

Water (Special Measures) Bill [HL]

RUNNING LIST OF ALL AMENDMENTS ON REPORT

*Tabled up to and including
14 November 2024*

[Amendments marked ★ are new or have been altered]

Clause 1

LORD CROMWELL

- ★ Clause 1, page 2, line 3, at end insert –
- “(d) requiring a relevant undertaker to report not less than annually to the Authority on actual or planned financial structuring or restructuring of the undertaker, including debt levels, commercial strategy and any associated risks, including to the long-term sustainability of the undertaking.”

Member's explanatory statement

The amendment requires that financial engineering becomes a regular focus area for timely reporting in order to assist in regulators' understanding and alert them in good time to risks or distortions in a water company.

BARONESS MCINTOSH OF PICKERING

- ★ Clause 1, page 2, line 8, at end insert –
- “(iia) meeting relevant standards issued under the Flood and Water Management Act 2010, in particular the standards in Schedule 3 (sustainable drainage),”

LORD REMNANT

Clause 1, page 2, leave out lines 38 and 39

Member's explanatory statement

This amendment ensures that the rules about remuneration do not extend to individuals below board level.

LORD REMNANT

Clause 1, page 2, line 42, at end insert –

“(6A) The decision on whether such persons sit on a board, committee or panel is for the relevant undertaker to make.”

Member's explanatory statement

This amendment ensures that it is boards of water companies, rather than Ofwat, who decide which forum (boards, committees or panels) best suits their own requirements.

LORD CROMWELL

★ Clause 1, page 2, line 42, at end insert –

“(6A) The Authority must arrange quarterly meetings between its own representatives and civil society organisations for the purposes of –

- (a) regular, recorded feedback from civil society to regulators on water and water-related environment issues;
- (b) highlighting priorities and timelines for specific action;
- (c) reviewing progress against actions agreed at previous meetings;
- (d) minuting the discussions, including actions agreed, and publishing these on the Authority’s website, or by any means that is in due course equally accessible to the public, within 10 calendar days of each meeting.”

Member's explanatory statement

This amendment will oblige regulators and water companies to engage effectively and formally with civil society and to record transparently feedback, agreed actions and performance outcomes.

LORD REMNANT

Clause 1, page 4, line 25, leave out “2024” and insert “2025”

Member's explanatory statement

This amendment ensures that the provisions about performance-related pay do not have retroactive effect.

Clause 2

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, line 28, leave out “Before section 95” and insert “After section 205”

Member's explanatory statement

This amendment moves the provisions about pollution incident reduction plans to a different part of the Water Industry Act 1991, in consequence of the Minister's subsequent amendments extending Clause 2 to the water supply network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, leave out line 29 and insert—

““Pollution incident reduction plans

205A Duty to prepare and publish plans”

Member's explanatory statement

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

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, line 30, leave out “sewerage” and insert “relevant”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, line 30, leave out “whose area is wholly or mainly in England”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, line 35, leave out “sewerage”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 4, line 37, leave out “sewerage”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 9, leave out “sewerage”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, leave out lines 17 to 19

Member's explanatory statement

This amendment removes provision superseded by the Minister's amendment at page 5, line 38.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 20, leave out “Secretary of State” and insert “Minister”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 22, leave out “Secretary of State must consult the Environment Agency” and insert “Minister must consult the appropriate agency”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 24, leave out “sewerage” and insert “relevant”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 25, leave out “Environment Agency” and insert “appropriate agency”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 27, leave out from “The” to “before” in line 28 and insert “appropriate agency must consult the Authority and the Minister”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

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

“(7A) A pollution incident reduction plan must include, or be published with, a statement by the chief executive of the undertaker that the chief executive has personally approved the plan.”

Member's explanatory statement

This amendment requires a pollution incident reduction plan to be approved by the chief executive of the undertaker in question.

BARONESS MCINTOSH OF PICKERING

★ 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, developers and others to identify natural flood prevention solutions to prevent pollution incidents.”

