



Environment Bill

Water UK recommendations

February 2020

www.water.org.uk

Water UK is the representative body and policy organisation for all water and wastewater service providers. Our sector is integral to the protection and enhancement of the UK's rivers and seas and the habitats around them; we invest over £1 billion every year on environmental improvements, including a programme over the next five years to enhance 7,500 miles of river. This is a vital part of ensuring the safe and sustainable supply of clean water for our customers.

The Environment Bill is uniquely important for water companies: not only will the legislation affect our management of the impacts of sewage and abstraction, it also touches on our sector-wide programmes to reduce carbon emissions to net zero by 2030, plant 11 million trees, and eliminate the equivalent of four billion plastic bottles from landfill and watercourses.

We are relying on this Bill being as effective as possible. Therefore, following its reintroduction on 30 January, Water UK have made the following recommendations.

The Environment Bill: Summary Position

Water UK and our members have strongly supported the Bill - and efforts to strengthen it - since its inception. We welcome its ambition, including the introduction of biodiversity net gain, conservation covenants, moves to tackle waste (especially plastics, which are a growing pollutant in our water sources) and the inclusion of provisions specific to the water sector.

The Environment Bill is crucial for allowing water companies to build on improvements made over the last thirty years. It facilitates a predictable, stable legal framework following Brexit - absolutely essential for enabling continued long-term planning, investment, and innovation.

We also applaud its potential to hold all industries, in addition to the water sector, to a higher standard than today. While water companies play an important role in protecting surface waters and preventing pollution, the majority of issues under the Water Framework Directive are today caused by more lightly-regulated sectors, so we welcome scrutiny of all those touching the water cycle.

As with much of this Bill, the Government's true ambition may only be known through the detail of secondary legislation and the targets it chooses to set and the Bill misses some important opportunities to further strengthen environmental outcomes. This particularly applies to **its lack of ambition on empowering the public to become more water efficient, a need for clarity on the schemes that will be brought forward as part of the new producer responsibility obligations, and**

its weak approach to integrated long-term planning for drainage and wastewater, issues set to grow in importance thanks to drought and flooding from climate change.

These omissions are serious, and notable given the extensive treatment in the Bill of other provisions for the water sector, some of which are of much less importance to the environment.

Critical Issue 1: Enabling adaptation to more frequent drought

The latest analysis shows that every region in England will see some kind of water deficit by the second half of the century. One of the biggest factors determining that (and the environmental impact of abstraction) is the amount of water used per person. In many cases, changes to 'volume per person' will be a bigger factor in future river flows than the impacts of climate change or population growth.

The Government should confirm it will use Clauses 49 and 50 to introduce a mandatory national labelling scheme for water appliances like dishwashers and washing machines, coupled with minimum standards. This would empower customers by giving them the information to make informed purchase decisions and not waste water in the home. It is also zero or near-zero cost to Government; is the single most effective, reliable and cost efficient way of tackling demand; and has successful precedents - both in energy, and, for water, in other countries like Australia.

Critical Issue 2: Tackling wet wipe pollution

Wet wipe pollution causes 300,000 sewage blockages every year, resulting in significant damage to our infrastructure and the environment. 11 billion wet wipes are used in the UK each year, with almost all of those currently on sale containing plastic and other synthetic fibres. Wet wipes account for more than 90% of material in fatbergs, combining with oils, fats and greases as they cool and congeal. These cost customers £100 million to resolve, cause homes to flood, and result in damage to the environment through plastic pollution and serious incidents of river pollution.

The welcome inclusion of clauses 47 and 48 on producer responsibility presents an opportunity to introduce a producer responsibility scheme that tackles wet wipe pollution. This would ensure that the responsibility for financial and environmental costs lies with manufacturers rather than customers, as well as incentivising innovations in product design that enable wet wipes to break down in sewers.

Critical Issue 3: Enabling adaptation to more frequent flooding

Drainage (which is set to grow in importance thanks to the increasing frequency of heavier rainfall, and more runoff from population growth) is a shared responsibility that requires co-ordinated action across a range of organisations. Yet the Bill only places obligations on water companies to do something that they are in fact already doing (indeed, to continue following a process they themselves developed), rather than establishing a real and robust framework for genuinely integrated long-term planning. This does not reflect the scale of the challenge from climate change, or that drainage is a shared responsibility, with other organisations also responsible for managing surface water.

