



Water Bill 2013-14. Lords amendments

Standard Note	SN/SC/6876
Last Updated:	7 May 2014
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This note provides information on the Water Bill's Committee, Report and Third Reading stages in the Lords. It highlights amendments made to the Bill and also gives a brief account of other significant amendments discussed. It does not provide an exhaustive account of proceedings or document every amendment discussed.

The main amendments made to the Bill's water industry provisions during the Lords stages concerned:

- **Retail exit:** A government amendment was introduced at Lords Third Reading stage to provide incumbent (monopoly) water companies with a mechanism to exit the non-household retail market, subject to the consent of the Secretary of State. The amendment was passed without a vote; amendments with similar aims had been tabled by other Members during the Bill's previous stages.
- **Water abstraction reform:** During the Bill's Lords' Committee Stage, several Members expressed concern that the Bill's provisions on opening up the water industry to competition may have environmental risks in the absence of parallel reforms to the regulatory regime for water abstraction. A Government amendment tabled at Report Stage requires the Secretary of State to prepare a report on the progress being made on water abstraction reform within 5 years from the day the Act is passed.
- **Flood Re Scheme:** Regulations implementing the scheme would be subject to the affirmative procedure.

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1 Introduction

The Water Bill was introduced to the House of Commons on 27 June 2013. The Bill aims to deliver more resilient water supplies and lead to cheaper and more efficient management of water resources in the longer term. Its provisions include:

- extending competition by enabling all non-household customers to choose their water and sewerage supplier and enabling more companies to provide water and sewerage services;
- a new flood insurance scheme for domestic properties;¹ and
- a new duty for the regulator to focus on the long-term resilience of water supplies.

[Library Research Paper 13/67](#), prepared for Commons Second Reading, provides a detailed explanation of the legislation and should be consulted for background information. [Research Paper 14/01](#) gives information on the Bill's Commons Committee Stage, where important Government amendments were made.

The Department of Environment, Food and Rural Affairs (DEFRA) has prepared [Explanatory Notes](#) on the Lords Amendments in advance of the return of the Bill to the House of Commons on 7 May 2014.²

2 Second Reading

The Bill received its Second Reading in the Lords on 27 February 2014. Lord Whitty (Labour) confirmed that the Opposition would not seek to oppose the main elements of the Bill, but criticised the Government for not using it to fully implement the measures in the earlier White Paper, [Water for Life](#).³ It would support the retail competition proposals, although he cautioned that the likely benefits should not be exaggerated.⁴ He also criticised the lack of an exit mechanism for incumbent water companies from the non-domestic market, and drew attention to what he saw as an omission of measures to deal with the financial aspects of the water industry.⁵

Baroness Parminter (Liberal Democrat) said that she supported the Bill, but would be pressing for reassurances about the reform of water abstraction and would be tabling amendments on a number of other issues including water meters and the scope of the 'resilience duty'.⁶

In response to the points raised, Lord De Mauley assured that the Government would not take any action that would increase unsustainable water abstraction.⁷ On metering, he said that water companies were best placed to decide on their use in discussion with customers. He gave assurances that the Government would consider the issue of market exit

¹ Briefing in this note on the Flood Re scheme was provided by Tim Edmonds in the Library's Business and Transport Section.

² Defra, [Explanatory notes on Lords Amendments](#), 10 April 2014.

³ HM Government, [Water for Life](#), 1 December 2014. CM 8230

⁴ HL Deb 27 Feb 2014, c 1008

⁵ *Ibid.*, c 1009

⁶ *Ibid.*, c 1012

⁷ *Ibid.*, c. 1061-2

mechanisms for the future, but that at present the risks of enabling retail exit outweighed the benefits.⁸

3 Committee Stage

3.1 Significant amendments discussed

The Government introduced a number of minor, technical and drafting amendments at Committee Stage which were not debated. Opposition and other Members tabled a number of substantial amendments, none of which were pressed to a vote. Below is a short discussion of some of the amendments debated.

