

Water (Special Measures) Bill [HL]

SECOND MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

[Amendments marked ★ are new or have been altered]

Amendment
No.

After Clause 1

LORD SIKKA

29 After Clause 1, insert the following new Clause –

“Prohibition of possible conflicts of interest

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 35D (inserted by section 1 of this Act), insert –

“35E Prohibition of possible conflicts of interest

- (1) An employee, director or advisor of the Authority, or the Secretary of State, may not –
 - (a) take any employment, directorship, commercial opportunity, or other significant transactional relationship with any regulated water company, or connected party, or
 - (b) accept gifts of any amount,
that could produce the appearance of a conflict of interest.
- (2) A connected party under subsection (1)(a) includes a shareholder, significant creditor, or other entity with a significant transactional relationship with a regulated water company.”

Member's explanatory statement

The amendment seeks to enhance independence of the regulator.

Clause 2

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
BARONESS PINNOCK

30 Clause 2, page 4, line 30, after “Each” insert “water and”

Member's explanatory statement

This amendment ensures that both water-only providers and sewerage providers are required to prepare pollution incident reduction plans.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
BARONESS PINNOCK

31 Clause 2, page 4, line 31, leave out “and publish” and insert “, publish and implement”

Member's explanatory statement

This amendment would require water companies to implement pollution incident reduction plans. Current drafting only requires them to prepare and publish.

BARONESS PARMINTER
THE DUKE OF WELLINGTON

32 Clause 2, page 4, line 35, at end insert –

“(2A) A water or water and sewerage undertaker must take all reasonable steps to implement the measures described in its pollution incident reduction plan.”

Member's explanatory statement

This amendment would place a duty on water or water and sewage companies to implement the pollution incident reduction plans which this section would require them to publish.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE

33 [Withdrawn]

BARONESS MCINTOSH OF PICKERING

34 Clause 2, page 5, line 12, after “incidents” insert “including natural flood prevention solutions”

Member's explanatory statement

This amendment, and another in the name of Baroness McIntosh of Pickering, would require consideration of opportunities to retain water through natural solutions to prevent sewage mixing in combined sewers with excess rainfall, causing pollution incidents.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE

This amendment replaces Amendment 33, which was marshalled in the wrong place in error, and corrects its location on the Marshalled List.

34A Clause 2, page 5, line 12, at end insert –

“(da) the measures the undertaker intends to take or continue for the purpose of eradicating pollution incidents discharging into waterways within National Parks and the Broads by 2030,”

Member's explanatory statement

This amendment requires undertakers to include plans to eradicate pollution incidents within National Parks.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE

35 Clause 2, page 5, line 19, at end insert –

“(ga) any environmental risks from pollution incidents, and specify steps to mitigate identified risks, and”

Member's explanatory statement

This amendment addresses the gap in the proposed pollution reduction plans by requiring the identification and mitigation of environmental risks.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
BARONESS PINNOCK

36 Clause 2, page 5, line 25, leave out “and publication” and insert “, publication, and implementation”

Member's explanatory statement

This amendment is consequential on another amendment in the name of Baroness Bakewell of Hardington Mandeville.

BARONESS JONES OF MOULSECOOMB

37 Clause 2, page 5, line 29, at end insert –

“(7A) A sewerage undertaker must have regard to opportunities for nature-based solutions to be used to reduce pollution and to deliver other environmental benefits when preparing and publishing a pollution incident reduction plan.”

Member's explanatory statement

This amendment would require consideration of opportunities to use nature-based solutions to address pollution within pollution incident reduction plans.

BARONESS MCINTOSH OF PICKERING

38 Clause 2, page 5, line 29, at end insert –

“(7A) Before preparing a pollution incident reduction plan, a sewerage undertaker must consult with farmers, local authorities and others to identify natural flood prevention solutions to prevent pollution incidents.”

Member's explanatory statement

This amendment, and another in the name of Baroness McIntosh of Pickering, would require consideration of opportunities to retain water through natural solutions to prevent sewage mixing in combined sewers with excess rainfall, causing pollution incidents.

BARONESS PARMINTER

39 Clause 2, page 5, line 40, after “94EA(1)” insert “or 94EA(2A)”

Member's explanatory statement

This would ensure that the proposed implementation duty in another amendment in the name of Baroness Parminter is enforceable by the Environment Agency.

BARONESS PARMINTER

40 Clause 2, page 6, line 2, after “94EA(1)” insert “or 94EA(2A)”

Member's explanatory statement

This would make the failure to implement pollution incident reduction plans, as required by another amendment in the name of Baroness Parminter, an offence alongside the existing offence of not publishing a plan.

LORD ROBOROUGH
LORD BLENCATHRA

41 Clause 2, page 6, line 6, at end insert –

- “(4) Within 10 days of the end of a sewerage undertaker’s financial year end, the undertaker must report to the Authority its performance against this plan.
- (5) Within a further 20 days the Authority must approve or seek amendment to this performance report.
- (6) The sewerage undertaker’s annual report and accounts must include a summary of its performance against this plan as well as the Authority’s statement on the report.
- (7) The plan, the annual performance report and the Authority’s statement must be published on the sewerage undertaker’s website annually.”

Member's explanatory statement

This amendment requires water companies to report progress against their pollution incident reduction plans annually and include this report in their annual report as well as publishing it on their website.

LORD ROBOROUGH
LORD BLENCATHRA

42 Clause 2, page 6, line 6, at end insert –

- “(4) The sewerage undertaker must complete a quarterly self-assessment of its performance against this plan and lay it before the Authority within 10 days of the end of each quarter. Once the Authority has accepted the self-assessment, the sewerage undertaker must publish it on its website.”

Member's explanatory statement

This amendment requires water companies to produce a quarterly self-assessment of their progress against their pollution incident reduction plans and publish these reports.

Clause 3

EARL RUSSELL

43 Clause 3, page 6, line 16, at end insert –

- “(ba) the volume and concentration of the discharge;”

Member's explanatory statement

This amendment would require water companies to publish the volume and concentration of discharge from an emergency overflow.

