



Save Windermere



Briefing on the Key Issues we Face Nationally in Securing Clean Rivers, Lakes and Seas

September 2024

1. Introduction

1.1 The sewage system is broken. Hundreds of campaign groups have formed in outrage at the state of our rivers and seas, and in particular about sewage pollution for profit. We have previously set out our shared position statement and this briefing provides clarity to the questions that are now being asked about the Water (Special Measures) Bill, the Ofwat price review, and the future of water companies.

1.2 The Water (Special Measures) Bill does not address the reasons why current law is not enforced which strongly suggests new legislation will meet the same fate. The measures being given to the regulators are not addressing the root of the problem which is the lack of clarity about enforcement of the law.

1. Stopping bonuses will not work. Water companies will just put up salaries or find ways to syphon money to directors in other ways. Most directors work across multiple companies within a group. The measures suggested to control them are so lenient that they will make

no impact.

2. Pollution must be measured at the point of delivery, not in the watercourse where too many variables apply and installation and maintenance will be difficult and expensive. Water companies have extensive experience measuring flow volumes and this should be applied to untreated sewage pollution as well as treated effluent. Duration and number of spills are a very poor second to measuring how much. All of it is a very poor second to making companies comply with the exceptional circumstances law.
3. Real time monitors tell us nothing about volume. The regulators do not follow through on the data they have now. It is the campaign groups that have unearthed illegal pollution. In addition, all the water companies are under investigation by the regulators, and we do not see what having more data will do, if already all water companies are not complying with the law but are being allowed to continue operating.
4. Personal criminal liability. Despite companies operating illegally, there has been little criminal prosecution. Any water company operating illegally should be put into special administration. Water as a precious commodity should not be in the hands of companies that are prepared to break the law as a profitable activity.
5. Holding water companies to account. We have these powers already and citizens are exercising them with Town Meetings, Citizen Science, Media coverage and lobbying. The problem is how citizen power is balanced with the power of international shareholders.

Amendments to the bill are required to insert new clauses as follows:

1. Stop public bailout of the water industry (the bill allows for public bailout).
2. Reform the duties of Ofwat to be for clean water, conservation and regional bills. This brings English water regulation up to the standards of, and improves upon, the Water (Scotland) Act 1980 section 1 ¹(The Bill puts growth before the environment.).
3. Put employees and bill payers on the Boards of water companies. This reflects the normal practice in most wealthier OECD countries for large companies.
4. Put failing water companies into special administration (see below).

¹ <https://www.legislation.gov.uk/ukpga/1980/45/section/1>

2. How are water companies performing?

2.1 Every water company operating in England is under criminal investigation for illegal pollution (Ofwat)² and many are under investigation for breaching permits (EA)³. The Office for Environment Protection says regulators are not regulating according to the law.[Reference?] The Environment Agency investigation into illegal breaches of permit conditions is investigating more than 2,200 treatment works and is not ready to report despite being initiated in 2021. There have been no prosecutions, only fines so far.

2.2 Water Companies are failing in their performance on water quality, and they are in financial distress with debt increasing annually (by £8.2bn 2021-23) with overall debt at £60bn and dividend payments at £78bn despite inheriting no debt at privatisation. This is being tolerated by the regulator, whilst customers continue to pay.

“The combined effect of the extraction of dividends, reduction in real value of shareholder equity, and reduction in retained earnings, is a real loss of £85.2bn. (@2023 prices) for the water and sewerage services of England and Wales.” (David Hall 2024) ⁴.

2.3 The most obvious type of illegal pollution is the 'dry spilling' section whereby untreated sewage is dumped outside of heavy or even any rainfall. The most obvious examples are identified where near-live data is provided, for example by Thames Water. Some coastal disclosures are being made for bathing waters but in other regions, the public has to witness pollution as it occurs, or wait for retrospective publication of data by the water companies.

2.4 By 2050 water companies will be overseeing short of 4bn litres of water per day. Currently leakage is circa 3bn a day, and no water company is on track for 2050 targets. (Dame Julia King, Watershed investigations⁵)

² <https://www.ofwat.gov.uk/investigation-into-sewage-treatment-works/>

³ <https://environmentagency.blog.gov.uk/2023/06/23/environment-agency-investigation-into-sewage-treatment-works-moves-to-next-phase/>

⁴Ownership without investment in English water-net capital extraction by shareholders of English & Welsh water and sewerage companies 1990-2023. [Working Paper] (Unpublished) <https://gala.gre.ac.uk/id/eprint/47165/>

⁵ <https://podcasts.apple.com/gb/podcast/hung-out-to-dry/id1695875655?i=1000625421179>

3. What is the future for the water companies and what does this mean for our nation's budget?

3.1 It is clear that water companies are at risk of going bust. If water companies collapse under the weight of their debt then the regulator must advise the government to put in a special administration regime to run the business and sell it, with the current water company shareholders being responsible for the debt not the customer⁶. Thames Water has met the criteria of being in financial distress and not meeting the obligations of its licence or meeting performance targets for a long time.

