



Parliamentary Briefing

The Water Bill: safeguards to upstream competition amendments

December 2013

1. Summary

We welcome Government commitment to amend the Bill to:

- Require applicants for new Water Supply Licences to consult with the Environment Agency as well as Ofwat.

We are calling for the Bill to include:

- Other safeguards related to upstream competition so that it does not contribute to over-abstraction and environmental damage. This includes safeguards related to: 1) bulk supply agreements between water companies, and; 2) water supply arrangements between water companies and other abstractors.

2. Increasing competition in the water sector

The Water Bill's primary function is to increase competition in the water industry. As well as increasing competition in the retail side of the business (by allowing commercial customers to switch supplier), the Bill takes forward recommendations from the Cave Review¹ to introduce competition in the 'upstream' market (i.e. the part of the business associated with water abstraction, treatment and disposal of sewage).

The clauses proposed on upstream competition will:

1. Open up the upstream market to new entrants through new powers which would allow all abstractors (including farmers, industrial users and private land owners) to gain Water Supply Licences and sell the water they abstract to the incumbent water company (Part 1 of the Bill); and
2. Encourage increased trading of bulk water supplies between water companies through a standardised set of Operational Agreements overseen by Ofwat (also Part 1 of the Bill).

In theory, this could have environmental benefits:

1. Competition can lead to greater innovation and efficiencies which could mean less water abstracted overall ; and
2. New Water Supply licences could mean more sources of water to choose from, which could lead to selecting water-abundant sources over sources where water is scarce.

¹ Cave Review: Competition and Innovation in the Water Sector, 2008.

However, in practice, the Bill as it stands will result in greater environmental damage because the abstraction licensing system which underpins all water supply sources is fundamentally broken.

The Bill will incentivise existing abstracting licence holders to sell their water to water companies, even when the catchment is already “over-abstracted” or “over-licensed” according to the Environment Agency. And with no safeguards in place, this will mean greater environmental damage to our already stressed river systems.

3. Amendments

Ultimately, we believe that it is essential that wider abstraction reforms are introduced prior to opening up of the upstream part of the market to competition. The Government is supportive of this in its recent Water Bill briefing on ‘Upstream Competition and Abstraction Reform’:

“We have committed to ensuring that the implementation of our upstream and abstraction reforms are carefully co-ordinated, with the timetable for expansion of upstream water resource markets and transition to a new abstraction regime likely to be broadly similar. This will enable abstractors to take decisions about managing their water use with good information about how future regulation will operate and the role markets might play in enabling them to meet their water needs.”

In light of this it seems ill-advised to press ahead with upstream reforms in this Bill and wait for a second (yet uncertain) Bill to press ahead with the abstraction reforms. We seek amendments to this Bill to provide the Secretary of State with the powers to implement the conclusions of the abstraction reform consultation, instead of waiting for a Bill in the next Parliament, which we believe will be unlikely to happen.

To minimise the risks associated with pressing ahead with upstream competition prior to widespread implementation of the reformed abstraction regime, the following amendments are needed:

1. Safeguards we propose to upstream competition:
 - a. Requiring parties entering into bulk supply agreements to consult with the Environment Agency. (Amendment 1)
 - b. Giving the Environment Agency powers to intervene to vary or terminate bulk supply agreements if they are contributing to over-abstraction and environmental damage. (Amendment 2)
 - c. Requiring applicants for new Water Supply Licences to consult with the Environment Agency. (Amendment 3)
 - d. Requiring full public consultation prior to new regulations relating to water supply arrangements between water companies and other abstractors. (Amendment 4)

Before 2nd Reading, Defra conceded that they would lay down amendments at Bill committee requiring applicants for new Water Supply Licences to consult with the Environment Agency (EA), the 3rd safeguard above. Also they are considering adding the EA as a consultee if and when an order is made regarding a Bulk Supply agreement between water companies. This is welcome however falls far short of what we are seeking. Government assurances that current arrangements will prevent Bulk Supply agreements between amicable parties causing damage are less convincing not least because the EA’s powers to intervene under water resource legislation rely on damage having occurred before action is taken. Vigilance is needed at Bill Committee to examine the substance of the Department’s Water Supply License amendment, and whether they do indeed table amendments on bulk transfer between water companies.