LORD CROMWELL

44 Clause 3, page 6, line 18, at end insert –

- “(e) the volume and type of discharge,
(f) an explanation of why the discharge happened,
(g) how the discharge is being mitigated and a recurrence prevented.”

BARONESS YOUNG OF OLD SCONE

45 Clause 3, page 6, line 18, at end insert –

- “(e) whether emerging contaminants were present, including but not limited to per- and poly-fluoroalkyl substances and microplastics, in the discharge.”

LORD CROMWELL

46 Clause 3, page 6, line 21, at end insert –

“(2A) Where information in subsection (1)(e) to (g) is not available within an hour of the discharge ending, a timeline for provision of the information on subsection (1)(e) to (g) must be published at the same time as that for subsection (1)(d).”

EARL RUSSELL

47 Clause 3, page 6, line 26, at end insert –

“(c) be published on one website.”

Member's explanatory statement

This amendment would require water companies to publish data on one website, to increase transparency and ease of access for the public.

LORD ROBOROUGH
LORD BLENCATHRA

48 Clause 3, page 6, line 26, at end insert –

“(c) be published on the undertaker’s website.”

LORD CROMWELL

49 Clause 3, page 6, line 26, insert –

“(3A) The information must be published on the website of the undertaker and simultaneously sent to the Authority, which must then provide for timely posting of discharge information from all undertakers in one readily accessible place on its own website.”

Member's explanatory statement

This amendment would ensure that certain information is more readily accessible, including in a single and coordinated location for the public and civil society to access in as near to real time as practicable.

BARONESS YOUNG OF OLD SCONE

50 Clause 3, page 6, leave out lines 32 to 35

THE DUKE OF WELLINGTON

51 Clause 3, page 8, line 6, at end insert –

“141H Emergency overflow permit restriction

An environmental permit to allow an emergency overflow may not be granted to a sewerage undertaker solely for the reason of an electrical power failure at sewage disposal works.”

Member's explanatory statement

This amendment seeks to prevent the granting of permits which allow emergency overflows in the case of electrical power failures at sewage disposal works.

LORD BETHELL

52 Clause 3, page 8, line 6, at end insert –

“141H Monitoring of river health after emergency overflows

- (1) Where there is a discharge from an emergency overflow of a sewerage undertaker into inland waters, the undertaker must regularly assess the environmental health of that inland water within 500 metres downstream of the overflow.
- (2) The methods used to make assessments under subsection (1) must include the use of fish counters or other methods of accurately monitoring the fish population.
- (3) The undertaker must prepare a report on the results of these assessments on a quarterly basis and submit this report to the Authority.
- (4) The undertaker must publish this report within 30 days after it has submitted it to the Authority.
- (5) The information must –
 - (a) be in a form which allows the public to readily understand it,
 - (b) be published in a way which makes it readily accessible to the public, and
 - (c) be published on the undertaker’s website.”

BARONESS MCINTOSH OF PICKERING

Baroness McIntosh of Pickering gives notice of her intention to oppose the Question that Clause 3 stand part of the Bill.

After Clause 3

BARONESS MCINTOSH OF PICKERING

53 After Clause 3, insert the following new Clause –

“Report on implementation of Schedule 3 of the Flood and Water Management Act 2010

The Secretary of State must, within six months of the passing of this Act, lay before each House of Parliament a report on the effect of this Act on the implementation of Schedule 3 of the Flood and Water Management Act 2010 (Sustainable Drainage).”

BARONESS BROWNING

54 After Clause 3, insert the following new Clause –

“Right to communicate with public sewers

In section 106(4) of the Water Industry Act 1991 (right to communicate with public sewers), after paragraph (b) insert –

“(c) the predicted or actual volume of sewerage to be discharged into the public sewer would exceed the capacity of sewerage infrastructure.””

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE

EARL RUSSELL

BARONESS WILLIS OF SUMMERTOWN

55 After Clause 3, insert the following new Clause –

“Environmental duties with respect to national parks

After section 4 of the Water Industry Act 1991 insert –

“4A Environmental duties with respect to national parks

- (1) Where a relevant undertaker operates, or has any effect, on land within national parks or the Broads, that undertaker must –
 - (a) secure and maintain ‘high ecological status’ in the water in these areas by 2028;
 - (b) further the conservation and enhancement of wildlife and natural beauty;
 - (c) improve every storm overflow that discharges within these areas by 2028;
 - (d) reduce the load of total phosphorus discharged into freshwaters within these areas from relevant discharges by 2028 to at least 90% lower than the baseline as defined in Regulation 13(1) of the Waste

Water Targets set under the Environment Targets (Water) (England) Regulations 2023.

- (2) A relevant undertaker must be put into special administration, and not be eligible for a further licence, if it fails to –
 - (a) demonstrate adequate progress each year;
 - (b) meet the targets in subsection (1).
- (3) Within one year of the day on which the Water (Special Measures) Act 2024 is passed, the Secretary of State must lay a report on the undertakers' implementation of the environmental duties in subsections (1) and (2) before Parliament.
- (4) Following the first report being published under subsection (3), a progress report on implementation must be included in the annual environment improvement plan, issued under section 8 of the Environment Act 2021.
- (5) The Secretary of State must by regulations make provision requiring an undertaker to achieve bespoke objectives for specific iconic and the most culturally and ecologically significant waterways, including, where appropriate, complete removal of sewage discharge from the undertaker's infrastructure.
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section –
 - “the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988;
 - “land” includes rivers, lakes, streams, estuarine and other waterways;
 - “High Ecological Status” means the classification of water bodies defined in Regulation 6 of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”

Member's explanatory statement

This amendment would require water companies to adhere to and deliver stronger environmental objectives and duties within National Parks and the Broads, so as to protect waters across National Parks from sewage. The amendment would give the Secretary of State regulation-making power to extend protections to specific bodies of water, such as Lake Windermere.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
EARL RUSSELL

56 After Clause 3, insert the following new Clause –

“Review of environmental permits

- (1) The Environmental Permitting (England and Wales) Regulations 2016 are amended as follows.

