

**Water UK briefing
Committee Stage of the Flood and Water Management Bill
January 2010**

Water UK represents UK water and wastewater service suppliers at national and European level.

Water UK welcomes the introduction of the Flood and Water Management Bill but hopes that the Committee Stage will provide clarity in some areas. The full impact of the Bill cannot be assessed without the detail which will appear in guidance, regulations and standards. Water UK would like to see more of this detail on the face of the Bill.

Water UK has specific concerns about a number of issues:

1. Schedule 3 (Clause 32) – Sustainable Drainage Systems

Sustainable Drainage Systems (often ponds or other landscape features) can be valuable in slowing down the flow of water before it gets to sewers, thus reducing the risk of sewer overloading and flooding.

However, Water UK has concerns about two issues: the connection of SUDS to the public sewerage system and the maintenance of SUDS.

Our main concern is about the right of a third party, the SUDS approving body (the local authority), to allow the connection of a SUDS to the public sewerage system, after 'consulting' the sewerage undertaker.

It is not at all clear what 'consulting' means. Does the SUDS approving body have to take any notice of the sewerage undertaker's opinion? It is important that a SUDS system should not be connected to the public sewerage system without the approval of the sewerage undertaker (subject to a right of appeal) to prevent the over-loading of a sewer which can cause flooding of property downstream and pollution. Water UK is concerned that the Bill gives the SUDS Approving Body authority for approving a connection but no accountability for the consequences of that approval decision.

Secondly, Water UK feels that the SUDS approving body (the local authority) should be under a clear duty to maintain the SUDS system. This should be made explicit in the Bill and National Standards.

Water UK also feels that the Bill should make it clear that any surface water drain or sewer draining to a SUDS system forms part of the SUDS system, rather than the public sewerage system to avoid confusion of ownership and responsibility between the sewerage undertaker and the SUDS Approving Body.

2. Clause 35 - Provision of Infrastructure

The purpose of this clause is to introduce a new way for major infrastructure projects to be delivered.

The Bill, as drafted, specifically prohibits incumbent water or sewerage undertakers from bidding for major infrastructure projects.

Water UK argues that water or sewerage undertakers and companies associated with undertakers **should** be allowed to bid for infrastructure projects under these provisions so that their skills, expertise and experience can be used, for the benefit of customers and the environment.

The criteria for the projects that would be covered by these provisions remain unclear. Our understanding is that these provisions are intended to cover very limited situations. However, we are concerned that, as drafted, the provisions could be used much more widely.

A clear statement of the limited scope of these provisions is needed on the face of the Bill.

Water UK also suggests strengthening the Parliamentary oversight of the process by ensuring that the provisions operate under Ministerial guidance, rather than at the discretion of the regulator.

3. Clause 36 - Water use: Temporary Bans

Water UK supports the provisions in the Bill to update hosepipe ban legislation.

As drafted, this clause gives Ministers an enabling power to implement changes. Regulations - in which the details would be given – are to follow.

Currently, only watering gardens and washing cars with a hosepipe can be prohibited in the event of a drought. However, there is widespread agreement that a range of non-essential uses of water could easily be added to the existing legislation, without the need for Regulations. Examples of these uses are:

- (a) watering gardens, lawns and landscaped areas;
- (b) operating ornamental fountains and cascades;
- (c) cleaning private motor vehicles;
- (d) cleaning private boats, other vessels and watercraft;
- (e) cleaning patios, drives, paths, pavements and other similar artificial external surfaces;
- (f) operating private water slides and other water-based facilities designed for the entertainment of children;
- (g) filling private ponds (other than fish ponds);
- (h) cleaning external surfaces of non-commercial buildings.

The use of a hosepipe or other means for filling private swimming pools, paddling pools, hot tubs and similar bathing facilities could also be prohibited.

Where a water undertaker has made a specific charge for the use of a hosepipe, and then prohibits that use, it should certainly make arrangements for a reasonable reduction of that charge (including arrangements for repayment or credit where the charge is paid in advance). But the Bill currently reads as though any member of the public that uses a hosepipe for any reason, and without having paid a specific charge, would be entitled to a reduction if a temporary ban was introduced. This would be extremely complex to administer and an inefficient use of resources.

