HOUSE OF LORDS

Library Note

Water Bill
(HL Bill 71 of 2013–14)

The Water Bill would introduce greater competition in the water sector by allowing non-household customers to switch their water and sewerage supplier (retail competition) and by allowing new entrants to the water market to provide new sources of water or sewerage treatment services (upstream competition). Reforms would be made to the regulation of the water industry, including giving Ofwat a duty to secure the long-term resilience of water supplies and sewerage. The Bill also seeks to address the availability and affordability of insurance for households in high flood risk areas. Other measures include provisions enabling water-related legislation to be brought under the environmental permitting framework at a later date, and changing the regulation of Internal Drainage Boards.

This Note is intended to provide background information in advance of the Bill's second reading in the House of Lords on 27 January 2014. It outlines measures contained in the Bill and summarises proceedings at report stage and third reading in the House of Commons.

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1. Introduction

The Water Bill (HL Bill 71 of 2013–14) implements proposals set out in the water White Paper, *Water for Life*, which was published in December 2011.[1] A technical document, *Water for Life: Market Reform Proposals*, was published alongside the White Paper. The Government published a Draft Water Bill in July 2012, which was subject to pre-legislative scrutiny by the House of Commons Environment, Food and Rural Affairs (EFRA) Committee. The Committee published its report on the *Draft Water Bill* in February 2013.[2] The Government published its response to the EFRA Committee's report on 27 June 2013, the same day that the Water Bill was given its first reading in the House of Commons.

The Water Bill had its second reading in the House of Commons on 25 November 2013. It was considered by a Public Bill Committee, which held three sittings on the general principles of the Bill at the beginning of December 2013, and conducted line-by-line scrutiny over six sittings between 10 and 17 December 2013. The Bill completed its remaining stages in the House of Commons on 6 January 2014, and was introduced to the House of Lords the following day. It is due to have its second reading on 27 January 2014.

The Bill would introduce greater competition in the water sector by allowing non-household customers to switch their water and sewerage supplier (retail competition) and by allowing new entrants to the water market to provide new sources of water or sewerage treatment services (upstream competition). Reforms would also be made to the regulation of the water industry, including giving Ofwat a duty to secure the long-term resilience of water supplies and sewerage. The Bill also contains measures to establish a flood reinsurance scheme to address the availability and affordability of insurance for households in high flood risk areas, with reserve powers to oblige insurers to provide such insurance should the scheme prove unsuitable. Other measures include provisions enabling water-related legislation to be brought under the environmental permitting framework at a later date, and changing the regulation of Internal Drainage Boards.

This Note is intended to provide background information in advance of the Bill's second reading in the House of Lords. Section 2 outlines the Bill's provisions. Section 3 gives brief details of amendments made at committee stage in the House of Commons (for further details please see the House of Commons Library Research Paper *Water Bill: Committee Stage Report*, 2 January 2014, RP 14/01). Section 4 summarises the report stage debate in the House of Commons, giving details of the government amendments made to the Bill and of the non-government amendments that were discussed but not agreed to. Many of these were intended to widen the scope of the Bill, for example to include measures on the affordability of domestic water bills or to scrutinise the corporate governance arrangements of water companies. Section 5 summarises the Bill's third reading in the House of Commons. Section 6 contains a bibliography of selected parliamentary resources relating to water and flooding.

The Department for Environment, Food and Rural Affairs (Defra) has produced a series of policy briefings on the Bill. Impact assessments for the various measures in the Bill are available on the parliamentary website. A House of Commons Library Research Paper on the *Water Bill*, (21 November 2013, RP 13/67) provides briefing on the background to the key issues addressed in the Bill.

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[1] Cm 8230.
[2] HC 674 of session 2012–13.

2. The Bill

2.1 Overview

The Department for Environment, Food and Rural Affairs (Defra) has set out the case for the Bill as follows:

> Our water supplies are coming under pressure as a result of an increasing population and a changing climate. The privatisation of the water industry has been successful in attracting investment that has improved infrastructure and produced cleaner water supplies. However, given the future challenges we face and the need to keep bills affordable, we need to find new approaches to water management, to encourage innovation and greater efficiencies.
>
> The Water Bill is one of the main parts of our programme of action to deliver this vision, focusing particularly on the reform of the water industry. Beyond the Bill, we are taking action to tackle affordability for customers, water efficiency, leakage, pollution and unsustainable abstraction.
>
> […] The Water Bill aims to deliver:
>
> Resilience—a future where water is always available to supply households and businesses without damaging the environment. The Bill will also ensure that households at high risk of flooding can get affordable flood insurance, to help them become more resilient to the financial effects of flooding.
>
> Choice—a water sector that offers choice and flexibility to customers. The Bill will also help keep bills affordable by encouraging existing water companies to be as efficient as they can be and to encourage new businesses to enter the sector with innovative ideas and approaches. New flood insurance measures will mean that customers will be free to shop around for insurance rather than being tied to their existing insurer.
>
> Growth—a water sector that continues to attract global investment and creates employment, by encouraging innovation, greater efficiencies and reducing burdens on businesses. New flood insurance measures will provide support with affordability for those at high risk as well as reassurance that such households will be able to manage the financial impacts of flooding.[3]

2.2 Competition

2.2.1 Retail and Upstream Competition

Chapter 1 of part 1 of the Bill and schedules 1 to 4 deal with competition in the water industry. When the water industry was privatised in 1989, the water supply and sewerage functions of the ten publicly owned regional companies were transferred to limited companies.[4] There are 19 'incumbent' water companies across England and Wales, ten of which provide water and

[3] Defra, *Water Bill—Overview of the Water Bill*, November 2013, pp 1–2.
[4] Defra, *Water Bill—The Structure and Regulation of the Water Industry*, November 2013, p 2.

sewerage services, and nine which supply water only.[5] Each company is appointed by the Water Services Regulation Authority, commonly known as Ofwat, and holds a regional monopoly for providing water or water and sewerages services in a particular geographical area.

Household customers cannot switch water suppliers, but the current water supply licensing regime does allow for a limited amount of competition: non-household customers (businesses, public sector organisations and charities) that use over a certain threshold of water each year can switch their water supplier to a business licensed under the water supply licensing regime.[6] The threshold is five megalitres or more of water per year if the incumbent company is based wholly or mainly in England, and 50 megalitres or more per year if the incumbent company is based wholly or mainly in Wales.[7]

The new supplier ('licensee') can provide either retail services alone, or both retail and upstream services. Retail services are defined as "customer-facing services, for example billing, meter reading and call centre services".[8] Water is still physically supplied by the incumbent company; the licensee pays the incumbent company for the water and for use of its network to deliver it to the customer.[9] Upstream services are defined as "the elements of the water and sewerage value chain that do not directly involve the customer", and could include activities such as the abstraction, storage, treatment and distribution of water.[10] Upstream sewerage services would include the collection, treatment and disposal of waste water and sewage. Currently customers cannot switch their sewerage supplier, only their water supplier.

To date, very few non-household customers outside Scotland have switched their water supplier:

> Although eight companies hold water supply licences, only four customers have switched their water supplier on certain sites since retail competition was initially allowed in 2005: C2C, Bernard Matthews, First Milk and Tesco.
>
> The main reason why this regime has not been particularly successful to date is because the prices that licensees must pay to the incumbent water company for using their network are government by the restrictive 'costs principle' in legislation. This has been widely criticised for creating only a small margin on which a licensee can compete when setting prices. As a result, there has not been a great influx of new entrants and incumbent water companies have had little incentive to increase efficiency.[11]

Retail competition was introduced in Scotland in 2008, since when all non-household customers have been able to switch their water and sewerage supplier, with no usage threshold applying. Defra notes that "while only 5 percent of [Scottish] customers have switched their supplier,

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[5] An 'incumbent water company' is defined as "the water and/or sewerage undertaker that holds the de facto monopoly to provide services to premises in its area of appointment". An 'undertaker' is defined as "a company who has statutory powers and duties to supply water and/or sewerage services to premises within an appointed geographical area under the Water Industry Act 1991" (Defra, *Water Bill—Glossary: Water Terms*, November 2013).
[6] Defra, *Water Bill—The Structure and Regulation of the Water Industry*, November 2013, p 2.
[7] One megalitre is equal to 1000 cubic metres or one million litres. A standard Olympic-size swimming pool contains 2.5 megalitres of water (Defra, *Water Bill—Glossary: Water Terms*, November 2013).
[8] Defra, *Water Bill—Glossary: Water Terms*, November 2013.
[9] Defra, *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, p 2.
[10] Defra, *Water Bill—Glossary: Water Terms*, November 2013; and *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, p 1.
[11] Defra, *Water Bill—The Structure and Regulation of the Water Industry*, November 2013, pp 2–3.

more than 45,000 customers (around 50 percent) have renegotiated the terms of their supplies and are enjoying a range of benefits".[12]

The Bill would allow greater competition in certain parts of the industry and remove barriers within the existing legislation (principally the Water Industry Act 1991) that restrict the ability of new businesses to compete in the industry. The Government intends that "allowing more competition in the sector will drive forward both innovation and efficiency, by bringing in new players and new ways of thinking, and by using market forces to keep down customer costs".[13] With regard to retail competition:

> The Water Bill will enable all businesses, public sector organisations and charities, regardless of size, to switch their water supplier. It will also enable them to switch their sewerage provider for the first time. These changes will be introduced in England […]
>
> The Water Bill will also enable cross-border arrangements with Scotland. This means a streamlined application process for potential water and sewerage suppliers wishing to enter the market, and will ultimately mean that customers operating across England and Scotland will experience a seamless market.
>
> The Bill will also make it more attractive for potential new suppliers to enter the market by changing the system of charges that incumbent water companies can levy on licensees for the use of the public water supply system.[14]

The Bill does not extend retail competition to household customers. The Government has stated that:

> […] there is no evidence to suggest it would provide enough direct benefits for householders, given the low margins involved in water pricing. The circumstances in which business customers are most likely to benefit from retail competition are not relevant to householders (unlike multi-site business customers, for example, who would benefit from one national bill).[15]

The Government intends that the new retail markets will be opened in England in 2017.[16]

Defra intends upstream competition to create a "market for the sale of treated or untreated water into the supply system or the disposal of waste from the sewerage system".[17] Services traded within this market could include developing a new water source and selling water from it to an existing water company, or developing a more environmentally friendly way of treating wastewater, re-using it for industrial use or disposing of sewage sludge. Defra states that "upstream competition will also make it easier for water companies to buy and sell water from each other".[18] The market will only extend to some upstream services—Defra has stated that the original incumbent water companies will still "own and manage the network pipes that