(2) In Regulation 34, remove (1) and insert –

- “(1A) The regulator must review environmental permits held by a person appointed under the Water Industry Act 1991 as water undertaker or sewerage undertaker for any area of England and Wales at least once every five years in order to ensure those permits –
- (a) contain conditions to incorporate all relevant legal obligations on such persons with respect to sewage treatment and disposal including but not limited to those specified in the Water Industry Act 1991, and
 - (b) contribute to achieving all relevant targets set out under the Environment Act 2021.”

Member's explanatory statement

This amendment would require the Environment Agency to review environment permits applying to water and sewage companies every five years, rather than “periodically” as regulations currently dictate.

LORD ROBOROUGH
LORD BLENCATHRA

57 After Clause 3, insert the following new Clause –

“Reporting of impact on pollution

- (1) The Secretary of State must publish an assessment of the expected impact of the Act on the overall level of pollution caused by the activities of sewerage undertakers within 3 months of the Act coming into force.
- (2) The Secretary of State must publish an assessment of the actual impact of the Act on the overall level of pollution caused by the activities of sewerage undertakers within 3 years of the Act coming into force.”

Member's explanatory statement

This amendment requires the Government to publish their expectations of the impact of the Act on pollution and the actual impact of the Act 3 years after it comes into force.

BARONESS YOUNG OF OLD SCONE
BARONESS JONES OF MOULSECOOMB

58 After Clause 3, insert the following new Clause –

“Monitoring quality of water potentially affected by discharges

- (1) Section 141DB of the Water Industry Act 1991 (monitoring quality of water potentially affected by discharges from storm overflows and sewage disposal works) is amended as follows.
- (2) In subsection (1) for “A sewerage undertaker whose area is wholly or mainly in England” substitute “The Environment Agency”.

- (3) For subsection (2) substitute –
- “(2) The assets referred to in subsection (1) are –
- (a) any storm overflow operated by a sewerage undertaker, and
- (b) any sewage disposal works comprised in the sewerage system of a sewerage undertaker,
- where the storm overflow or works discharge into a watercourse.”
- (4) For subsections (4) to (7) substitute –
- “(4) The Environment Agency must publish online the data obtained as a result of the monitoring under subsection (1) in as close to real time as is practicable.””

LORD CAMERON OF DILLINGTON
BARONESS JONES OF MOULSECOOMB

59 After Clause 3, insert the following new Clause –

“Environmental permits: monitoring requirements: sewerage undertakers

- (1) The Environmental Permitting Regulations 2016 are amended as follows.
- (2) In regulation 34 (Review of environmental permits and inspection of regulated facilities), after subsection (1) insert –
- “(1A) By 31 December 2027 the regulator must amend or modify any existing environmental permit that relates to the discharge of treated effluent, storm sewage or emergency sewage by a sewerage undertaker to include conditions that –
- (a) ensure the independent, continuous volumetric and qualitative monitoring of all discharges, such qualitative monitoring to be as against such determinants as the regulator shall deem necessary;
- (b) require the real time online publication of all data generated by the monitoring under paragraph (a); and
- (c) detail the method of assessment of compliance with the permit as against the monitoring under paragraph (a).””

Clause 4

LORD SANDHURST
LORD ROBOROUGH

60 Clause 4, page 8, line 29, leave out “2 years” and insert “12 months”

Member's explanatory statement

This amendment will prevent those convicted of an offence under this section from being sentenced to a custodial sentence of more than 12 months.

LORD SANDHURST
LORD ROBOROUGH

61 Clause 4, page 8, line 37, leave out “or connivance”

Member's explanatory statement

This amendment will prevent the relevant officers from being guilty of an offence for “connivance”.

LORD SANDHURST
LORD ROBOROUGH

62 Clause 4, page 9, line 5, leave out paragraph (c)

Member's explanatory statement

This amendment prevents the definition of “relevant officer” from including those who merely purport to be officers of a water company.

LORD BETHELL

63 Clause 4, page 9, line 6, at end insert –

“(5K) The water undertaker or sewerage undertaker must provide relevant officers under subsection (5J) with mandatory training on subsection (3E) and how it relates to their powers and duties described in subsection (3D).”

Member's explanatory statement

This amendment seeks to ensure that relevant officers receive training from the undertaker on the penalties for offences related to impeding investigation by environmental regulators, as well as how these offences relate to their powers and duties as undertakers.

LORD BETHELL

64 Clause 4, page 9, line 6, at end insert –

“(5K) The water undertaker or sewerage undertaker must publish clear guidance for employees on offences under this section and provide all employees with annual mandatory training on these offences.”

Member's explanatory statement

This amendment seeks to ensure that the undertaker must make employees aware of offences relating to impeding investigation by environmental regulators and provide employees with regular training on these offences.

LORD SANDHURST
LORD ROBOROUGH

65 Clause 4, page 9, line 7, leave out subsection (2)

Member's explanatory statement

This amendment would prevent an individual guilty of impeding an investigation by the drinking water inspector from receiving a custodial sentence.

LORD SANDHURST
LORD ROBOROUGH

66 Clause 4, page 9, line 16, leave out “2 years” and insert “12 months”

Member's explanatory statement

This amendment will prevent those convicted of an offence under this section from being sentenced to a custodial sentence of more than 12 months.

Clause 5

LORD SANDHURST
LORD ROBOROUGH

67 Clause 5, page 9, line 43, at end insert –

“(4A) Where the relevant offence is –
(a) triable summarily (whether or not it is also triable on indictment), and
(b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
the amount of the variable monetary penalty may not exceed the maximum amount of that fine.”

Member's explanatory statement

This amendment would limit the level of any fine under this section to the levels set out in the 2008 Act.

BARONESS HAYMAN OF ULLOCK

68 Clause 5, page 10, line 4, at end insert –

“(6) But an offence is to be regarded for the purposes of this section as committed by a water supply licensee or sewerage licensee only if it is committed by such a licensee in the course of the activities to which its licence relates.”

Member's explanatory statement

This amendment provides that Clause 5 applies to water supply and sewerage licensees only in relation to their licensed activities.

LORD SANDHURST
LORD ROBOROUGH

The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.

