occurred in response to a pumping station failure versus rainfall events. The addition of installing flow monitors will increase the cost and complexity for that site. This also provides justification for why some individual companies have stated they can achieve 100% coverage of monitors faster and at a lower cost than others, as they may have fewer sites that also require flow monitoring.

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https://assets.publishing.service.gov.uk/media/5d6cd601e5274a170c435365/Monitor_Engagement_Natural_Environment_2018_2019_v2.pdf Monitor of Engagement with the Natural Environment – The national survey on people and the natural environment Headline report 2019

⁶⁷ [The Seaside Tourist Industry in England and Wales | Sheffield Hallam University \(shu.ac.uk\).](#)

⁶⁸ [Awareness and perceptions of river water quality](#) (CCW)

Under previous planning for PR24 (2025-2030), WaSC had been requested to install monitors at 25% of emergency overflows, however, some companies had a higher target for installing monitors at a higher proportion of emergency overflows within PR24. This is outlined in the table 3 below. This requirement was introduced by the previous government. The preferred approach under the Water (Special Measures) Bill will go further by aiming for a higher rollout rate, with monitoring required at 50% of emergency overflows during PR24, and at 100% by the end of Price Review 2029 (PR29) (31 March 2035). As such, the cost of the measure has been modelled based on information from PR24. Some WaSC had planned for a higher % rollout in PR24 period, which has been factored into the overall cost of the policy.

Table 3: Current costs from PR24 (based on rollout of monitors at 25% of emergency overflows)

Costs in PR24	Cost requested for Emergency Overflows in PR24 at 25% (£m)	OFWAT draft determinations for 25% roll-out (£m)
Anglian Water	44.2	44.2
Northumbrian Water	125.3	31.3
Severn Trent Water	13.1	11.9
Southern Water	38.9	27.2
South West Water	5.14	5.1
Wessex Water	10.7	8.6
Thames Water	8.6	6.9
United Utilities Water	39.1	27.4
Yorkshire Water	19.1	13.4
Total	£304m	£176m

In order to derive a cost for the installation of monitors a cost per emergency overflow from Water companies have been multiplied by the number of emergency overflows. An average unit cost across all types of monitor of £87,000 has been estimated across all types of upgrades to account for the difference in unit costs. This has been compared to an estimate provided by OFWAT, where costs estimate from draft determinations have been used to model a higher rollout. Currently WaSC are assumed to have costed for 25% rollout, but they will need to now install more monitors than previously assumed. Therefore, total costs have been estimated for the new policy inclusive of costs for a 25% rollout.

The estimated costs for the preferred option under this measure requiring installation of monitors at 50% of emergency overflows by 2030, and 100% by 2035 is outlined in the table 4 below.

Table 4: Costs associated with the Emergency Overflows measure⁶⁹

Scenario	Total financial costs (£M) over a ten-year period.
Central Estimate	620
High	744
Low	496

For this assessment the net present values have been derived based on the costs above. Costs are modelled over the next ten years, which covers the next two price review periods, but in reality, costs will likely differ year to year rather than be uniform each year. Companies will install monitors at different rates and may achieve the target of rollout quicker than expected.

⁶⁹ Costs are illustrative estimates by Defra and subject to change. OFWAT final determinations will determine the price and service package Water Companies provide.

Data from the Environment Agency has been shared with Defra on the total number of emergency overflows. The total number of emergency overflows is subject to change given uncertainty on the full extent on the network (See page 44).

Option analysis and direct cost to business

To model the costs to businesses, the rollout period is assumed to last for ten years and would see investment spread over that period. Therefore, a ten-year appraisal period is used. Water companies have been requested, via guidance, to achieve a 50% rollout of monitors at emergency overflows by 31 March 2030. Individual companies may achieve compliance at different rates over the next two price review periods, and therefore costs incurred from year to year will be different than what is assumed in the impact assessment for estimating the net present value of costs (i.e., that the cost of installation is uniformly spread over the next ten years).

Table 5: Direct cost to Business (Total financial costs over the period)

Scenario	Total cost (financial cost £M)
Central Estimate	620
High	744
Low	496

Table 6: Costs to Business (Net present values (2023/24))

Scenario	Total cost £M (net present values 2023/24)
Central Estimate	534
High	640
Low	427

Sensitivity tests

Given uncertainty in the costs, a high and low-cost scenario has been modelled where costs are either 20% higher or lower. This would reflect a higher-than-expected costs of installing monitors which could be due to higher inflation or for a higher-than-expected number of emergency overflows.

Familiarisation costs

The change in policy for emergency overflows may mean WaSC have to consider which further emergency overflows are in scope of the measure compared to the current 25% requirement, although to some extent this cost would have been incurred in PR29, given future WINEP policy. The costs above do include costs related to the planning for EO's, though familiarisation costs will only be a small part of this. This cost will involve WaSC familiarising themselves with the new the new requirements and potentially undertaking further survey work of emergency overflows. This is assumed based on judgement to be a small percentage of the overall cost about 0.1% of the total capital expense equating to £500,000.

Household impacts, Costs and pass through

WaSC may be able to pass on some of the investment costs related to MEO to consumers, this will be determined by Ofwat. The cost measure is likely to be passed onto Households through Water bills though not mandated.

As mentioned above the costs to WaSC will be dependent on the number of emergency overflows in the network within the WaSC region, and the type of monitor that needs to be installed. The costs

do vary by WaSC, but this is not determined to have any significant differential impact on bills in different regions. Please see the section on household impacts for more detail on the impact of the WSMB on Water bills.

Impact on Households: Costs

The overall cost of monitoring every outlet will impact on households through water bills. Our bill model is not sufficiently sensitive to be able to ascertain bill impacts of a 50% and 100% roll-out for individual companies.

There would be some regional variation to this, for example a greater impact could be expected in areas with lower population and higher need for monitors, but this variation is not considered to be significant. Those water companies that will likely have the highest overall bill increases in PR24 have not suggested costs to meet the emergency overflows monitoring requirement would have a dramatic impact on their bills for PR24. Please see the section on household impacts for more detail on the impact of the WSMB on Water bills.

Obstructing Sentencing Power

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023)⁷⁰. As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

Benefits

Improved Enforcement

The deterrent effect of tougher punishments for the obstruction of regulator investigations is expected to reduce instances of obstruction. This will allow for a smoother investigation process and more effective enforcement activity by EA, NRW and DWI. Over time, improvements in enforcement will ensure water companies act more to benefit society by increasing the private cost of law breaking to companies/employees.

Reduced use of regulators' resources

The number of obstruction cases is expected to come to zero or near zero, since there have only been a small number of cases to date (c4 successful prosecutions in the appraisal period), and a strengthened penalty should deter further cases. A lower incidence of obstruction should enable more successful regulatory investigations, and thereby greater accountability. This could reduce the overall employee time cost of carrying out enforcement activities for EA and DWI enforcement officers compared to the status quo.

