

SEWAGE (INLAND WATERS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Sewage (Inland Waters) Bill as introduced in the House of Commons on 5 February 2020 (Bill 16).

- These Explanatory Notes have been prepared by the Member in Charge of the Bill, Rt Hon Philip Dunne MP, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

	Subject	Page of these Notes
	Overview of the Bill	3
	Policy and legal background	3
	Territorial extent and application	4
	Commentary on provisions of Bill	5
	Clause 1: new section 17ZA in the WIA	5
	Clause 1: new section 17ZB in the WIA	5
	Clause 1: new section 17ZC in the WIA	6
	Clause 1: new section 17ZD in the WIA	9
	Commencement	9
	Financial implications of the Bill	9
	Devolved legislatures	9

These Explanatory Notes relate to the Sewage (Inland Waters) Bill as introduced in the House of Commons on 5 February 2020 (Bill 16)

Overview of the Bill

- 1 This Bill would place a new duty on water companies to take all reasonable steps to ensure that untreated sewage is not discharged into rivers and other inland waters. It also requires the Government, Ofwat and the Environment Agency to seek to ensure water companies comply with that duty, requires water companies to take certain specific steps, and requires the Government to report both on a range of measures that might assist with the achievement of the duty and on the performance of water companies against the duty.

Policy and legal background

- 2 Water pollution remains a major problem in achieving targets established under the EU Water Framework Directive (which requires all European surface water to reach ‘good ecological status’ by 2015, with a maximum deadline of 2027). As the UK has left the EU, this requirement is due to be carried over into UK law under the Environment Bill, which began its Committee Stage in the House of Commons in March 2020 before a pause related to the Covid-19 pandemic.
- 3 The Sewage (Inland Waters) Bill is intended to assist the Government in meeting the obligations contained in The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, as amended. It is further intended to assist the Government in meeting the commitments made in “A Green Future: Our 25 Year Plan to Improve the Environment”¹, the 25-year environment plan, including:

Improving at least three quarters of our waters to be close to their natural state as soon as is practicable. (page 25)

Minimising by 2030 the harmful bacteria in our designated bathing waters and continuing to improve the cleanliness of our waters. (page 23)

Working with industry to create a more robust wastewater planning and investment process that will help provide better outcomes for both customers and the environment. (page 96)

Making sure that all those with a role to play take action to improve water quality by, for example, removing misconnected plumbing, improving surface water drainage and land management, and maintaining private sewage systems to a high standard. (page 103)

Continuing to develop the Environment Agency’s forecasting and warning system so that bathers are warned of a possible short-term pollution problem, perhaps owing to spill from overloaded sewers during heavy rain. (page 103)

- 4 In 2019 only 16% of English rivers met ‘good’ ecological status, and no river met ‘good’ chemical

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

status under the EU Water Framework Directive.

- 5 There are three main sources of pollution of rivers and other inland waters:
 - Agricultural (40%)
 - Wastewater (36%)
 - Surface water run-off from urban areas and roads (18%)
- 6 This Bill is focused on reducing discharges from the foul drainage sewer network, which drains are substantially co-mingled with the surface water drainage system, so some proposals relate to limiting such discharges.
- 7 Untreated sewage is discharged directly into rivers from Combined Sewer Overflows (CSOs) from almost 18,000 sewer treatment plants managed by the 12 water and sewerage companies (Water Companies), which are permitted by the Environment Agency (EA) to exceed consented concentrations during periods of heavy rainfall. A recent well publicised report established there were over 200,000 such CSO incidents spilling sewage discharges into rivers across England for over 1.5 million hours in 2019.
- 8 As much of the 500,000km of drainage network which serves towns and cities across England was constructed in the 19th and 20th centuries, there is significant capital investment required to bring the water infrastructure up to standard to improve water quality and cope with the demand and supply challenges posed by climate change. At present the water pricing regulator, Ofwat, in its recent determination of water charging by Water Companies for the five year pricing period 2021-2025 has effectively capped investment in improving water quality in the capital plans of some water companies, by limiting price rises to consumers to reward investment in meeting water objectives (e.g. leakage reduction targets) set by Ofwat (as advised by DEFRA) which do not currently include water quality.
- 9 The Bill is also intended to assist the Environment Agency in its ambition set out in “The State of the Environment: Water Quality (February 2018)² for “a cleaner, healthier and better managed water environment” by helping to deliver on the Agency’s requirement that “the public and businesses must do more to keep plastics, fats and household chemicals out of our drains” and that “water companies must continue reducing pollution incidents from sewer systems and sewage treatment works”.