Clause 6

LORD SANDHURST
LORD ROBOROUGH

69 Clause 6, page 10, line 28, leave out subsection (7)

Member's explanatory statement

This amendment would ensure a relevant undertaker (water company) will be able to appeal the decision of the Authority to impose an automatic fine on the grounds that exceptional circumstances apply.

LORD ROBOROUGH
LORD BLENCATHRA

70 Clause 6, page 10, line 35, at end insert –

“(8A) All fines imposed on the undertaker or its employees under this section by –

- (a) the Secretary of State,
- (b) the Welsh Ministers, or
- (c) another relevant authority

must be gathered together and once per annum be used to reduce all customers' bills by an equal amount per customer.

(8B) Any reduction applied under subsection (8A) must be separately disclosed within the customer's statement of account.”

BARONESS HAYMAN OF ULLOCK

71 Clause 6, page 11, line 9, at end insert –

“(11) Section 5(6) also applies for the purposes of this section.”

Member's explanatory statement

This amendment provides that Clause 6 applies to water supply and sewerage licensees only in relation to their licensed activities.

After Clause 6

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE

EARL RUSSELL

BARONESS JONES OF MOULSECOOMB

72 After Clause 6, insert the following new Clause—**“Water Restoration Fund**

- (1) No more than 60 days after the day on which this Act is passed, the Secretary of State must by regulations make provision for the establishment, operation and management of a Water Restoration Fund.
- (2) A Water Restoration Fund is a fund—
 - (a) into which any monetary penalties imposed for specified offences must be paid, and
 - (b) out of which payments must be made for expenditure on measures to improve the quality of the freshwater environment in England.
- (3) The Secretary of State must by regulations list the specified offences for the purpose of this section, which must include—
 - (a) any relevant provisions of the Water Resources Act 1991, including—
 - (i) section 24(4) (unlicensed abstraction or related works or contravening abstraction licence);
 - (ii) section 25(2) (unlicensed impounding works or contravening impounding licence);
 - (iii) section 25C(1) (contravening abstraction or impounding enforcement notice);
 - (iv) section 80 (contravening drought order or permit);
 - (v) section 201(3) (contravening water resources information notice);
 - (b) regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities etc);
 - (c) regulations under section 61 of the Water Act 2014 (regulation of water resources etc).
- (4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) The Secretary of State may by regulations made by statutory instrument add to the list of offences specified in subsection (3).
- (6) The provisions in this section replace any existing provision for the sums received for specified offences, including in section 22A(9) of the Water Industry Act 1991 (penalties).”

Member's explanatory statement

This amendment would require all funds from fines on water companies for environmental offences to be ringfenced for the Water Restoration Fund, for spending on freshwater recovery.

EARL RUSSELL

73 After Clause 6, insert the following new Clause –

“Power to revoke licences

After section 17R of the Water Industry Act 1991 insert –

“17S Power to revoke licences

The Authority may revoke a water supply and sewerage licence (WSSL) with six months’ notice.”

Member's explanatory statement

This amendment provides Ofwat with the power to remove a water supply and or sewerage licence with six months’ notice.

EARL RUSSELL
BARONESS BROWNING
BARONESS JONES OF MOULSECOOMB

74 After Clause 6, insert the following new Clause –

“Environmental duties with respect to chalk streams

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 4, insert –

“4A Environmental duties with respect to chalk streams

- (1) Where a relevant undertaker operates, or has any effect on chalk streams, that undertaker must –
 - (a) secure and maintain “high ecological status” of chalk streams, and
 - (b) clearly mark chalk streams which are of “high ecological status”.
- (2) In this section “high ecological status” relates to the classification of water bodies in The Environment (Water Framework Directive) (England and Wales) Regulations 2017.”

BARONESS MCINTOSH OF PICKERING
BARONESS BROWNING

75 After Clause 6, insert the following new Clause –

“Overflows: sanction exception

In section 19 of the Water Industry Act 1991 (exemptions to duty to enforce), after subsection (1)(a) insert –

“(aza) that the contravention arose from waste materials being deposited into the water system by consumers;”

Member's explanatory statement

This amendment is intended to probe whether provision additional to section 19(1)(aa) of the Water Industry Act 1991 is needed to exempt water companies from sanctions where an emergency overflow results from cooking fat, wet wipes etc.

BARONESS JONES OF MOULSECOOMB

75A After Clause 6, insert the following new Clause –

“Water companies: removal of enforcement undertakings

In section 50 of the Regulatory Enforcement and Sanctions Act 2008 (enforcement undertakings), after subsection (5) insert –

“(6) A regulator may not accept an enforcement undertaking from a person appointed under the Water Industry Act 1991 as water undertaker or sewerage undertaker for any area of England and Wales.”

Member's explanatory statement

This amendment is intended to probe the use of “enforcement undertakings” and whether they are undermining water companies being held to account for wrongdoing.

Clause 7

BARONESS HAYMAN OF ULLOCK

76 Clause 7, page 11, line 25, leave out from “if” to end of line 28 and insert “–

- (a) it is held by a water undertaker or sewerage undertaker, or
- (b) it is held by a water supply licensee or sewerage licensee, within the meaning of the Water Industry Act 1991, for the purposes of the activities to which its water supply licence or sewerage licence relates;”

Member's explanatory statement

This amendment provides that Clause 7 applies to water supply and sewerage licensees only in relation to their licensed activities.

BARONESS HAYMAN OF ULLOCK

- 77 Clause 7, page 11, line 29, leave out “a reference to such licences includes those” and insert “regulations under this section may apply to water industry licences”

Member's explanatory statement

This amendment is consequential on the Minister's previous amendment.