Costs

Imprisonment costs

The deterrent effect is expected to reduce the already low number of obstruction offences. However, there is still the possibility that there will be obstruction prosecutions. This would place a small additional burden on the prison system which is already under significant strain. The maximum sentence that a case could receive is 2 years of imprisonment. As the prison estate is already being expanded to meet demand, cost estimations for additional cases of imprisonment must also factor in the cost of building and running additional prison places on top of the existing expansion plans. The

⁷⁰ [Better_Regulation_Framework_guidance.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115444/better-regulation-framework-guidance.pdf)

Ministry of Justice estimates that it costs £500,000 to build additional capacity and £52,000 in annual running costs per place⁷¹. There have only ever been 3 successful prosecutions of individuals for obstruction (2 prosecutions have been successfully appealed), 3 cases of Southern Water employees removing EA samples from their vehicle in 2019. As an upper bound cost estimate, Defra assumes there could be one case every two years with the maximum sentence of a two-year imprisonment based on the fact there has been four historic cases. The building cost has been split over three years to allow for construction, as per Ministry of Justice guidance. The estimated cost would be £218,667 for the first three years and £52,000 every subsequent year. Table 7 below shows the upper bound estimation of imprisonment costs over the 10-year appraisal period in 2023/24 prices and discounted at a 3.5% discount rate as suggested in the Green Book⁷². The total net present cost of imprisonment over the 10-year appraisal period is estimated to be between zero and £930,882.

Table 7: Upper bound estimation of discounted imprisonment costs over the appraisal period

	2025	2025	2027	2028	2029	2030	2031	2032	2033	2034	Total NPV
Imprisonment cost	£218,667	£211,272	£204,128	£46,901	£45,315	£43,783	£42,302	£40,872	£39,489	£38,154	£930,882

Familiarisation costs

Familiarisation costs are expected to be very low since no new criminal offence will be created through this provision. Instead, the penalty for an existing offence, which companies should already be familiar with, will be strengthened. A new provision on consent, connivance and neglect will be inserted. However, this provision exists elsewhere in water legislation, so familiarisation costs should be minimal.

Whilst it is difficult to quantify these costs at this stage, we assume that this power is applicable to 21 (11 WASC, 5 WOCs and 5 NAVs) businesses in the water sector across England and Wales. Defra assumes that 1-5 legal employees per business would need to be familiar with the new arrangements. This will vary depending on the size of the business. Defra assumes that each employee will spend on average 30 minutes to one hour familiarising themselves with the measure.

To estimate the total familiarisation costs to the water sector associated with this modification, we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the hourly wage rate from the Office for National Statistics Annual Survey of Hours and Earnings (ASHE) estimates for "employees working on legal and accounting activities" which is £26.32⁷³. This hourly wage rate has been uplifted by 22% to take into account non-wage costs such as National Insurance and pension contributions⁷⁴. This provides a one-off total cost estimate to the England and Wales water sector of between £337 to £3,372.

⁷¹ 2023/24 prices. Prison Estate Analysis Programme, MoJ

⁷² <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

⁷⁴ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/IPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

Table 8: Estimated one off familiarisation costs for impeding investigations: sentencing and liability

	Low	Central	High
Familiarisation costs	£337	£1,517	£3,372

We will be consulting on cost implications and impacts on businesses further as part of our consultation on regulations and will refine this estimate through a secondary impact assessment.

Lowering the Standard of Proof

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023)⁷⁵. As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

The modification of the standard of proof will enable the regulators to issue FMPs and VMPs using the civil standard of proof (“on the balance of probabilities”) for water industry offences. It is expected that any FMPs enabled by this power will be issued via the new automatic penalty regime. The impacts associated with automatic FMPs have been set out below and are not discussed here to avoid double counting. This section focuses on the impact of VMPs enabled under this power.

Benefits

Under the status quo, the EA cannot impose financial penalties on water companies without lengthy investigations to the criminal standard of proof, even for minor to moderate offences. The proposed measure would allow for penalties to be issued based on the lower civil standard of proof. This would result in less time and resources spent per offence by the regulators, where this evidential standard is proportionate, should non-compliance arise.

The ability to impose quick and proportionate penalties for minor to moderate offences by water companies will allow for more effective regulation. Stricter enforcement is expected to decrease instances of offences covered by civil standard penalties, including water pollution and water resources offences. This increase in fines will internalise the externalities of offences by increasing the private costs that water companies face by committing the listed offences.

Costs

Familiarisation costs

Water companies will also face one-off costs, to familiarise themselves with the new civil penalties. It is our intention for any familiarisation costs to be minimised through frequent engagement and consultation with the water industry. Familiarisation costs are also considered to be minimal for the modification of the standard of proof for variable monetary penalties, as this penalty regime is anticipated to retain existing variable monetary penalty procedures.

Whilst it is difficult to quantify these costs at this stage, we assume that this power is applicable to 21 (11 WaSC, 5 WOCs and 5 NAVs) businesses in the water sector across England and Wales. It is also assumed that 1-8 employees per business would need to be familiar with the new arrangements, covering a range of professions including the board, senior management, legal teams, accounts/finance, office staff, catchment managers, compliance managers, operational staff

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https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better_Regulation_Framework_guidance.pdf

and any other personnel involved in compliance and management of permits and licences. This will vary depending on the size and structure of the business. It is then assumed that each employee will spend on average one 7.5 hour working day.

To estimate the total familiarisation costs to the water sector associated with this modification, we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the hourly mean wage rate of employees working on legal and accounting activities of £26.32 based on the Office for National Statistics Annual Survey of Hours and Earnings (ASHE) 2023 estimates^{76,77}. This hourly wage rate has been uplifted by 22% to take into account non-wage costs such as National Insurance and pension contributions^{78,79}. This provides a one-off total cost estimate to the England and Wales water sector of between £5,057 -£40,459*. However, there will be no new offences introduced and the process will be similar to the existing penalty process to ease familiarisation costs.

Table 9: Estimated one off familiarisation costs for modification of the standard of proof (2023 prices)

	Low	Central	High
Familiarisation costs, £	5,057*	17,701*	40,459*

We will be consulting on cost implications and impacts on businesses further as part of our consultation on regulations and will refine this estimate through a secondary impact assessment.

Cost of penalties

In this assessment of costs, we assume that compliance with permit or licence is 100% based on previous Regulatory Policy Committee guidance⁸⁰. As such, the assumed number of VMPs issued under this power will be zero. As such, the assumed cost to businesses of penalties under this power is zero.

The penalty regime associated with this modified standard of proof will be developed through secondary legislation. The secondary legislation will set out the maximum VMP that the EA can issue under their modified power – this penalty cap will be consulted on during the Bill’s passage. It is possible that once the penalty regime of this power is introduced as part of secondary legislation that it could take businesses time to adapt, and any non-compliant businesses could incur VMPs imposed to a civil standard of proof. VMPs issued under this power would lead to a direct financial loss of net income in the period that fines are issued for non-compliant companies.