Territorial extent and application

- 10 The extent of a Bill is the legal jurisdiction where it forms part of the law. The application of a Bill is where it has practical effect. The extent of a Bill can be different from its application.
- 11 This Bill extends to the legal area of England and Wales but only applies in England. This reflects that water quality, water resources and the water industry are chiefly within the legislative competence of Senedd Cymru.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709493/State_of_the_environment_water_quality_report.pdf

Commentary on provisions of Bill

- 12 The Bill consists of two clauses. Clause 1 inserts a new Chapter into Part II of the Water Industry Act 1991 (“the WIA”). Clause 2, which covers the extent, commencement and short title, is self-explanatory.
- 13 The Bill only relates to inland waters in England. These are defined in the WIA with reference to section 221 of the Water Resources Act 1991, in which “inland waters” means the whole or any part of—
- “(a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
 - (b) any lake or pond, whether natural or artificial, or any reservoir or dock, in so far as the lake, pond, reservoir or dock does not fall within paragraph (a) of this definition; and
 - (c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition”

Clause 1: new section 17ZA in the WIA

- 14 New section 17ZA places a duty on water companies (defined as companies appointed as water undertakers or sewerage undertakers under Chapter I of Part II of the WIA), to take all reasonable steps to ensure that untreated sewage is not discharged into inland waters.
- 15 It further requires that the Secretary of State, the Environment Agency and the Water Services Regulation Authority (Ofwat) to use their available powers to seek to secure water company compliance with that duty.

Clause 1: new section 17ZB in the WIA

- 16 New section 17ZB sets out a non-exhaustive list of reasonable steps water companies must take in accordance with the duty in new section 5A.
- 17 Paragraph (a) would require water companies to maintain and publish a register of combined sewer overflows (CSOs) and any other sewer catchment assets from which discharges of treated or untreated sewage may be made to inland waters. This is intended to assist the Environment Agency in working closely with water companies to ensure that water companies are closely monitoring and reporting back on their discharge activity.³ As water companies are ‘public authorities’ for the purposes of the Environmental Information Regulations 2004, this is consistent with their existing duty under Regulation 4 - Dissemination of environmental information - progressively to make environmental information that they hold available to the public by electronic means which are easily accessible; and take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.
- 18 Paragraph (b) would require water companies to publish a biannual report on the operational status of those assets. This is intended to help meet the obligation in Regulation 4 of the 2004 Regulations above, assist the Government in meeting relevant commitments of the 25 YEP, and enable the Environment Agency and other stakeholders to contribute to so meeting those commitments.

³ <https://environmentagency.blog.gov.uk/2020/07/02/combined-sewer-overflows-explained/>

- 19 Paragraph (c) would require water companies progressively to install continuous monitoring of all discharges of treated or untreated sewage into inland waters from those assets, and publish the data obtained from that continuous monitoring. This step is intended to meet, over time and as technology allows, the long-standing objective to monitor sewage discharges continuously (as against a set number of monthly or weekly instantaneous ‘spot’ samples) as, for example, expressed in the National Rivers Authority’s 1990 report “Discharge consent and compliance policy: a Blueprint for the Future” (aka “the Kinnersley Report”). The publication of data produced is intended to help to meet the obligation in Regulation 4 of the 2004 Regulations above.
- 20 Paragraph (d) requires the monitoring and publishing reports on the quality and duration of discharges made from CSOs. This is intended to assist the Environment Agency in working closely with water companies to ensure that water companies are closely monitoring and reporting back on their discharge activity⁴, with the data produced helping the Environment Agency to understand where the system is not operating as it should, so that water companies can target investigations and investment, including at the already-identified over 700 overflows that are to be investigated by the Environment Agency within the period 2020-2025.
- 21 Paragraph (e) makes requirements of water companies as part of drainage and wastewater management plans, which are a statutory requirement envisaged under the Environment Bill 2020. The requirement in sub-paragraph (i) regarding the installation of biological or nature-based treatments at waste water treatment works discharging to inland waters that do not otherwise provide for the tertiary treatment of effluent is intended to support the use of nature-based (and hence low-carbon) solutions to the final tertiary treatment or ‘polishing’ of sewage effluents from existing wastewater treatment works, for example Integrated Constructed Wetlands being piloted by some water companies, and may also provide flood attenuation services.
- 22 The step in sub-paragraph (ii) to reduce reliance progressively upon CSOs is intended to drive and reflect the progressive separation of the surface water and sewage collection systems, as provided for elsewhere in the Bill, which is intended to reduce overloading of sewers during heavy rainfall.
- 23 Paragraph (f) makes provision for requirements of water companies in connection with the duty in new section 17ZA made in a report of the Secretary of State under new section 17ZC (see below) to be included in this list of reasonable steps.