After Clause 7

BARONESS PARMINTER
 BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
 LORD RANDALL OF UXBRIDGE
 BARONESS JONES OF MOULSECOOMB

- 78 After Clause 7, insert the following new Clause –

“Water regulator obligations

Duties of water regulators for clean water

- (1) Section 2 of the Water Industry Act 1991 (General duties with respect to water industry) is amended as follows –
- (a) omit paragraph (2A)(c);
 - (b) in subsection (2B), omit from “promoting” to “services” and insert “ensuring –
 - (a) clean and wholesome drinking water,
 - (b) bathing waters of excellent quality,
 - (c) lakes, rivers and beaches of high ecological status,
 - (d) the conservation of water resources, and
 - (e) reasonable water bills.”
- (2) In section 3 of the Water Industry Act 1991 (General environmental and recreational duties), in subsection (2), before paragraph (a) insert –
- “(aa) a requirement to achieve excellent quality of all bathing waters, lakes, rivers and beaches of high ecological status, and elimination of sewage, waste and other pollution so far as reasonably practicable from all waterways;”

Member's explanatory statement

This new clause would change the duties of Ofwat to be compatible with the public interest. It would eliminate the prioritisation of corporate welfare and reform the duties of Ofwat to be for clean water, conservation and reasonable water bills. This would bring English water regulation up to the standards of, and improve upon, the Water (Scotland) Act 1980, section 1.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
EARL RUSSELL

79 After Clause 7, insert the following new Clause –

“Abolition of the Water Services Regulation Authority

- (1) The Water Industry Act 1991 is amended as follows.
- (2) For section 1A (Water Services Regulation Authority) substitute the following –

“1A Abolition of the Water Services Regulation Authority

- (1) The body corporate known as the Water Services Regulation Authority (in this Act referred to as “the Authority”) is abolished.
- (2) All references to the duties and functions of the Authority in this Act or any other enactment are null and void.”
- (3) Omit Schedule 1A (The Water Services Regulation Authority).”

Member's explanatory statement

This amendment abolishes Ofwat.

BARONESS BAKEWELL OF HARDINGTON MANDEVILLE
EARL RUSSELL

80 After Clause 7, insert the following new Clause –

“Clean Water Authority

- (1) There shall be a body corporate to be known as the Clean Water Authority for the purpose of carrying out the duties conferred on it by this section.
- (2) The general duties of the Clean Water Authority are as follows –
 - (a) to issue guidance to undertakers, and enforce the implementation of that guidance, requiring undertakers to meet excellent standards concerning –
 - (i) the provision of clean and wholesome drinking water,
 - (ii) the maintenance of bathing waters of excellent quality,
 - (iii) the maintenance of lakes, rivers and beaches of high ecological status,
 - (iv) the conservation of water resources, and
 - (v) the charging of reasonable water bills;
 - (b) to issue rules prohibiting a relevant undertaker from giving to persons holding senior roles performance-related pay in respect of any financial year in which the undertaker has failed to prevent all sewage discharges, spills, or leaks; or failed in any other relevant matter as determined by the Authority;
 - (c) to swiftly revoke the licence of water companies that have performed poorly, as defined by the Authority, with particular regard to the standards set out in paragraph (a);

- (d) to require relevant undertakers to have arrangements in place for environmental experts to be members of a board, committee or panel of the undertaker;
- (e) to issue stringent and legally-binding targets concerning sewage discharges affecting bathing waters and highly sensitive nature sites;
- (f) to mandate that undertakers publish publicly-accessible live time data on the recorded volume, duration and number of sewage spills;
- (g) to perform unannounced inspections with regard to the duties under this subsection.

(3) In this section, “undertaker” means a water undertaker or sewerage undertaker.”

Member's explanatory statement

This amendment establishes the Clean Water Authority and provides it with duties concerning water company governance and performance standards.

EARL RUSSELL

81 After Clause 7, insert the following new Clause –

“Review of the water industry

- (1) The Secretary of State must consider as part of any review into the water industry the following –
 - (a) the functions and performance of the Water Services Regulation Authority, and the case for its abolition;
 - (b) whether a public benefit company could better perform the role of current undertakers.
- (2) The consideration under subsection (1)(a) must analyse the case for replacing the Water Services Regulation Authority with a new corporate body known as the Clean Water Authority, with the following general duties –
 - (a) to issue guidance to undertakers, and enforce the implementation of that guidance, requiring undertakers to meet excellent standards concerning –
 - (i) the provision of clean and wholesome drinking water,
 - (ii) the maintenance of bathing waters of excellent quality,
 - (iii) the maintenance of lakes, rivers and beaches of high ecological status,
 - (iv) the conservation of water resources, and
 - (v) the charging of reasonable water bills;
 - (b) to issue rules prohibiting a relevant undertaker from giving to persons holding senior roles performance-related pay in respect of any financial year in which the undertaker has failed to prevent all sewage discharges, spills, or leaks, or failed in any other relevant matter as determined by the Authority;
 - (c) to swiftly revoke the licence of water companies that have performed poorly, as defined by the Authority, with particular regard to the standards set out in paragraph (a);

- (d) to require relevant undertakers to have arrangements in place for environmental experts to be members of a board, committee or panel of the undertaker;
- (e) to issue stringent and legally-binding targets concerning sewage discharges affecting bathing waters and highly sensitive nature sites;
- (f) to mandate that undertakers publish publicly-accessible live time data on the recorded volume, duration and number of sewage spills;
- (g) to perform unannounced inspections with regard to the duties under this subsection.”

Member's explanatory statement

As part of any future review into the water industry, such as the one the Minister committed to at Second Reading, this amendment would require that any review must consider the abolishment of Ofwat, the potential of public benefit companies, and the establishment of a new regulator called the Clean Water Authority.

LORD SIKKA

82 After Clause 7, insert the following new Clause –

“Governance structure of the Authority

After section 1A of the Water Industry Act 1991 (Water Services Regulation Authority), insert –

“1B Governance structure of the Authority

- (1) The board of directors of the Authority regulating water companies must have –
 - (a) at least 25% of its members elected by its employees,
 - (b) at least 25% of its members chosen by local authorities in the water catchment area, in consultation with independent environmental and consumer groups.
- (2) Every employee and bill-payer has the right to be entered on the register of the Authority.
- (3) Employees as a group are entitled to a minimum of 25% of the total votes in the general meeting of the Authority.
- (4) Bill-payers as a group are entitled to a minimum of 25% of the total votes in the general meeting of the Authority and, relative to one another, each employee and bill-payer has one vote.
- (5) Every employee and bill-payer is entitled to cast a binding vote on remuneration of all directors.””