Additionally, businesses in the England and Wales water sector may incur costs associated with the introduction of any internal processes that they need to set up to ensure that they are compliant. However, it is expected that water companies should already have these processes in place given that no new offences are being introduced as part of this power.

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SIC code 69

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

⁷⁸ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/_RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

⁷⁹ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/_RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

⁸⁰ https://assets.publishing.service.gov.uk/media/5c9b8614ed915d07aba070c3/_RPC_case_histories_-_December_2016_volume.pdf

Costs to the Environment Agency / Government

As set out above, since we assume a 100% compliance rate with permit and licence conditions relevant to this measure, it is assumed that there are no additional costs to the EA.

Potential enforcement activity related costs that the EA and government could incur if compliance is not 100% could include:

- Cost of investigating whether an offence has been committed, gathering proof to a civil standard and deciding the appropriate level of fine.
- Cost of issuing notices to offending water companies.
- Additional IT costs associated with new penalties.
- Cost of any appeals against the notices.

Though some of these costs may be recoverable under the new cost recovery powers provided to the EA and DWI by this Bill, once their respective new charging regimes have been finalised.

Costs passed onto households

Whilst it is assumed that compliance will be 100%, if any penalties were issued to water companies using the civil standard of proof under this power, as is Ofwat's current practice, we expect these penalties to be borne by the companies and not consumers.

If additional enforcement activities are undertaken by the EA as the result of modification of the standard of proof, then the EA may be able to cover some of these costs via the EA's expanded cost recovery power, also provided for by this Bill. In this situation, any additional costs that arise from additional EA enforcement activities as a result of this power would be at least in part transferred to the water industry. Ofwat, the independent economic regulator, sets the amount of revenue companies can recover from consumers through its price review process. Ofwat own any final decisions on whether enforcement costs that the regulators may propose to charge water companies can be passed on in part or full.

Automatic Penalties

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023)⁸¹. As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

Benefits

Stricter enforcement

The ability to give swift penalties for minor to moderate offences by water companies will allow for stricter regulation with the introduction of automatic penalties and the lowering of standard of proof to civil standards. Stricter enforcement is expected to decrease instances of offences covered by automatic penalty measures, including pollution events, pollution monitoring and data reporting offences, as well as more serious offences that may have developed over time if the less serious offences were not addressed. This increase in penalties will internalize the externalities of offences by increasing the private costs that water companies face by committing the listed offences.

⁸¹ [Better_Regulation_Framework_guidance.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/better-regulation-framework-guidance.pdf)

Reduced administrative burden

Under the status quo, the regulators cannot impose financial penalties on water companies without lengthy investigations as they must prove guilt at the criminal standard of proof. The proposed measure would allow for penalties to be served to the lower civil standard of proof. This would result in less time and resources spent per offence by regulators per investigation and would encourage more cases of non-compliance to be addressed. This reduced administrative burden would result in a cost saving for EA and DWI.

Costs

Cost of fines for water companies

The introduction of automatic penalties with a lower standard of proof will mean that water companies that commit offences will pay penalties more often. This will lead to a direct financial loss of net income in the period that fines are issued for non-compliant companies. This reduction in net income could affect investor confidence as it could impact investor returns for companies that commit offences. This is particularly pertinent as water companies require substantial investment to fulfil plans made in PR24 and future infrastructure improvements. Although, the impact on investor confidence is assumed to be balanced more broadly by the improved water company performance resulting from the Bill. A reduction in net income due to automatic penalties could lead to increased pressure to increase allowed returns through other means, potentially leading to higher consumer bills. However, this impact will not be factored into costs at this primary legislation impact assessment as RPC guidance states that an IA should assume 100% compliance when estimating the cost and benefits of new regulation. However, if a department has specific evidence that compliance is unlikely to be 100% then it should use that evidence to potentially assume a lower level of compliance⁸². The potential cost of fines to water companies will be investigated further and consulted upon during the development of secondary legislation on this measure where the specific offences that would lead to penalties will be set out and non-compliance can be estimated.

Familiarisation costs

Water companies will also face one-off costs, to familiarise themselves with the new automatic penalty measure. It is our intention for any familiarisation costs to be minimised through frequent engagement and consultation with the water industry. Familiarisation costs are also considered to be minimal as there will be no new offenses introduced and the process will be kept as close as possible to the existing penalty process to ease familiarisation costs.

Whilst it is difficult to quantify these costs at this stage, we assume that this power is applicable to 21 (11 WaSC, 5 WOCs and 5 NAVs) businesses in the water sector across England and Wales. Defra assumes that 1-9 employees per business would need to be familiar with the new arrangements, covering a range of professions including the board, senior management, legal teams, accounts/finance, office staff, catchment managers, compliance managers, operational staff, maintenance staff for event duration monitor equipment and any other personnel involved in compliance and management of permits and licences. This will vary depending on the size and structure of the business. Defra assumes that each employee will spend on average one to two 7.5 hour working days familiarising themselves with the measure.

To estimate the total familiarisation costs to the water sector associated with this modification, we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the hourly wage rate from the Office for National Statistics Annual Survey of Hours and Earnings (ASHE)

⁸² Section 4.3.2 [RPC case histories - December 2016 volume.pdf \(publishing.service.gov.uk\)](#)

estimates for "employees working on legal and accounting activities" which is £26.32⁸³. This hourly wage rate has been uplifted by 22% to take into account non-wage costs such as National Insurance and pension contributions⁸⁴. This provides a one-off total cost estimate to the England and Wales water sector of between £5,057-£91,033*. However, there will be no new offences introduced and the process will be kept as close as possible to the existing penalty process to ease familiarisation costs.

Table 10: Estimated one-off familiarisation costs for Automatic Penalties

	Low	Central	High
Familiarisation costs	£5,057*	£37,930*	£91,033*

We will be consulting on cost implications and impacts on businesses further as part of our consultation on regulations and will refine this estimate through a secondary impact assessment.

Cost Recovery Power

EA/NRW Cost Recovery Power

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023). As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

Benefits

Under the status quo, the EA cannot recover the full costs of their enforcement activity for water companies relating to suspected discharge or abstraction breaches. This proposed measure would enable the EA to recover their enforcement costs, once the associated charging regime is in place. This measure should lead to a reduction in government GiA funding for enforcement, thereby reducing the administrative burden to the taxpayer, since water companies will bear the cost of enforcement action taken in response to their failings.