3.2 Special Administration

3.2.1 Special Administration is a legal mechanism within the 1991 Water Industry Act, that allows the government to take control of water companies. This can be triggered under two conditions: either the company is in financial distress, as in the case of Thames Water, or it has breached its licence or statutory duties to a degree that makes it inappropriate for the company to continue operating. We believe all major water companies meet the latter condition given the widespread illegality demonstrated by Professor Peter Hammond from Windrush Against Sewage Pollution, triggering the Ofwat and EA investigations of every water company.

"The special administration process is designed for when a company is either insolvent—unable to pay its debts—or has very serious performance issues such that it cannot meet its statutory obligations to customers. The approval of the Secretary of State is required in both of those situations, so those are not just decisions for Ofwat to make." David Black: Environment Audit Committee November 2023⁷

3.2.2 Special Administration provides a firebreak, with the government putting in an interim team to scrutinise and stabilise company finances and performance in temporary administration, remodelling it and to then find new owners. The government has ruled out public ownership and that limits the Special Administrator's options. All options should be on the table, the current government approach ties the Special Administrator's hands behind their back.

"The special administration process is there to protect customers' interests" David Black, Industry and Regulators Committee, July 2023⁸

⁶ <https://committees.parliament.uk/oralevidence/13992/pdf>

⁷ <https://committees.parliament.uk/oralevidence/13888/html/>

⁸ <https://committees.parliament.uk/oralevidence/13469/html/>

3.2.3 The Government has ruled out public ownership on the basis of costs, in a letter to campaign groups⁹, using a flawed and discredited paper by the "Social Market Foundation" as a reason to avoid considering a change in ownership as part of its review of the sector, and we can only therefore assume also as an option for future ownership if the company is taken into Special Administration. The report, commissioned by four water companies, put the cost of bringing water firms into public ownership six times higher at £90bn than the estimate by Moody's, the credit ratings agency, of £14.5bn. The report was widely discredited at the time of its publication¹⁰.

3.3 The risk to pension funds

3.3.1 Pension funds are expected to invest to create value, in line with their fiduciary duties to members. The responsibility for where they invest lies with the pension funds. This should not be a 'ransom' issue used by water companies to inflate the risk of their collapse. The UK-based Universities Superannuation Scheme has all but written off its investment in Thames Water which, according to accounts filed this year, is now "minimal."¹¹ The value of investment held by UK pension funds in the water industry is, minimal, when set against the value of the funds overall. It is worth noting that the Environment Agency Pension Fund had investments in 6 water companies to the value of £41M¹²

What do we know?

If water companies go bust, the government can take control through special administration and ensure that the company, rather than the UK government, the taxpayer or the consumer, is liable for any loss or debt. (see David Black's evidence to the Environment Select Committee 2024).

Section 10 of the Water (Special Measures) Bill sets out a mechanism for the raising of funds from bill payers to fund loss or expense incurred in special administration, and to cover any financial assistance provided by government to the water company. This is, in effect, a mechanism to enable the bailout of the water companies at bill payers' expense.

⁹ A copy of the ministerial letter can be found here: https://drive.google.com/file/d/1ULILKqC_HmDrJOjrSRbq07ZBTL_9cJa1/view?usp=sharing

¹⁰ Reporting on the Moody's and SMF reports can be found here: <https://www.ft.com/content/8ee5d48a-6103-11e9-a27a-fdd51850994c>

¹¹ <https://www.ft.com/content/e2e459ab-8eb7-4390-8584-eed07e936ee1>

¹² <https://www.endsreport.com/article/1884504/revealed-ea-nrw-pension-fund-holds-bonds-worth-41-million-water-companies#:~:text=Both%20the%20EA%20and%20NRW,been%20confirmed%20by%20the%20OEA.>

The Bill must be amended to ensure that the public is not liable for debt or losses incurred by failing water companies.

The issue of the impact on pension funds has been exaggerated. Most pension funds have highly diversified portfolios - most have little overall exposure to water companies.

4. Why is the Law not being Enforced?

4.1 What are 'exceptional' circumstances and what is the legal limit on storm overflows?

4.1.1 Water companies must comply with, and regulators must regulate, according to the 1991 Water Industry Act and the 1994 Urban Waste Water Treatment Regulations. These require all sewage to be treated, and for storm overflows (which discharge raw sewage) to only operate in exceptional circumstances.