As in the current legislation, there is a requirement in the Bill to give notice of the introduction of restrictions. However, the Bill also includes a new

requirement on water companies to give details of how to make representations (although there are no details on how the water company is expected to take account of representations). This clause is impractical and could potentially delay the introduction of restrictions when time is of the essence. Representations should be limited to those restrictions that have an impact, or potential impact, on the economy or the livelihood of users.

4. Clause 41 - Agreements on new Drainage Systems

Water companies need to be able to control what is connected to the public sewerage system, and where that connection is made, in order to reduce the risk of overloading sewers, flooding property and creating pollution.

Clause 41 of the Bill as it stands would insert a new section 105B. This would provide that all future lateral drains and sewers which are to be connected to the public sewerage system must be –

- (a) constructed to standards prescribed by Ministers; and
- (b) transferred to the sewerage undertakers (SUs),

and would require developers to enter into Section 104 Adoption Agreements containing provisions to this effect.

However, the Bill provides that SUs must not refuse the connection of new sewers and lateral drains to the public sewerage system on the grounds that the new sewers and drains do not meet the prescribed standards. What, we would ask, is the value of having standards if new sewers and drains do not have to meet them?

Water UK's suggests that the Bill should be amended to require that the Section 104 Adoption Agreements include provisions for the protection of, and (as may be necessary) the reinforcement of, the public sewerage system in relation to the construction, routing and connection of the new sewers and lateral drains.

This would be supported by Adoption Agreements requiring non-performance guarantees to allow water companies or sewerage undertakers to complete any outstanding works (at no cost to existing customers), should a developer fail to comply with the standards or fail to complete the work.

The approval of new sewers and drains by sewerage undertakers will overlap with the functions of local authority building inspectors and so the Building Act 1984 needs to be amended so that regulations can be made to accommodate this.

The Government intends to start the transfer of private sewers, lateral drains and sewerage disposal works to sewerage undertakers next year. However, the existing legislation contains no provisions for the undertaker to acquire the land, rights of way and other rights necessary for securing, operating and maintaining sewage disposal works, pumping stations and outfalls. These provisions should be introduced.

Currently, the Water Industry Act 1991 would require water and sewerage companies to proactively locate, survey and record the location and connection of all private sewers and lateral drains. This would cost tens of millions of pounds, without a single blockage being cleared, or a repair being made. Water UK feels that the existing exemption from proactive mapping of sewers that were built before 1989 (in the Water Industry Act 1991) should be ‘carried across’ to those private sewers and lateral drains transferred to sewerage undertakers. Undertakers would still map the sewers, but they would do so as required when they carried out repairs on them.

5. Clause 42 - Concessionary Charges for Community Groups

The current drafting of clause 42 would leave it to the sewerage undertakers to decide which community groups should benefit, subject only to Ministerial guidance, (which the Minister is not obliged to issue).

Water UK’s concern is that this seems likely to result in the continuance of disputes as it could encourage ever more groups to demand concessions or even different ‘benefiting’ groups in different regions.

Furthermore, such a provision would not be in line with other legislation aimed at assisting community groups such as section 48 of the Local Government Act 1985 and section 35 of the Companies (Audit, Investigations and Community Enterprise) Act 1984. In order to reduce the possibility of such disputes, we suggest that there needs to be an obligation on Ministers to ‘prescribe’ qualifying community groups.

6. New Clause on Water and Sewerage Charges: Non Owner Occupiers

Water UK warmly welcomes the New Clause which obliges the owner of a property to give a water company information about who at the property is liable for the water bill. If the owner does not do this, the owner is liable to pay the water charges.

Water debt, from bills that are unpaid by customers, is a large and growing problem. Approximately £12 has to be paid by customers who do pay their water bill to make up for those who don't pay. This is a particular problem in rented properties where it is often unclear who is actually liable for water charges and tenants may abscond without paying their due charges. Rented properties account for almost half of the total water debt, now over £1.2 billion.

This uncontroversial, and practical, legislative proposal was recommended, as a priority, by Anna Walker's Independent Review of charging for household water and sewerage services.

The proposal was developed with the Residential Landlords' Association, the British Property Federation, the National Landlords' Association and Water UK through meetings chaired by Anna Walker's Review team.

In Parliament, there was support for this measure at Second Reading from the Shadow Secretary of State for Environment, Food and Rural Affairs, from a former Defra Minister and from the Chair of the All Party Water Group.

This proposal is also supported by Ofwat, the water industry's economic regulator, and by the Consumer Council for Water, representing consumers.

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