Costs

Familiarisation Costs

It is expected that there will be a one-off familiarisation cost to water companies as a result of the introduction of the EA/NRW cost recovery power. This is the time taken to read, understand and disseminate information regarding this power. In the absence of reliable evidence, we have assumed that the estimated DWI cost recovery familiarisation costs (covered in the section below) are a proxy for EA cost recovery familiarisation costs. Realised EA familiarisation costs could be higher or lower than set out below, to 26 businesses in the water sector across England and Wales (11 WASC, 9 WOCs and 6 local water companies)⁸⁵. It is assumed that between 1-15 employees per business will familiarise themselves with the details of this power, each spending an estimated two 7.5 hour working days.

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

⁸⁴ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/_RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

⁸⁵ <https://www.discoverwater.co.uk/water-sector#:~:text=Water%20and%20sewage%20companies,from%20a%20water%20only%20company.>

To estimate the total familiarisation costs to the water sector of this power we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the mean hourly wage rate of those involved in accounting, bookkeeping and auditing activities based on the Office for National Statistics ASHE estimates, £26.82^{86, 87}. This hourly wage rate has been uplifted by 22% to take into account non-wage costs such as National Insurance and pension contributions⁸⁸. This provides a one-off total cost estimate to the England and Wales water sector of between £12,761 -£191,414*. The familiarisation costs to water companies of reading and understanding this EA cost provision measure is expected to be small. This is because water companies and regulators are already familiar with the broad approach of cost recovery. In examining the likely impact of any proposed charges and approach, water companies could provide estimated familiarisation costs to the EA during consultation.

Table 11: Estimated one off familiarisation costs for companies of the EA cost recovery power, 2023 prices*

	Low	Central	High
Familiarisation costs, £	12,761*	102,088*	191,414*

Costs of EA enforcement activity related to suspected discharge or abstraction breaches that can be recovered from water companies

The EA’s charging powers are set out in the Environment Act 1995 to allow cost recovery for “subsistence” of a licence. Enforcement activities fall outside the current ‘subsistence’ scope and are grant in aid funded.

The EA have identified a range of costs expected to be eligible for cost recovery from water companies under this power. Final proposals will be subject to approval from the Defra Secretary or Welsh ministers as well as HM Treasury. As such the expected costs of the measures are subject to further consultation and further development by the Environment Agency and Natural Resources Wales.

These estimated costs may include, subject to consultation:

- *Current grant in aid⁸⁹*
- *Costs of the flow-to-full treatment investigation against ten water companies⁹⁰*
- *IT modernisation investment*
- *Water industry facing components of EA digital technology to enhance the ability to regulate the water industry in a modern and effective way*
- *Corporate cost contribution of c.36% to cover indirect activities including HR, legal estates, IT and fleet⁹¹.*
- *Cost of taking forward cases which do not result in automatic penalties under:*
 - *Dry day spills and Event Duration Monitoring*
 - *Independent monitoring of Event Duration Monitoring on emergency overflows*

⁸⁶ SIC number 692

⁸⁷ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

⁸⁸ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

⁸⁹ Based on the 2024 GiA allocation to EA for water industry enforcement - [How we’re bringing change to water industry performance – Creating a better place \(blog.gov.uk\)](#)

⁹⁰ Unpublished. Based on under Spending Review 2021, existing staff and forecast counsel costs.

⁹¹ As advised by Defra finance

- *Permit limit breaches*
- *Abstraction*
- *Costs of developing and delivering training for relevant enforcement activities*
- *Cost of identifying pollution incidents that have not been submitted by water companies within the permitted/legal time frame*
- *Cost of legal resource to review representations and advise on the decision-making process with officers under:*
 - *Modification of the standard of proof and automatic penalties*
 - *Obstruction powers*

Costs passed onto households

Ofwat, the independent economic regulator, sets the revenue allowances companies can recover through bills to consumers. Ofwat will consider whether and what type of enforcement costs that the regulators may propose to charge water companies are appropriate to be passed on in part or full to consumers, including what incentives the options set for companies' behaviour. Ofwat carries out its work taking account of its duties, including duties to protect the interests of consumers and secure that companies can finance the delivery of services to meet legal obligations, including through the recovery of legitimately incurred costs.

DWI Cost Recovery Power

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023)⁹². As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

Benefits

The objective of this measure is to enable the DWI to recover 100% of the costs for the SEMD work they carry out and subsequently allow the DWI to expand its SEMD team to allow more regulatory work. The measure will also provide powers for the DWI to amend their fee structure to spread the cost of regulation more fairly amongst water suppliers.

Costs

Familiarisation costs

It is expected that there will be a one-off familiarisation cost to water companies as a result of the introduction of the DWI cost recovery power. This is the time taken to read, understand and disseminate information regarding this power. It is expected that this power is applicable to 26 businesses in the water sector across England and Wales (11 WASC, 9 WOCs and 6 local water companies)⁹³. The DWI estimate that between 1-15 employees per business will familiarise themselves with the details of this power, each spending an estimated two 7.5 hour working days.

To estimate the total familiarisation costs to the water sector of this power we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the mean hourly wage rate of those involved in accounting, bookkeeping and auditing activities based on the Office for National Statistics ASHE estimates £26.82. This hourly wage rate has been uplifted by 22% to take into

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https://assets.publishing.service.gov.uk/media/65420ee8d36c9100d935b58/Better_Regulation_Framework_guidance.pdf

⁹³ <https://www.discoverwater.co.uk/water-sector#:~:text=Water%20and%20sewerage%20companies,from%20a%20water%20only%20company.>

account non-wage costs such as National Insurance and pension contributions^{94,95,96}. This provides a one-off total cost estimate to the England and Wales water sector of between £12,761 -£191,414*.

Table 12: Estimated one off familiarisation costs for DWI cost recovery power, 2023 prices

	Low	Central	High
Familiarisation costs, £	12,761*	102,088*	191,414*

Costs of DWI SEMD related enforcement activities that could be passed onto water companies

This power will enable the DWI to recover costs from water companies for enforcement related to their requirements under the SEMD annually, through which the DWI regulate the protection of our national infrastructure and ensure plans are in place to continue water supply and sewerage functions during a civil emergency. This cost recovery capability will allow the DWI to increase the resource it can direct to this work. In the context of a heightened threat landscape for utilities in the UK, this is a key risk that requires enhanced scrutiny and regulatory intervention.

Final proposals will be subject to approval from the Defra Secretary or Welsh ministers as well as HM Treasury. As such the expected costs of the measures are subject to further consultation and further development by the Drinking Water Inspectorate.

Under this measure water companies will face an annual charge to enable the DWI to recover enforcement costs related to their requirements under the SEMD.

It has been assumed that the DWI will be able to charge water companies for their SEMD enforcement costs from 2025. The expected costs of this measure is subject to further consultation and further development by HMG.