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[12] Defra, *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, p 1.
[13] Defra, *Water Bill—Overview of the Water Bill*, November 2013, p 2.
[14] Defra, *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, pp 2–3.
[15] ibid, p 4.
[16] ibid.
[17] Defra, *Water Bill—Reform of the Water Industry: Upstream Competition*, November 2013, p 1.
[18] ibid.

transport the water, wastewater and sewage" and "will continue to provide all the distribution services".[19]

2.2.2 Water and Sewerage Licensing

Clause 1 would establish a new water supply licensing regime. Ofwat would issue water supply licenses which would allow the holder to enter into the competitive water supply market for the purpose of providing retail and/or upstream services.[20] A licensee may hold one or more of four 'authorisations' within a water supply licence. The different types of authorisation are defined in schedule 1—a 'retail authorisation' to provide retail services wholly or mainly in England; a 'wholesale authorisation' to provide upstream services wholly or mainly in England; a 'restricted retail authorisation' to provide retail services wholly or mainly in Wales; and a 'supplementary authorisation' to provide upstream services wholly or mainly in Wales. The Welsh Government has decided not to implement retail or upstream competition for incumbent water companies operating wholly or mainly in Wales—please see section 2.2.3 of this Note for further information about the situation in Wales. Paragraphs 4 and 7 effectively stipulate that water supply licensees cannot supply household premises.[21]

Schedule 2 sets out the duties of the existing water undertakers to take the new water supply licences into account. Water undertakers would be under a duty to permit licensees to use their systems to supply retail or wholesale (upstream) services, except under certain circumstances. Ofwat would be given powers to determine agreements between undertakers and licensees if the parties could not agree on arrangements between themselves. Ofwat would have powers to issue codes relating to such agreements, and would be required to publish and revise rules about the charges that water undertakers could levy in relation to these agreements. The Secretary of State could issue charging guidance to Ofwat in relation to these agreements.

Clause 2 would extend the definition of a water undertaker's supply system to cover treatment works, reservoirs and other water storage systems, as well as the downstream mains and pipes. This would give water supply licensees with a wholesale authorisation more options to introduce water into the system.[22]

The Government expects to remove the requirement for non-household customers to use over a certain threshold of water before they can switch their supplier when the new water supply licensing arrangements are introduced.[23] This would enable all non-household customers to switch water supplier. It would only apply to customers in the areas of water companies based wholly or mainly in England—see section 2.2.3 of this Note for information about the separate arrangements for Wales. However, clause 3 would give the Secretary of State power to remove the threshold before the other water supply licensing reforms are introduced.

Clause 4 and schedules 3 and 4 mirror the provisions in clause 1 and schedules 1 and 2, establishing a sewerage licensing regime in parallel with the water supply licensing regime. This would introduce competition into sewerage services for the first time.

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[19] ibid, p 2.
[20] Defra, *Water Bill—Glossary: Water Terms*, November 2013.
[21] Explanatory Notes, para 274.
[22] ibid, para 41.
[23] ibid, para 42.

2.2.3 Wales

The majority of the Bill extends to England and Wales only. Under the Government of Wales Act 2006, some aspects of water industry and environment law are devolved, and some are not:

> […] the National Assembly for Wales has legislative competence (amongst other things) in relation to "water supply" and "water resources management (including reservoirs)" in relation to Wales. The National Assembly for Wales does not have legislative competence in relation to sewerage services, the "appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales" or the licensing and regulation of licensed water suppliers (apart from the regulation of licensed activities using the supply systems of water undertakers wholly or mainly in Wales). The Welsh Ministers have executive competence in certain matters relating to water and sewerage undertakers whose areas are wholly or mainly in Wales and in other matters relating to water and sewage.[24]

The areas of the incumbent water companies do not correspond with the geographical border between England and Wales. Dwr Cymru Welsh Water supplies most of Wales and parts of England; Dee Valley Water supplies part of north-east Wales and part of the north-west of England; Severn Trent Water supplies mid-Wales and parts of south-west England and the Midlands.[25] In general, the Welsh Ministers have responsibility for water and sewerage undertakers operating wholly or mainly in Wales (Dee Valley Water and Dwr Cymru Welsh Water), while the Secretary of State for the Environment, Food and Rural Affairs has responsibility for water and sewerage undertakers operating wholly or mainly in England (including Severn Trent Water).[26]

The Welsh Government has taken the decision not to implement the retail competition measures for incumbent water and sewerage companies operating wholly or mainly in Wales as it "remain[s] to be convinced that this will deliver any measurable benefits for Wales".[27] Currently, non-household customers served by incumbent water companies located wholly or mainly in Wales can switch their water supplier only if they consume more than 50 megalitres of water a year. Under clauses 1 and 3 and schedule 1 of the Bill, this threshold would remain in place unless the Welsh Ministers repealed it. The Welsh Government has also decided not to implement upstream competition for incumbent water companies operating wholly or mainly in Wales. It "does not believe that there is sufficient evidence available at this time to demonstrate whether this will deliver any benefits for Wales and what impacts this will have on [its] own wider policy commitments relating to infrastructure and the sustainable management of water as a natural resource across Wales".[28]

However, the Welsh Government has taken powers in the Bill to implement retail and upstream competition in the future if it wishes.[29] Clause 5 and schedule 5 of the Bill would give Welsh Ministers the power to apply the new water supply and sewerage licensing arrangements

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[24] Explanatory Notes, para 31.
[25] HC *Hansard*, 6 January 2014, col 50.
[26] Alun Davies AM, Minister for Natural Resources and Food, 'Written Statement—The Water Bill', 16 October 2013.
[27] Defra, *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, p 5.
[28] Defra, *Water Bill—Reform of the Water Industry: Upstream Competition*, November 2013, p 4.
[29] Defra, *Water Bill—Reform of the Water Industry: Retail Competition*, November 2013, p 5; and *Water Bill—Reform of the Water Industry: Upstream Competition*, November 2013, p 4.

to the areas of incumbent companies wholly or mainly in Wales as they apply to undertaker areas wholly or mainly in England.[30] This would introduce competition and remove the threshold requirement.

A new clause tabled by Plaid Cymru, which would have given the National Assembly for Wales legislative competence for water in Wales up to the geographical boundary with England, was defeated at report stage—please see section 4.2 of this Note.

2.2.4 Scotland

Water industry and environment law are wholly devolved in relation to Scotland. Clauses 6 and 7 of the Bill would amend the Water Industry Act 1991 and equivalent Scots law to allow Ofwat and its Scottish counterpart, the Water Industry Commission for Scotland (WICS), to accept a single application for a water services licence in each jurisdiction.[31] This is intended to help establish a cross-border market in water and sewerage retail services for eligible customers.[32]

2.3 Regulation

2.3.1 Water and Sewerage Undertakers

Chapter 2 of the Bill focuses on arrangements between water and sewerage undertakers. It would give Ofwat powers to introduce codes relating to the arrangements between water and sewerage undertakers and to issue rules relating to undertakers' charging schemes. The Secretary of State and Welsh Ministers would be able to issue guidance on charging rules, and would have the power to veto or amend Ofwat's initial codes. The Government intends that the codes and charging rules will "increase transparency and streamline negotiations between undertakers", which would help to "increase the interconnectivity between undertakers so that water resources can be used more flexibly and efficiently".[33] A Defra briefing explains that codes could set out standard terms and conditions so that agreements between water and sewerage companies (with the exception of certain upstream services) would "no longer need to be individually negotiated, which currently takes time and money".[34]

Clauses 8 and 9 would establish these powers in relation to agreements between companies on bulk water supply (the transfer of raw or treated water between water undertakers) and on main connections into sewerage systems respectively. Clauses 10 and 11 would give Ofwat similar new powers to regulate the self-lay regime (under which a developer can install, or use a contractor to install, the pipework for a new water main or sewer which will subsequently be adopted by the relevant undertaker).[35] Ofwat would have powers to make orders and to issue codes and charging rules relating to agreements between developers and undertakers.

Under clause 12, Ofwat could be given the power to require a water undertaker to take a water supply from another party (for example, a farmer with excess water from storage).[36]

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[30] Explanatory Notes, paras 52 and 325.
[31] ibid, para 7.
[32] ibid, para 55.
[33] ibid, para 9.
[34] Defra, *Water Bill—The Competition Framework Under the Water Bill*, November 2013, p 4.
[35] Defra, *Water Bill—Glossary: Water Terms*, November 2013.
[36] House of Commons Library, *Water Bill*, 21 November 2013, RP 13/67, p 25.

Clause 13 would add the Environment Agency, the Natural Resources Body for Wales, the Chief Inspector of Drinking Water and the Chief Inspector of Drinking Water for Wales to the list of people to be consulted when a company applies to become a new undertaker or for the boundaries between existing undertakers to be changed.

Clauses 14 and 15 would change the arrangements for scrutinising water company mergers. According to the Explanatory Notes, the current special merger regime within the Water Industry Act 1991 "acts as a disincentive against water company mergers and creates uncertainty when a merger is proposed or has taken place".[37] The Bill would allow the new Competition and Markets Authority, scheduled to go live in April 2014, to determine whether or not to make a merger reference.

Under current legislation, water and sewerage companies are obliged to agree their charging schemes with Ofwat before they can charge their customers. According to the Explanatory Notes to the Bill, "this is generally seen to be an overly burdensome and regulatory approach requiring significant concentration of resources each year".[38] Clause 16 would remove the requirement for prior approval from Ofwat, and replace it with a requirement for companies to make their charging schemes in accordance with rules produced by Ofwat. Clauses 17 to 20 would enable Ofwat to publish rules on the charges that water and sewerage companies could levy for connections and access to their water mains, public sewers and other associated infrastructure, and for moving pipes. The Secretary of State and the Welsh Ministers would be required to produce guidance to Ofwat on the charging rules. Clause 33 would require undertakers to notify Ofwat if they made an individual charging agreement with a customer that was not covered by a charging scheme.

Clause 21 of the Bill would insert a new section on sustainable drainage into the Water Industry Act 1991 which would "give sewerage undertakers the power to construct, maintain and operate drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does".[39] For further discussion of sustainable drainage systems, please see section 4.7 of this Note.

