



Department
for Environment
Food & Rural Affairs

Environment Bill

Lords Amendments for Commons
Consideration – 8th November 2021

<p>31 and 75) OEP Independence</p>	<p>Government does not agree with these amendments. The Bill explicitly provides for the OEP’s independence and includes specific safeguards to ensure this, including a legal duty on ministers to have regard to the need to protect the OEP’s independence. Ministers will have no powers of direction, nor can they intervene in decision making about individual cases. As the Secretary of State is ultimately responsible to Parliament for the OEP, this guidance power is required to ensure appropriate accountability and that the OEP continues to operate effectively.</p>
<p>33) OEP Enforcement</p>	<p>Government does not agree with this amendment, but has instead tabled an amendment in lieu. Environmental reviews will be taking place potentially long after decisions have been taken, and outside of normal judicial review time limits. Some structured protections are therefore necessary to ensure fairness and certainty for third parties, who may otherwise be affected by the grant of a remedy through no fault of their own. Whilst we remain committed to these important principles, we also agree it is important that serious environmental harm can be mitigated where necessary. Our new amendment will allow that where serious environmental harm may otherwise occur and there is an exceptional public interest reason to do so, the court will be able to act to remedy or mitigate this.</p>
<p>45) Storm overflows</p>	<p>Government does not agree with this amendment. It instead has tabled an amendment in lieu, which will strengthen the Bill further by placing a new duty directly on water companies to progressively reduce the adverse impacts of storm overflow discharges. This follows the position we have already set out in our draft Strategic Policy Statement to Ofwat that we expect water companies to take steps to “significantly reduce the frequency and volume of storm overflows”. This new amendment will make the government’s position unequivocal in law. We are unable to accept the wording of the Duke of Wellington’s amendment and have redrafted it for proper legal effect, but our amendment will deliver the same outcome, of reducing sewage discharges into our rivers.</p>
<p>85) Single-use Items</p>	



What does the Bill do?

- The Bill gives the OEP an unprecedented remit, with the ability to take enforcement action against all public authorities from a Minister of the Crown to a local authority.
- The Secretary of State can issue guidance to the OEP regarding its enforcement policy, that the OEP must have regard to. There is an equivalent power for Ministers in Northern Ireland.
- This does not provide Ministers with any powers of direction over the OEP. They would not be able to direct the OEP as to the content of any advice or report. Nor would they be able to direct the OEP or intervene in any specific cases or decisions.
- As the Secretary of State is ultimately responsible to Parliament for the OEP, this guidance power is required to ensure appropriate accountability and that the OEP continues to operate effectively. For this reason, it is also right that they decide on the appropriate funding and appointments for the OEP.
- The Secretary of State will appoint the OEP Chair. They will also appoint the other non-executive members after consulting the OEP Chair. All public appointments to the OEP are independently regulated by Her Majesty's Commissioner for Public Appointments. This is an equivalent public appointments process to that of other independent scrutiny bodies such as the Committee on Climate Change and the Equality and Human Rights Commission.

What would the Lords' Amendments 31C and 75C do?

Amendment 31C narrows the provision for the Secretary of State to issue guidance to the OEP on its enforcement policy to clause 22(6)(c), having laid a draft before Parliament for scrutiny. Amendment 75C narrows the equivalent provision for Northern Ireland.

The amendments also insert further provisions on the appointments processes to the OEP.

What is the Government's position on the Lords' amendments?

- **The government does not support these amendments.** The Bill explicitly provides for the OEP's independence and includes specific safeguards to ensure this.
- This includes a legal duty on ministers to have regard to the need to protect the OEP's independence - Ministers will have no powers of direction, nor can they intervene in decision making about individual cases. Any guidance that seeks to divert OEP scrutiny away from entire policy areas, outside of existing statutory steers on prioritisation, would not be in-keeping with that duty.
- Having listened to the concerns raised however, the Government has reinstated amendments to provide members from both Houses the opportunity to review and make recommendations regarding draft guidance, to which the Secretary of State must respond before final guidance can be laid and have effect.
- Important protections for the OEP's independence are therefore already in place, and it is necessary to overturn this amendment to ensure appropriate accountability.



What does the Bill do?