Domestic customer disadvantage

Lord Whitty moved **Amendment 1**, which would insert into Bill Clause 1 a new sub-clause to ensure that the granting of non-domestic retail supply license would not disadvantage domestic customers, either monetarily or by ‘diminution of service’. In response, Lord De Mauley said that Ofwat’s retail price limit powers would prevent householders cross-subsidising business customers. The costs of upstream reform would however be shared between businesses and householders.⁹ The amendment was withdrawn.

De-averaging

Amendment 5, moved by the Earl of Selborne, aimed to address the issue of ‘de-averaging’, whereby cheaper rates are offered to some customers while others are subject to higher rates. Undertakings given by the Government during the Bill’s Commons stages that de-averaging would be prevented by ministerial charging guidance offered only “limited assurance”, he said; if contracts between resource providers and retailers were decided under European law rather than UK competition law, any such ministerial guidance may risk being overruled.¹⁰

Lord De Mauley, in response, said the model this would create would be one of a ‘single buyer’ (the incumbent water company), which would create less flexibility for new market entrants and would allow incumbent water companies to “dictate the future direction of upstream markets”. The Government had given a “crystal clear steer” that Ofwat must not allow de-averaging that was harmful to consumers. Ofwat, he said, already had all the necessary tools to act to prevent this. On the EU point, he said there was no evidence that average pricing contravened competition laws.¹¹ The amendment was withdrawn.

Amendment 9, moved by Lord Whitty, also concerned de-averaging. It would require that charging guidance precluded different prices being offered to different customers based on their location. The Minister said that Ofwat’s charging rules would be flexible and would be able to take account, over time, of how the market developed.¹² The amendment was withdrawn.

⁸ *Ibid.*, c 1062

⁹ HL Deb 4 Feb 2014 c 108

¹⁰ *Ibid.*, c 119

¹¹ *Ibid.*, c 122

¹² *Ibid.*, c 128

Structure of water industry

Amendment 49, moved by Lord Whitty, would give Ofwat powers to mandate the separation of a relevant company's retail and upstream arms, or, following market review, place the same requirement on all relevant companies in that sector. **Amendment 97** would require voluntary separation in certain circumstances, or negotiated separation following Ofwat intervention. The Minister said the Government had already made clear its opposition to such courses of action and that it was important not to destabilise the market.¹³ Amendment 49 was withdrawn.

Water abstraction reform

Amendment 96 was moved by Baroness Parminter and concerned the regulation of water abstraction. It would have required the Government to publish draft legislation on this issue before implementing key measures in the Bill. She expressed concern that, in a context of increased water trading there was a risk of "environmental deterioration" without parallel reform of water abstraction regulation.¹⁴ The Minister agreed this was a "vital area" but said the Government considered the amendment unnecessary. It was the Government's intention to legislate for abstraction reform early in the next Parliament, he said.¹⁵ (C 162)

Retail market exit

Amendment 98, moved by Lord Whitty, provided for a retail market exit mechanism for incumbent water companies. The inclusion in the Bill of such a mechanism, he said, was supported by Ofwat and also some incumbents.¹⁶ Speaking to his own amendment discussed in this group (Amendment 107 – which would also provide for an exit mechanism via the drawing up of transfer schemes) Lord Moynihan said he considered Amendment 98 the "jewel in the crown" of the amendments tabled because "for an effective market there needs to be an ability for new entrants to enter and for existing market players to exit. Customers benefit from more effective and efficient suppliers replacing poorer performing businesses."¹⁷ In response, the Minister said any such move would have to be undertaken carefully, and that a major risk of allowing this would be the forced separation of incumbent water companies.¹⁸ The amendment was withdrawn.