2.3.2 Resilience Duty

Since 2005, Ofwat has had a statutory duty to contribute to the achievement of sustainable development.[40] There has been a long-running debate about whether this duty should be changed from being a 'secondary' duty to become a 'primary' or over-arching duty.[41] In 2011, the independent Gray Review of Ofwat concluded that no change in the order of duties was required, because "we do not believe such a change would have the effect that its proponents are looking for".[42] However, in its pre-legislative scrutiny of the Draft Water Bill, the House of Commons Environment, Food and Rural Affairs Committee concluded that "the increasing pressures on our water resources" would "justify such a change".[43] An amendment originally tabled by Roger Williams (Liberal Democrat MP for Brecon and Radnorshire) and supported by

[37] Explanatory Notes, para 10.
[38] ibid, para 11.
[39] Explanatory Notes, para 130.
[40] Defra, *Water Bill—Sustainable Development and Resilience Duties*, January 2014, p 1.
[41] ibid.
[42] Defra, *Review of Ofwat and Consumer Representation in the Water Sector*, July 2011, p 39.
[43] House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, HC 674 of session 2012–13, 1 February 2013, para 57.

Labour, to elevate sustainable development to a primary duty, was defeated at committee stage.[44] The Government maintains that:

> All of the duties have statutory force and there is a clear expectation that they are all reflected in regulatory decision-making. This expectation is clearly underscored in the Government's guidance to Ofwat.[45]

In line with its explicit commitment in the water White Paper to ensure that long-term priorities for the water sector and the water environment are properly reflected in regulatory decision-making, the Government also decided to create a new resilience duty for Ofwat.[46] This is set out in clause 22 of the Bill, which would amend the Water Industry Act 1991 to give Ofwat a primary duty to "further the resilience objective". Under this objective, Ofwat would have to secure the long-term resilience of water supply and sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour.

The Government made several amendments to clause 22 at report stage, which Dan Rogerson, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, said were to "clarify the resilience duty".[47] The amendments placed an explicit duty on Ofwat to ensure that water and sewerage undertakers manage water resources "in sustainable ways" and reduce demand "for water so as to reduce pressure on water resources". Mr Rogerson said he wanted to "make it absolutely clear […] that we are covering environmental sustainability" and "that we are looking at environmental resilience as well as social and economic resilience".[48]

2.3.3 Strategic Priorities and Objectives

Clause 24 of the Bill would give the Secretary of State and Welsh Ministers powers to publish a statement setting out strategic priorities and objectives for Ofwat. This would allow for the production of a single consolidated statement of government priorities for Ofwat—previously the UK Government published a strategic policy statement (SPS) and social and environmental guidance separately, and the Welsh Government published stand-alone social and environmental guidance.[49] The Government has stated that the priorities in the SPS will include "ensuring a fair deal for customers, supporting economic growth and effective water management".[50] The Government believes that the Bill would strengthen the role of the SPS by obliging Ofwat to act in accordance with it.[51]

2.3.4 Undertakers and Licensees

Clause 23 would place a general duty on Ofwat and ministers to ensure that undertakers do not show undue preference or undue discrimination in their dealings with other undertakers or licensees.

In addition to the general duties in clauses 22 to 24, chapter 3 of part 1 would give Ofwat regulatory powers relating to undertakers and licensees. According to the Explanatory Notes,

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[44] House of Commons Public Bill Committee, Water Bill, Eighth Sitting, 17 December 2013, col 328.
[45] Defra, *Water Bill—Sustainable Development and Resilience Duties*, January 2014, p 2.
[46] ibid, p 3.
[47] HC *Hansard*, 6 January 2014, col 112.
[48] ibid.
[49] Defra, *Water Bill—The Competition Framework Under the Water Bill*, November 2013, p 2.
[50] ibid, p 4.
[51] ibid, p 3.

these would enable Ofwat to "regulate the water and sewerage market as competition develops".[52] Under clause 25, Ofwat would be permitted to determine the procedure for granting water and sewerage licensees, and any fees payable.

Clause 26 would increase from twelve months to five years the period during which undertakers and licensees could be fined for a historic breach of the terms of their appointment or licence or of a statutory obligation. (This would not apply to any breaches prior to the clause coming into force.) Ofwat and appropriate ministers already have powers to demand information about potential contraventions for enforcement purposes; clause 36 would extend the range of possible contraventions on which they could demand information.

Clause 29 would allow the Secretary of State and Welsh Ministers to set performance standards for water supply services provided by licensees—the existing powers only relate to services supplied by undertakers. Clause 30 would give the Secretary of State equivalent powers for sewerage licences in undertaker areas wholly or mainly in England.

If a water supply licensee ceased to supply water, clause 31 would enable Ofwat to direct other water supply licensees to take on its customers. If Ofwat did not exercise this power, the customers would revert automatically to the local water undertaker.[53] Clause 32 contains equivalent provisions for sewerage services. These provisions set out what would happen if a licensee decided to exit the market. However, the Bill does not contain provision for an undertaker to exit the competitive retail market. For further discussion of this issue, please see section 4.5 of this Note.

Clauses 33 to 35 would amend the information that Ofwat is required to record in its register of regulatory activities about charging, and the arrangements for public access to the register.

Clause 38 would enable the Secretary of State and Welsh Ministers to issue and revise high-level guidance relating to Ofwat's charging rules—both charges to consumers, and charges between incumbent water companies and licensees.[54] The guidance would have to be laid before Parliament or the National Assembly for Wales.

Clause 27 would allow the Secretary of State to give directions to water undertakers whose area is wholly or mainly in England about the basis on which they should prepare a water resources management plan, but only for the purposes of "securing the ability of the water undertaker to meet the need for the supply of water to consumers".[55] Clause 28 would bring the timescale for producing drought management plans into line with that for water resources management plans (generally on a five-yearly basis although the Secretary of State or Welsh Ministers could require water undertakers to prepare a drought plan more frequently if necessary).[56]

Chapter 3 of part 1 contains some provisions relating to adjudication and dispute resolution. Clause 37 and schedule 6 would enable the Secretary of State to set up a system of appeals against Ofwat decisions to revise codes. Appeals would be made to the new Competition and Markets Authority. Under clause 39, the Secretary of State could specify alternative parties to perform some of Ofwat's adjudication responsibilities. According to the Explanatory Notes, this

[52] Explanatory Notes, para 15.
[53] ibid, para 153.
[54] ibid, para 166.
[55] ibid, para 148.
[56] ibid, para 16.

would enable "greater flexibility" in the resolution of disputes by enabling routine disputes to be solved in a timely manner and "to allow for the development of expertise in relation to specific classes of dispute".[57] Clause 41 gives the Welsh Ministers powers to appoint an independent person to settle disputes about the provision of public sewers in Wales.

Chapter 4 of part 1 would give Ofwat powers to modify undertakers' conditions of appointment and licensees' licence conditions. Clause 42 would allow Ofwat to include conditions about providing a consumer redress scheme. According to the Explanatory Notes, "the consumer redress scheme itself is in the process of development by the water sector, Ofwat and the Consumer Council for Water".[58] Clause 43 would give Ofwat a time-limited power to make changes to conditions of appointment and licence conditions in order to implement changes made in part 1 of the Bill. These are expected to relate mostly to the new licensing regime for water supply and sewerage services.[59]

2.4 Water Resources

Part 2 of the Bill deals with water resources. Clause 45 would remove undertakers' statutory right to compensation for losses resulting from their licence to abstract water (ie to extract it from the natural environment) being modified or revoked. Part 3 of the Bill contains provisions that would enable reform of the abstraction licensing regime at a future date—please see section 2.5 of this Note for further information. The Bill has been criticised for not containing more specific measures on abstraction reform—please see section 4.8 of this note for further details.

Clause 46 would make the Environment Agency and the Natural Resources Body for Wales (NRBW), rather than ministers, responsible for maintaining main river maps. A 'main river' is defined as "a watercourse shown as such on a main river map".[60] The Environment Agency and the NRBW have flood risk management responsibility for main rivers in England and Wales respectively. All other watercourses are 'ordinary watercourses', and are the responsibility of Internal Drainage Boards or Lead Local Flood Authorities. The Environment Agency and the NRBW would have powers to determine which watercourses should be designated as main rivers and to amend the maps. They would be required to keep the map in electronic form. Under clause 47, the Environment Agency and the NRBW would no longer be required to keep and maintain a public register of maps showing their resource mains, discharge pipes and other underground waterworks.[61]

2.5 Environmental Regulation

Part 3 (clauses 48 to 50) and schedule 8 of the Bill deal with environmental regulation. They would bring the regulatory regime for water abstraction and impoundment licences, flood defence consents and fish passage approvals into the existing environmental permitting framework. The framework came into force in 2007, when the Environmental Permitting Regulations brought 41 separate sets of regulations relating to environmental pollution under one framework, with additional measures added to the framework in 2010.[62] The Bill would

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[57] ibid, para 169.
[58] ibid, para 175.
[59] ibid, para 177.
[60] Defra, *Water Bill—Glossary: Water Terms*, November 2013.
[61] Explanatory Notes to the Water Bill, para 24 and 191.
[62] Defra, *Water Bill—Environmental Permitting Framework*, November 2013, p 1.

enable three additional regimes to be incorporated into the environmental permitting framework:[63]

- Water abstraction licences (generally needed for taking water from sources such as rivers, lakes, canals and underground sources) and impounding licences (needed for the construction, alteration and operation of structures such as weirs or dams that impede the flow of water in a river).

- Flood defence consents, needed by people wishing to carry out certain construction or maintenance works in or near main rivers, to avoid the risk of flooding or environmental damage.

- Fish passage approvals and notices, required to ensure the suitability of fish passes and screen structures installed to modify or by-pass obstructions such as dams and water intakes which restrict the free movement of fish in rivers.

A single set of regulations would enable operators to apply for one rather than multiple permits and regulators to use one common process and compliance framework.[64] The new regulations would be set out in secondary legislation. The Government plans to consult on draft regulations for flood defence consents and fish passage approvals in late 2014 or early 2015 with a view to laying the regulations before Parliament in 2015.[65] Defra has published indicative regulations for flood defence consents.[66] Water abstraction and impoundment licences are likely to be dealt with later "to help manage other changes that are planned for this regime".[67] The Bill has been criticised for not containing more specific measures on abstraction reform—please see section 4.8 of this note for further details.