- The OEP's enforcement framework will resolve potential failures in a co-operative manner without litigation wherever possible. It will do so through a series of steps beginning with the commencement of an investigation, and escalating through the issuing of information and decision notices, to which public authorities are required to respond, where necessary.
- If the OEP is unable to resolve potential breaches of environmental law through its investigation and notice procedures, it will be able to challenge this conduct in the High Court, through a bespoke mechanism called environmental review. If the court finds that there has been a failure to comply with environmental law on an environmental review it may grant any remedy that could be granted in a judicial review (other than damages), but only if it is satisfied that to do so would not:
 - a) cause substantial hardship, or substantial prejudice to the rights of a third party; or
 - b) be detrimental to good administration.
- This recognises the unique context in which environmental reviews will be occurring, potentially many months after decisions were taken, and outside of normal judicial review time limits of 12 weeks *after* the decision in question, or 6 weeks in planning cases. Providing protection for third parties who may have acted in good faith on the basis of certain decisions is essential to protect fairness and certainty.
- The OEP may bring judicial reviews without going through its standard enforcement processes, when an 'urgency condition' is met.

What would the Lords' Amendment 33B do?

This amendment would add a list of factors the court must have regard to when considering the granting of remedies, but would remove the specific protections for third parties and good administration that are built into the environmental review mechanism.

What is the Government's position on the Lords' amendment?

- Whilst we remain committed to ensuring a high degree of certainty for third parties, the government also wishes to ensure serious environmental harm can be mitigated where necessary.
- **Having carefully considered the concerns raised by Peers, we have tabled an amendment in lieu which strikes this important balance. The amendment we have tabled will ensure that a high bar is still set for the granting of remedies where third parties may be affected, but also that where serious environmental harm may otherwise occur and there is an exceptional public interest reason to do so, the court will be able to act to remedy or mitigate this.** This could include granting a court order to require a certain action or prevent further damage.
- This will retain a high degree of certainty for third parties, whilst strengthening the OEP's enforcement framework as a whole.



What is the Government's position on the Lords' Amendment?

- **We are strengthening the Environment Bill by placing a new duty directly on water companies to progressively reduce the adverse impacts of storm overflow discharges, and providing for enforcement of the duty by the Secretary of State, or Ofwat under general authorisation, with the full suite of sanctions available under the Water Industry Act 1991.**
- This follows the position we have already set out in our draft Strategic Policy Statement to Ofwat that we expect water companies to take steps to significantly reduce the frequency and volume of storm overflows. This means that when Ofwat and the Environment Agency set out the process for the next Price Review, they will include this in their requirements for companies preparing their business plans.
- This new amendment will make the government's position unequivocal in law. With the information that the other provisions in the Bill provide, we will be able to assess the progress water companies are making to achieve a progressive reduction in harm to the environment and, if progress is insufficient, take enforcement action against those companies.

What does the Commons' Amendment 45A do, and what would the Lords' Amendment 45B do?

The Duke of Wellington's amendment would place a new duty on sewerage undertakers in England and Wales to demonstrate improvement in the performance of sewerage systems, and secure progressive reductions in the harm caused by untreated sewage discharges. It would require the Secretary of State, the Director of Ofwat, and the Environment Agency to ensure compliance with the duty through any legislation available to them.

We cannot accept the Duke of Wellington's amendment, but we recognise its intentions, and have redrafted it for proper legal effect. We need to ensure integration with other legislation, including new measures in the Environment Bill, and existing duties in the Water Industry Act 1991. The Duke of Wellington's amendment does not contain a workable enforcement mechanism for the new duty – the Government's proposed amendment, however, will dock into the enforcement mechanism in section 18 of the Water Industry Act 1991, which includes the ability for Ofwat to issue enforcement notices for breaches of licence conditions. This is a critical part of the Government's proposed amendment, because it means that if we do not see sufficient progress from water companies we will be able to take robust enforcement action.

Further, it is not clear how this specific duty would interact with the general duties on the Secretary of State and Ofwat in section 2 of the Water Industry Act 1991. The Government's proposed amendment, in contrast, creates a more precise legal duty on water companies, with a specific enforcement mechanism for Government and Ofwat.