Costs passed onto households

The overall cost of the DWI's SEMD cost recovery will impact on households through water bills. However, the small increase in costs to water companies will have a modest impact on bills.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

This measure is not a regulatory provision. This is determined by how a regulatory provision is defined under section 2.3 of the Department for Business and Trade Better Regulation Framework guidance (2023)⁹⁷. As this measure is not a regulatory provision, it does not directly impact business activity. However, we have set out below the potential impacts of this measure and the stakeholders it could impact. We have, wherever possible, monetised costs and benefits but these have not been captured in the summary tables or EANDCB given that this measure is not a regulatory provision.

⁹⁴ SIC number 692

⁹⁵ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

⁹⁶ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/IPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

⁹⁷

https://assets.publishing.service.gov.uk/media/65420ee8d36c9100d935b58/Better_Regulation_Framework_guidance.pdf

Benefits

This power would modernise the water industry special administration regime and ensure funding from the taxpayer is protected by providing SoS and Welsh Ministers with the power to modify water company licences and by providing the Government with the flexibility to recover a shortfall from the bill payers of individual water companies. This power reduces government and taxpayer exposure to the costs of a water company SAR.

Costs

Familiarisation costs

It is expected that there will be a one-off familiarisation cost to water companies as a result of the introduction of the shortfall recovery mechanism SAR power. This is the time taken to read, understand and disseminate information regarding this power. It is expected that this power is applicable to 17 businesses (11 WASC, 5 WOCs and 1 licensed infrastructure provider) in the England and Wales Water sector. Ofwat estimate that 1-5 legal department employees per business will familiarise themselves with the details of this power, each spending an estimated 2 to 5 hours.

To estimate the total familiarisation costs to the water sector of this power we have multiplied the number of businesses affected by the assumed number employees affected and by the assumed number of hours spent per employee. We have then multiplied this by the mean hourly wage rate of those involved in legal activities based on the Office for National Statistics ASHE estimates^{98,99}. This hourly wage rate has been uplifted by 22% to take into account non-wage costs such as National Insurance and pension contributions¹⁰⁰. This provides a one-off total cost estimate to the England and Wales water sector of between £1,067 -£13,341.

Table 13: Estimated one off familiarisation costs for shortfall recovery mechanism, 2023 prices

	Low	Central	High
Familiarisation costs	1,067	5,603	13,341

Costs to water companies of SAR administration costs shortfall

As mentioned above, a SAR has not occurred in the water sector in England and Wales to date. Costs will only be incurred if a SAR is implemented for a water company and if there was a shortfall in administrative costs. HMG funding is usually required during a SAR to cover the costs of the special administration. Whilst HMG would aim to recoup all of its funds at the end of a SAR and HMG funding ranks highly in the post-SAR repayment hierarchy, 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 what HMG put in) under existing legislation, Defra SoS does not have powers to modify a water company licenses to ensure repayment by consumers of the financial assistance provided.

Given that it is unlikely that a water company would enter into a SAR and that there is uncertainty regarding the likelihood of the existence and scale of any resulting shortfall in administrative costs it has not been possible to estimate the potential costs to businesses (see 'Risks and Assumptions' section for additional detail). Additionally, the costs to business would be dependent on whichever company it is assumed is entering a SAR. To estimate this would have a high degree of complexity and would be subject to commercial sensitivities, thus it has been judged to not be proportionate.

Costs passed onto households

⁹⁸ SIC number 691

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry4digitsic2007ashtable16>

¹⁰⁰ https://assets.publishing.service.gov.uk/media/5d679af2e5274a1719fd3d/_RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

The SAR shortfall recovery power being introduced provides the Defra SoS with the power to recover a shortfall in SAR administration costs from the water sector. The recovery mechanism design could be determined by the Defra SoS and Ofwat. This means that the shortfall in SAR administration costs could be recovered from the consumer bills of a single company, a portion of companies or from all the companies in the water sector. If the costs were recovered from a single company, then this could lead to a larger increase in consumer bills compared to a scenario where costs are recovered from a wider distribution of water company consumers.

Winding-up petitions

Benefits

This power would provide a statutory requirement for those petitioning for the winding up order to notify the Defra SoS or Ofwat and provide a statutory right for SoS and Ofwat to be heard during court proceedings. This provides reassurance and ensures that Ofwat and the Defra SoS are not reliant on creditor engagement or the court's discretion to be notified. This ensures adequate time to prepare for a SAR (which would be the likely result of a winding-up petition hearing for a water company) and provides an opportunity for either government or Ofwat to ensure their views are taken into account by the court. This will increase transparency between water companies, government and the public.

Costs

Familiarisation costs

We have identified a one-off familiarisation cost associated with this new measure due to the need for relevant water company employees to read and understand this power. The scale of this cost is expected to be negligible.

Cost to water companies of notifying the Defra SoS and Ofwat

A SAR has not occurred in the water sector in England and Wales to date. Costs associated with notifying the Defra SoS and Ofwat of a SAR will only be incurred if a SAR is implemented for a water company. If a SAR was implemented for a water company, it would likely incur the administrative costs associated with writing a letter and sending it to Ofwat and the Defra SoS likely via email. It is anticipated that this cost would be small. The frequency in which this cost would be incurred would be dependent on the number of times any company in the water sector of their creditors applied for a SAR.

Impact on small and micro businesses

The provisions introduced by the Water (special measures) Bill mostly impact businesses in the water sector that can be categorised as medium, large or very large. There are a small number of NAVs in England and Wales that are categorised as small or micro businesses which may be impacted by some of the provisions. This includes those which introduce new obstruction sentencing powers, modify the standard of proof for certain offences, introduce new automatic penalties for certain offences, expand the DWI and EA's cost recovery powers. However, under each of these measures, the majority of permits and licences will be held by large and very large organisations. Under the Lowering of Standard of Proof measure, the EA will consider the size of the defendant company to ensure the penalty size is appropriate and avoid disproportionate action. Under the other measures where small and micro businesses are potentially involved, the policy intention is that will be subject to the same requirements as larger undertakers, given the criticality of the services that they provide.

Costs and benefits to households' calculations

Some of the measures in the Bill may be passed onto water bills, through the Price Review process. It is expected the following measures may be eligible:

Rules about Remuneration and governance and Obstruction sentencing power

The costs associated with these measures will be borne by companies in the first instance. Households may see benefits through increased accountability of water company boards as well as a slight improvement in performance driven by improved enforcement from greater obstruction sentencing power and stricter remuneration regulation.

Monitoring of Every Outlet

WaSC may be able to pass on some of the investment costs related to MEO measure this will be determined by Ofwat. As mentioned above the costs to WaSC will be dependent on the number of emergency overflows in the network within the WaSC region, and the type of monitor that needs to be installed.

Lowering the Standard of Proof and Automatic Penalties

As is Ofwat's current practice, we expect that penalties imposed under automatic penalties and the lower standard of proof to be borne by the water companies to which they are issued and not consumers.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

As noted in the above section, there is a scenario where costs could be passed onto households in the event of a shortfall in recovering government funds. However, households will benefit from being protected from costs that would otherwise fall on taxpayers if the shortfall was not recovered from the water sector.