2.6 Flood Insurance

2.6.1 Insurance Market

Part 4 of the Bill deals with flood insurance, introducing measures intended to address the affordability and availability of flood insurance to households in areas at high risk of flooding. Household flood risk is typically covered under standard buildings and contents insurance policies.[68] The premiums currently charged for these policies often do not reflect the actual flood risk of the insured property:

> The UK insurance industry currently provides insurance against flooding as a standard feature of buildings and contents insurance. In most cases, household insurance premiums do not, currently, reflect the actual flood risk to properties. The costs of flood damage are often shared between the premiums of all householders, whether or not they are at risk of flooding […]

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[63] ibid, p 3.
[64] Explanatory Notes, paras 25 and 194.
[65] Defra, *Water Bill—Environmental Permitting Framework*, November 2013, p 2.
[66] Defra, *Water Bill—Environmental Permitting Framework: Indicative Regulations for Flood Defence Consents*, November 2013.
[67] Defra, *Water Bill—Environmental Permitting Framework*, November 2013, p 2.
[68] House of Commons Library, *Household Flood Insurance*, updated 3 January 2014, SN06613, p 2.

> The current cross-subsidy means that many householders living in high-risk properties may not be paying a price which reflects the risk.[69]

However, "as understanding of flood risk improves so will the ability of insurers to price this risk more accurately".[70] The cross-subsidy "is expected to diminish over coming years as insurers more accurately reflect flood insurance risk in premiums".[71] While this might lead to lower insurance costs for most people, those in areas at high risk of flooding could see large increases in their insurance premiums, or find it difficult to get insurance at all.[72] Successive governments have worked with the insurance industry to address this issue. Since 2003, 'statements of principles' have been in place between the Government and the Association of British Insurers (ABI). Under these voluntary arrangements, insurers agreed to continue to provide flood insurance as a standard feature of household and small business policies for properties at significant risk of flooding, provided there were local flood defence measures meeting specified standards already in place, or scheduled for completion within the next few years. The latest statement of principles was due to expire in June 2013 (later extended to July 2013). Flood working groups including representatives from government, the Environment Agency and insurers have been working on developing a long-term solution, including a future flood insurance model. For further details about the statements of principles and negotiations on a new agreement, please see the House of Commons Library Standard Note, *Household Flood Insurance*, updated 3 January 2014, SN06613.

When the Bill was first introduced to the House of Commons in June 2013, it contained a placeholder clause on flood insurance. In parallel, the Government launched a consultation on the memorandum of understanding it had reached with the ABI on how a new flood insurance scheme might work. The Government published draft flood insurance clauses and accompanying commentary on 6 September, and ran a second consultation on these. At the Bill's committee stage, the placeholder clause was replaced with new clauses on flood insurance (clauses 51 to 71 in the Bill as introduced to the House of Lords). For a summary of the committee stage debate, please see the House of Commons Library Research Paper *Water Bill: Committee Stage Report*, 2 January 2014, RP 14/01.

2.6.2 Flood Re

Clause 51 would establish the Flood Reinsurance Scheme (also referred to as 'Flood Re' and 'the FR Scheme'), the details of which would be set out in secondary legislation. A Defra briefing explains that Flood Re would work as follows:

> Flood Re would effectively limit the most that high-risk households should have to pay for the flood component of their home insurance. The maximum amounts would differ by council tax band so that those in smaller properties do not have to pay as much for flood insurance as those in larger houses. The approach means that people could know the maximum they might be asked to pay and would no longer need to be worried about not finding affordable insurance. The maximum prices charged under Flood Re would increase each year so that households can adjust gradually. Under Flood Re, insurers would only charge excesses between £250–500.

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[69] Defra, *Flooding and Insurance: A Roadmap to 2013 and Beyond—An Interim Report of the Flood Insurance Working Groups*, May 2011, p 12.
[70] ibid.
[71] House of Commons Library, *Household Flood Insurance*, updated 3 January 2014, SN06613, p 3.
[72] ibid.

> Flood Re would be an industry-run, not-for-profit scheme that would support around 500,000 of the highest-risk households in the UK. If a high-risk policy had been ceded to Flood Re and the policyholder needed to claim for flooding, their insurer would pay the claim directly and Flood Re would then reimburse the insurance company […]
>
> It would be up to insurers to decide whether to cede a policy to Flood Re. If an insurer calculates that the technical flood risk insurance premium for a household exceeds the eligibility threshold for their council tax band they can seek to have the policy covered by Flood Re. This means that if another insurer calculates the price is lower it could still offer insurance directly—without having to use Flood Re. This mechanism will keep Flood Re to only those that need it.
>
> To fund Flood Re, a new industry-backed levy would be introduced. All UK household insurers would have to pay the levy. This levy is likely to be set at £180 million per year for the first five years. This is the equivalent of around £10.50 for each UK household with both contents and buildings cover in place. Although the cost of the levy would be passed on to customers, spreading risk across policyholders is a widely used model for insurance, and the industry estimates that lower risk households are already subsidising those at higher risk of flooding to approximately this level.
>
> Flood Re will pay out on reinsurance claims up to the limit equivalent to a 1 in 200 year level of claims. A 1:200 loss scenario is comparable to six times worse than the 2007 floods. We are discussing with the ABI how best to help affected households if annual flooding exceeds this level but we are clear that there is no Government liability for Flood Re.[73]

With regard to eligibility for the scheme, the Defra briefing explains:

> Domestic properties in council tax bands A–G and some micro-businesses would be eligible. Other businesses would not be included since our evidence suggests that the majority of businesses are not finding it difficult to get suitable insurance and therefore we are concentrating the scheme on domestic properties.
>
> We are currently not planning to include properties in council tax band H, which are typically valued at £900,000 or more, because we believe that their owners are most able to afford to pay a bit more for their cover.
>
> Properties built after January 2009 were excluded from the 2008 Statement of Principles and it is proposed will also be excluded from Flood Re. We believe a cut-off date is needed to maintain the signal to planning authorities that all development must be appropriate and resilient to flooding, and still believe that 2009 is the most appropriate date based on our current understanding of flood risk.
>
> We consulted on whether the highest risk households should be excluded from Flood Re and received a variety of views. We propose that such properties would not be excluded at first, but over time Flood Re may develop an approach for properties that flood very frequently that will help to reduce the impact of their claims on the scheme's affordability. For example if action was not taken to reduce the cost or likelihood of these properties being damaged by flooding, Flood Re could set higher premiums or

[73] Defra, *Water Bill—Flood Insurance*, November 2013, pp 1–2.

> excesses. Only in the most extreme cases would exclusion from Flood Re be considered.[74]

Clause 53 would give the Secretary of State (with the consent of the Treasury) power to make regulations regarding the funding of the scheme, including a requirement for relevant insurers to pay a levy. The levy that could be imposed under subsection (1)(a) is "designed to mirror the existing cross-subsidy in the market between those at low and high risk of flooding".[75] Under subsection (1)(b), the Government could require additional ad hoc payments from insurers if Flood Re did not have enough money from the regular levy and the capped insurance premiums paid by policyholders to meet its liabilities. A briefing from Defra describes this as "the top-up levy" and explains that:

> The top-up levy is designed to ensure that Flood Re has access to funding in emergency circumstances when the FR scheme is running out of money. For prudential reasons it would not be possible for prior parliamentary approval to be sought by Flood Re for each individual call on the top-up levy, as this might leave open the very real risk that Flood Re could become insolvent and be unable to pay claims. However, it is proposed that Parliament would approve a framework of controls, to ensure the circumstances under which the top-up levy might be called upon are limited to fulfilling Flood Re's purposes, and only when necessary.
>
> It is also proposed that, should Flood Re be required to call on the top-up levy and subsequently build up a sufficient surplus (in future years), insurers' top-up levy contributions should be paid back to them by Flood Re.[76]

Defra has assessed that by imposing a statutory levy on the insurance industry, it would be "likely" that the Office for National Statistics "would consider some or all of Flood Re's funding as tax and therefore some or all of its expenditure as public expenditure".[77] Arrangements would need to be made to "put appropriate controls in place to control its finances and ensure accountability is clear". Clause 52 would give the Secretary of State the power to designate a body as the administrator of Flood Re. Regulations regarding the administration of the scheme would be made under clause 54. The regulations could require the appointment of a Responsible Officer directly accountable to Parliament and could permit the National Audit Office to scrutinise whether the scheme had delivered value for money and been operated with propriety. Clause 55 would provide for the scheme and/or the administrator to be replaced. Clause 56 would enable regulations to be made allowing the disclosure of council tax information by the Valuation Office for the purposes of setting up Flood Re.

If the levy was classified as taxation, then state aid approval from the European Commission would be required for the use of this public funding to fund Flood Re.[78] At the Bill's report stage, Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the House of Commons Environment, Food and Rural Affairs Committee, invited the Minister to "inform us how the state aid application to the EU Commission in Brussels is going to enable Flood Re to come into effect according to the Government's timetable", but he did not respond on this point.[79] Please see section 4.10 of this Note for further details of the discussion on Flood Re at

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[74] ibid, p 3.
[75] Explanatory Notes, para 208.
[76] Defra, *Water Bill—Flood Insurance (Flood Re): Finance and Accountability*, December 2013, p 1.
[77] ibid, p 2.
[78] Defra, *Water Bill—Flood Insurance*, November 2013, p 3.
[79] HC *Hansard*, 6 January 2014, col 98.

the Bill's report stage, when amendments to bring small businesses into the scheme and to clarify what would happen in a 1-in-200 year loss scenario were debated.

