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Water (Special Measures) Bill Published: Increased Regulatory Enforcement Powers and Minor Amendments to Special Administration Regime

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At a Glance

The UK Government published major draft legislation on 4 September to “crack down on water bosses polluting Britain’s rivers, lakes and seas”, marking the most significant increase in enforcement powers in a decade.

The draft [Water \(Special Measures\) Bill](#) is intended to strengthen the power of water industry regulators and to drive meaningful improvements in the performance and culture of the water industry.

It will also make minor adjustments to the special administration regime, as described below.

Adjustments to Special Administration Regime

The Bill will permit the Secretary of State to require (or enable) a water company to increase customer bills for the purpose of making good any loss incurred by the Secretary of State in giving financial assistance to support a special administration.¹ Such amounts may be required to be held on trust pending their payment to the Secretary of State. This measure will operate to protect taxpayers in the event that the government provides (super-senior) funding to support a special administration.

The Bill will also restrict a court that is hearing a winding-up petition in respect of a

water company from commencing special administration unless Ofwat and the Secretary of State have had at least 14 days' notice of the petition. This measure is apparently intended to prevent an unfortunate scenario in which the court might make a special administration order (in lieu of a winding-up order) without adequate advance notice to the government.

The above provisions will become effective two months after the legislation is actually enacted.

Key Regulatory Measures

<i>Measure</i>	<i>Detail</i>	<i>Timing</i>
Director measures: ban on performance-related pay; "fitness" standards	<p>The Bill will empower Ofwat to issue rules to:</p> <ul style="list-style-type: none"> prohibit the payment of performance-related pay, including bonuses, to water executives if they fail to meet high standards to protect the environment, their consumers and the company's financial resilience; and require senior personnel of water companies to meet specified standards as to "fitness and propriety". 	<p>Commencement subject to secondary legislation; Ofwat required to consult on draft rules in due course</p>
Offence of failure to co-operate/obstructing	<p>The Bill will create new tougher penalties</p>	<p>Effective two months after legislation is</p>

investigations

– including potential imprisonment – for water executives when companies fail to co-operate (or obstruct) investigations.

enacted

Pollution reduction

The Bill will introduce independent monitoring of every sewage outlet, requiring water companies to publish real-time data for all emergency overflows. It will require sewerage undertakers to publish annual pollution incident reduction plans.

Commencement subject to secondary legislation

Standard of proof for water offences

The Bill will lower the standard of proof required before water regulators can impose financial penalties for water industry offences, from the criminal standard of proof (“beyond reasonable doubt”) to the civil standard (“on the balance of probabilities”). Relevant offences include pollution offences and failures to comply with information requests and reporting requirements.

Effective once legislation enacted

Charging water companies to recover enforcement costs

The Bill will expand the cost recovery powers of regulators to require water companies to bear the cost of enforcement action.

Effective once legislation enacted

1. Existing legislation provides that, within the water industry special administration regime, the Secretary of State (with the consent of the Treasury) may:

- provide grants or loans to the company in special administration for the purpose of facilitating the achievement of the statutory purposes of the special administration;
- indemnify the special administrators (or related parties); and/or
- guarantee the repayment of new sums borrowed by the company in special administration, on such conditions as they see fit.

Such amounts would rank as a super-priority claim in the special administration. [↔](#)

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