Winding-up petitions

The estimated cost to water companies of requiring them to notify Ofwat and the SoS of Defra about an application for a SAR are expected to be small. It is anticipated that these costs will not be significant enough to require any bill increases from Ofwat.

Overall Impact on Household Bills

Ofwat acts as the economic regulator of water companies and the extra investment costs will be factored into the price review process, where every five years Ofwat is required to set the price, investment, and service package for water companies. Ofwat review the revenue allowance for the appointed business in the price review process which determines bills. The exact increase in bills will be dependent on Ofwat review of the companies' submitted business plans. As such, the increased cost from the Water (Special Measures) Bill will be a factor in this consideration, the bill does not be mandated these are passed directly onto bills. Therefore, passthrough may not strictly be 100% and the impact on household bills is considered indirect. We have not estimated EANC DH based on the costs to household is indirect, but we have considered a scenario where the Bill does impact on household water bills directly.

For illustration, an assumption is made that the cost of each of 3 measures in scope will be fully passed on to Water bills. Advice from Ofwat suggests 100% passthrough may be unlikely in reality.

The scale of costs for the bill is small in comparison to the total costs base of the industry, where total expenditure can be £10bn a year¹⁰¹. As such, Defra is confident the costs will be a relatively small increase to bills due to the cost imposed to water companies. The costs do vary by WaSC, but this is not determined to have any significant differential impact on bills in different regions.

The increase in costs to water companies will have a modest impact on bills. The Defra bill model is not sufficiently sensitive to be able to ascertain the precise bill impacts for individual companies or in units less than £5. Modelling shows that if the total costs were additional to current spending plans, then the difference in the average water bill would likely be less than £5 per year or 1% of average bills compared to a counterfactual of no intervention.

There would be some regional variation to this, for example a greater impact could be expected in areas with lower population and higher need for monitors, but this variation is not considered to be significant. Those water companies that will likely have the highest overall bill increases in PR24 have not suggested costs to meet the emergency overflows monitoring requirement that would have a dramatic impact on their bills for PR24.

Business environment

Pollution Incident Reduction Plans

Introducing a statutory duty to produce PIRPs is not expected to have any impact on the attractiveness of the water sector to investment. There is already an expectation for sewerage undertakers to produce these plans. This duty provides a legal basis and consistency. The duty to create these plans may have a positive impact on innovation, if sewerage undertakers use these plans as an opportunity to consider innovative ideas for reducing pollution.

This duty will have no impact of businesses moving goods or providing services between Northern Ireland and Great Britain.

Monitoring of Every Outlet

The duty to monitor emergency overflows will increase the costs of operating for a sewerage undertaker due to the cost of the rollout and upkeep of monitors. This cost will be funded via the Ofwat Price Review process, so is unlikely to significantly impact on the attractiveness of sewerage undertakers to investment.

The required monitors will be provided by private organisations. Any organisation may become certified to provide a monitor that meets the required standard. Certification provides a small barrier to market but is proportionate to ensure that data published under this duty is sufficient quality.

This duty will have no impact of businesses moving goods or providing services between Northern Ireland and Great Britain.

Lowering the Standard of Proof and Automatic Penalties

The introduction of new penalties may drive innovation from the sector to increase compliance rates and avoid penalties being issued which could impact investor returns positively.

However, if compliance rates do not improve, it could mean that water companies that commit offences will pay higher fines, more often, with a direct financial loss of net income in the period that fines are issued for non-compliant companies. This could impact investor returns for companies that

¹⁰¹ [https://www.ofwat.gov.uk/investment-in-the-water-industry/#:~:text=Average%20totex%20\(total%20expenditure\)%20has,\(%C2%A36bn\)%20between%202015%2D](https://www.ofwat.gov.uk/investment-in-the-water-industry/#:~:text=Average%20totex%20(total%20expenditure)%20has,(%C2%A36bn)%20between%202015%2D)

commit offence, at a time when private-sector investment is necessary to fund important changes. To mitigate this concern, government will consult during the bill's passage on increasing the level of Fixed Monetary Penalty and on which offences automatic penalties will apply to, and the maximum value variable monetary penalty that could be imposed to the civil standard of proof and consider the wider impacts to the water industry. In issuing a variable monetary penalty, the EA will also consider the offender's unique circumstances, including the ability to pay a financial penalty.

Cost Recovery Power

EA/NRW Cost Recovery Power

The introduction of the EA/NRW cost recovery power will mean that water companies will have additional costs through enforcement charges. Ofwat own any final decisions on whether enforcement costs can be funded via the Ofwat Price Review process or whether the charges could impact investor returns for companies. To mitigate this concern, the EA will consult on what the charge will be and when it is payable and consider the wider impacts to the water industry. The charges will ensure that that the EA recovers a greater proportion of its regulatory enforcement costs against associated with environmental breaches from water companies. This may increase the attractiveness to investors by driving improvements in environmental compliance. The cost recovery provision would not impact on businesses moving goods or providing services between Northern Ireland and Great Britain.

DWI Cost Recovery Power

Including SEMD work cost recovery will increase the regulatory costs water suppliers pay the DWI but the increase in costs will be nominal, and we do not expect to impact investment in the water sector.

Allowing the DWI to fully recharge for SEMD work will allow the regulator to scale their SEMD team and subsequently ensure the protection of national infrastructure and that plans are in place to continue water supply and sewerage functions during a civil emergency. We anticipate the improvement of DWI's regulatory oversight of SEMD will make water companies a safer investment option.

The measure to make the DWI's fee structure more flexible was included with the goal of making the water market more accessible for new entrants. Any changes to the fees structure will require a consultation but we anticipate it will look to share regulatory costs fairly across water suppliers.

Water Industry Special Administration Regime

Shortfall Recovery Mechanism and Winding-up petitions

Neither of these measures are expected to impact on the business environment. In the unlikely event of a SAR occurring and there being a shortfall in administrative costs, creditor claims will already have been settled through the administration process either through a restructuring plan or a transfer of the company. The shortfall recovery mechanism would only be used after this process was complete and would not impact the prioritisation of claims in a SAR.

Trade implications

None of the measures in this impact assessment are expected to have trade implications. However, the introduction of new penalties also has the potential to alter investor confidence for non-compliant companies. Automatic penalties with a lower standard of proof will mean that water companies that commit offences will pay penalties more often. This will lead to a direct financial loss of net income in the period that fines are issued for non-compliant companies. This reduction in net income could affect investor confidence as it could impact investor returns for companies that commit offences.

This is particularly pertinent as water companies require substantial investment to fulfil plans made in PR24 and future infrastructure improvements. Although, the impact on investor confidence is assumed to be balanced more broadly by the improved water company performance resulting from the Bill.