2.6.3 Flood Insurance Obligation

The Bill also contains reserve powers to "regulate the insurance industry by requiring insurers to each insure a certain share of a list of higher flood risk properties".[80] This would be known as the 'flood insurance obligation'. The Explanatory Notes state that "the reserve powers are needed in case Flood Re proves unworkable or does not deliver the Government's policy goals, and if pricing proves to be unacceptable".[81] A Defra briefing sets out why the Government considers this might be necessary, and how they envisage it would work:

> There is still a lot of detail to be worked out for Flood Re and many aspects of that policy still need to be agreed with Parliament, the insurance industry and the European Commission. Should Flood Re fail to meet its objectives for any reason, and free market pricing prove unsatisfactory, we want to make sure that households at higher flood risk can still access affordable insurance, through regulation if necessary. Taking both sets of powers now will reassure households that, whatever should happen, we will be able to do this.
>
> If we were to implement the obligation, we would work with the Environment Agency and its counterparts in the devolved administrations to create a UK-wide register of properties at a higher risk of flooding. Work to develop the criteria for inclusion on the register is on-going, but we expect at least 500,000 properties in England to be able automatically to benefit from inclusion on the register, if they wished. Householders would be able to opt out from the register and we would also set out clear criteria for opting in, so that households at genuine risk of flooding can benefit from access to affordable insurance. Members of the public would also be able to query the register to identify whether their home—or a home they were considering buying or renting—was included.
>
> Each insurer would be allocated a quota of higher-risk properties from this register (its 'obligation'), based on its market share. To ensure public confidence in the function of the obligation, we intend to make the Financial Conduct Authority responsible for supervising the scheme and taking action against insurers who don't meet their quotas.
>
> The Flood Insurance Obligation would force insurers to compete with each other for the business of higher-risk households in order to meet their targets. This should help customers to shop around to get a good deal.
>
> This regulatory option is another approach to formalising the existing cross-subsidy of the market and, accordingly, would be unlikely to impose significant additional costs on the insurers.[82]

Clause 57 would give the Secretary of State the power to impose a flood insurance obligation on relevant insurers. Regulations would set out how an insurer's share of the market would be calculated. Clause 58 would allow the Secretary of State periodically to set a target for the

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[80] Explanatory Notes, para 26.
[81] ibid.
[82] Defra, *Water Bill—Flood Insurance*, November 2013, p 4.

number of registered properties which insurers would collectively be obliged to insure. Regulations would be issued under clause 59 requiring insurance companies to submit information or documents to help determine whether they are 'relevant insurers'. Clause 60 would enable the Secretary of State to establish an enforcement scheme in secondary legislation.

Clauses 61 and 62 would enable regulations to be made regarding the creation and maintenance of a register of premises in the UK subject to greater flood risk. Clause 63 would specify that the regulations should establish procedures for reviewing and appealing against a decision not to include a property on the register. Under clause 64, the Government could raise a levy from insurers to cover the costs of maintaining and administering the register. Clause 65 would enable the Secretary of State to make regulations requiring insurers to report on their compliance with their flood insurance obligations. Clauses 66 to 68 would enable the Treasury to make secondary legislation regarding the regulation of the flood insurance obligation by the Financial Conduct Authority and the Prudential Regulation Authority.

2.6.4 Sunset Clause

Clause 70(1) is a sunset clause; it provides that clauses 51 to 68 (the Flood Re scheme and the flood insurance obligation) would be repealed after 25 years. Clause 70(2) would allow the Government to repeal the flood insurance provisions at an earlier date by order. The Government intends that the measures in the Bill would address the availability and affordability of flood insurance in the short to medium term and "ensure a smooth transition to the free market" and a "gradual transition towards risk reflecting pricing" in the long term.[83] Under clause 52, the Secretary of State could require the administrator of Flood Re to produce and publish a plan for "achieving the transition to risk reflective pricing over the life of the scheme".[84]

2.7 Internal Drainage Boards

Internal Drainage Boards (IDBs) are "independent statutory bodies responsible for land drainage in areas of special drainage need".[85] They operate primarily under the Land Drainage Act 1991 and have powers to undertake work to secure drainage and water level management of their districts. There are currently 123 IDBs in England, mostly in East Anglia, Yorkshire, Somerset, Lincolnshire, Sussex and Kent.[86] They are largely funded by drainage rates paid by farmers and by special levies on local authorities.

Part 5 and schedule 9 of the Bill streamline some processes relating to IDBs. Under the 1991 Act, IDBs may undertake organisational changes to deliver operational or efficiency benefits, but the current process for making such structural changes can take up to twelve months.[87] Clause 72 would streamline the process to be followed, and would mean that it was no longer subject to special parliamentary procedure. As far as Defra is aware, the special parliamentary procedure has never been invoked.[88] Clause 73 would enable the Secretary of State to make new regulations regarding the way in which IDBs make byelaws. The Government intends to allow IDBs to follow the same byelaw-making procedure as local authorities and no longer have

[83] Defra, *Water Bill—Overview of the Water Bill*, November 2013, p 3.
[84] Explanatory Notes, para 211.
[85] Defra, *Water Bill—Glossary: Water Terms*, November 2013.
[86] Defra, *Water Bill—Internal Drainage Boards*, November 2013, p 1.
[87] ibid.
[88] ibid, p 3.

to seek ministerial approval of their byelaws.[89] Clause 74 and schedule 9 would remove the requirement for IDBs to publish notices in local newspapers and byelaws in the London Gazette, so that they could also use "other appropriate mechanisms, such as websites [and] local parish boards, to ensure the notices are publicised in the most effective way".[90]

3. Committee Stage

At committee stage, a number of Government amendments were made, in particular:

- Addition of clause 42 on consumer redress schemes (see section 2.3.4 of this Note).
- Additional requirements for consultation of the Environment Agency and/or Natural Resources Wales in matters such as: granting a water supply licence (clause 1); issuing an order on an agreement under the water supply licence (clause 8) or a sewerage licence (clause 9); publishing a strategic policy statement (clause 24); giving direction on the basis on which a water resource management plan is to be prepared (clause 27).
- Addition of provisions on flood insurance (clauses 51 to 71). The original version of the Bill had contained a placeholder clause on flood insurance while the Government continued to develop the details of the scheme. See section 2.6 of this Note for more information about the flood insurance provisions.

No non-government amendments were made to the Bill at committee stage, although a number of issues were discussed, several of which were raised again at report stage. For a more detailed summary of proceedings at second reading and committee stage in the House of Commons, please see the House of Commons Library Research Paper *Water Bill: Committee Stage Report*, 2 January 2014, RP 14/01.

4. Report Stage

4.1 Government Amendments

A number of government amendments were made to the Bill at report stage. A series of amendments was made to clause 29 to clarify the powers of Welsh Ministers to set standards of performance relating to water supply services provided by water supply licensees wholly or mainly in Wales.[91] Clause 77 was amended to give effect to a new schedule—schedule 11 in the Bill as introduced in the House of Lords. Clause 77 gives the Secretary of State and Welsh Ministers a power to make transitional, transitory or saving provisions by order in relation to the coming into force of any provision within the Act.[92] Schedule 11 makes further provision about the contents of such orders. Dan Rogerson, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, explained that this new schedule provided the Secretary of State with the power to produce transitional orders that would allow the Government to implement retail and upstream reform separately.[93] Amendments were also

[89] ibid.
[90] ibid, pp 3–4.
[91] HC *Hansard*, 6 January 2014, col 121.
[92] Explanatory Notes, para 273.
[93] HC *Hansard*, 6 January 2014, col 71.

made to schedule 5 (which would allow the Welsh Ministers to adopt the reforms being introduced in England at a later date should they decide to do so—see section 2.2.3 of this Note) and schedule 7 (which sets out consequential changes to existing legislation, principally the Water Industry Act 1991).[94]

Mr Rogerson said that:

> Taken together, our amendments will provide Ministers with the maximum flexibility to commence the different market reform provisions transparently and in stages as per our commitment to stagger the implementation of our retail and upstream reforms. They will enable the current arrangements to continue without diverting attention from the immediate priority of preparing for the reformed retail market in April 2017.[95]

The Government intends upstream competition to be implemented later, "at a measured pace, beyond the 2019 price review".[96]

Thomas Docherty, Shadow Minister for Environment, Food and Rural Affairs, said that Labour would support the Government's amendments.[97]

The Government also amended clause 22 at report stage to clarify Ofwat's resilience duty—see section 2.3.2 of this Note for details.

No non-government amendments were made to the Bill at report stage. The remainder of section 4 of this Note sets out the non-government amendments that were debated. The majority of these sought to introduce new clauses to the Bill to widen its scope, rather than to amend existing provisions of the Bill.

4.2 Wales

Hywel Williams (Plaid Cymru MP for Arfon) moved new clause 1, which would have given the National Assembly for Wales legislative competence for water up to the geographical boundary with England.[98] He explained that water had been "an emotive, emblematic and defining political matter in Wales for many decades", and pointed to the "drowning of Welsh valleys to supply English conurbations against the will of the people of Wales" in the 1950s and 60s.[99] In connection with Severn Trent Water using Welsh water resources to supply England, he suggested it could be seen as "a clear injustice, with a private sector organisation from another country benefiting from a substantial part of what should be a valuable public resource for Wales". He pointed out that the water industry in Wales was run on a non-profit basis, unlike in England and Scotland. Mr Williams argued it was "a reasonable aspiration for any legislature to have legislative competence for important resources within its territory", and "reasonable that the current arrangements should be changed" to remove what he called "the London veto on Welsh water".[100]

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[94] ibid, col 71 and cols 125–34.
[95] ibid, col 72.
[96] Defra, *Water Bill—Reform of the Water Industry: Upstream Competition*, November 2013, p 3.
[97] HC *Hansard*, 6 January 2014, col 64.
[98] ibid, col 48.
[99] ibid, col 50.
[100] ibid, col 51.