Clause 8

BARONESS HAYMAN OF ULLOCK

83 Clause 8, page 12, line 32, at end insert –

“but, in relation to water supply licensees and sewerage licensees, includes those functions only so far as performed in respect of the activities to which their licences relate.””

Member's explanatory statement

This amendment provides that Clause 8 applies to water supply and sewerage licensees only in relation to their licensed activities.

After Clause 9

BARONESS JONES OF MOULSECOOMB

84 After Clause 9, insert the following new Clause –

“Removal of Regulators’ Code and statutory growth duty in respect of regulation of water and sewerage undertakers

- (1) The Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (S.I. 2007/3544) is amended as follows –
 - (a) in Part 1, after “Environment Agency” insert “except in so far as those functions relate to a water or sewerage undertaker appointed under the Water Industry Act 1991”;
 - (b) in Part 2, omit “Water Industry Act 1991”.
- (2) Part 1 of the Schedule to the Economic Growth (Regulatory Functions) Order 2017 (S.I. 2017/267) is amended as follows –
 - (a) after “Environment Agency” insert “except in so far as those functions relate to a water or sewerage undertaker appointed under the Water Industry Act 1991”;
 - (b) omit from “Water Services Regulation Authority” to the end of Part 1.”

Member's explanatory statement

This amendment aims to remove the Environment Agency and Ofwat from the scope of the Regulators’ Code and the statutory growth duty, only when dealing with water companies.

BARONESS JONES OF MOULSECOOMB

85 After Clause 9, insert the following new Clause –

“Giving the Authority a primary duty to protect the environment

- (1) Section 2 of the Water Industry Act 1991 (general duties with respect to water industry) is amended as follows.

(2) After subsection (2A)(a), insert –

“(aa) to further the environmental objective;”

(3) After subsection (2D), insert –

“(2DZA) The environmental objective mentioned in subsection (2A)(aa) above is –

- (a) to protect the environment;
- (b) to ensure compliance by persons engaged in commercial activities concerned with the provision of water and sewerage services with all relevant legal obligations on –
 - (i) sewage collection, treatment and disposal,
 - (ii) the abstraction of water resources, and
 - (iii) the conservation of biodiversity, and
- (c) to contribute to meeting all relevant targets set out under the Environment Act 2021.”

Member's explanatory statement

This amendment aims to place a clear and unambiguous environmental duty on Ofwat.

Clause 10

LORD REMNANT

86 Clause 10, page 13, leave out lines 38 to 40

Member's explanatory statement

This amendment ensures that compliant companies in the sector are not required to render financial assistance to recover losses.

LORD ROBOROUGH

Lord Roborough gives notice of his intention to oppose the Question that Clause 10 stand part of the Bill.

Clause 11

LORD ROBOROUGH

Lord Roborough gives notice of his intention to oppose the Question that Clause 11 stand part of the Bill.

After Clause 12

BARONESS BOYCOTT
 BARONESS PARMINTER
 BARONESS BROWNING
 LORD WHITTY

87 After Clause 12, insert the following new Clause—

“Water and sewerage undertakers: the Environmental Information Regulations 2004

- (1) A water or sewerage undertaker appointed under the Water Industry Act 1991 is a public authority for the purposes of the Environmental Information Regulations 2004.
- (2) After regulation 4 (dissemination of environmental information), paragraph (4)(b) of the Environmental Information Regulations 2004 insert—
 - “(c) all effluent or wastewater treatment works monitoring data held by water and sewerage undertakers appointed under the Water Industry Act 1991 including operational monitoring data in addition to any data required under permits issued under the Environmental Permitting (England and Wales) Regulations 2016.”
- (3) Section 50 of the Freedom of Information Act 2000 as read with regulation 18 of the Environmental Information Regulations 2004 is to be read as if a request for information made by the complainant to a public authority includes a complaint concerning any failure proactively to publish information under regulation 4 of the Environmental Information Regulations 2004.”

Member's explanatory statement

This amendment would remove some of the difficulties that the public experience in getting access to real-time and operational data held by the water companies pursuant to their roles as sewerage undertakers under the Water Industry Act 1991 and would enable any failure to proactively publish such data to be referred to the Information Commissioner.

BARONESS BROWNING
 BARONESS MCINTOSH OF PICKERING

88 After Clause 12, insert the following new Clause—

“Duty to comply with water main requisition

In section 41 of the Water Industry Act 1991 (duty to comply with water main requisition), after subsection (4) insert—

- “(4A) The duty to provide water under this section shall not apply to provision for a proposed new development where the water undertaker has notified the developer and the planning authority that—
 - (a) it does not have sufficient water resources available, or

- (b) it believes that the provision of water to the new proposed development would be likely to lead to unacceptable damage being caused to a protected site.””

BARONESS BROWNING

89 After Clause 12, insert the following new Clause –

“Form and contents of licences

- (1) The Water Resources Act 1991 is amended as follows.
- (2) In section 46 (form and contents of licences), after subsection (7) insert –
 - “(8) All licences granted to water undertakers for the abstraction of water from surface or groundwater sources must include a condition requiring the continuous measurement or monitoring of volumes abstracted.
 - (9) The information required under subsection (8) must be made publicly available at all times and should be published online in real time.
 - (10) For those licences which precede the coming into force of subsections (8) and (9), the measures in those subsections will be required when the licence comes under review or by 31 December 2027, whichever is the earlier.”
- (3) In section 197 (provision of information about water flow etc.), after subsection (2) insert –
 - “(2A) It shall be the duty of every water undertaker to publish in real time the flow and abstraction volume data for every abstraction licence that relates to abstractions from rivers.””

BARONESS BROWNING

90 After Clause 12, insert the following new Clause –

“Water resources management plans: general duty

After section 37C of the Water Industry Act 1991 (water resources management plans: provision of information), insert the following new section –

“37CA Water resources management plans: general duty

- (1) It shall be the duty of every water undertaker to carry out the long-term measures for water resources provision included in any of its water resources management plans.
- (2) A water undertaker shall publish interim reports every six months on all projects and schemes listed in any of its water resources management plans.