Metering

Amendment 112A, moved by Lord Oxburgh, would have allowed companies to introduce water metering in areas of water stress, possible water stress and other areas where such a move might generate other "social benefits".¹⁹ He argued that "Metering has the benefit of making people realise that water is not a free good of which there is a boundless supply. Before and after comparisons suggest that demand tends to fall by 15% to 20% after meters are installed".²⁰ In response to Amendment 112A and others grouped with it, Baroness Northover said that the Government did not support a blanket approach to metering, the costs and benefits of which varied from region to region.²¹ The amendment was withdrawn.

¹³ HL Deb 4 Feb 2014 c 145

¹⁴ *Ibid.*, c 155

¹⁵ *Ibid.*, c 162

¹⁶ *Ibid.*, c 180

¹⁷ *Ibid.*, c 182

¹⁸ *Ibid.*, c 188

¹⁹ HL Deb 6 Feb 2014 c 278

²⁰ *Ibid.*, c 279

²¹ *Ibid.*, c 284

Competition

Amendment 115, moved by Lord Moynihan, concerned competition. It would place a duty on water undertakers to facilitate competition and to fulfil their duties in ways that do not distort such competition. Responding to the amendment, Lord De Mauley said that the *Competition Act 1998* already prohibited business from making agreements that involve the prevention, restriction or distortion of competition.²² He also contended that Ofwat already ensured that incumbents did not set discriminatory or preferential charges. Additionally, Clause 23 of the Bill provided the Secretary of State with a shared responsibility to ensure that incumbents would not discriminate in the provision of services.²³ The amendment was withdrawn.

National Affordability Scheme

Amendment 119, moved by Lord Whitty, would require the introduction of a National Affordability Scheme, with determined eligibility criteria. Lord Whitty said that 11% of household consumers had problems paying their water bills and that few companies currently offered social tariffs, despite being allowed to do so under the *Flood and Water Management Act 2010*.²⁴ In response, Lord De Mauley said that the idea of nationally-mandated eligibility criteria “simply ignores the reality of the water industry, which is structured on a regional basis” and that by 2015-16 the majority of water companies would have a social tariff in place.²⁵ The amendment was withdrawn.

Flood Reinsurance scheme

Position of leaseholders

The clauses to the *Water Bill* were not introduced to the Bill until the Commons Committee stage and so the Lords stages were the first real opportunity to examine them in detail. Various amendments were moved that would alter the eligibility of the scheme during the Committee proceedings on 11 February 2014. The main issue raised was that of leaseholders, for example people who lived in blocks of flats, appeared to be excluded from the Flood Re scheme. Lord Campbell Savours raised this and the lack of clarity surrounding their position.²⁶ Replying, the Minister, Lord De Mauley promised to consider the matter in time for amendments on Report if necessary.²⁷

4 Report Stage

4.1 Government amendments

Abstraction reform

Government Amendment 87 requires the Secretary of State to report to Parliament on progress on abstraction reform in England within five years of Royal Assent of the Bill. The Minister said that this would mean a written progress report being laid before Parliament no later than early 2019.²⁸ Speaking to the amendment, he said that it “[signalled] the Government’s determination to progress abstraction reform and provides Parliament with a

²² *Ibid.*, c 318

²³ HL Deb 6 Feb 2014 c 327

²⁴ *Ibid.*, c 325-6

²⁵ *Ibid.*, c 327

²⁶ [HL PBC 11 February 2014 c602](#)

²⁷ [HL PBC 11 February 2014 c604](#)

²⁸ HL Deb 25 Mar 2014 c 463

route to hold government to account on delivery of this commitment”.²⁹ The amendment was agreed without a vote.

Bulk supply

Government Amendments 42 to 53 concerned the bulk supply of water by water undertakers. DEFRA explains that the intention of the amendments was to:

[S]trengthen the environmental safeguards in relation to bulk supply agreements by giving a greater role, through consultation, to the Environment Agency and the Natural Resources Body for Wales. [They..] would also place a duty on all suppliers to a bulk supply agreement to provide information about the supply of water under that agreement at the request of either the Environment Agency or the Natural Resources Body for Wales.³⁰

Amendments 42-53 were agreed without a vote.