By limiting its ambition to the status quo, the Bill misses an important opportunity to oblige those with responsibility for surface flooding to plan for it properly. It also foregoes the opportunity to strengthen the coordination of action across organisations.

As a minimum, the Bill should place a duty to cooperate on all drainage risk management authorities in the production of Drainage and 'Wastewater' (not just 'Sewage') Management Plans.

Detailed Position

See Annex for the full list of recommendations.

Governance and Environmental improvement

It is important that the OEP cover climate change. As well as its world-leading commitment on mitigation, the water industry is uniquely affected by climate change's impacts on rainfall patterns and drought. Given the importance of those issues for ecological outcomes, we recommend that:

- 1. The Government should confirm that the OEP will look at water resource management as an essential part of climate change adaptation – not just mitigation policy**

We share others' concerns that provisions concerning the OEP's powers and operations need further clarity to ensure its independence, and that enforcement properly replicates the current powers of the EU Commission. Therefore:

- 2. The Government should ensure the OEP can robustly hold the government to account against long term and interim targets**

Clarity of application

As identified by the EFRA Select Committee in their pre-legislative scrutiny last year, the Bill as written results in a duplication of powers between regulators. The problem arises due to use of the term 'public authority' as a target for OEP enforcement, which may also apply to water companies and other private companies in some circumstances.

This creates clear potential for difficult interplays between existing statutory regulators of water companies (particularly with the Environment Agency), and of competition, duplication and confusion between bodies. While the Defra Bill team have been clear that this was not the intention, the current Bill does not resolve this issue. It instead creates new powers, roughly the equivalent of the Commission having an ability to bring directions and infraction proceedings against private companies, in addition to the enforcement powers already held by those companies' regulators. This could have an impact on the stability of plans and investment.

- 3. The Bill should introduce a simple specific exclusion for statutory undertakers, or some other mechanism, to address the unintended consequence of direct OEP regulation of private companies.**
 - **Another potential solution could be to include an addition to subsection 5 of Clause 22 (on how the OEP intends to avoid any overlap with the Committee on Climate Change in exercising its functions) to introduce reference to other statutory regulators as well.**

Target setting and review

There is currently no obligation on the government to develop or implement enabling policies to achieve its targets, which could allow decisions to be pushed back to future Secretaries of State or Governments. While there are interim targets, there is currently no duty to meet these. Additionally, while there is a requirement to review progress towards targets every year and to review plans every five years there is no requirement to act if targets are not being met. This should be made explicit.

4. The government should be required to ensure that sufficient measures are in place, in total, to enable targets to be met

While the Bill as drafted includes powers to set environmental targets for air, water, biodiversity and resources there is no clarity as to what these targets should seek to do, their evidence base, how they will be consulted on, or how they might be aligned with everything else. They will only be tested retrospectively. The Bill should:

- 5. Define upfront environmental objectives to guide target setting over time – currently the process of setting targets could be unpredictable for the environment and economy**
- 6. Include specified matters which should be considered when setting targets (equivalent to the provisions in the Climate Change Act) to build confidence and transparency on target setting**

There is a potential concern of how the Secretary of State may both set targets and recommend changes at the 5 yearly reviews under the current drafting.

While recognising the importance of ensuring EIPs are kept up to date with the latest available evidence, there is concern that under current drafting that a change in political direction may result in a sudden change of policy direction. If this occurs, this would impact billions of pounds of investment planning and undermine confidence in future EIPs. The water industry for example will invest over £1bn per year on environmental schemes alone.

- 7. In setting and revising targets, provision should be included for full consultation with professional bodies, NGOs, academics and those sectors affected by a target, in a full and transparent fashion.**

There is no obligation on regulators to take into consideration the targets and requirements under the Environment Bill in the operation of their sectors. However, several sectors – including water – have their investment decisions and environmental plans hugely influenced by their regulators. Therefore

- 8. The Bill needs to include provision to ensure all regulators of environmentally important activities, such as the water sector, are required to ensure Environmental targets are fully factored into their operation over their sectors.**

Maximising the opportunity from ‘whole environment’ planning

The Bill needs clarity over local delivery of the targets to ensure a coherent framework, currently a framework for Local Nature Recovery Strategies is included, but there are 37 existing spatial instruments that could apply in any one area.