4.1.2 However, there is disagreement among the regulators as to what constitutes "exceptional circumstances". The EA says 'exceptional' means sewage can be dumped when capacity is reached at a sewage works (can be hundreds of times a year); Ofwat says x20 a year unless the EA says water quality is good enough for more sewage to be discharged; Defra Bathing Status regulation says x 10 a year. Note every water company is under criminal investigation by Ofwat for illegal sewage 'spills' discharges of untreated sewage into our rivers, lakes and seas, and some also by the EA for not complying with their permits (see above).

4.1.3 The Office for Environmental Protection states "*As a result of our investigations so far, we think there may have been misinterpretations of some key points of law. The core of the issue is that where we interpret the law to mean that untreated sewage discharges should generally be allowed only in exceptional circumstances, such as during unusually heavy rainfall, it appears that the public authorities may have interpreted the law differently, permitting such discharges to occur more often.*" OEP 2023¹³

4.2 Why is the Environment Agency not issuing permits that comply with the law?

4.2.1 The EA says that if it issues permits for STWs that restrict storm overflows in line with the 1994 Urban Waste Water Treatment Regulations then the water companies would be able to appeal as

¹³[https://www.theoep.org.uk/news/oep-identifies-possible-failures-comply-environmental-law-relation-regulatory-oversight#:~:text=The%20Office%20for%20Environmental%20Protection,combined%20sewer%20overflows%20\(CSOs\).](https://www.theoep.org.uk/news/oep-identifies-possible-failures-comply-environmental-law-relation-regulatory-oversight#:~:text=The%20Office%20for%20Environmental%20Protection,combined%20sewer%20overflows%20(CSOs).)

their current assets don't meet the requirements of the legislation and they would be in breach of the permit regularly. We understood that the EA are concerned about making the permits difficult to comply with because of the costs of improvement. However the water companies have certified to Ofwat every year since privatisation that they have had sufficient resources to meet their legal obligations, which include those contained in the 1994 Regulations.

4.2.2 The Office for Environmental Protection (OEP) says the EA must regulate in accordance with the law¹⁴. The OEP's investigation into regulation of the industry reported in 2024 stating "*the OEP has identified a number of areas where the Government and the EA may not have complied with the requirement of the regulations.*"

4.2.3 The WildFish Judicial review clarifies that the EA has both a duty and the powers to enforce compliance with the 1994 Regulations through amending permits.¹⁵ They have an absolute duty to revise the permits. It is not a choice.

What do we know?

"Exceptional weather does not include normal or usual rainfall. It certainly does not include dry weather conditions, although we have seen many water company sewage pipes discharging untreated sewage into rivers in dry conditions over recent years." WildFish 2023¹⁶

The Environment Agency permits must be set to ensure compliance with the 1994 Regulations . The EA must issue permits that ensure water companies are not discharging untreated sewage outside exceptional circumstances.

5. What are we paying for in the PR24 Business Plans?

5.1 Water companies are proposing upgrades to their infrastructure, classifying this as 'enhancement' work (the consumer pays) not 'base' work (the water company pays).

¹⁴<https://www.theoep.org.uk/news/oep-identifies-possible-failures-comply-environmental-law-relation-regulatory-oversight>

¹⁵<https://wildfish.org/latest-news/sewage-friday-wildfish-high-court-judgement-clarifies-that-governments-short-term-sewage-plan-does-not-deal-with-unlawful-discharges-of-untreated-sewage-into-rivers-and-seas/>

¹⁶<https://wildfish.org/latest-news/sewage-friday-wildfish-high-court-judgement-clarifies-that-governments-short-term-sewage-plan-does-not-deal-with-unlawful-discharges-of-untreated-sewage-into-rivers-and-seas/>

5.2 Enhancement is new work for improvement, base is the work needed to continue to meet basic legal obligations.

5.3 Water companies are dressing up their contribution as 'investment'. This actually means debt. Approximately 20% of customer's bills are already going to pay interest on loans generated between water companies and their holding companies. The plan in PR24 is for bills to increase by an average of £19 per year before inflation to service debt. This is another way for the holding company to make money from sewage pollution.

5.4 We are calling for the government not to authorise new price rises until all water companies are acting legally and performing in line with their contract targets. Bill rises (PR24) should not be proposed, let alone agreed, until Ofwat completes its investigation into all water companies' criminal activity and the EA completes its (2021) investigation into illegal permit breaches at over 2,200 sewage works

What do we know?