Duty to consult on charging schemes

The Government introduced two amendments – amendments 57 and 58 – which placed a duty on Ofwat to issue codes requiring the Consumer Council for Water to be consulted by water and sewerage undertakers on all charging schemes. The amendments were agreed without a vote.

Resilience duty and duty to have regard to social and economic matters

Government Amendment 61 clarifies that the new primary resilience duty placed on Ofwat would extend to the efficient use of water. Baroness Northover, speaking to the amendment, said a “compelling” case had been made during debate for more clarity on the issue of the extent of the new duty which would, she said, “[embrace] all relevant action, such as the capture and retention of water by investing in new water storage or by tackling leakage.”³¹ The amendment was agreed without a vote.

Government Amendments 65 to 70 require that the Secretary of State (or Welsh Ministers for Wales) must have regard to social and economic matters when formulating their statements to Ofwat. These amendments were agreed without a vote.

4.2 Other significant amendments discussed

De-averaging

Amendment 2 (tabled with a series of grouped amendments) was moved by the Earl of Selborne, and aimed to address the perceived risk of de-averaging (see discussion above on Committee Stage). It would have introduced amendments to Schedules 1 to 4 so that the holders of authorisations were required to participate in arrangements made for the introduction of water into the supply system, or the removal of matter from the undertaker’s sewerage system. Authorisation holders would therefore be prevented, he said, from acting “bypass the undertaker”.³² Introducing the amendment, he said that:

[T]he problem arises from the direct link in the Bill between the retailer and the provider of resources [...]. The danger is that, if a new entrant retailer can access a new source of water more cheaply than the incumbent and offer it to selected customers with the

²⁹ *Ibid.*

³⁰ See Defra, *Explanatory Note to Lords Amendments*, 10 April 2014, Pp. 2

³¹ HL Deb 25 Mar 2014 c 483

³² *Ibid.*, c441

focus on price, and price alone, there will be no incentive to improve on or even match the incumbent in providing, for example, water efficiency services that might be beneficial to the customer but which might involve an upfront cost for either the retailer or the customer. In other words, if you can offer a simple “buy it cheap” service for specific customers, you have immediately blown a hole in the averaging regime.³³

In response, the Minister reiterated responses given during earlier Bill stages. He said the grouped amendments would break the link between the retailer and upstream operations, would derail the Bill’s reforms, and would allow incumbents to dictate the future of upstream markets. He reiterated that charging guidance would make clear that Ofwat must not allow de-averaging that was harmful to customers.³⁴ Amendment 2 was withdrawn.

Retail exit

Amendment 40, moved by Lord Moynihan, and other grouped amendments again sought to address the issue of retail exit by incumbent water companies – which he described as “absolutely critical”.³⁵ In response, the Minister said the Government had listened carefully to the debate and said that he planned to return to this issue at Third Reading.³⁶

Water abstraction legislation

Amendment 41, moved by Lord Whitty, would require the passage of new primary legislation on the licensing of water abstraction before Clause 1 of the Water Bill could be brought into force. Speaking to the amendment, he said reforms to the abstraction regulatory regime were required before introducing more competition, given the scarcity of water resources and the risks of over-abstraction.³⁷ The amendment was pressed to a division, but was defeated by 192 votes to 271.

National Affordability Scheme

Amendment 55, moved by Lord Whitty, was another amendment to introduce a National Affordability Scheme for water, with defined eligibility criteria determined by the Secretary of State in consultation with relevant bodies. He reiterated his earlier arguments, made at Committee Stage that social tariffs currently in operation and those likely to be rolled out in the future were likely to have a limited reach and would not be sufficiently inclusive.³⁸ The house divided on the amendment, which was defeated by 181 votes to 261.