The Bill presents the opportunity to join these up over time getting much better value for the environment and much more effective decision making

9. **Measures to support integration of relevant plans into a single framework should be considered.**
10. **There should be a duty on the Secretary of State to report within 12 months on how to bring together final plans and organisations at local level**

Waste and Resource Management

While some elements are welcome, we believe there is more scope for greater ambition on waste and resource management provisions.

We support action on littering and problem plastics through mechanisms to improve waste and recycling collection, the ability to roll out charging for single use plastics, and making producers responsible for disposal of products and waste. However, we also need to see:

11. **Confirmation that the intended Deposit Return Scheme will be an ‘all-in’ scheme and to be implemented on a more ambitious timeframe than currently indicated**
12. **The power of administrators to use funds received to promote awareness and run education campaigns about correct disposal**
13. **A duty on the Secretary of State to review banned products (currently microbeads in cosmetics, plastic cotton buds, stirrers and straws) every 5 years to determine whether further action is required to address problem plastics and other avoidable single use items, in addition to the introduction of charging on single use plastic**
14. **Mandatory, clear labelling for end of life of management for products (to support separation of waste) should be included in the provisions for waste and resource management and to maximise the effectiveness of waste management and recycling**

Producer responsibility obligations

Part 3 includes two clauses (47 and 48) on producer responsibility obligations. We strongly support the inclusion of these new clauses. They allow the costs of cleaning up pollution to be directed to those causing the problem, rather than relying on the taxpayer or customer to fund it instead. It is an important way of giving life to the ‘polluter pays’ principle.

This is particularly important for the water industry, whose customers regularly deal with pollution caused by other sectors. For example, currently, the design of most wet wipes means they do not break down in sewers – wet wipes account for more than 90% of material in fatbergs. These cause 300,000 blockages every year in the UK, costing customers £100 million to resolve, and causing homes to flood and serious incidents of river pollution. It is right that wipe manufacturers deal with this problem rather than customers; it also introduces a cost incentive to redesign products to make them break down in sewers.

Any producer responsibility scheme should therefore include wet wipes within its scope to address the damage to infrastructure and the environment caused by wet wipe pollution. Clear labelling on packaging and at point of sale should identify products that contain plastic or do not comply with the water industry’s standard for flushability, Fine to Flush, and should advise on appropriate waste disposal options for the product. Manufacturers should fund national awareness raising campaigns to influence consumer behaviour, as well as beach and river cleans to remove littered wet wipes from the environment. Data gathering and reporting mechanisms to assess the efficacy of these measures in reducing the damage caused by wet wipes should also be included within the scope of the scheme. Clean-up of blockages should be funded through graded financial penalties commensurate with the potential damage caused by the product: products that contain plastic

should incur the highest penalty, followed by products that do not contain plastic but that also do not meet the Fine to Flush standard.

- 15. Under the new producer responsibility obligations, a scheme should be introduced to ensure that manufacturers of wet wipes pay the full costs of labelling, awareness raising and cleaning up blockages and pollution before 31 December 2024 to align with or exceed the ambitions of the EU Single Use Plastics Directive.**
- 16. The Government needs to provide clarification and detail about which schemes it will bring forward under producer responsibility powers, and their coverage, delivery (including consultation) and anticipated financial flows. Action should be targeted on those issues causing the most environmental damage.**

Water Specific Provisions

Drainage, addressing the current gaps

We strongly support putting Drainage and Wastewater Management Plans, which we developed, on to a statutory footing. There are two key issues however which need to be amended.

Firstly, it is unfortunate and confusing that, after the Defra, regulators, NGOs and the entire sector has spent years developing the framework for Drainage and **Wastewater** Management Plans (DWMPs), which is now being implemented, the Bill refers to Drainage and **Sewerage** Management Plans.

The reason is that the terms ‘sewerage’ and ‘wastewater’ are not interchangeable in general usage, with sewerage often being understood to have a narrower meaning not encompassing all environmental impacts on river and bathing water quality. Using this term risks, at best, misunderstandings and inconsistencies regarding the scope of application of the provisions and missing out on the inclusion of stakeholders with responsibilities in the waste water system whose focus – like ours – is to protect and enhance the environment.

- 17. The terminology ‘wastewater’ as previously agreed by Defra and all other stakeholders in the development of these provisions should be used. If necessary, adding an appropriate definition for the term ‘wastewater’.**

Secondly, the Bill only places obligations on water companies for something they are already doing. This does not reflect the scale of the challenge from climate change, and that drainage is universally recognised to be a shared responsibility, with other organisations also responsible for managing surface water. To deal with the significant risk of more surface flooding we need co-ordinated action required across organisations.

