

Written evidence submitted by Surfers Against Sewage and River Action (WSMB17)

Water (Special Measures) Bill: Written evidence for Bill Committee

Executive Summary

This written evidence for the Commons Public Bill Committee for the Water (Special Measures) Bill is submitted by **Surfers Against Sewage and River Action**. Two campaigning organisations collaborating to end sewage pollution into the UK's rivers, lakes and seas.

1. The Water (Special Measures) Bill is a welcome first step to dealing with sewage pollution. But without significant amendment it will miss the opportunity to deal with systemic causes of pollution.
2. During Second Reading on 16th December, MPs spoke passionately about how the Bill does not go far enough to tackle the scale of the crisis we face. Minister Hardy said herself that the Bill is “intentionally narrow” and that the “Bill alone will not be enough to fix our water system.”
3. Since Second Reading, MPs have tabled amendments to ensure this legislation addresses the fundamental issues within our water system, and we call on Bill Committee members to support further strengthening of the Bill to ensure it delivers on the government’s ambition to clean up our rivers, lakes and seas.
4. We urge the committee to consider in detail the following amendments:
 - I. **Environmental duty for regulators to deliver clean water** - tabled by Tim Farron MP and Charlie Maynard MP.*
 - II. **Special Administration for companies in breach of environmental obligations** - tabled by Adrian Ramsay MP.*
 - III. **Prohibition on bail-out of water company shareholders and creditors** - tabled by Tim Farron MP and Charlie Maynard MP.*
5. These amendments were initially drafted by Prof Ewan McGaughey, Professor of Law at Kings College, London, in collaboration with the **Sewage Campaign Network**.

Key points to consider in Committee

A Clean Water Duty for Ofwat

6. Ofwat does not currently have a legal duty to protect the environment or public health. Instead, it has a legal duty to make reasonable returns for Water Companies.
7. As a result of the public show of anger through the March for Clean Water (where over 15,000 people and 141 organisations made their voices heard), and well-made points by peers during the Lords debate, the Government brought forward an

amendment during the House of Lords stage to place a new duty on Ofwat to have 'due regard' to existing climate change and environment targets. While this is a positive step and begins to address Ofwat's misplaced priorities, the amendment does not tackle the core issue that one of Ofwat's primary legal duties is to achieve 'reasonable returns' for water companies.

8. We are urging the government to replace the existing duty of Ofwat to make reasonable returns for water companies with a duty to provide clean water and end sewage pollution. Without removing Ofwat's primary focus on profit, we don't believe the Government's proposed duty will bring about the broader systemic reform that is needed to ensure the regulator makes decisions that benefit the environment and public health, which are customers' core priorities.
9. **Question: Separate environmental and financial regulation of the water companies has led to a system that has effectively rewarded profiting from pollution. Does the government agree that the objectives of environmental protection and ending sewage pollution will only be achieved when the regulators – the Environment Agency and Ofwat – share a clear goal of ensuring clean water?**
10. **Question: Should a regulator only be charged with ensuring a return for the sector rather than protecting the environment and public health?**

Enforcement of Existing Law

11. The water industry in England is governed by the 1991 Water Industry Act and the 1994 Urban Wastewater Treatment Regulations. This legislation requires water companies to treat sewage "effectively" and only permit sewage discharges from storm overflows in "exceptional circumstances".
12. However, [the government has admitted](#) sewage overflows "are being used significantly beyond their original purpose". With investigations by [Windrush Against Sewage Pollution](#), [Surfers Against Sewage](#) and [the BBC](#) found water companies regularly discharging untreated sewage on days where there had been no rainfall at all, including at some of the nation's favourite swim sites.
13. This illegal pollution has led the [Office for Environment Protection to conclude](#) in December 2024 that the Government as well as the Environment Agency and Ofwat have failed to comply with environmental law, including misunderstanding its enforcement duties and failing to act on its legal obligations.
14. [Outcomes from a judicial review](#) from the environmental organisation Wild Fish supported these findings by making clear that Ofwat has a duty to enforce the 1994

law, and the Environment Agency has a duty to secure compliance by tightening the terms of the permits it issues to water companies.

- 15. Question: Will the Government clarify how it plans to enforce existing environmental laws?**
- 16. Question: Will it require the Environment Agency to tighten permits to ensure compliance with the 1994 law prohibiting untreated sewage discharges outside exceptional circumstances?**
- 17. Question: Will the Government provide the Environment Agency with sufficient funding and resources to enable the effective investigation and enforcement of environmental law?**

Priority Amendments for the Committee to Consider (details in appendix)

ENVIRONMENTAL DUTY FOR REGULATORS TO DELIVER CLEAN WATER

18. The Government has introduced to the Bill a clause which places a duty on Ofwat to have 'due regard' to existing climate change and environmental targets. However, MPs must now take this further by pushing for an amendment that puts clean water at the heart of regulator duties.
19. The proposed clean water duty would require the regulator to ensure:
 - a) clean 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.