Water industry structure

Amendment 78 concerned the structure of the water industry and echoed similar amendments moved during Committee Stage. It would require Ofwat to take into account financial matters relating to undertakers when conducting or re-opening a price review. The broader issues which could be considered may include the structure and financing of licence applicants or their taxation structure. Licensed undertakers would be required to provide such information to the Secretary of State and otherwise publish such information. Speaking to the amendment, Lord Whitty said that the “ [the] level of borrowing, the level of dividends and the level of taxation, taken as a whole, is very difficult to justify to the British people [...]”.³⁹ Lord De Mauley reiterated that he considered Ofwat had sufficient powers in this

³³ *Ibid.*, c 439-440

³⁴ *Ibid.*, c 442

³⁵ HL Deb 25 Mar 2014, c 454

³⁶ *Ibid.*, c 456

³⁷ *Ibid.*, c 458

³⁸ *Ibid.*, c 470

³⁹ *Ibid.*, c 506

regard already and was already taking action to improve standards of corporate governance across the sector. Further reporting requirements would not contribute positively to Ofwat's activities in this regard.⁴⁰ The amendment was withdrawn.

Flood RE Scheme

Delegated Powers Committee

The Government moved a number of amendments which reflected comments and recommendations by the Delegated Powers Committee.⁴¹:

- all subsequent regulations, which will include the bulk of the detail of the scheme, will be subject to the affirmative procedure
- the provisions related to the release of council tax data required under the scheme;
- regarding changes to the rules about the scheme's reserves which no longer require consultation with the FCA or PRA;
- an amendment to the eligibility threshold; and
- an amendment ensuring that the regulations are not hybrid.

Excluded categories

The Department has issued an explanatory note on the scope of Flood Re – [Water Bill: Part 4 Flood Insurance Scope of Flood Re](#). Which provides the best guide to what is and what is not in scope.

Non government **amendment 89** initiated a long discussion about whether band H council tax properties should be included within the scheme and touched upon other excluded categories.⁴² The Government spokesman (Lord De Mauley) said that this condition was part of the overall agreement with the insurance industry; including substantial properties would increase the cost of the scheme and that it was aimed at helping the most affected properties through a widespread but small levy on all properties. He commented on the exclusion of leaseholders issue:

It is very difficult to identify the number of leaseholders who are covered by a commercial policy who would potentially be at a high enough level of flood risk otherwise to be eligible for Flood Re, but, based on the best available data, it would be in the low thousands at the very most. The suggestion that tens of millions of homes would be excluded is not right. If the number is supposed to refer to those policies that are out of scope because they are treated as commercial by the industry, I would also disagree that such properties are excluded. They are not covered by Flood Re because they form part of a separate commercial insurance portfolio. These policies will not contribute to the levy so, while they are out of scope, it is not because government or the industry has decided wilfully to exclude them but because they are not part of the market that Flood Re is designed to address.⁴³

⁴⁰ *Ibid.*, c 505

⁴¹ HL Deb 31 March 2014 c757

⁴² [HL Deb 31 March 2014 c761](#)

⁴³ [HL Deb 31 March 2014 c775](#)

The amendment was withdrawn.

Amendment 89B specifically addressed the exclusion of leaseholders from the Flood Re scheme. Lord Whitty, who proposed it, pointed out the complicated qualifying, or excluding, conditions surrounding the ownership and occupation rules. He also mentioned the impact the rules would have on the social landlord sector. Other speakers mentioned the problems of people who live in a property that comes with their job or who live in flats.

Replying, Lord De Mauley remarked that following the issue being raised in Committee, the issue had been discussed with the industry (ABI). He set out, on the basis of these just what would be included:

domestic **contents** policies will be available to all under Flood Re, regardless of whether properties are leasehold or freehold, rented or owner-occupied, except those properties in band H and those built from 1 January 2009.

Leasehold houses will also be in scope of Flood Re, provided that the leaseholder lives in the property and purchases the buildings insurance in his or her own name. Flats will be eligible, provided that there are not more than three flats in the building and that the freeholder, or one of those with a share of the freehold, lives in the building and takes out the cover. Setting the eligibility to a maximum of three flats reflects the general limit that the insurance market is willing to cover under a domestic or personal lines policy. There is already a competitive market for insurance for properties with four or more units, which we expect to continue. As I have already said, we and the ABI will monitor the market to ensure that that remains the case. We believe that a significant proportion of the leasehold sector will be in scope of Flood Re, but I should emphasise here that we expect most properties will not need to be in Flood Re and will find better prices through normal routes.