As written, therefore, this is a significant missed opportunity that puts at risk the potential benefits which customers, society and the environment could otherwise gain.

While water companies will lead the production of DWMPs - and are already committing significant resources in carrying out this role - it is a fundamental feature of drainage and wastewater planning that water companies cannot do this in isolation, because drainage is shared with other ‘risk management authorities’ (RMAs) as defined in the Flood and Water Management Act 2010. There are, for example, large numbers of drainage assets that are not under the ownership of water companies, the management of which needs to be integrated into DWMPs.

This has been recognised by the National Infrastructure Commission in their recommendation that *‘water companies and local authorities should work together to publish joint plans to manage surface water flood risk by 2022’*.

- 18. As a minimum, all other risk management authorities should have a duty to co-operate in the production of DWMPs. This could be given statutory force by, for example, expanding the definition of ‘flood risk management function’ in section 4 of the Flood and Water Management Act 2010, and making other risk management authorities statutory consultees for DWMPs.**
- 19. We also suggest that it would be helpful for Regional Flood and Coastal Committees to be statutory consultees for DWMPs. Consideration of how provisions apply to these additional bodies is needed.**

Operating Licences

We note the changes to the process for modifying appointment conditions for water companies set out in Clause 78. Over the last 30 years, water companies’ operating licences and the current process for their modification have played a crucial role in providing investors with the confidence that they can make long term commitments to the water industry – which has enabled £150 billion of investment and resulted in very significant environmental improvements, while also enabling many changes to licences over this period.

It is therefore important that any changes to the process for modifying the conditions of these licences are carefully considered to avoid the risk of unintended consequences of increasing investors’ views of regulatory risk. While views vary on the degree of risk associated with this clause, this is an area that Parliament may wish to explore further.

Water efficiency: a missed opportunity

Water efficiency is not included in the Bill, despite being critical for environmental protection and enhancement, and the crucial ability to meet future water needs. This represents a significant missed opportunity.

The resource efficiency section of the Bill contains two clauses that may facilitate the introduction of regulations on water efficiency labelling (Clause 49 on resource efficiency information) and minimum standards (Clause 50 on resource efficiency requirements). For the reasons outlined at the beginning of this document, it is urgent that the Government introduce such schemes. An unprecedented analysis¹ of all the options for reducing water demand in the home demonstrates conclusively that such schemes are, by an order of magnitude, the most powerful, reliable, cost effective and consumer-friendly options available – and they could be introduced at virtually zero cost to Government. These changes would also protect consumers’ water bills and give them information about the appliances they purchase. However, Government have not yet committed to their introduction.

- 20. The Government should confirm that Clauses 49 and 50 apply to the use of water, and confirm that it will commit to the introduction of mandatory labelling schemes for**

¹ Water UK and Artesia (2019), ‘Pathways to Long-Term PCC Reduction’, <https://www.water.org.uk/wp-content/uploads/2019/12/Water-UK-Research-on-reducing-water-use.pdf>

appliances coupled with minimum evidence-based standards for their water-efficient operation.

- **If these clauses do not apply to water resources the Bill should be amended to ensure its application to water resources.**

In addition, to future proof new homes into which such appliances are often installed, and correct a methodological flaw that means recorded real-world water use often exceeds original estimates:

21. Additional provision should be included to amend building regulations (part G) to require measurements to be based on fittings, not calculated use, and to make standards on water efficiency mandatory

The specific inclusion of water as a consideration in Environmental Improvement Plans is welcome.

22. As well as water quality, this needs to also include water demand management as water availability is a key indicator for improving ecological outcomes

Restore and enhance nature and green spaces

We support the mandating of biodiversity net gain to align with ambitions of the 25 year Environment Plan and provide this with a statutory footing.

Clause 90 (Schedule 14) (through amendment to the England Town and Country Planning Act 1990 and amendment to section 40 of the Natural Environment and Rural Communities Act 2006) requires that a biodiversity net gain plan must be submitted to the relevant planning authority. The planning authority must only approve the plan where a 10% increase in biodiversity gain is achieved. This strengthens and improves the duty on public bodies to conserve and enhance biodiversity and will be an important way to enhance the Natural Environment.

With population growth and increasing consumption a significant factor in water demand, and water availability a key ecological indicator, the assessment of impact on water should be clearly included in any biodiversity gain plan/assessment.