- (3) The duties of a water undertaker under this section shall be enforceable under section 18 (orders for securing compliance with certain provisions) –
- (a) by the Secretary of State, or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

BARONESS WILLIS OF SUMMERTOWN
BARONESS PARMINTER
BARONESS YOUNG OF OLD SCONE
LORD RANDALL OF UXBRIDGE

91 After Clause 12, insert the following new Clause –

“Climate change and nature duty

After section 2(2A) of the Water Industry Act 1991 (general duties with respect to the water industry) insert –

- “(2AA) In exercising and performing the powers and duties mentioned in subsection (1) above, the Secretary of State or, as the case may be, the Authority must take all reasonable steps to contribute to –
- (a) the achievement of biodiversity targets set under sections 1 to 3 of the Environment Act 2021,
 - (b) the achievement of targets set under Part 1 of the Climate Change Act 2008 (carbon target and budgeting), and
 - (c) adapting to current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008 (report on impact of climate change).”

Member's explanatory statement

This amendment would give Ofwat a new climate change and nature duty requiring it to take all reasonable steps to contribute to the achievement of the Climate Change Act 2008 and Environment Act 2021 targets in exercising its functions regulating water companies.

LORD ROBOROUGH
LORD BLENCATHRA

92 After Clause 12, insert the following new Clause –

“Rules about borrowing

After section 154B of the Water Industry Act 1991 (financial assistance for major works), insert –

“CHAPTER III

RULES ABOUT BORROWING FOR UNDERTAKERS

154C Restriction on borrowing

- (1) Where a relevant undertaker has total borrowing of 60 per cent of their regulated assets or more, the relevant undertaker may not make a payment of dividends, capital, assets, or interest to shareholders or controlling entities.
- (2) Borrowing under subsection (1) shall be calculated from the audited company accounts of the relevant undertaker annually and returns approved by the regulator based on that.
- (3) A relevant undertaker may not take borrowing above 60 per cent of their regulated assets by any shareholder returns.
- (4) This section voids any relevant guarantees given by a relevant undertaker to any other company.””

BARONESS MCINTOSH OF PICKERING

93 After Clause 12, insert the following new Clause –

“Review: water re-use and existing regulations

- (1) Within twelve months of the day on which this Act is passed, the Secretary of State must publish a review of the impact of existing regulations related to water wholesomeness on water companies’ ability to encourage water re-use.
- (2) A report on the findings of the review must be laid before Parliament.”

Member's explanatory statement

This amendment reviews the effect of existing regulations on water wholesomeness as it is currently excluded from the responsibility of water companies to encourage water efficiency measures such as use of grey water, reuse of water from a shower and other such water efficiency measures as they are not covered by the definition of wholesome water.

EARL RUSSELL

94 After Clause 12, insert the following new Clause –

“Citizen science

- (1) The Secretary of State must take steps to engage citizens regarding the monitoring of water and sewerage undertakers, as part of its regulatory efforts.
- (2) This engagement must include the production of toolkits and data sharing.
- (3) The Secretary of State must also consider funding citizen science projects regarding the monitoring of water and sewerage undertakers.”

Member's explanatory statement

This amendment would require the Secretary of State to take steps to facilitate citizen science regarding the monitoring of water companies.

LORD DAVIES OF GOWER

95 After Clause 12, insert the following new Clause –

“Duty to consult with the Welsh Ministers on water pollution incident reduction

The Secretary of State must, within three months of the day on which this Act is passed, consult with the Welsh Ministers on the different approaches to water pollution incident reduction in Wales compared to England and lay before Parliament a report assessing any differences between the steps taken by relevant authorities in Wales to effect the reduction of water pollution incidents in Wales and equivalent steps for the management of such incidents in England.”

LORD CAMERON OF LOCHIEL

96 After Clause 12, insert the following new Clause –

“Report on differences between provisions of this Act in England and equivalent provisions in Scotland

The Secretary of State must, within 12 months of the day on which this Act is passed, lay before Parliament a report assessing any differences between the provisions made by this Act for the reduction of water pollution incidents in England and equivalent provisions for the management of such incidents in Scotland.”

BARONESS JONES OF MOULSECOOMB
 BARONESS PARMINTER
 LORD SIKKA

97 After Clause 12, insert the following new Clause –

“Prohibition on bail-out of water company shareholders and creditors

- (1) The Secretary of State and His Majesty’s Treasury must not directly or indirectly discharge, assume, or guarantee any debts of legal entities in any water company group subject to proceedings under section 24 of the Water Industry Act 1991 (special administration orders made on special petitions), except in accordance with subsection (2).
- (2) The special administrator of a water company may reduce the debts owed by the regulated entity to its creditors by between 50 and 100 per cent, taking into account the persistence of pollution, the breaches of terms of appointment, the level of returns on capital while pollution or breaches occurred, and the priority given to returns on capital over principal duties.
- (3) The prohibition set out in subsection (1) and the reduction of debts set out in subsection (2) must not include pension, wage and other obligations owed to employees, excluding any past or current member of a board of directors, within the water company group.”

Member’s explanatory statement

This amendment aims to allow 50-100% of debts to be cancelled in the event of special administration proceedings, taking into account the seriousness of environmental breaches, excessive returns on capital, costs that creditors have already imposed on the public, and any risk-taking.

