

Sustainability *First*

Water Bill 2013-14 : Commons Committee Stage

Briefing Note - Clause 22. New Ofwat Resilience Duty

Sustainability *First*

Sustainability First is an independent environment think-tank and registered charity. We have just published a discussion paper : **Water Consumers – Today & Tomorrow. Aligning the short and long-term interests of water and sewerage consumers** which can be found at www.sustainabilityfirst.org.uk.

This briefing note for the Committee Stage of the Water Bill, **addresses the proposal for a new primary duty for Ofwat to secure resilience.**

Chapter 3 - Regulation of the Water Industry

Clause 22 : Proposed new primary duty for Ofwat to secure resilience

Sustainability First welcomes the proposed amendment to Ofwat's existing general duties to add a new 'resilience' objective to Ofwat's primary duties. This offers the *potential* for Ofwat and therefore water companies to increase their focus on the **long term challenges** that the water and sewerage sectors are facing.

However, without more detail it is impossible to assess how the proposed new duty will work in practice.

Unless the resilience duty is suitably clarified in Committee there may be good reason to support the alternative of a new primary sustainable development duty for Ofwat instead.

We have identified four points to address and clarify with respect to the present draft of Clause 22:

1. Scope too narrow – broaden but clarify the definition of resilience

The definition in Clause 22 (3) (2DA) (a) is too narrow

Resilience is not only concerned with security of water supplies and sewerage systems. It is also important in regard to abstraction, drainage, the environment and flooding.

The Bill aims to address resilience to environmental pressures, population growth and changes in consumer behavior. Sustainability First considers that resilience to social impacts is also important and that a duty in this area needs to address affordability for both current and future consumers. Unless this happens, concerns will remain around the legitimacy and ‘social licence’ of the water companies to operate.

The reference in Clause 22 (3) (2DA) (b) needs clarification

‘The need for the supply of water’ needs clarification. The notes to the Bill do not help here. These say that the Bill will deliver a resilient future ‘where water is always available to supply households and businesses without damaging the environment’ and to ensure that households become ‘more resilient to the financial effects of flooding’.

If water is to be ‘always available’, this implies a degree of redundancy in the system, and potentially stranded assets. A network, which is engineered to withstand *all* droughts, may be resilient but would come at a cost that some consumers, and indeed GB Plc., may find difficult to afford. The notes to the Bill do not distinguish between essential, day-to-day requirements and more discretionary use eg car washing, garden hose use etc.

2. Recognise the importance of demand management and partnership working as important alternative approaches to securing resilience.

A resilience duty which reinforces or locks companies into *existing* ways of working – so, defined in unduly narrow terms to favour infrastructure investment above other new and / or innovative approaches to water resource management - may be unduly costly.

Clause 22 should explicitly recognize the importance of securing resilience **in a variety of ways - including demand-management and partnership working** with bodies both within and beyond the water sector (such as farmers). This will help to overcome potential bias towards capital investment over other more innovative approaches.

The aim should be to ensure more diversity of response by the water sector to achieve resilience, making companies more resilient to systemic problems.

3. Provide a requirement for review of the new resilience duty

The concept of resilience is relatively untested in the regulation of the water sector. Many questions remain as to how the resilience duty will be embedded in the regulatory approach and work in practice.

Given the potential significance of the proposed new resilience duty, the Bill should provide a requirement for Ofwat to review the effectiveness of the new duty at appropriate intervals. This will necessitate the collection of both quantitative and qualitative evidence from the outset.

4. Resilience and Sustainable Development Duties

The extent to which the new resilience duty is different from, and will work with, Ofwat's **existing** secondary sustainability duty is not clear in the draft Bill.

In theory, **resilience** should be easier to define than **sustainability**, making it easier for Ofwat to set appropriate boundaries in its decisions in this area.

If the Bill broadens the definition of resilience as suggested in this briefing, the proposed resilience duty **would complement the existing secondary sustainable development duty** : the resilience duty capturing key long term planning issues and the secondary sustainable development duty indicating how these potentially conflicting issues should be balanced in a wider context.

If the Bill does not broaden the definition of resilience as suggested, there is a risk that Ofwat's existing secondary sustainability duty will not be able to work to maximum effect.

In that circumstance, there would instead be a stronger argument for introducing a new primary sustainable development duty.

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About Sustainability First Sustainability First is an independent research organisation with a focus on practical policy development in the areas of sustainable energy, waste and water. A registered charity, our aim is to improve knowledge and understanding of complex multi-disciplinary issues. We develop implementable ideas in key policy areas – such as energy, water and the roles of economic and other regulators in sustainability policy – where it can make a difference. We undertake research, publish papers and organise policy seminars.

Sustainability First Trustees are : Ted Cantle CBE (Chair) ; Phil Barton (Secretary); Trevor Pugh (Treasurer); John Hobson; Derek Osborn CB ; David Sigsworth; Sara Bell; Derek Lickorish MBE ; Richard Adams OBE.

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(3) (2DA) defines the resilience objective as:

‘(a) to secure the long-term resilience of water undertakers’ supply systems and sewerage undertakers’ sewerage systems as against environmental pressures, population growth and changes in consumer behaviour, and

(b) to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

including by promoting appropriate long-term planning and investment by relevant undertakers, and the taking by them of a range of measures to manage water resources and reduce demand.’