Mr Williams acknowledged that water companies in Wales were wholly or mainly exempt from the Bill's provisions on competition, but he pointed out that the Bill "still leaves open to competition a huge area of Wales owned by Severn Trent, which is expressly against the wishes of the Welsh Government—at least for that part of Wales for which they have the power to decide".[101] He pointed out that the Labour Welsh Government had stated that it wanted the National Assembly to have full legislative control up to the geographical boundary with England.[102]

Dan Rogerson, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, stated that the Government was not minded to change the devolution settlement at the present time:

> […] further changes to the current devolution arrangements would have implications for customers and household bills on both sides of the border. They would also affect the companies, their assets and operating rules, and possibly the people who work for them. Therefore, changes should not be undertaken without very serious consideration of all the implications.
>
> The UK Government position is that we will not make changes to the devolution settlement in advance of the review and report by the Commission on Devolution in Wales—the Silk Commission—which […] is expected to report in the spring.[103]

Thomas Docherty, Shadow Minister for Environment, Food and Rural Affairs, agreed that the right time to consider this issue would be after the Silk Commission had reported.[104]

New clause 1 was defeated by 282 votes to six.[105]

4.3 Corporate Governance

Thomas Docherty spoke to the Opposition's new clause 11, which would have required undertakers to submit annual reports to the Secretary of State and Ofwat on their performance, the total amount of their investment, their taxation structure, their corporate structure and the total amount of dividends paid to the company's shareholders.[106] He said that this was intended to "[shine] a light on the opaque world of the companies' financial and business practices". He maintained that it would not be "an unreasonable or overly bureaucratic requirement", and noted that "for many years, water companies voluntarily produced reports such as those". A similar Opposition new clause was defeated at committee stage.[107]

On a similar theme, John McDonnell (Labour MP for Hayes and Harlington) spoke to his new clause 14, which would have prevented chapter 1 of the Bill from coming into force until the Secretary of State laid before Parliament a report on the performance of the water companies since privatisation, covering issues such as the cost of water to the consumer, the number of

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[101] ibid, col 53.
[102] ibid, col 54.
[103] ibid, col 65.
[104] ibid, col 72.
[105] ibid, col 73.
[106] ibid, col 63.
[107] House of Commons Public Bill Committee, Water Bill, Eighth Sitting, 17 December 2013, col 347.

disconnections, water quality, leakages, levels of investment, management remuneration, levels of taxation, and compliance with employment, human rights and environmental legislation.[108] He claimed that "the water industry is second only to the energy industry in ripping off the British public". He described "obscene levels of profiteering at the expense of the consumer", with water bills rising at the same time as "borrowing being used to pay dividends to shareholders and high salaries to chief executives and board directors".[109] He said he could understand why the chairman of Ofwat had described water companies' "profits and tax-raising structures as 'morally questionable'".[110] Mr McDonnell criticised the Bill for not going "any way near addressing this rip-off of the British consumer or tackling some of the tax evasion and tax avoidance by these companies that has gone on".[111]

In response, Dan Rogerson pointed out that Ofwat was already taking action to improve standards of corporate governance across the water industry.[112] He said that new clauses 11 and 14 would place a duty on water companies to report information that was already freely available in the public domain, and "they would therefore not increase transparency".[113]

Thomas Docherty pressed new clause 11 to a division. It was defeated by 289 votes to 218.[114]

4.4 National Affordability Scheme

Thomas Docherty spoke to a number of Opposition amendments relating to the affordability of water bills for consumers. He said that "at a time when household incomes are continuously being squeezed, it is not acceptable to Opposition Members for most water companies to continue to do so little to help their struggling customers".[115] He noted that according to Defra statistics, some 2.5 million households were in 'water poverty', but only three water companies had voluntarily implemented social tariffs for customers having difficulty paying their water bills. The Opposition's new clause 7 would have introduced a 'national affordability scheme'—essentially a water tariff "to help those struggling to pay their bills".[116] Eligibility for the scheme would have been set out in regulations. Mr Docherty said that Labour "would expect schemes to be funded by the excess profits of the water companies, not by other water bill payers".[117] A similar Labour amendment on a national affordability scheme had already been defeated at committee stage.[118]

Responding for the Government, Dan Rogerson pointed out the difficulty of defining "excess profits". He noted that "we have a regulated system under which the profits are allowed for under the price review process"; if Ofwat set a level of profit that it thought reasonable for the price review period, this would then need "somehow [to] be unpicked as being in excess in

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[108] HC *Hansard*, 6 January 2014, col 58.
[109] ibid, col 61.
[110] ibid, col 60.
[111] ibid, col 62.
[112] ibid, col 68.
[113] ibid, col 70.
[114] ibid, col 117.
[115] ibid, col 79.
[116] Labour press release, 'If David Cameron Was Serious About Tackling the Cost of Living Crisis, He Would Back Labour's Amendments to the Water Bill', 5 January 2013.
[117] HC *Hansard*, 6 January 2014, col 83.
[118] House of Commons Public Bill Committee, Water Bill, Eighth Sitting, 17 December 2013, col 334.

some cases in order to fund the scheme".[119] Roger Williams (Liberal Democrat MP for Brecon and Radnorshire) said that water companies had made larger profits due to a period of low interest rates, but "basing an entire policy on windfall profits that might not occur in the future would certainly not be a very good idea".[120]

On the subject of affordability, Mr Docherty also spoke to the Opposition's new clauses 8 and 12. New clause 12 would have inserted a provision into the Water Industry Act 1991 requiring Ofwat to "have regard to the rates of charges" to household and non-household premises when setting prices in future price review periods.[121] He claimed that "Ofwat's current interpretation of its role as an economic regulator is far too narrow". New clause 12 was intended to "ensure that water companies served their customers' interests, not the other way round". The Minister, Dan Rogerson, maintained that new clause 12 would "simply duplicate Ofwat's existing duty".[122]

The Opposition's new clause 8 would have obliged all water companies to include information on residential customers' bills about all tariffs provided by the company; a recommendation of the lowest possible tariff for each household; and information about the WaterSure scheme. Introduced by the Labour Government in 1999, the WaterSure scheme caps the water bills of customers who receive certain benefits and who either have three or more children living with them or have certain medical conditions, so that they pay no more than the average water bill for their area, even if they use more than the average amount of water.[123] Mr Docherty said that the low take-up of the scheme was "unacceptable" and he accused the Government of "complacency".[124] He said Labour wanted to "make it clear to water companies that they must do much more to promote the scheme, and we want Ofwat and the Government to hold them to account if they do not". A similar Opposition amendment had already been defeated at committee stage.[125]

Dan Rogerson responded that all water companies already provided information about WaterSure voluntarily.[126] He also argued that since water companies do not have complex tariffs (unlike energy companies), and since most customers simply have to choose between a metered and an unmetered tariff, new clause 8 "simply fail[ed] to reflect the realities of the water sector".

Thomas Docherty put new clause 7 to a division. It was defeated by 291 votes to 216.[127] There was no vote on new clauses 8 and 12.

Further information on the issue of affordability of water bills is available in the House of Commons Library Standard Note, *Water Bills—Are They Affordable to All?*, 24 May 2013, SN06595.

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[119] HC *Hansard*, 6 January 2014, cols 85–6.
[120] ibid, col 86.
[121] ibid, col 64.
[122] ibid, col 71.
[123] Ofwat, 'WaterSure (Vulnerable Groups Scheme)', accessed 15 January 2014.
[124] HC *Hansard*, 6 January 2014, col 83.
[125] House of Commons Public Bill Committee, Water Bill, Eighth Sitting, 17 December 2013, col 332.
[126] HC *Hansard*, 6 January 2014, col 86.
[127] ibid, col 113.

4.5 Retail Market Exit

In its report on the Draft Water Bill, the House of Commons Environment, Food and Rural Affairs (EFRA) Committee noted that:

> A natural consequence of competition is that whilst some companies will thrive, others will be less successful. Those incumbent companies with less efficient retail arms may decide that they would be better served by exiting the retail market and focusing on their wholesale operations. At present, however, they are obliged under the terms of their licences to continue to offer a retail service.[128]

The Committee stated that the English and Scottish regulators, incumbent companies and new entrants to the retail market all supported the idea of an exit route, and it therefore recommended that the Bill should include provisions to enable incumbent companies to voluntarily exit the retail market.[129] In response, the Government said it "remain[ed] concerned that allowing an exit route from the retail market for some water companies would leave it open to a competition authority to impose separation on the sector".[130] To avoid the risk of mandatory separation, the Government decided not to include a provision in the Bill that would allow retail exits. The Opposition moved an amendment at committee stage that would have enabled incumbent water companies to leave the non-household retail market, but it was defeated.[131]

At report stage, Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the EFRA Committee, spoke to new clause 2 which would have allowed the Secretary of State to make regulations permitting an incumbent company to transfer assets and liabilities associated with its non-household retail business into a separate company. Miss McIntosh argued that enabling companies to exit the retail market by transferring their retail business to a third party would "open up the market to new entrants who hold a retail authorisation, by allowing them to acquire whole retail businesses, rather than acquiring one contract at a time".[132] She explained that the Secretary of State would have the power to make any such transfer subject to approval and safeguards, thus ensuring "an orderly exit from the market". In her view, an exit clause was necessary to "allow the market to function normally and competitively" and to avoid "forc[ing] companies to stay in a market in which they have few or no customers".[133] Thomas Docherty, Shadow Minister for Environment, Food and Rural Affairs, said that the Opposition supported new clause 2.[134] He hoped that the House of Lords would take note that members of the Public Bill Committee had also signalled their belief that it was a "sensible and worthwhile measure".

Dan Rogerson, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, said that the Government did not rule out coming back to this issue in future.[135] However, he explained that new clause 2 did not address the Government's concern

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[128] House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, 1 February 2013, HC 674 of session 2012–13, para 21.
[129] ibid, paras 23–24.
[130] HM Government, *Government Response to the EFRA Committee's Pre–legislative Scrutiny of the Draft Water Bill*, June 2013, Cm 8643, para 38.
[131] House of Commons Public Bill Committee, Water Bill, Ninth Sitting, 17 December 2013, col 376.
[132] HC *Hansard*, 6 January 2014, col 56.
[133] ibid, col 57.
[134] ibid, col 64.
[135] ibid, col 66.

that "enabling water companies to walk away from the non-household retail market risks being a bad outcome for household customers". He feared that domestic customers could be left with a company that had "limited incentives to focus on improving customer service", and any forced legal separation of retail and non-retail business could result in reduced regulatory stability, higher capital costs and therefore higher bills for household customers. Mr Rogerson thought it unlikely that so many non-household customers would switch suppliers that incumbent companies would want to exit the market because they had no non-household customers left.[136] On the contrary:

> Anecdotal evidence from business customers suggests that incumbents are already upping their game, even though retail competition reform is some years away.
>
> […] Many non-household customers may choose to stick with the incumbent supplier because the incumbent supplier will improve its services to them as a result of the reforms. The benefits of that may in turn be passed on to household customers. Forcing or even allowing retail exit ignores such points.[137]

4.6 Bad Debt

It is estimated that bad debt in the water industry adds an average of £15 to all customers' bills.[138] At report stage, a number of amendments to tackle this issue were discussed. Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the EFRA Committee, said that it was "unacceptable for honest customers to be forced to subsidise those who can pay but refuse to pay their bills".[139] She moved new clause 3, which would have made provision for details about customers receiving benefits to be shared by landlords with water and sewerage companies. Miss McIntosh reminded the House that provisions requiring landlords to share information about their tenants with water companies were already on the statute books (section 45 of the Flood and Water Management Act 2010, amending the Water Industry Act 1991), but had not yet been implemented. Her committee had called on the Government to implement these provisions without delay.[140] She explained that her new clause "would enable companies to determine which customers cannot pay and those who will not do so" and that it would also help companies target information about social tariffs and other assistance at their most vulnerable customers.[141]