Consistency with the draft Strategic Policy Statement to Ofwat, and Ofwat's Price Review mechanism is also important. Aligning the new duty with the existing framework in this way will

ensure the Price Review does its job – balancing the need for investment with the need to protect customers from disproportionate price hikes.

What does the evidence say about storm overflows?

- The Storm Overflows Taskforce has this week published a research project on the costs, benefits and feasibility of different options for eliminating harm from storm overflows. This research, the first assessment of its kind ever conducted, was commissioned by the Storm Overflows Taskforce – made up of Defra, the Environment Agency, Ofwat, Consumer Council for Water (CCW), Blueprint for Water and Water UK.
- There have been numerous public calls, as well as past amendments to the Bill, which seek to require total elimination of sewage discharges from storm overflows. The report estimates that the complete elimination of sewage discharges through storm overflows in England is likely to cost between approximately £340 billion and £600 billion.
- Elimination of sewage discharges from storm overflows would mean the complete separation of wastewater and stormwater systems – which are currently combined into one system – with the potential to cause significant disruption to homes and businesses.
- However, keeping storm overflows but limiting their operation so that they do not discharge to inland waters on a year with average rainfall is estimated to cost between £160 billion and £280 billion.
- The report covers a wide range of policies and financial scenarios – from £5 billion as the low estimate for limiting discharges to rivers to 40 per year, to £600 billion as the high estimate for completely replumbing England’s sewers.
- The Taskforce will use this research to develop the best mix of policy solutions, informing the government plan on storm overflows to be published in 2022.

What does the Bill do?

The new amendment we are proposing follows the action we are already taking through the Environment Bill, including:

1. A new duty on Government to produce a **statutory plan to reduce discharges from overflows** and the harm this causes by September 2022, and report to Parliament on progress.
2. A new duty on water companies and the Environment Agency to **publish data on storm overflow operation** on an annual basis.
3. A new duty on government to produce a **report setting out the actions that would be needed to eliminate storm overflows** in England and the costs and benefits of those actions. This report will provide Parliament, the public and the water industry with up-front, clear and comprehensive information on the feasibility and cost of elimination. Between the Government plan on storm overflows and the new elimination report, we will set out transparently and precisely how far we can go in tackling storm overflows.
4. A new duty on water companies to publish **near real time information** (within 1 hour) of the commencement of an overflow, its location and when it ceases.
5. A new duty on water companies to continuously **monitor the water quality** upstream and downstream of a storm overflow and of sewage disposal works.
6. A new duty on water companies to produce comprehensive statutory **Drainage and Sewerage Management Plans** setting out how the company will manage and develop its

drainage and sewerage system over a minimum 25-year planning horizon and how storm overflows will be addressed through these plans.

7. A power of direction for the government to direct water companies in relation to the actions in these Drainage and Sewerage Management Plans if they are not good enough. We will not hesitate to use this power of direction.
8. The Bill also requires us to set and achieve **at least one new target to drive progress in the priority area of water**. In our policy paper published in August 2020, we set out the objectives for targets currently under consideration. For water, these include reducing pollution from agriculture, wastewater, and abandoned metal mines, and reducing water demand.

We are also taking action on this issue outside the Bill:

9. Between 2020 and 2025, water companies will invest **£7.1bn** on environmental improvements in England. Of this, **£3.1 billion** will be invested in storm overflow improvements directly.
10. We have made our expectations crystal clear in our **draft Strategic Policy Statement to Ofwat**. For the first time, the Government will be telling the industry's economic regulator that we expect water companies to take steps to "significantly reduce storm overflows", and that we expect funding to be approved for them to do so.
11. We have committed to undertaking **a review of the case for implementing Schedule 3** to the Flood and Water Management Act 2010 in England. This Schedule would set mandatory build standards for sustainable drainage schemes on new developments, to help to reduce the pressure on combined sewer systems from surface water runoff, as well as providing multifunctional benefits such as for flood prevention and for nature.
12. All of these measures are informed by the work of the **Storm Overflows Task Force**, which Defra established in August 2020 to bring together key stakeholders from the water industry, environmental NGOs, regulators, and Government in order to drive progress in reducing sewage discharges. The Taskforce has agreed a long-term goal to eliminate harm from storm overflows.