Clause 1: new section 17ZC in the WIA

- 24 New section 17ZC would require the Secretary of State to report to Parliament within a year and every year thereafter on measures taken to assist water companies to meet the duty in section 17ZA. Those reports must include the assessment of the Secretary of State of the contribution that potential measures could make to reducing treated and untreated sewage discharges to inland waters in England and what steps, if any, the Secretary of State intends to take in connection with each measure.
- 25 Subsections (3) to (7) set out a non-exhaustive list of measures the Secretary of State might take, that are intended to separate surface water and sewage collection, to reduce the volume of sewage produced by domestic properties, to reduce the polluting content of sewage, to reduce the impact

⁴ <https://environmentagency.blog.gov.uk/2020/07/02/combined-sewer-overflows-explained/>

of CSO discharges and to promote improvements in bathing water quality in inland waters.

Measures intended to separate surface water and sewage collection

- 26 The measure in subsection (3)(a) is requiring all new developments of more than two residential or commercial buildings to have separate surface water and sewage collection systems. This measure would be intended to assist in progressively reducing the co-collection of surface waters and sewage in order to reduce flows in sewer catchments to treatment works and, when sewers are overloaded, to inland waters via CSOs. It is intended to assist in meeting obligations under the Water Industry Act 1991, as amended by the Flood and Water Management Act 2010.
- 27 The measure in paragraph (b) is bringing Schedule 3 of the Flood and Water Management Act, 2010 into force in England (it is already in force in Wales). That Schedule introduces standards for the design, construction, maintenance and operation of new rainwater drainage systems, and an 'approving body'. The body, which would generally be a unitary, county or county borough local authority, will be required to approve most types of rain-water drainage systems before any construction work with drainage implications can start. Where the system affects the drainage of more than one property, the approving body will be required to adopt and maintain the system upon satisfactory completion. The Schedule also amends section 106 of the Water Industry Act 1991 to make the right to connect surface water run-off to public sewers conditional on the approval of the drainage system by the approving body.⁵
- 28 This measure would be intended to assist in reducing the collection of surface waters from highways and its entry into sewers. This would reduce flows in sewer catchments to treatment works and, when sewers are overloaded, to inland waters via CSOs. This measure would also be intended to assist in meeting the wider objectives of the Flood and Water Management Act 2010 with respect to flood reduction by sustainable management of surface waters.
- 29 Requiring all new surface water collection systems to incorporate sustainable urban drainage systems (SUDS) is the measure in paragraph (c). This would be intended to ensure that that all new developments are built with a sustainable alternative to disposing of surface water into sewers—Sustainable Urban Drainage Systems (SUDS)—for which the Government has already published non-statutory technical standards on the design, maintenance and operation of sustainable drainage systems to drain surface water⁶.
- 30 The measure in paragraph (d) is to require all major retrofitting or redevelopment projects of buildings where practicable (say in terms of location or topography) to incorporate SUDS and separate surface water and sewage collection systems.
- 31 The measure in paragraph (e) is amending strategic guidance to Ofwat to require it to facilitate capital expenditure on (i) nature-based drainage systems, such as integrated constructed wetlands, and (ii) SUDS, as part of the asset management plans drawn up periodically under WIA.

Measures intended to reduce the volume of sewage produced by domestic properties

- 32 The measure in subsection (4)(a) is requiring by 2025 all domestic properties to have a metered

⁵ Flood Management Act 2010, [Explanatory Notes](#)

⁶ <https://www.gov.uk/government/publications/sustainable-drainage-systems-non-statutory-technical-standards>

water supply when being leased, rented or sold. This is intended to accelerate the take-up of water meters across England. Water meters are a recognised way of reducing water demand, and hence sewage flows, from domestic properties.