The noble Lord, Lord Whitty, suggests that that is all very complicated and does not go far enough. We have looked carefully at that with the ABI. Flood Re should be available only to those who need it. Indeed, in an earlier debate the noble Lord to some extent agreed with that. The ABI has assured us that the same systemic issues relating to availability and affordability do not exist for larger-scale leaseholders and commercial managing agents as in the domestic home insurance market.

The insurance industry has recently written to assure the Government that it does not expect there to be widespread issues over access to the insurance market for those parts of the leasehold sector which will be out of scope of Flood Re, which I am sure that noble Lords will agree is very welcome reassurance. The industry is clear that there is plenty of capacity to continue to provide insurance on a competitive basis.⁴⁴

The amendment was defeated on division by 190-209 votes.

Surplus funds

Baroness Parminter put down an amendment about the disposition of any surplus funds which built up within the Flood Re scheme. The amendment would require funds to be appointed to helping residents reduce their own flood risks.⁴⁵ The Government argued against the amendment, pointing out that by its nature the scheme would necessarily have reserve funds – that was what it was for – and that the level of these would vary according to

⁴⁴ [HL Deb 31 March 2014, c792](#)

⁴⁵ [HL Deb 31 March 2014, c798](#)

the rate of claims against it. Hence it was impossible to state quite what was a 'surplus' fund. The amendment was withdrawn.

5 Third Reading

Market exit provisions

Lord De Mauley moved **Amendments 1 to 12 and 18**. These would allow the Minister to make regulations on the exit of incumbent water companies from the non-domestic retail market. He said that this was not a simple matter, and the enabling powers proposed were necessarily broad. He undertook that there would be further consultations on this area, and that regulations made under this section would be subject to an enhanced affirmative procedure whereby draft regulations would be laid before the house.⁴⁶ Regulations may include grounds for refusing an application to exit. The powers as drafted, he said, made provision for the protection of household and non-household customers, who would need to be consulted about market exit. Amendments 1 to 12 and 18 were agreed without votes.⁴⁷

Flood RE – surplus funds

Following the amendment in Report on surplus funds (see above), Baroness Parminter moved a further amendment on the topic following discussions with Ministers since then. This time the focus was on requiring the industry to have a strategy to deal with surpluses as they crystallised in time – post hoc. The Government response was that large (excessive) reserves were not intended for the scheme. If they materialised “we would expect the levy and eligibility thresholds to be set in such a way as to manage down excess reserves.”⁴⁸ The government proposals and expectations were set out by the Minister:

We therefore propose that the secondary legislation, which will itself be subject to the affirmative procedure, will set out in more detail the points that Flood Re's transition plan should cover, including that Flood Re could encourage and incentivise policyholders to make their properties more resilient to flooding. We will also expect Flood Re to consider in broad terms the process for managing any surplus during the lifetime of the scheme, either as part of the transition plan or in its wider governance framework. Parliament will have an important role to play in holding Flood Re to account for its use of resources and the delivery of its purpose, and its directors will be directly accountable to Parliament for that.

In relation to any reserves at the end of Flood Re's life, as I have previously explained, Clause 71 allows the Government to require Flood Re to transfer a sum of the reserves to government, following consultation with Flood Re. It will ultimately be for the Government of the day, in consultation with Flood Re and Parliament, through affirmative resolution, to decide on the treatment of any reserves.⁴⁹

⁴⁶ HL Deb 25 Mar 2014, c 1270.

⁴⁷ *Ibid.*, c 1261

⁴⁸ [HL Deb 8 April 2014 c1281](#)

⁴⁹ [HL Deb 8 April 2014 c1281](#)