Member's explanatory statement

This amendment 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 HAYMAN OF ULLOCK

Clause 2, page 5, line 31, leave out “sewerage” and insert “relevant”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 33, at end insert –

““appropriate agency” means –

- (a) the Environment Agency, in relation to relevant undertakers whose areas are wholly or mainly in England, and

- (b) the NRBW, in relation to relevant undertakers whose areas are wholly or mainly in Wales;”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 33, at end insert –

““chief executive”, in relation to an undertaker, means an employee of the undertaker who, alone or jointly with one or more others, is responsible under the immediate authority of the board of directors for the conduct of the whole of the business of the undertaker;”

Member's explanatory statement

This amendment defines “chief executive” for the purpose of the Minister’s amendments at page 5, line 29 and page 6, line 1.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, line 36, at end insert –

““the Minister” means –

- (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England, and
- (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales;”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, leave out lines 37 and 38 and insert –

““system”, in relation to a relevant undertaker, means –

- (a) in the case of a water undertaker, its supply system within the meaning of Chapter 1A of Part 2 (see section 17B);
 - (b) in the case of a sewerage undertaker, its sewerage system within the meaning of that Chapter (see section 17BA(7)).
- (10) In the case of a relevant undertaker that is both a water undertaker and a sewerage undertaker, the duty in subsection (1) is to be discharged in respect of both of its systems in a single plan.”

Member's explanatory statement

This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

BARONESS HAYMAN OF ULLOCK

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

“94EAA Implementation reports

- (1) A relevant undertaker must, together with each pollution incident reduction plan that it publishes (except the first), publish an implementation report.
- (2) An implementation report is a report containing the undertaker’s assessment of –
 - (a) the extent to which it succeeded in implementing the planned measures during the preceding calendar year, and
 - (b) to the extent that it failed to implement those measures during that year –
 - (i) the reasons for that failure, and
 - (ii) how the undertaker intends to avoid repeating that failure in respect of any measures in its current plan that are the same as, or similar to, those in respect of which the failure occurred.
- (3) In subsection (2), “the planned measures”, in relation to an undertaker and a calendar year, means the measures set out in its previous pollution incident reduction plans so far as they were (according to those plans) likely to be implemented in that year.
- (4) Subsections (6), (7) and (7A) of section 94EA apply in relation to implementation reports as they apply in relation to pollution incident reduction plans.”

Member's explanatory statement

This amendment requires water and sewerage undertakers to publish annual reports on their implementation of previous pollution incident reduction plans.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 5, leave out lines 40 and 41 and insert –

- “(1) The duties of a relevant undertaker under sections 94EA(1) and 94EAA(1) are enforceable by the appropriate agency.”

Member's explanatory statement

This amendment is consequential on the Minister’s amendments extending Clause so that it covers the water supply network, the Minister’s amendment at page 5, line 38, and the Minister’s amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 6, leave out lines 1 to 3 and insert –

- “(2) If a relevant undertaker fails to comply with its duty under section 94EA(1) or 94EAA(1) –
- (a) the undertaker commits an offence, and
 - (b) the chief executive of the undertaker commits an offence, subject to subsection (2A).
- (2A) It is a defence for the chief executive to prove that they took all reasonable steps to avoid the failure.
- (2B) A person who commits an offence under this section is liable, on summary conviction or conviction on indictment, to a fine.”

Member's explanatory statement

This amendment makes the chief executive of an undertaker liable if the undertaker fails to comply with the new duties about pollution incident reduction plans, unless the chief executive has taken all reasonable steps to ensure compliance.

BARONESS HAYMAN OF ULLOCK

Clause 2, page 6, line 4, leave out “The offence under subsection (2)” and insert “An offence under this section”

Member's explanatory statement

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

BARONESS HAYMAN OF ULLOCK

Clause 2, page 6, line 5, leave out “Environment Agency” and insert “appropriate agency”

Member's explanatory statement

This amendment is consequential on the Minister's amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

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

- “(4) Where, in deciding how to exercise its functions in relation to a relevant undertaker, the appropriate agency has regard to the record of the undertaker in complying with its legal obligations concerning pollution, it must also have regard to the record of the undertaker in implementing measures set out in its pollution incident reduction plans.”

Member's explanatory statement

This amendment requires the Environment Agency and the Natural Resources Body for Wales to have regard to the record of undertakers in implementing their pollution incident reduction plans when deciding how to exercise regulatory functions.

BARONESS HAYMAN OF ULLOCK

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

“(4) In this section, “appropriate agency” and “chief executive” have the meanings given by section 94EA(9).”

Member's explanatory statement

This amendment is consequential on the Minister's amendments extending Clause 2 to Wales and the Minister's amendment at page 6, line 1.

Clause 3

LORD CROMWELL
BARONESS BROWNING

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

“(e) the date by which an explanation of reasons why the discharge occurred is expected to be made publicly available.”