- 33 The measure in paragraph (b) is requiring the Environment Agency to maintain a register of all private sewage treatment systems. This would be intended to supplement the binding rules already applied to private sewage systems by the Environment Agency⁷ and enable the Agency to identify those locations where a significant numbers or concentrations of such systems might be causing water quality problems in inland waters.
- 34 Amending Building Regulations to require efficient processing of grey water (sullage) is the measure in paragraph (c). This would be intended to encourage the efficient processing of grey water (wastewater not containing human sewage) such that flows to sewers from domestic properties are reduced.
- 35 The measure in paragraph (d) is to require all new domestic and commercial outside ground-level surfaces where practicable to be made from permeable materials. This is intended to allow rainwater to soak into the ground rather than be discharged via surface water drains into sewers, thereby reducing sewage flows to wastewater treatment works or into inland waters via CSOs.
- 36 Introducing water efficiency labelling on household appliances (paragraph (e)) is intended to encourage consumer choice to drive the use of water efficient domestic appliances, thereby reducing flows to sewers from domestic properties.

Measures intended to reduce the polluting content of sewage

- 37 Establishing a regulatory standard for flushable products (subsection (5)(a)) is intended to reduce blockages in sewers and impediments to wastewater treatment works, thereby reducing the frequency and duration of discharges of untreated sewage to inland waters.
- 38 Prohibiting the use of plastics in sanitary products and wet wipes (paragraph (b)) reducing the use of microplastics in flushable products (paragraph (c)) have a similar intention, as well as reducing residual plastic pollution of inland waters when treated and untreated sewage discharges do occur.
- 39 The measure in paragraph (d) is prohibiting the disposal of fats and oils into sewers by food service establishments. Warm fats and grease in a liquid form or waste oil poured down sinks and drains can block sewers or impede wastewater treatment works, leading to more frequent and longer duration discharges of untreated sewage to inland waters.

Measures intended to reduce the impact of CSO discharges

- 40 The measure in subsection (6)(a) would be to require the Environment Agency to continue to work with water companies in reducing harmful discharges from CSOs.
- 41 The measure in paragraph (b) would be to direct the Environment Agency to research the effects of CSO discharges on water quality in inland waters and water bodies identified pursuant to The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, as amended.

⁷ <https://www.gov.uk/permits-you-need-for-septic-tanks>

Measures intended to promote improvements in bathing water quality in inland waters

- 42 The measure in subsection (7)(a) is to set statutory targets to increasing the number of bathing waters rated as “good to or “excellent”. Bathing waters are currently classified on a scale of “poor” through to “excellent”. The [existing regulations](#) require the Environment Agency to take “such realistic and proportionate measures as they each consider appropriate with a view to increasing the number of bathing waters classified under regulation 11 as ‘good’ or ‘excellent’”. A target for this would be intended to drive forward action on this requirement.
- 43 The measure in paragraph (b) is designating a minimum of two inland bathing waters, to include one in-river inland bathing water, in each water company area for each year of any price review period. This would therefore set targets for the increase of the number of inland waters, including rivers, that will be designated as inland bathing waters, then subject to appropriate statutory water quality standards.
- 44 Amending strategic guidance to Ofwat to require it to facilitate capital expenditure on the improvement of water quality in inland bathing waters is the measure in paragraph (c). The intention is that such expenditure would be promoted, including through asset management plans drawn up periodically under the WIA.

Clause 1: new section 17ZD in the WIA

- 45 The new section 17ZD would require the Secretary of State to report annually on the performance of water companies against their section 17ZA duty. Such reports would, under subsection (2), include information on the performance of the sewerage assets of each such company and the quantity of sewage discharged into inland waters from those assets.

Commencement

- 46 Clause 2 states that the Bill will come into force on the day on which it is passed. The first Government reports under new sections 17ZC and 17ZD would be due no later than one year after that day.

Financial implications of the Bill

- 47 The Bill does not require a Money Resolution as expenditure on Government reports does not meet the threshold for such a requirement.
- 48 The Bill does not require a Ways and Means Resolution because it does not authorise new taxation or similar charges on the people.

Devolved legislatures

- 49 The Bill extends to England and Wales, but applies to England only. A corresponding provision applying to Wales would be within the competence of Senedd Cymru.
- 50 As the Bill is a Private Member’s Bill, the English votes provisions in the Standing Orders of the House of Commons relating to Public Business do not apply.

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