Responding for the Government, Dan Rogerson said he did not think the clause was "likely to achieve either objective effectively".[142] He argued that neither being on benefits, nor living in rented accommodation was a good indicator of difficulty in affording water bills—for example, Ofwat evidence showed that 60 percent of households at risk of water affordability problems did not receive means-tested benefits.[143] There were also legal issues with sharing "highly sensitive" benefits data "for the purposes of collecting debt".[144] Miss McIntosh withdrew new

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[136] ibid, cols 67–8.
[137] ibid.
[138] HM Government, *Water for Life*, December 2011, Cm 8230, p 66.
[139] HC *Hansard*, 6 January 2014, col 76.
[140] Ibid; and House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, 1 February 2013, HC 674 of session 2012–13, para 65.
[141] HC *Hansard*, 6 January 2014, col 78.
[142] ibid, col 89.
[143] ibid, col 90.
[144] ibid, cols 89–90.

clause 3, but expressed her "fervent wish" that new clauses on bad debt should be discussed in the House of Lords.[145]

Thomas Docherty spoke to the Opposition's new clause 9, which would have obliged landlords to provide water companies with contact details for their tenants if the water company had no information about the resident of the property. He explained that:

> Some 80 percent of those who do not pay are in rented accommodation. One of the challenges facing water companies is tracking down those who refuse to pay because they move homes far more than the average person. The only way to track them down effectively is to require landlords to provide water companies with a list of tenants. Individuals moving property would not then disappear from the system and evade paying their debts.[146]

In his view, the measure would not require a disproportionate amount of bureaucracy to implement; the onus would be on water companies, not landlords, to match up individuals and unpaid bills.[147] A similar Opposition amendment had been defeated at committee stage.[148]

Dan Rogerson explained that following a consultation on tackling bad debt in the water industry, the Government took the decision that "a voluntary approach would be more suitable".[149] He believed that "the focus should be on driving better standards across the sector rather than regulating landlords", who were not responsible for the bad debt problem. He explained that the water industry was working with landlords to establish a voluntary scheme whereby landlords could provide water companies with information about their tenants.[150] Mr Rogerson argued that the new database, due to be launched in March 2015, should be given time to work.

Thomas Docherty also spoke to the Opposition's new clause 10 which would have given powers to the Secretary of State and Ofwat to prohibit water companies from recovering losses due to unpaid bills by passing these costs on to other customers. He said that Labour wanted to "give Ofwat and water companies a clear and unambiguous signal that hard-pressed customers should no longer be treated as a cash cow by companies that cannot be bothered to meet their own responsibilities".[151] A similar Opposition amendment had been defeated at committee stage.[152]

Dan Rogerson pointed out that Ofwat had changed its approach to bad debt in the methodology it was using for the 2014 price review.[153] Ofwat was "bear[ing] down on the costs of bad debt" by "requiring companies to demonstrate high performance in debt collection and to show that any increase in bad debt is beyond their control before they are allowed to include it in customer charges".[154] He described new clause 10 as "exactly the kind of political

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[145] ibid, col 91.
[146] ibid, col 80.
[147] ibid, col 81.
[148] House of Commons Public Bill Committee, Water Bill, Ninth Sitting, 17 December 2013, col 371.
[149] HC *Hansard*, 6 January 2014, col 87.
[150] ibid, col 88.
[151] ibid, col 82.
[152] House of Commons Public Bill Committee, Water Bill, Ninth Sitting, 17 December 2013, col 375.
[153] HC *Hansard*, 6 January 2014, col 88.
[154] ibid, col 89.

interference that concerns investors", and argued that any increase in the cost of borrowing would have the direct result of putting up customers' bills.

4.7 Sustainable Drainage

In urban areas, surface water flooding can occur when rainfall overwhelms drainage capacity.[155] Conventional drainage systems operate by carrying away rainfall and waste water as quickly as possible through underground pipes and sewers. Sustainable drainage systems (SUDS) provide an alternative to conventional drainage systems. They work by mimicking natural drainage, with the aim of reducing flooding and improving the quality of water draining from urban surfaces ('run-off'). SUDS could include features such as grassy areas, ponds or porous paving. The Flood and Water Management Act 2010 contained provisions on sustainable drainage. It introduced standards for new rainwater drainage systems and specified that an 'approving body', such as a local authority, would be required to approve most types of rainwater drainage systems before construction work could start.[156] It also amended 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.

In recent reports on the Draft Water Bill and on managing flood risk, the EFRA Committee has criticised the Government for its failure to implement the sustainable drainage provisions in the Flood and Water Management Act 2010.[157] In response, the Government stated in September 2013 it was working hard to do so at the earliest opportunity, and aimed to commence the relevant provisions in April 2014. There remained a number of issues the Government was working through with representatives from local authorities, developers and sewerage undertakers.[158]

At report stage, Anne McIntosh moved new clause 4, which would have required the Secretary of State to implement the relevant provisions of the 2010 Act within a month of the Water Bill receiving royal assent. She stated that "surface water flooding has been on the increase, and has become more of a problem, since 2007", and that the implementation of these provisions was "woefully late".[159] Thomas Docherty said that the Opposition agreed with the EFRA Committee about sustainable drainage.[160]

Dan Rogerson explained that the Government was still working on implementing the SUDS provisions of the 2010 Act, but it was looking "increasingly unlikely" that this would happen by the Government's preferred date of April 2014.[161] He explained that the Government was working with developers and local government to develop the requisite processes, standards and guidance. He said he remained "committed to introducing the relevant legislation at the earliest opportunity" and planned to lay the relevant affirmative regulations by April.

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[155] POST, *Urban Flooding*, POSTNote 289, July 2007.
[156] Explanatory Notes to the Flood and Water Management Act 2010, para 206.
[157] House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, 1 February 2013, HC 674 of session 2012–13, paras 59–63; and *Managing Flood Risk*, 2 July 2013, HC 330 of session 2013–14, paras 46–9.
[158] House of Commons Environment, Food and Rural Affairs Committee, *Managing Flood Risk: Government Response to the Committee's Third Report of Session 2013–14*, 16 October 2013, HC 706 of session 2013–14, pp 7–8.
[159] HC *Hansard*, 6 January 2014, cols 93 and 94.
[160] ibid, col 109.
[161] ibid, col 110.

Clause 21 of the Bill would insert a new section on sustainable drainage into the Water Industry Act 1991 which would "give sewerage undertakers the power to construct, maintain and operate drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does".[162] Miss McIntosh also spoke to amendments 2 and 3, which would have given these powers to highway authorities as well. She explained that:

> If water runs off a highway, it is the responsibility of the county council, the unitary council or the Highways Agency itself. However, if that water then runs into the combined pipes, it suddenly becomes the water company's problem, although what has happened is not its fault. I hope that that unacceptable situation can be addressed […] highways authorities must take responsibility and create a SUD to take the excess water.[163]

On a similar note, Mark Spencer (Conservative MP for Sherwood), a member of the Public Bill Committee, spoke of "enormous frustration […] that when a new development takes place there is an obligation to connect [to the public sewer] and that often means that the public sewer, which is already under pressure, becomes flooded".[164] His amendment to clause 21 would have inserted a new subsection into the Water Industry Act 1991 which would have required highways authorities building new roads to incorporate drainage systems designed to decrease the risk of flooding the public sewers. He urged the Minister to find a way to ensure that those building new roads or housing estates would bear the cost of "solving the problem that they are creating and [dispose] of the surface water responsibly rather than putting pressure on an existing, overflowing sewerage system".[165]

In response to this set of amendments, Mr Rogerson replied that there were already legislative powers to ensure that highway surface water drainage does not pollute or flood.[166] He noted that section 100 of the Highways Act 1980 enables the local highways authority to take action related to the drainage of highways, such as constructing drains or erecting barriers to divert surface water into an existing drain. He explained that most new road drainage systems are not connected to the public sewerage system, and there is no automatic right to make such a connection.

4.8 Abstraction Reform

Water abstraction is "the extraction of water from rivers and aquifers for the public water supply and for use by others such as farmers and industry".[167] Abstraction is currently controlled by a licensing system set up in the 1960s, "when water supplies were not considered to be as limited as they are now".[168] The Government recognises that:

> […] the current system is not flexible enough to deal with the future challenges of climate change and population growth whilst still protecting the environment and

[162] Explanatory Notes, para 130.
[163] HC *Hansard*, 6 January 2014, cols 94–5.
[164] ibid, col 103.
[165] ibid, col 104.
[166] ibid, col 110.
[167] House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, 1 February 2013, HC 674 of session 2012–13, para 47.
[168] Defra press release, 'Water Abstraction Reforms Published', 17 December 2013.

> allowing for economic growth. In addition, the current system does not incentivise licence holders to manage their water efficiently or make it easy for them to trade it.[169]

Clause 45 of the Water Bill removes water companies' statutory right to compensation for losses resulting from their abstraction licence being modified or revoked, and part 3 contains provisions would enable the reform of the abstraction licensing system at a future date. However, environmental organisations have expressed concerns that the upstream competition reforms contained in the Bill might lead to unsustainable abstraction if the abstraction regime is not reformed at the same time.[170] During the report stage debate, Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the EFRA Committee, noted that over recent years on average "only 45 percent of the annual total of water licensed for abstraction in England and Wales was actually abstracted" and that "if all this unused but already licensed water was abstracted, there could be a significant deterioration of the environment".[171]

During its pre-legislative scrutiny of the Draft Water Bill, the EFRA Committee expressed concerns that Defra appeared "to lack the necessary sense of urgency to press on with these reforms".[172] The Government has stated its intention to legislate for abstraction reform early in the next Parliament (from 2015), with a view to implementation in the early 2020s.[173] It is "committed to ensuring that implementation of our upstream and abstraction reforms are carefully coordinated, with the timetable for expansion of upstream water resource markets and transition to a new abstraction regime likely to be broadly similar". The Government also stated that Defra, Ofwat and the Environment Agency are "confident" that the existing regulatory framework is "fully capable" of managing the risk that upstream reforms could unintentionally incentivise an increase in abstraction under the current licensing arrangements.[174] A consultation on abstraction reform was published in December 2013 and will run until 28 March 2014.[175]

At the Bill's committee stage, Labour tabled amendments that would have delayed the introduction of upstream reform until primary legislation on abstraction reform had been implemented, but these were defeated.[176] At report stage, Anne McIntosh tabled new clause 5 which would have required the Secretary of State to introduce a reformed abstraction regime within seven years of the passage of the Water Bill (ie by 2021). She said that she could not see "how we can consider introducing upstream competition without having the necessary reforms to abstraction in place".[177] Thomas Docherty, Shadow Minister for Environment, Food and Rural Affairs, agreed.[178] On the basis of evidence submitted to the EFRA Committee, Miss McIntosh believed that this was "the most accurate and cost effective timetable for all the parties involved".[179]

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[169] ibid.
[170] House of Commons Library, *Water Bill*, 21 November 2013, RP 13/67, p 16.
[171] HC *Hansard*, 6 January 2014, col 97.
[172] House of Commons Environment, Food and Rural Affairs Committee, *Draft Water Bill*, 1 February 2013, HC 674 of session 2012–13, para 51.
[173] Defra, *Water Bill—Upstream Competition and Abstraction Reform*, November 2013, p 3.
[174] ibid.
[175] Defra, 'Abstraction Reform', 17 December 2013.
[176] House of Commons Public Bill Committee, Water Bill, Eighth Sitting, 17 December 2013, col 331.
[177] HC *Hansard*, 6 January 2014, col 96.
[178] ibid, cols 96 and 109.
[179] ibid, col 97.

