



## Parliamentary Briefing

# The Water Bill: abstraction reform amendment

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December 2013

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### 1. Summary

**We welcome new legislation ending the right for water companies to be compensated if an abstraction licence is withdrawn or amended.** This should go a considerable way to address damaging water company abstraction in hundreds of places by ending the deadlock that has arisen from large demand for compensation from a very small and insufficient funding pot.

**However the Bill does not address the fact that the abstraction licensing system, which underpins all water supply sources, is fundamentally broken.** A third of river catchments in England and Wales are either 'over-licensed' or 'over-abstracted' according to Environment Agency figures<sup>1</sup>, with more water taken out than the environment can sustain. The pressures of increasing population, changing lifestyles and climate change are all likely to put even more pressure on our environment. Defra acknowledge these concerns and plan to take their preferred options for reforming the water abstraction regime in England and Wales to consultation this December, with plans for any subsequent legislation in some future - and uncertain - Water Bill. Despite this the Government has chosen to use this Bill to introduce upstream competition and water trading, provisions that effectively incentivise the use of potentially damaging unused quota on existing licences.

**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.

### 2. Addressing current unsustainable abstraction

The right to abstract water from rivers, reservoirs etc. in England and Wales was formally created by the Water Act of 1963. This was done at the time with little or no consideration of what level of abstraction the body of water could actually sustain. This allocation has since proved to be seriously inaccurate: current levels of abstraction is causing significant ecological problems in over 1,000 river water bodies<sup>2</sup>; 42% groundwater bodies (pretty much

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<sup>1</sup> Environment Agency. 2008. Water Resources in England and Wales.

<sup>2</sup> The Environment Agency and Ofwat. 2011. The Case for Change.

every groundwater body in the south and east of England) are failing<sup>3</sup>, and yet; sixty per cent of the water licenced for abstraction is not taken<sup>4</sup>.

The Water White Paper included welcome plans for dealing with the environmental legacy of unsustainable abstraction, which is causing serious damage to our wetland ecosystems and will place them under even greater pressure in a future where drought and other extreme weather is likely to become more frequent.

Clause 41 of the Water Bill will provide a significant step forward- the ending of water company compensation rights will effectively bring plans to address abstraction problems into the price review process. **However, whether Clause 41 will actually deliver reduced levels of damaging abstraction will be entirely dependent on Ofwat approval.** This is one of many reasons why it is essential that Ofwat's duty to consider sustainable development be upgraded to a primary duty.

Clause 41 is an important fix to the outdated system to help minimise damage now. However:

- It will only address problems from water company abstractions (51% total abstracted<sup>5</sup>).
- It will do nothing to address over-allocation, inflexibility and inefficiency of the current abstraction licensing system.
- If the whole abstraction regime is not overhauled then things will just deteriorate further as demand for water increases and we face droughts of increasing frequency and intensity.

### **3. A future sustainable abstraction regime**

**The Water Bill should include a legislative framework for abstraction reform, giving the Government powers to implement the conclusions of the abstraction reform consultation (due in December 2013) according to the principles set out in the White Paper.**

The Water White Paper set out a compelling case for long term reform of the abstraction regime. With a rising population and changing climate the existing system will be increasingly unfit for purpose, placing limits on economic growth (with the increasing risk of abstractors not having access to water or holding rights to abstract water that is simply not there) and continuing to threaten the integrity of our freshwater ecosystems.

To address this, the White Paper set out a vision of a sustainable abstraction regime for the future, with clear principles for its design, such as the need for abstraction licences to signal water availability, reflect the value of water, protect the environment and drive efficient use.

The Government intends that the reforms will be rolled out from 2022 although the framing of the ambition has become increasingly vague and entirely contingent on the ability to find space in the Parliamentary timetable for another water bill within the next few years. This is highlighted in Defra's response to the Efra inquiry into the Bill:

*...If we are able to legislate early in the next Parliament, we agree that implementation should be in progress by 2022. However, we cannot set a firm timetable until decisions have been taken on the shape of the future regime and we fully understand the scale and complexity of the implementation challenge and the*

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<sup>3</sup> The Environment Agency. 2013. Abstraction and Flow Problem - Significant Water Management Issues

<sup>4</sup> The Environment Agency and Ofwat. 2011. The Case for Change.

<sup>5</sup> Data from 'Estimated abstractions from all sources except tidal by purpose and Environment Agency region: 2000 – 2011'.

*legislative timetable. The time taken to deliver reform will also depend on a range of other factors, such as requirements for new systems, for piloting change and for providing reasonable notice for abstractors.*

We are extremely concerned that the Government has delayed legislation on abstraction reform until the next Parliament and now appears to be equivocating on timescales and approach.

The important work underway to develop the detailed implementation plan should not hold up the legislative process; instead, the Water Bill should provide for reform to be brought in at a later date by secondary legislation, after sufficient consultation. Including an amendment in this Water Bill will also send a clear signal to abstractors that the Government does intent to reform licences, provide greater certainty and a longer lead in period to adapt their business planning. This has the potential of reducing the expense of the transition to the new abstraction regime.

**Amendment 1: New clause to enable abstraction licence reform after public consultation.**

XYZ Abstraction licence reform

- (1) The Secretary of State may by regulations make provision for the reform of the abstraction licensing system of Part II of the Water Resources Act 1991
- (2) A statutory instrument containing regulations to be made by the Secretary of State under this section may not be laid unless the Minister has first –
- (a) prepared a draft of the proposed regulations,
  - (b) consulted the public on that draft, and
  - (c) considered any responses received.
- (3) A statutory instrument containing regulations under this section, if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House.
- (4) No regulations to which this subsection applies shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Subsection (4) applies to–
- (a) the first regulations to be made under this section;
  - (b) any regulations under this section which create an offence or increase a penalty for an existing offence;
  - (c) regulations under this section which amend or repeal any provision of an Act.”

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