Amendment 1: Safeguards requiring parties entering into a bulk supply agreement to consult with the Environment Agency to ensure that the trade won't contribute to unsustainable abstraction

Amendment to 40B Codes - new sub-section between 40B(2A) such that consulting the Environment Agency over bulk supply becomes a 'must':

- (2A) A code **must** make provision about -
- (..) procedures for consulting the Environment Agency or NRBW for the purpose of ensuring that any bulk supply agreement contributes to -
 - (i) conserving, redistributing or otherwise augmenting water resources in England and Wales;
 - (ii) securing the proper use of water resources in England and Wales; and
 - (iii) securing the conservation of flora and fauna which are dependent on an aquatic environment”

Amendment 2: Powers for the Environment Agency to intervene to ensure that new bulk supply agreements won't contribute to unsustainable abstraction

Insert a new subsection in Section 40, such that the Environment Agency can require Ofwat to intervene to vary or terminate the Bulk Supply Agreement:

“In relation to any agreement for the supply of water in bulk between a water undertaker and a qualifying person –

- (a) the Authority and any party to an agreement shall at any time if so requested provide such information as the Environment Agency or NRBW may require in relation to the volume and source of any water to be abstracted or supplied and the timing of such abstraction or supply under the agreement;
- (b) the Environment Agency or NRBW may at any time certify to the Authority that it is necessary or expedient for the purpose of -
 - (i) conserving, redistributing or otherwise augmenting water resources in England and Wales;
 - (ii) securing the proper use of water resources in England and Wales; and
 - (iii) securing the conservation of flora and fauna which are dependent on an aquatic environmentto vary or terminate an agreement, the Authority must seek a variation or termination of that agreement
- (c) If the Authority is satisfied that the variation or termination cannot be achieved by agreement between the parties within a reasonable time it must by order vary or terminate that agreement accordingly”

Amendment 3: Powers for the Environment Agency to ensure that new water supply arrangements (between water companies and other abstractors) do not contribute to over abstraction

Amend clause 12, by inserting a new sub-clause, between 66O and 66P, to give the Environment Agency / NRW powers to ensure that new water supply arrangements (as set out in sub clause 66M) do not contribute to over abstraction:

Water resources management and conservation of the aquatic environment

- (1) Any Regulations under section 66M must make provision for the purposes of -
 - (a) conserving, redistributing or otherwise augmenting water resources in England and Wales,
 - (b) securing the proper use of water resources in England and Wales, and
 - (c) securing the conservation of flora and fauna which are dependent on an aquatic environment.
- (2) Provision made under subsection (1) must provide that -
 - (a) any water undertaker and any relevant person must
 - (i) consult the Environment Agency or NRW before entering into a water supply agreement, and
 - (ii) provide such information as the Environment Agency or NRW may require in relation to the volume and source of any water to be abstracted or supplied and the timing of such abstraction or supply under any proposed water supply agreement.
 - (b) the Environment Agency or NRW must satisfy itself that the purposes in (1) will be met by any proposed water supply agreement and inform the proposed parties accordingly;
 - (c) no water supply agreement can be entered into by any person or water undertaker until the Environment Agency or NRW has so informed the parties;
 - (d) during the term of a water supply agreement, the Environment Agency or NRW must keep the effect of the water supply agreement under review and may require changes to the agreement in respect of the volume, sources and timing of any water to be abstracted under that agreement

Amendment 4: Ensuring that new regulations relating to water supply arrangements between water companies and other abstractors are subject to full public consultation

Amend subsection **(in bold)** to clause 12, section 66P:
66P Procedure etc

- (1) A statutory instrument containing regulations under section 66M may not be made unless a draft of the instrument has been laid before and approved by a resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State, or
 - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (2) Before laying a draft of an instrument in accordance with subsection (1), the Minister must consult—
- (a) the Authority,
 - (b) water undertakers,
 - (c) water supply licensees,
 - (d) the Chief Inspector of Drinking Water,
 - (e) the Chief Inspector of Drinking Water for Wales if there is one,
 - (f) the Environment Agency,
 - (g) the NRW,
 - (h) the Council, and
 - (i) the public.**

Contact	Dominic Gogol; Public Affairs Adviser; WWF-UK Rob Cunningham; Head of Water Policy; RSPB Martin Salter; National Campaigns Coordinator; Angling Trust
Email/Tel	Dgogol@wwf.org.uk ; 07771 818704 Rob.cunningham@rspb.org.uk ; 07884 087962 martinreadingwest@googlemail.com ; 07976 946033
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