How are sewage discharges enforced?

Sewerage companies must have a permit, issued by the Environment Agency, to discharge any wastewater. The Environment Agency assesses whether companies are complying with their permits. Any non-compliance is reported and may be subject to appropriate enforcement action. There are significant penalties in place for offenders, and we've been clear that polluters must pay for the damage they do to the environment

Earlier this year Southern Water was handed a record-breaking £90m fine, and Thames Water was fined £4 million and £2.3 million for separate incidents. We will hold underperforming companies to account, including through the measures in the Environment Bill.

We take this issue incredibly seriously. These recent prosecutions bring the total since 2015 to 47 prosecutions securing fines of over £132 million. We have accepted an additional 7 enforcement undertakings so far in 2021, paying £1,268,272 to environmental and wildlife trusts organisations bringing the total since 2015 to £11.6 million from 66 enforcement undertakings.

What else is the Government doing to improve water quality?

We also recognise that there are many pressures on our water environment, caused by population growth, intensive farming, climate change, use of chemicals by individuals and businesses, and the way we all use our water and sewerage system. We must collectively address all of these if we are to achieve our objectives of returning our waters to a near-natural state. The Government is determined to ensure action is taken on all of these issues, while protecting bill payers from unreasonable price hikes. Some of our other action to improve water quality includes:

1. **River Basin Management Planning:** The first river basin management plans (2009-15) saw a net increase in water bodies achieving good ecological status or better for phosphorus and a net improvement in fish populations. The EA has just launched the next round of draft plans for consultation.
2. **Addressing farming pollution:** We are improving poor farming practices which lead to water pollution, including by providing funding through our new Environmental Land Management schemes. We have doubled the funding for Catchment Sensitive Farming.
3. **Defra Abandoned Metal Mines programme:** Investment to clean up rivers polluted by abandoned metal mines has improved 100 km of rivers since 2011.
4. **Bathing waters:** In 2019 98.3% of bathing waters passed the minimum standard. Of these, 71% of bathing waters were classified as 'Excellent' - the highest water quality standard.
5. **Chalk streams:** The Chalk Streams Restoration Group launched its Chalk Stream Restoration Strategy on 15 October. It recommends actions for government, regulators and the water industry on water resource, quality and habitat restoration.



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Single Use Items

What does the Bill do?

- Existing powers under the Environment Bill currently enable regulations to be made to impose charges on single-use plastic items.
- Charges can be applied to single use items that are made wholly, or partly, of plastic and sold in connection with a good or service.
- As has been successful with the single use carrier bag charge, the aim of a charge is to target consumer behaviour and reduce the use of single use plastic items. Charges incentivise consumers to reuse or refill, reducing plastic waste and helping government to move towards a circular economy.

What would the Lords' Amendment 85 do?

- Lords Amendment 85 amends Clause 55 and Schedule 9 to enable regulations to be made to impose charges for any single use item.
- The amendment would enable potential future charges to apply to “single use items” that “are made of plastic or any other single use material”.
- This amendment would apply to England, Wales, and Northern Ireland.

What is the Government's position on the Lords' amendment?

- **The government accepts the intention of this amendment. We are committed to moving to a more circular economy. As such, we accept the legislative intent of this amendment, and have tabled amendments 85A-E in lieu. A further amendment during Lords consideration of Commons amendments extends this change to Wales.** These amendments will ensure we target the unnecessary use of all single-use items, decrease resource consumption overall, and avoid simply shifting use from plastic to other materials. This will also mean the power is consistent with our existing power to place charges on carrier bags.
- We have redrafted the language for added clarity to remove the necessity of defining a ‘single use material’ in legislation in favour of maintaining the current definition of a ‘single use item’ to define which items are in scope of these powers.
- The amendments will allow the charge to be imposed on single use items made from any material, not just plastic. Following changes for LCCA, the amendment will apply to England and Wales. Northern Ireland will still only be able to place charges on single-use plastic items sold in connection with goods or services. The Scottish Government will be seeking their own primary powers to place charges on single use items through their Circular Economy Bill.
- This will enable targeted action on the overarching issue of single-use culture, not just plastic-specific issues within this, subsequently aligning with our ambitions to transition towards a circular economy.