After Clause 3

BARONESS HAYMAN OF ULLOCK

After Clause 3, insert the following new Clause –

“Nature-based solutions

In section 94A(3) of the Water Industry Act 1991 (matters to be addressed in drainage and sewerage management plans), after paragraph (e) insert –

“(ea) the use that is to be made of nature-based solutions, technologies and facilities within the undertaker's drainage system and sewerage system,.”

Member's explanatory statement

This amendment requires a sewerage undertaker's drainage and sewerage management plan to explain the intended contribution of nature-based solutions, technologies and facilities.

BARONESS MCINTOSH OF PICKERING

★ 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).”

Clause 6

LORD CROMWELL

★ Clause 6, page 6, line 26, at end insert “including both on the website, or subsequent public and remotely accessible information display technology, of the undertaking and simultaneously sent to the Authority, which must then provide for timely posting of discharge information from all undertakers in one place that is remotely accessible by the public”

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.

Before Clause 8

BARONESS HAYMAN OF ULLOCK
BARONESS WILLIS OF SUMMERTOWN

Before Clause 8, insert the following new Clause –

“Requirement for Ofwat to have regard to climate change etc

In section 2 of the Water Industry Act 1991 –

(a) after subsection (4) insert –

“(4A) In exercising or performing any such power or duty in accordance with those provisions, the Authority must also have regard to the need to contribute towards achieving compliance by the Secretary of State with the relevant environmental target duties, where the Authority considers that exercise or performance to be relevant to the making of such a contribution.

(4B) The “relevant environmental target duties” means –

- (a) the duty in section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
- (b) so far as the exercise or performance concerned relates to appointment areas wholly or mainly in England, the duty

- in section 5 of the Environment Act 2021 (other environmental targets);
- and for that purpose an “appointment area” is an area for which an appointment is held under Chapter 1 of Part 2.”;
- (b) in each of subsections (6A), (6B) and (7), for “(4)” substitute “(4A)”.”

Member's explanatory statement

This new Clause requires Ofwat to have regard to the need to contribute to the achievement of Secretary of State’s targets on climate change and other environmental matters where relevant to its functions.

After Clause 9

BARONESS JONES OF MOULSECOOMB

- ★ 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 paragraph (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

Clause 10, page 14, leave out lines 7 to 9

Member's explanatory statement

This amendment ensures that compliant companies in the sector are not required to render financial assistance to recover SAO losses caused by another company under special administration.

After Clause 12

BARONESS JONES OF MOULSECOOMB

★ 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

★ 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

★ 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 (SI 2016/1154);”
- (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

★ 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.

Clause 13

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 18, at end insert “, so far as relating to undertakers whose areas are wholly or mainly in England;”

Member's explanatory statement

This amendment is consequential on the Minister's amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 20, at end insert –

“(d) section (*Nature-based solutions*), so far as relating to undertakers whose areas are wholly or mainly in England;”

Member's explanatory statement

This amendment provides for the commencement by regulations in England of the Minister's new Clause after Clause 3.

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 20, at end insert –

“(d) section (*Requirement for Ofwat to have regard to climate change etc*), so far as relating to powers or duties exercised or performed in relation to appointment areas (within the meaning of the subsection (4B) inserted by the section) wholly or mainly in England.”

Member's explanatory statement

This amendment provides for the commencement by regulations in England of the Minister's new Clause before Clause 8.

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 24, at end insert –

“(aa) section 2 (pollution incident reduction plans), so far as relating to undertakers whose areas are wholly or mainly in Wales;”

Member's explanatory statement

This amendment is consequential on the Minister's amendments extending Clause 2 to Wales.

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 26, at end insert –

“(c) section (*Nature-based solutions*), so far as relating to undertakers whose areas are wholly or mainly in Wales;”

Member's explanatory statement

This amendment provides for the commencement by regulations in Wales of the Minister's new Clause after Clause 3.

BARONESS HAYMAN OF ULLOCK

Clause 13, page 19, line 26, at end insert –

“(c) section (*Requirement for Ofwat to have regard to climate change etc*), so far as relating to powers or duties exercised or performed in relation to appointment areas (within the meaning of the subsection (4B) inserted by the section) wholly or mainly in Wales.”

Member's explanatory statement

This amendment provides for the commencement by regulations in Wales of the Minister's new Clause before Clause 8.

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Tabled up to and including

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