20. This would ensure that the water regulator takes an active role in achieving the government's mission of cleaning up the UK's rivers, lakes, and seas, rather than working against it by favouring profit over pollution.
21. The proposed duty should be included in tandem with the Government's newly introduced duty to have due regard for climate and environment targets.
22. By incorporating the duties, the regulator would have the power to take robust enforcement action against water companies who damage the environment, by achieving a more equal balance between economic and environmental considerations and providing a statutory justification for environmentally ambitious regulation. It would also drive an increase in the contribution made by the water sector as a whole to the achievement of the Government's climate and nature missions.

SPECIAL ADMINISTRATION FOR BREACH OF ENVIRONMENTAL OBLIGATIONS

23. Special Administration, a mechanism provided under existing legislation, enables the government to assume control of failing water companies. This regime can currently be triggered if a water company becomes insolvent or fails to carry out its statutory functions or licensed activities, including to maintain and manage sewer infrastructure appropriately, to such an extent that it is inappropriate for the water company to hold its appointment or licence.
24. This process involves the removal of current directors and the transfer of assets to new owners. Importantly, it would empower the government to redirect funds currently allocated to shareholder dividends—sourced from customer payments—towards the urgent infrastructural improvements needed to mitigate the ongoing sewage crisis.
25. The Bill Minister explained that the Bill will *“modernise the existing special administration regime for the water industry, to bring it in line with special administration regimes for other regulated sectors and to ensure that taxpayer money is protected in the event of a water industry special administration regime”*. She also said there is a *“very high bar for the imposition of a special administration regime”*.
26. However, despite record numbers of sewage spills, including in dry weather in clear breach of water companies' statutory duties, the government is yet to use the Special Administration regime as the ultimate enforcement tool available. Given the clear non-compliance of water companies and the failing financial status, it is unclear why the Government has chosen not to take failing water companies into Special Administration. Therefore, this amendment sets out the conditions required for a company to be taken into Special Administration.
27. These conditions include a breach of Water Companies duties to:
 - f) maintain efficient and economical water supply,

- g) improve mains for the flow of clean water,
- h) provide sewerage systems that are effectively drained,
- i) comply with the terms of its licence,
- j) abide by anti-pollution duties in the Environmental Protection Act 1990, Water Resources Act 1991, or the Environmental Permitting (England and Wales) Regulations 2016.

28. This amendment will provide clarity to aid government decisions by making clear the circumstances when the Secretary of State must act. It will also make clear to failing water companies when Special Administration will be triggered – thus ensuring there is a true incentive for companies to change behaviour.

29. MPs are therefore urged to support amendments which would set out clearly in what circumstances a Water Company would be taken into Special Administration.

PROHIBITION ON BAIL-OUT OF WATER COMPANY SHAREHOLDERS AND CREDITORS

30. Given the current unstable and unsustainable financial and environmental performance of water companies, it is crucial to consider what should occur if companies are failing or are taken into Special Administration. If Special Administration procedures are exercised by the government, as contemplated in the Bill, there is a mechanism for the government to recover water company operational expenditure and continuing capital expenditure from water company customers. It is unclear whether this might include the costs of servicing water company debt, or the repayment of principal sums in the event of a water company having its operating licence suspended during Special Administration.

31. This amendment seeks to clarify this, ensuring these measures would not amount to a form of water company bailout or a bailout for water company creditors. As recognised in the House of Lords debate at Report Stage, it would “force good companies and their blameless customers to bail out failed companies” ([Lord Remnant, Conservative, 20/11/24](#))

32. Clause 11 requires the Secretary of State and HM Treasury to not bail out the shareholders or creditors of any water company. Fundamentally the amendment will ensure that neither taxpayers nor bill payers will be made to bail out the polluting water companies.

33. Clause 11 would require that if a company is to be taken into Special Administration, 100 per cent of debts are cancelled, dependent on the seriousness of environmental breaches and historical returns on capital, reflecting the costs creditors have previously imposed on the public and the financial and environmental risks taken as part of the management. This would ensure risks and rewards taken by companies are not placed on the public or customers.

Appendix of Amendments

1. DUTIES OF WATER REGULATORS FOR CLEAN WATER

Tabled by Tim Farron MP and Charlie Maynard MP

- (1) The Water Industry Act 1991 is amended as follows.
- (2) (2) In section 2 (General duties with respect to water industry)—
 - (a) (a) omit paragraph (2A)(c);
 - (b) (b) in subsection (2B), omit from “by” to the end of the subsection and insert—

““ensuring—

- (a) clean 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.””

(3) In section 3 (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 amend Ofwat's consumer duty to prioritise clean water and bill levels instead of commercial competition.

2. SPECIAL ADMINISTRATION FOR BREACH OF ENVIRONMENTAL OBLIGATIONS

Tabled by Adrian Ramsay MP

To move the following 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 new clause aims to require the Secretary of State to place a water company into special administration arrangements if they breach certain environmental or other conditions.

3. PROHIBITION ON BAIL-OUT OF WATER COMPANY SHAREHOLDERS AND CREDITORS

Tabled by Tim Farron MP and Charlie Maynard MP

To move the following 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 up to 100 per cent, taking into account the future forecast expenditure over the short, medium and long term and subject to the administrator’s confidence in the company’s ability to accommodate this spending.

(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 new clause aims to allow up to 100% of debts to be cancelled in the event of special administration proceedings, taking into account the scale of investment required to hit the future targets established by the Authority.

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