Environment: Natural capital impact and decarbonisation

The overall bill seeks to protect and enhance the environment whilst contributing towards the water quality aspects of the Environment Act. The bill has been developed in line with the Environment principles policy statement. The impact of each measure has been considered in turn.

Rules about remuneration and governance

The prohibition of companies making performance-related payments to executives in years where companies fail to meet required standards provides higher accountability for water company executives. Company poor performance on consumer matters, the environment, financial resilience and criminal liability will result in higher private costs for executives, which should incentivise decision making that results in better outcomes for consumers and the environment. This payment restriction would internalise some of the externalities that wider society faces through water company poor performance by increasing the private costs to executives. This incentivises executives to place an increased importance on environmental outcomes and may result in reduced pollution from the industry.

Pollution Incident Reduction Plans

These plans provide a framework for sewerage undertakers to implement actions that meaningfully reduce the frequency and seriousness of pollution incidents. The extent to which these actions reduce pollution incidents will depend on the combined effectiveness of the individual actions that sewerage undertakers successfully implement. The benefits are, therefore, difficult to quantify. Reducing the frequency and seriousness of pollution incidents will reduce the environmental and human health impact of these incidents. Action taken to reduce pollution will also mean less money will need to be spent on responding to pollution incidents by the Environment Agency. Responding to pollution incidents costs the Environment agency £15.6 million a year in time, materials and support¹⁰².

Monitoring of Every Outlet

This measure will ensure greater transparency around discharges from emergency overflows, which will provide more data to regulators and the public to hold water companies to account. This is in line with the polluter pays principle and the rectification at source principle. With near real-time publishing of discharges, action may be taken sooner if monitors show excessive spills at an emergency overflow. Greater data and transparency from this measure and from other government action on storm overflows may help reduce the number of discharges.

Obstruction Sentencing Power, Lowering the Standard of Proof, and Automatic Penalties

These measures will improve EA and NRW's ability to conduct enforcement action against water companies committing environmental offences. The deterrent of imprisonment for obstruction of EA and NRW investigations will allow for a smoother investigation process and therefore more effective enforcement activity. Over time, improvements in enforcement will ensure water companies act

¹⁰² In 2025 prices accounting for inflation. [Pollution Incidents \(2013\)](#)

more to benefit society by increasing the private cost of law breaking to companies/employees. The Lowering the Standard of Proof and Automatic Penalties measure provide regulators with the ability to impose quick and proportionate penalties for minor to moderate offences by water companies will allow for more effective regulation. Stricter enforcement is expected to decrease instances of offences covered by civil standard penalties, including water pollution and water resources offences. This increase in fines will internalise the externalities of offences by increasing the private costs that water companies face by committing the listed offences.

Other wider impacts

Water pollution can pose a risk to public health. Discharges from storm overflows can contribute to Water pollution as they can contain raw sewage, which can contain high levels of harmful pathogens, such as viruses and bacteria. These can pose health risks to people who use our water bodies for recreation. Better monitoring of the emergency overflows will help to protect public health through better information being provided to water users. Whilst also monitors can help WaSC and Regulators to make decisions over where to target interventions to reduce discharges.

Risks and assumptions

Rules About Remuneration and Governance

This measure provides Ofwat with the power to place specific rules on water companies linked to remuneration and governance. However, it is for Ofwat to decide on the details of the rules and how these will be applied to companies. These details could change the scale of the impacts on water companies. Elements of the measure which are due to be set out in the rules include:

- What metrics will be considered and the threshold at which Ofwat will set the performance related pay restrictions (noting the legislation sets out these rules must cover consumer matters, environmental standards, financial resilience and criminal liability).
- Who these rules will apply to within water companies
- The level and manner of scrutiny that Ofwat will ensure current and future water company executives go through when assessing fitness and propriety.
- The specific detail on how companies need to consider consumer representation in decision making.

There is also uncertainty around the assumptions used in the familiarisation cost calculations. The number of staff that will need to familiarise with the measure and the time taken to familiarise themselves will vary from company to company and therefore the assumptions used are uncertain. To mitigate the uncertainty, sensitivity analysis has been conducted to show the impacts across a range of different input assumptions. There may also be costs associated with setting up new systems and processes to be compliant with new rules which have not been quantified in the cost calculations. However, familiarisation costs are expected to be small and any variation in the impacts is unlikely to have a significant impact.

Pollution Incident Reduction Plans

To estimate the cost of producing annual Pollution Incident Reduction Plans, some broad assumptions were made on staff time required to develop an annual plan that complied with the legislation. This assumption was based on the time taken to produce other plans but may vary significantly by sewerage undertaker, based on the complexity of the causes of the pollution incidents and the complexity of identifying appropriate actions to reduce the frequency and

seriousness of these incidents. The assessment also did not take into account the time that sewerage undertakers currently dedicate to producing PIRPs on a non-statutory basis.

Equally, broad estimates were made on the number of staff at each sewerage undertakers who would need to familiarise themselves with the duty and associated guidance. This may vary, depending on company structure.

Monitoring of Every Outlet

The main risk is the uncertainty over the full extent of emergency overflows and the costs associated with the installation of monitors. This uncertainty means that the costs associated with this measure are uncertain and could be higher or lower than expected. WaSC will need to undertake further survey work to understand the nature of monitors that might need to be installed at emergency overflows. Consultation with industry and regulators has provided assumptions around the costs and the number of emergency overflows.

There is also a risk over the number of Monitoring Certification Scheme (MCERTS) certifiers that will be a limiting factor for the companies to achieve both installation and certification, as required by EA and NRW permits. This factor can create a risk to rollout of monitors, which are required to meet the publishing requirements of this measure.

Obstruction Sentencing Power

The main risk that is associated with this measure is the potential for imprisonment costs to be larger than expected due to unforeseen circumstances. This is due to the scale of costs associated per additional prison capacity. Ministry of Justice guidance states that the cost of building new prison places must be factored in to costs when considering regulations that may lead to new cases of imprisonment. The one-off cost of building a new prison place is estimated to be £500,000 and the ongoing upkeep of a new prison place is £52,000 (2023/24 prices) per year. The monetisation of the potential imprisonment cost has been done using sensitivity analysis with a cautious upper bound, however if there were to be more cases of imprisonment than expected due to unforeseen circumstances, then the imprisonment costs would become much higher. However, given the low historic number of cases and the fact that this change in sentencing should act as a greater deterrent, it is unlikely that this risk will materialise.

There is also uncertainty around some of the assumptions used in the familiarisation cost calculations. The number of staff that will need to familiarise with the measure and the time taken to familiarise themselves will vary from company to company and therefore the assumptions used are uncertain. To mitigate the uncertainty, sensitivity analysis has been conducted to show the impacts across a range of different input assumptions. However, familiarisation costs are expected to be small and any variation in the impacts is unlikely to have a significant impact.