In response, Dan Rogerson, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs, pointed out that the Environment Agency was already taking action under the existing licensing regime to prevent unsustainable abstraction, "returning around 75 billion litres of water per year".[180] The consultation process which would lead to legislation on abstraction reform was already underway, and he did not believe that new clause 5 was "appropriate". Richard Benyon (Conservative MP for Newbury), until 2013 the Defra minister responsible for water, said that legislation dealing with abstraction was likely to be a "relatively complicated document" which would "be diminished if it was dealt with as secondary legislation as under new clause 5".[181]

4.9 Fracking and Water Contamination

Joan Walley (Labour MP for Stoke-on-Trent North), Chair of the House of Commons Environmental Audit Committee, spoke to her new clause 6.[182] This would have introduced a liability guarantee to ensure that fracking companies had the funds available to pay any clean-up costs should water contamination occur during the fracking process, following the 'polluter pays' principle. Roger Williams (Liberal Democrat MP for Brecon and Radnorshire) had tabled a similar amendment at committee stage, but had subsequently withdrawn it.[183] Ms Walley said she was returning to the issue because "the Minister's response in committee did not offer adequate assurances that the public purse would not be hit should an accident occur".[184] She argued that the existing financial competence checks on fracking companies would "not guarantee that a company has put in place funding or insurance for dealing with an accident".[185] Thomas Docherty said that Labour supported this new clause.[186] However, Dan Rogerson said that the Government remained "convinced that the existing provisions would be helpful enough in terms of the checks on companies' financial probity and their technical ability".[187]

4.10 Flood Re

Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the EFRA Committee, spoke to a series of amendments which would have brought small businesses within the Flood Re scheme. She said that there was "considerable doubt and anxiety" that small business would not be covered.[188] She also sought clarification about whether farms, people working from their own homes and blocks of leasehold flats would be covered by Flood Re.[189]

Clause 53 of the Bill would allow the Treasury to require insurers to pay a top-up levy in situations where Flood Re does not have sufficient funds to meet its liabilities. Clause 53 allows the Secretary of State to set out in secondary legislation the circumstances in which a top-up levy could be imposed. Anne McIntosh tabled amendment 8 to clause 53 which would have

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[180] ibid, col 112.
[181] ibid, col 108.
[182] ibid, col 101.
[183] House of Commons Public Bill Committee, Water Bill, Fifth Sitting, 10 December 2013, col 226.
[184] HC *Hansard*, 6 January 2014, col 101.
[185] ibid, col 102.
[186] ibid, col 109.
[187] ibid, col 111.
[188] ibid, col 98.
[189] ibid, col 99. The Minister clarified at third reading that households living in leasehold flats would have access to contents insurance under Flood Re if they were council tax payers (ibid, col 140).

specified on the face of the Bill that a top-up levy could be imposed on relevant insurers should a one-in-200-year loss scenario occur. She explained:

> Our amendments seek greater clarification of the Government's role in this scenario of a one-in-200-year loss, and in particular, how the taxpayer would be protected. As I have mentioned, the Government will, for the first time, be the insurer of last resort. In later years, after the fund has built up, I do not believe that that will be a problem, but we are seeking the Minister's reassurance about what the implications will be in respect of the first three years. In Committee, the Minister confirmed that there is no Government liability for Flood Re and that the Government have made it clear that Flood Re is not guaranteed above the one-in-200-year level […]
>
> Our amendment 8 would put the Government's commitment in the Bill and create certainty for all concerned as to who will assume the additional liability. A one-in-200-year loss scenario would be the total value of all claims from households reinsured through Flood Re that, during the course of a year, actuaries would not expect to be exceeded in 99.5 percent of years. Expressed in a different way, that would mean that the actuaries would be 99.5 percent confident that the limit would not be exceeded in any one year. It is important to note that that is not the same as a one-in-200-year flood event […][190]

Richard Benyon (Conservative MP for Newbury), a former Defra minister who had been involved in developing the scheme, "beg[ged] the House not to unpick the detailed negotiations that have resulted in the Flood Re proposal".[191] He explained that:

> […] if we started to introduce a wide range of businesses into the scheme, that would completely change the complex mathematical—probably algorithmic—calculations that will make it viable. I want as many properties to be included as possible, but […] Members have to understand that that would come at a cost. The cost might be that the industry walks away and that we have nothing, with constituents who live in risk of flooding facing the really terrifying prospect […] of not being able to get insurance.

Thomas Docherty, Shadow Minister for Environment, Food and Rural Affairs, asserted that a number of issues relating to Flood Re had not been addressed, and he believed that the House of Lords "will have an important job to do in the weeks ahead".[192] He said that "the Opposition will not simply go along with the Government because they have come to a deal" with the insurance industry.

Responding for the Government, Dan Rogerson argued against widening Flood Re to include small businesses.[193] Firstly, he maintained that the majority of business insurance policies were already "priced to risk", with little evidence that businesses at lower risk of flooding were paying higher premiums to subsidise those at greater risk, or that businesses were unable to obtain property insurance due to flood risk. Secondly, widening Flood Re to include small businesses would significantly increase the cost. Mr Rogerson said the Government did not want "someone living in a council tax band A property, for example, to subsidise the cost of insuring a private company that potentially earns up to £1 million a year". Thirdly, he outlined

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[190] ibid, col 100.
[191] ibid, col 106.
[192] ibid, col 110.
[193] ibid, col 111.

the possibility that Government intervention in the insurance market to support businesses could risk falling foul of state aid rules.

Mr Rogerson outlined the Government's objection to amendment 8 on cost grounds:

> If Flood Re is legally responsible for claims above a one-in-200-year [loss] level, the cost of the liability could be prohibitive. Likewise, if the Government took on a liability beyond a one-in-200-year level, we could expose the taxpayer to extremely large and unpredictable costs. In such a catastrophic situation, many more homes than would be insured by Flood Re are likely to be affected. That is why the memorandum of understanding says that the Government of the day would work with Flood Re and representatives of the insurance industry to decide how any available resources should be distributed to Flood Re customers if flooding exceeds such a level.[194]

4.11 Connections to Public Sewerage System

Andrew Love (Labour/Co-op MP for Edmonton) described the problem of misconnections (technically known as 'unlawful communications') to the public sewerage system where household DIY-ers or "cowboy builders and plumbers" mistakenly connected their plumbing to a surface water sewer instead of a foul water sewer, thereby causing pollution which could be difficult and expensive to trace.[195] He tabled new clause 13, which sought to grant water companies the same enforcement powers as those already available to local authorities. He believed this would mean that "the work could be completed quicker and that it would cost less". Dan Rogerson was "not convinced that giving the power to companies would be helpful".[196]

5. Third Reading

At the Bill's third reading, Dan Rogerson, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, reiterated the benefits he believed it would bring:

> It provides a framework for greater competition with the aim of driving more efficiency and innovation. Its measures will ensure a resilient future in which water is available to all at an affordable price, but not at the expense of the environment. It will ensure that there is choice and flexibility for customers and that bills are kept affordable, that there is more innovation in the water industry, and that there are opportunities for new businesses so that the industry continues to attract crucial investment. The Bill will not only protect and improve the environment, but contribute to the growth of our economy.
>
> The Bill will deal with the availability and affordability of flood insurance for households at high risk of flooding, and in the longer term it will ensure a smooth transition to a free market.[197]

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[194] ibid.
[195] ibid, cols 104–6.
[196] ibid, col 112.
[197] ibid, col 135.

Maria Eagle, Shadow Secretary of State for Environment, Food and Rural Affairs, said that Labour backed many of the measures in the Bill, including increasing competition, allowing non-household customers to switch supplier, encouraging new entrants into the market, regulatory reforms and the introduction of a flood insurance scheme.[198] However, she described the "absence of any serious attempt to tackle the impact that rising water bills are having on household budgets" as "a major hole at the heart of the Bill".[199] She listed numerous ways in which Labour believed that the Bill was deficient:

> This Bill contains important reforms, but it remains seriously flawed as it leaves this House; flawed because it does not sufficiently protect the environment; flawed because the Flood Re insurance scheme will not be in place until 2015 but also remains disconnected from future increases in at-risk properties as a result of our changing climate; flawed because it has failed to toughen the powers of the regulator to cut bills; flawed because it leaves it to the water companies to decide whether to establish a social tariff and preserves the postcode lottery on eligibility; and flawed because it does nothing to protect customers who pay their bills from seeing higher charges as a result of those who can pay but will not.[200]

Anne McIntosh (Conservative MP for Thirsk and Malton), Chair of the EFRA Committee, was of the opinion that "a lot of work" remained to be done on the Bill in the House of Lords, and that "too much detail has been left to be fixed at a later stage", not on the face of the Bill.[201] She welcomed the introduction of retail competition, but believed there was more to be done on the partnership approach to flood prevention measures, sustainable drainage systems and Flood Re.

The Bill was given its third reading without a vote.[202]

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[198] ibid, cols 136–7.
[199] ibid, col 137.
[200] ibid, cols 138–9.
[201] ibid, col 139.
[202] ibid, col 140.

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