BARONESS JONES OF MOULSECOOMB

98 After Clause 12, insert the following new Clause –

“Public ownership of water companies

After section 17 of the Water Industry Act 1991 insert –

“17ZA Public ownership of undertakers

- (1) The Secretary of State may by regulations made by statutory instrument make provision for the transfer of ownership of undertakers to public ownership.
- (2) Regulations under this section may include provisions for –
 - (a) the process of transferring private water companies to public ownership;
 - (b) the circumstances in which water companies will be transferred to public ownership;
 - (c) the establishment of new public bodies to manage water services;
 - (d) compensation arrangements for current shareholders and bondholders;

- (e) transition arrangements for employees, contracts, and ongoing operations;
 - (f) governance structures for publicly-owned water services, including provisions for local democratic control and accountability.
- (3) Before making regulations under this section, the Secretary of State must conduct a public consultation on the proposed transfer to public ownership.
- (4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

BARONESS JONES OF MOULSECOOMB
LORD SIKKA

99 After Clause 12, insert the following new Clause –

“Special administration for breach of environmental and other obligations

- (1) Section 24 of the Water Industry Act 1991 (special administration orders made on special petitions) is amended as follows.
- (2) After subsection (2)(a), insert –
- “(aa) that there have been failures resulting in enforcement action from the Authority or the Environment Agency on three or more occasions to –
 - (i) maintain efficient and economical water supply,
 - (ii) improve mains for the flow of clean water,
 - (iii) provide sewerage systems that are effectually drained,
 - (iv) comply with the terms of its licence, or
 - (v) abide by anti-pollution duties in the Environmental Protection Act 1990, Water Resources Act 1991, or the Environmental Permitting (England and Wales) Regulations 2016;”
- (3) After subsection (2), insert –
- “(2A) In support of an application made by virtue of subsection (1)(a) in relation to subsection (2)(aa), the Secretary of State must compile and present to the High Court records of –
- (a) water pipe leaks,
 - (b) sewage spilled into waterways, bathing waters, and private properties, and
 - (c) falling below international standards of effective water management.”

Member's explanatory statement

This amendment aims to require the Secretary of State to place a water company into special administration arrangements if they breach certain environmental or other conditions.

BARONESS JONES OF MOULSECOOMB
LORD SIKKA

100 After Clause 12, insert the following new Clause—

“Governance structure of water companies

After section 10 of the Water Industry Act 1991 insert—

“10A Governance structure of undertakers

- (1) The board of directors of a water or sewerage undertaker, and any parent or holding company, must have—
 - (a) at least one third of its members elected by the employees of the company or group,
 - (b) at least one sixth of its members chosen by local authorities in the water catchment area, in consultation with independent environmental and consumer groups.
- (2) Employees as a group are entitled to a minimum of one third of the total votes in a general meeting of the company.
- (3) Bill-payers as a group are entitled to a minimum of one sixth of the total votes in the general meeting of the company.
- (4) The Secretary of State may by regulations made by statutory instrument increase the proportion of directors in subsection (1) that are elected by employees to one half, and chosen by local authorities to one quarter, and must raise the proportion of votes in the meeting in subsections (2) and (3) accordingly.
- (5) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Member's explanatory statement

This amendment aims to require representatives of employees and the public to sit on the boards of water companies.

LORD SIKKA
BARONESS JONES OF MOULSECOOMB

101 After Clause 12, insert the following new Clause –

“Authorisation of dividends

After section 35A of the Water Industry Act 1991 insert –

“Authorisation of dividends

- (1) The Authority shall approve any payment of dividends before they are paid by an undertaker.
- (2) The Authority must not approve a payment under subsection (1) unless the undertaker has published complete details of its distributable reserves, and demonstrated that its operations have generated sufficient surplus cash to cover the payment after meeting its day-to-day expenses, liabilities and planned investment.
- (3) The Authority must not approve a payment under subsection (1) without the consent of the employees and customers of the water company.””

Member's explanatory statement

This amendment aims to give the Authority the power to curb excessive dividends and empower stakeholders to object to dividend payments.

LORD SIKKA

102 After Clause 12, insert the following new Clause –

“Special administration: criminal convictions

In section 24 of the Water Industry Act 1991 (special administration orders made on special petitions), after subsection (2)(e) insert –

- “(f) that the company has been the recipient of two or more criminal convictions in a five-year period.””

Member's explanatory statement

This amendment aims to exert pressure on companies to operate within the law by preventing water companies with numerous criminal convictions from remaining in business.

LORD CAINE

103 After Clause 12, insert the following new Clause –

“Report on differences between provisions of this Act in England and equivalent provisions in Northern Ireland

The Secretary of State must, within 12 months of the day on which this Act is passed, lay before Parliament a report assessing any differences between the

provisions made by this Act for the reduction of water pollution incidents in England and equivalent provisions for the management of such incidents in Northern Ireland.”

LORD GASCOIGNE
LORD ROBOROUGH
BARONESS JONES OF MOULSECOOMB

104 After Clause 12, insert the following new Clause –

“Nature recovery

In the Water Industry Act 1991, after section 17FB insert –

“Licence conditions about nature recovery

17FC Nature recovery

- (1) It is a condition of all licences granted under section 17A (water supply licences) that relevant undertakers must give due consideration to nature-based solutions targeted at reducing flood risk, improving water quality and benefiting nature restoration in their catchment area.
- (2) The Authority must not take any action that discourages or prevents a relevant undertaker from making an investment in accordance with subsection (1).”

Member's explanatory statement

This amendment would make it a condition of all water companies' licences to consider nature-based solutions to flood risk, improving water quality and benefiting nature restoration in their catchment area, and prevent the regulator from discouraging or stopping such investments.

Clause 13

LORD SANDHURST
LORD ROBOROUGH

105 Clause 13, page 19, line 16, at beginning insert “subject to subsection (5A),”

Member's explanatory statement

This amendment, together with another in the name of Lord Sandhurst, would prevent section 4 from coming into effect until the Secretary of State has laid a justice impact test regarding the Act before Parliament.

LORD SANDHURST
LORD ROBOROUGH

106 Clause 13, page 19, line 21, at end insert –

“(5A) Section 4 (impeding investigations: sentencing and liability) cannot come into force until the Secretary of State has laid a justice impact test before Parliament which includes an assessment of the number of people that are expected to receive a custodial sentence due to an offence created by this Act in the –

- (a) first year after the day on which it is passed, and
- (b) five years after the day on which it is passed.”

Member's explanatory statement

This amendment would prevent section 4 from coming into effect until the Secretary of State has laid a justice impact test regarding the Act before Parliament.

Water (Special Measures) Bill [HL]

SECOND MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

29 October 2024

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