The proposed price rises in PR24 across all water companies is to fund the companies' future contractual obligations within the law and any enhancements agreed with the regulators. The PR24 deal is not designed to pay for remediation of past underinvestment in past base work. The Secretary of State made clear that the investment required to bring the water companies' sewage networks into compliance with the law falls on the companies and their shareholders. This means the water companies must pay for this - not the consumer.

6. What about dividends and bonuses?

6.1 David Hall's analysis is that dividend payments based on 2022 prices, will cost customers £624 each by 2030. Examining annual dividends paid by companies between 2010 and 2022, he found that they average £1.83bn a year, and that along with the commitment water companies have to annual dividends "*implies a total of £14.67bn would be taken in dividends between 2023 and 2030.*"¹⁷

6.2 "*He [David Hall] suggested that the dividend payments have "significantly" reduced the money available for investment by companies and increased the cost of water and sewerage to consumers "by an average of £69 per household per year over the last 12 years".* Industry and Regulators

¹⁷<https://www.theguardian.com/money/2023/may/20/the-whole-thing-stinks-uk-water-firms-to-pay-15bn-to-shareholders-as-customers-foot-sewage-bill>

Committee 2023.¹⁸

6.3 That Committee stated, “*Water company executives should not be able to receive substantial bonuses while their companies have missed performance targets and polluted the water environment, potentially in breach of their permits.*”

6.4 Ofwat has criticised water companies for setting bonus targets below those required by PR19 (the agreement with Ofwat on price and services over 5 years), and says it is going to ensure shareholders not customers pay bonuses if the water company is not meeting its performance targets¹⁹. However, water company executive pay continues to increase (currently at £10M).

6.6 It is unclear where shareholders have invested. Ofwat has been challenged to report on the level of investment. It looks like all investment for upgrades has actually come from consumers.²⁰ Scottish Water invests 30%+ more per household than private English companies²¹.

6.5 Water company salaries should be benchmarked against comparable businesses

What do we know?

Water companies always say without dividends there is no return on shareholder and owner investment, without bonuses they can't attract high calibre leaders. However, there is little or no external investment. Executive directors prioritise shareholder profit over customers. In short, water companies have profited and continue to profit from pollution.

7. What should water companies put in place and how much does it really cost?

7.1 The solutions to pollution from raw sewage discharges from CSOs and Storm Overflows, and from undertreated sewage are known. They are not complex. The best solution will often be full treatment, followed by UV disinfection of final effluents. The National Engineering Policy Centre (2024) reviewed capital expenditure against risk reduction and concluded that the best solutions are

¹⁸ <https://publications.parliament.uk/pa/ld5803/ldselect/ldindreg/166/16610.htm>

¹⁹ <https://www.ofwat.gov.uk/ofwat-sets-out-details-on-crack-down-on-exec-pay>

²⁰ <https://www.theguardian.com/business/2024/sep/14/billpayers-in-england-and-wales-tricked-into-stealth-bailout-of-water-companies>

²¹

https://gala.gre.ac.uk/id/eprint/21097/20/21097%20YEARWOOD_The_Privatised_Water_Industry_in_the_UK_2018.pdf

to separate drainage of rainfall and clean water from foul sewers, sustainable drainage and the use of integrated constructed wetlands. These are not expensive options, in fact they can be cheaper. Yorkshire Water's flagship project Clifton ICW has shown that using the wetland as part of wastewater treatment offered cost reductions of 40% compared to the running costs of a traditional treatment works (Clarke 2023)²² The main cost is the purchase of land.

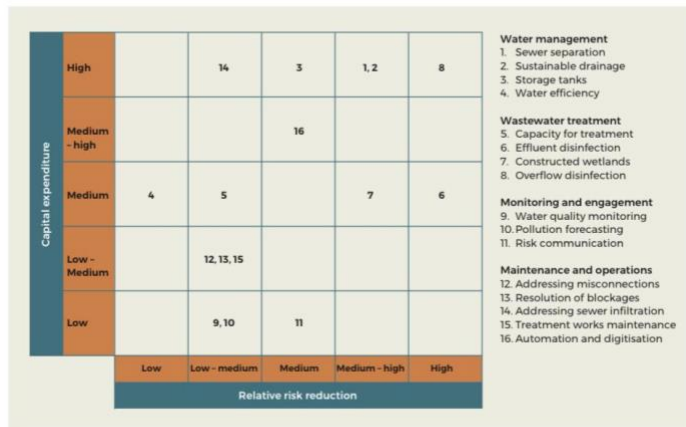


Figure 1 | shows a summary of the relative risk reduction effectiveness and indicative capital expenditure scores of all the interventions considered

7.2 The Yorkshire Water plans for Ilkley include more storage combined with nature based solutions and improved treatment. The infrastructure should be in place by 2026 and the costs and impact will be public, making this a prototype for the costs of cleaning up our rivers.

