



Parliamentary Briefing

The Water Bill: sustainable development duty of Ofwat amendment

December 2013

1. Summary

We welcome in the Bill:

- the statutory underpinning of Defra's Strategic Policy Statement to Ofwat, helping to secure its provisions around managing water for the natural environment and the long term.

We are calling for:

- **the sustainable development duty of Ofwat to be elevated to a primary duty**, in order to tackle water waste and unsustainable water management more effectively.

2. A sustainable water sector

Ofwat has a duty to “contribute to the achievement of sustainable development”. However, this is a secondary duty, which means that it is ignored if this contribution interferes with Ofwat's primary duties (i.e. if there are financial implications). The practical effect of this, as seen in the 2009 Price Review (PR09), is that Ofwat is forced to strike out investments to deliver demand management in ‘over-abstracted’ areas or areas which wish to address supply deficits which exist beyond the 5-year planning horizon.

- For example, in PR09 Ofwat did not approve schemes for leakage reduction and widespread metering, put forward by the water company for the Hertfordshire area on the grounds that the area was in ‘water surplus’. Ofwat did not consider the fact that this ‘surplus’ is in fact an illusion - a direct result of significant over abstraction of a high number of rivers and aquifers - and that per capita consumption in this water stressed area is the highest in the country.

We believe that effective demand management is a cornerstone of a sustainable water sector. However, it is not pursued vigorously enough, partly because the system does not reflect the value of water and the bias towards supply-side options has been entrenched in methods and culture. We hope that Ofwat's move to “totex” should address some of the bias towards capital expenditure. But reducing demand requires a cultural change both within the regulator and across the water industry. Giving Ofwat a primary duty on sustainable development would be a start of this change: it should result in greater representation and

consideration of the issue by the Ofwat Board and leadership team; ensure that Ofwat is adequately staffed to carry out its duty, and; that sustainability is included in the membership of stakeholder panels to inform Ofwat's methods and decisions.

2.1 The Bill includes a statutory underpinning of guidance to Ofwat and a Resilience duty – won't that do the job?

We welcome the statutory underpinning of Defra's Strategic Policy Statement to Ofwat, helping to secure its provisions around managing water for the natural environment and the long term. The Strategic Policy Statement sets out the priorities Government wants Ofwat to reflect in their decision making. This relates to 'what Ofwat do', the change in duties relates to 'who Ofwat are' and this distinction is important in tackling cultural issues in particular.

The Government itself makes the distinction, including a priority on resilience for the water sector in its Strategic Policy Statement, as well as proposing a new primary duty of resilience for Ofwat in the Bill (Clause 22) , focusing on:

- Building economic resilience;
- Reducing the frequency of restrictions on public water supply during droughts; and
- Avoiding possible severe impacts of flooding on the water industry.

The concept of a resilience duty is not without merit however, however by setting such a narrow definition, the Government risk creating trade-offs with perverse environmental outcomes. For example it would be relatively easy to increase the resilience of water companies in terms of avoiding interruptions to public water supply during drought by lifting any restrictions on water company abstraction during periods of low flows. However, such an approach fails to make the whole system resilient in terms of avoiding damage to natural systems.

Our organisations believe it is vitally important that a resilience duty is counterbalanced by an equally powerful sustainability duty. This would ensure impacts on environment would be considered alongside the relatively narrow metrics for resilience set out in the Bill. This would mean Ofwat's regulatory regime would be required to consider the potential impacts of climate change and any future abstraction regime on freshwater ecosystems alongside impacts on levels of customer service.

3. Ofwat's role in upstream competition and abstraction reform

The paramount need for sustainability to be at the heart of Ofwat can be viewed more clearly in the context of the increased powers the regulator gains in the Bill.

1. Clause 41 of the Bill, which ends the right for water companies to compensation when an abstraction licences is amended or revoked, effectively moves the abstraction issue into the price review process. This is a welcome proposal but it places more need for Ofwat to consider sustainability as delivery of the outcomes – reduced levels of damaging abstraction – would depend on its approval.
2. Provisions to further upstream competition will see Ofwat grant the Water Supply Licences, which allow new entrants into the upstream market by allowing abstractors (including farmers, industrial users and private land owners) to sell the water they abstract to the incumbent water company (Part 1 of the Bill).
3. Ofwat will oversee the standardised set of Operational Agreements that hope to encourage increased trading of bulk water supplies between water companies (also Part 1 of the Bill).

4. Amendment

To bring about the benefits of upstream competition, whilst ensuring that the Bill does not inadvertently cause significant environmental problems a primary sustainability duty for Ofwat is needed.

Amendment 1: Elevating Ofwat’s duty to sustainable development to a primary duty

Insert new clause:

22A OFWAT duty to contribute to sustainable development

- (1) Section 2(3)(e) of the Water Industry Act 1991 is repealed; and
- (2) In section 2(2A) of the Water Industry Act 1991, there is inserted “(e) to contribute to the achievement of sustainable development.

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