23. Confirmation is required that water availability and quality are to be included in any biodiversity net gain plan/assessment.

24. Inclusion of biodiversity net gain should not be at the expense of protections to irreplaceable habits such as national and international wildlife sites such as SSSIs, ancient woodland and Ramsar sites, and net gain should be seen as additional to the existing requirements of planning protections.

The Environment Bill: Summary of Recommendations

Our recommendations for improving the legislation, are listed below:

1. Confirm that the OEP will look at water resource management as an essential part of climate change adaptation – not just mitigation policy.
2. Ensure the OEP can hold the government to account against long term and interim targets.
3. Include a simple specific exclusion for statutory undertakers, or some other mechanism, to address this problem.
 - Another potential solution could be to include an addition to subsection 5 of Clause 22 (on how the OEP intends to avoid any overlap with the Committee on Climate Change in exercising its functions) to introduce reference to other statutory regulators as well.
4. Include a requirement to ensure that sufficient measures are in place, in total, to enable targets to be met should be included in the Bill.
5. Define upfront environmental objectives to guide target setting over time – currently the process of setting targets could be unpredictable for the environment and economy.
6. Include specified matters which should be considered when setting targets (equivalent to the provisions in the Climate Change Act) to build confidence and transparency on target setting.
7. In setting and revising targets, provision should be included for full consultation with professional bodies, NGO's, academics and the sectors concerned, in a full and transparent fashion.
8. Include provision to ensure all regulators of environmentally important activities, such as the water sector, are required to ensure Environmental targets are fully factored in to their operation over their sectors.
9. Include measures to support integration of relevant plans into a single framework should be considered.
10. Have a duty, on the Secretary of State, to report within 12 months on how to bring together final plans and organisations at local level.
11. Confirm that the intended Deposit Return Scheme will be an 'all-in' scheme and to be implemented on a more ambitious timeframe than currently indicated.
12. Provide the power of administrators to use funds received to promote awareness and run education campaigns about correct disposal.
13. Include a duty on the Secretary of State to review banned products (currently microbeads in cosmetics, plastic cotton buds, stirrers and straws) every 5 years to determine whether further action is required to address problem plastics and other avoidable single use items, in addition to the introduction of charging on single use plastic.
14. Include mandatory, clear labelling for end of life of management for products (to support separation of waste) should be included in the provisions for waste and resource management and to maximise the effectiveness of waste management and recycling.
15. Under the new producer responsibility obligations, a scheme should be introduced to ensure that manufacturers of wet wipes pay the full costs of labelling, awareness raising and cleaning up blockages and pollution before 31 December 2024 to align with or exceed the ambitions of the EU Single Use Plastics Directive.
16. Further clarification and detail required around producer responsibility obligations including which schemes it will bring forward, and their coverage, delivery (including consultation) and financial flows. Action should be targeted on those issues causing the most environmental damage.

17. Ensure the terminology 'wastewater' as previously agreed by Defra and all other stakeholders in the development of these provisions should be used. If necessary, adding an appropriate definition for the term 'wastewater'.
18. As a minimum, ensure that all other risk management authorities should have a duty to cooperate in the production of DWMPs. This could be given statutory force by, for example, expanding the definition of 'flood risk management function' in section 4 of the Flood and Water Management Act 2010, and making other risk management authorities statutory consultees for DWMPs.
19. We also suggest that it would be helpful for Regional Flood and Coastal Committees to be statutory consultees for DWMPs. Consideration of how provisions apply to these additional bodies is needed.
20. The Government should confirm that Clauses 49 and 50 apply to the use of water, and confirm that it will commit to the introduction of mandatory labelling schemes for appliances coupled with minimum evidence-based standards for their water-efficient operation.
 - If these clauses do not apply to water resources the Bill should be amended to ensure its application to water resources.
21. Additional provision should be included to amend building regulations (part G) to require measurements to be based on fittings, not calculated use, and to make standards on water efficiency mandatory.
22. Make clear that as well as water quality, this needs to also include water demand management as water availability is a key indicator for improving ecological outcomes
23. Confirm that water availability and quality are to be included in any biodiversity net gain plan/assessment.
24. Ensure that the inclusion of biodiversity net gain is not be at the expense of protections to irreplaceable habits such as national and international wildlife sites such as SSSIs, ancient woodland and Ramsar sites, and net gain should be seen as additional to the existing requirements of planning protections.