What do we know?

The solutions to sewage pollution are known. The costs are overestimated. There is insufficient planning from the water companies to put these solutions into practice across their sewage treatment systems.

National Engineering Policy Centre 2024²³

²²<https://www.watermagazine.co.uk/2023/05/03/constructed-wetlands-an-ecological-wonder-which-cuts-wastewater-treatment-costs/>

<https://waterprojectsonline.com/case-studies/clifton-icw-2022/>

²³<https://nepc.raeng.org.uk/media/qi2eyivp/testing-the-waters-priorities-for-mitigating-health-risks-from-wastewater-pollution.pdf>

Key Facts

1. "Government and the Environment Agency (EA) are currently not on track to meet the Environmental Objectives. The OEP's worst case assessment would see just 21% of surface waters in Good Ecological state by 2027, representing only a 5% improvement on the current situation." OEP (2024)²⁴
2. All of our rivers are polluted, with only 16% meeting the criteria for good ecological status and none meeting the criteria for achieving good chemical status.²⁵
3. Children and adults get sick as a result of swimming in our rivers and seas. Surfers Against Sewage report "*Between October 2022 and September 2023, a total of 1,924 water users reported getting ill after entering the water. That's nearly triple the number of reports we received in 2021-22.*"²⁶ Prof Chris Whitty calls for people to be protected from waterborne disease (National Engineering Policy Centre Report)²⁷
4. Water companies poured raw sewage into rivers and seas 477,972 times last year, for 4M hours²⁸.
5. Since privatisation water companies have taken £78 billion in dividends since taking over the industry and paid seven figure Director salaries whilst failing to maintain our water infrastructure and polluting our rivers with sewage. In the last 2 years the water industry has paid out 2.5 billion in dividends.²⁹

²⁴ OEP (2024) A REVIEW OF IMPLEMENTATION OF THE WATER FRAMEWORK DIRECTIVE REGULATIONS AND RIVER BASIN MANAGEMENT PLANNING IN ENGLAND Presented to Parliament pursuant to section 29(2) of the Environment Act 2021 May 2024. <https://www.theoep.org.uk/report/oep-finds-deeply-concerning-issues-how-laws-place-protect-englands-rivers-lakes-and-coastal>

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1113920/defra-annual-report-2021-2022.pdf

²⁶ <https://waterquality.sas.org.uk/#:~:text=of%20Sewage%20pollution&text=Between%20October%202022%20and%20September,sickness%20reports%20submitted%20to%20us>.

²⁷ <https://nepc.raeng.org.uk/media/qi2eyivp/testing-the-waters-priorities-for-mitigating-health-risks-from-wastewater-pollution.pdf>

²⁸ <https://www.theguardian.com/business/2024/mar/26/4m-hours-of-raw-sewage-discharges-in-england-last-year-figures-expected-to-show#:~:text=Total%20discharges%20from%20the%202014%2C000,figures%20seen%20by%20the%20Guardian>.

²⁹ <https://www.ft.com/content/c3cdfefb-c912-4699-bb7f-72c5c6515757>.

6. Water companies have accrued £64 billion net in debt since privatisation and we pay on average 20% of our bill towards servicing water company debt and rewarding shareholders³⁰
7. Water company profits are at the expense of other people's livelihoods, for instance coastal communities suffering economically thanks to the effect of sewage pollution on the holiday industry; the decimation of the shellfish industry from sewage pollution.

³⁰ <https://www.gov.uk/government/news/cma-issues-final-decision-on-water-price-controls> ;
<https://www.ft.com/content/c3cdfefb-c912-4699-bb7f-72c5c6515757>

Public Declaration for Rivers and Seas

Our rivers and seas are open sewers.

We care deeply about our rivers and seas.

Water companies must comply with, and regulators must regulate according to the 1991 Water Industry Act and the 1994 Urban Waste Water Treatment Regulations which require all sewage to be treated, and for storm overflows (which discharge raw sewage) to only operate in truly exceptional circumstances.

Our Declaration

Our rivers and seas should be protected for nature, for ourselves and for future generations.

This is our declaration:

- Stop pollution for profit.
- Make our waters healthy and safe again.
- Action now not targets sometime.
- Regulation that protects the victims, not the polluters.
- Now it's time for the polluters to pay



WildFish.

Save Windermere

