



# Department for Environment Food & Rural Affairs

Baroness Hayman of Ullock  
Parliamentary Under Secretary of State

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Baroness Drake CBE  
Chair of the Constitution Committee  
House of Lords  
London  
SW1A 0PW

17 November 2024

Dear Baroness Drake,

## **Water (Special Measures) Bill**

Thank you for your letter of 14 October about clauses 2 and 5 of The Water (Special Measures) Bill.

As set out in clause 2 of the Bill, the Secretary of State will be able to direct water companies to include other matters in Pollution Incident Reduction Plans as needed. As you state, the key material to be included within these plans is set out on the face of the legislation. This power is therefore only considered to be an ancillary power, intended to be used exceptionally, and only in circumstances where the Secretary of State considers water companies to have failed to include material relevant to the function and purpose of clause 2.

The power to make directions is analogous to other direction-making powers set out in the Water Industry Act 1991 (WIA 91), such as section 94A(3)(g), which provides an equivalent power for drainage and sewerage management plans. There is no parliamentary procedure required for giving directions under the WIA 91, and the Department does not consider that the nature of the direction proposed would require a departure from that position. The power is accompanied by a duty to consult with the Environment Agency prior to making a direction.

In regard to your concern over clause 5, as you state, regulators can currently impose civil penalties when satisfied “beyond reasonable doubt” that an offence has been committed. However, whilst this criminal standard of proof is appropriate for severe offences, the high investigatory burden is not proportionate for minor to moderate offences.

The Bill will enable financial penalties to be imposed using the civil standard of proof (“on the balance of probabilities”) for specific water industry offences. This will strengthen regulators’ ability to take quick and proportionate enforcement action against minor to moderate offending. Offences will be specified in secondary legislation and can include water resources and pollution related offences. Water companies’ existing legal protections, including the right to appeal, will be maintained.

Thank you once again for taking the time to contact me about the Bill.

Yours sincerely,

A handwritten signature in cursive script, reading "Suet Hayman". The signature is written in a dark ink on a white background.

**BARONESS HAYMAN OF ULLOCK**