Lowering the Standard of Proof and Automatic Penalties

The main objective of the modification of the standard of proof power and introduction of automatic penalties is to ensure greater enforcement minor to moderate offences relating to the water industry by strengthening the enforcement powers of the regulators to better hold water companies to account and by ensuring that the cost of compliance is less than that of non-compliance. In this IA we have assumed that there is complete compliance and that there will be no offences for which this

measure will be used, based on previous RPC guidance¹⁰³. However, there are a few uncertainties that would impact the potential costs of introducing this power including:

- The level of compliance. This will be partially based on the extent to which the potential for penalties for minor to moderate offending acts as a deterrent.
- Under the lowering the standard of proof power, a cap on the maximum variable monetary penalty that the EA can issue will be introduced in secondary legislation. There will be a forthcoming consultation to gather stakeholder opinion on the appropriate level of cap. The higher the cap of fine the greater the deterrent effect on companies, but also the higher the potential cost to business of this power. This would only impact companies that are not compliant.
- Secondary legislation will also set out the level of fine that will be associated with an automatic penalty and what offences will be punishable. This will be consulted upon by government preceding the introduction of secondary legislation. These factors will determine the size of the deterrent and the financial impact that the penalties will have on water companies.
- The scale of familiarisation costs. Familiarisation costs have been estimated using reasoned policy assumptions in the absence of reliable evidence. We will be consulting on cost implications and impacts on businesses further as part of our consultation on regulations and will refine this estimate through a secondary impact assessment. Key uncertainties include:
 - Time taken to read and understand the new measures.
 - The number of employees impacted per business.

Cost Recovery Power

EA/NRW Cost Recovery Power

The scale of the realised costs will be dependent on several factors including:

- The number of inspections/investigations/enforcement cases undertaken
- The future level of compliance

The scale of familiarisation costs could differ from presented in this IA. Familiarisation costs have been estimated using DWI cost recovery power familiarisation costs as a proxy in the absence of reliable evidence. Key uncertainties include:

- Time taken to read and understand the new measures
- The number of employees impacted per business

In examining the likely impact of any proposed charges and approach, water companies could provide estimated familiarisation costs to the EA during consultation.

DWI Cost Recovery Power

The scale of the realised DWI cost recovery power costs to companies will be dependent on several factors including:

- the number of staff currently working on SEMD, and an increase in DWI staff that they have assessed will be required to be fully effective in the future.

¹⁰³ https://assets.publishing.service.gov.uk/media/5c9b8614ed915d07aba070c3/RPC_case_histories_-_December_2016_volume.pdf

- The cost of these staff (including mean salary costs, pension contributions, National Insurance contributions, allowances, fixed overheads, and variable overheads) DWI travel and subsistence costs
- Potential DWI consultancy spend per audit undertaken
- The number of DWI audits undertaken annually.

The scale of familiarisation costs could differ from those presented in this IA. Familiarisation costs have been estimated using assumptions provided by the DWI. Key uncertainties include:

- Time taken to read and understand the new measures
- The number of employees impacted per business

Water Industry Special Administration Regime

Shortfall Recovery Mechanism

Whilst a SAR has not occurred in the water sector in England and Wales to date, there is a high degree of uncertainty around the cost of the recovery of a shortfall in SAR administrative costs should a water company enter a SAR. The most substantial uncertainties include:

- The likelihood of a SAR being implemented
- The length of a SAR
- The scale of the shortfall in SAR administrative costs
- The complexity of sales transaction and SAR
- Unexpected issues that are not known by Defra and Ofwat prior to the SAR process

The above uncertainties would be dependent on which water company would enter a SAR. Water companies can differ based on several factors including (but not limited to) size (e.g. number of households served and Regulatory Capital Value), services they provide and structure. Given the high degree of uncertainty set out above and the commercial sensitivities involved with a water company entering a SAR it has not been possible to set out the potential costs of providing the Defra SoS with the SAR shortfall recovery power beyond familiarisation costs. The SAR shortfall recovery power being introduced provides the Defra SoS with the power to recover a shortfall in SAR administration costs from the water sector. The recovery mechanism design could be determined by the Defra SoS and Ofwat. This means that the shortfall in SAR administration costs could be recovered from a single company, a portion of companies or from all the companies in the water sector.

The scale of familiarisation costs could differ from those presented in this IA. Familiarisation costs have been estimated using assumptions provided by the Ofwat. Key uncertainties include:

- Time taken to read and understand the new measures
- The number of employees impacted per business

Winding-up petitions

The main uncertainty that would influence the impact of this power would be the likelihood of a SAR being implemented. A SAR has not occurred in the water sector in England and Wales to date. Thus, it is assumed that the costs associated with introducing this power would be zero or very small.

Annex A: Water (Special Measures) Bill powers and associated clauses

Power title	Clauses in the Water (Special Measures) Bill it relates to
Rules about remuneration and governance	Clause 1: Rules about remuneration and governance
Pollution Incident Reduction Plans	Clause 2: Pollution incident reduction plans
Monitoring of Every Outlet	Clause 3: Emergency overflows
Obstruction Sentencing Power	Clause 4: Impeding investigations: sentencing and liability
Lowering the Standard of Proof	Clause 5: Civil penalties: modification of standard of proof
Automatic Penalties	Clause 6: Automatic penalties for certain offences Clause 7: Abstraction and impounding: power to impose general conditions
Cost Recovery Power	Clause 8: Charges in respect of Environment Agency and NRW functions Clause 9: Drinking Water Inspectorate: functions and fees
Water Industry Special Administration Regime	Clause 10: Modification by Secretary of State of water company's appointment conditions etc to recover losses Clause 11: Modification by Welsh Ministers of water company's appointment conditions etc to recover losses Clause 12: Winding-up petitions

Annex B: Acronyms

Acronym	Meaning
EA	Environment Agency
NRW	Natural Resources Wales
DWI	Drinking Water Inspectorate
HMG	His Majesty's Government
SoS	Secretary of State
FMPs	Fixed Monetary Penalties
VMPs	Variable Monetary Penalties
SEMD	Security and Emergency Measures Direction
SAR	Special Administration Regime
SAO	Special Administration Order
WIA91	Water Industry Act 1991
GiA	Grant-in-aid
CMA	Competition and Markets Authority
WaSC	Water and sewerage companies
RES Act 2008	Regulatory Enforcement and Sanctions Act 2008
Env Act	Environment Act 2021
EA95	Environment Act 1995
FPNs	Fixed penalty notices
NAVs	New Appointments and Variations
SMFs	Senior Management Functions
FCA	Financial Conduct Authority
WINEP	Water Industry National Environment Programme
CCW	Consumer Council for Water
Price Review 2024	PR24
Price Review 2029	PR29
SaMBA	Small and micro business assessment (helps to ensure that a robust and evidence-based analysis is conducted to assess the impacts of a regulatory proposal on small and micro businesses)