Salmon & Trout Conservation

Response to Government's Storm Overflows Discharge Reduction Plan

April 2022

Summary

The draft Storm Overflows Discharge Reduction Plan fails to acknowledge that section 94(1)(b) of the Water Industry Act 1991 placed a duty on water companies to make such provision as is necessary for effectually dealing, by means of sewage disposal works or otherwise, with sewage, which the Courts have defined as a requirement to treat sewage "in such a way as to render it reasonably harmless and inoffensive".

The evidence that that duty is not being met by water companies is overwhelming. In other words, they are routinely breaking the law.

Storm sewage should only be discharged in exceptional circumstances – that is the existing law, confirmed by the European Court of Justice, and remaining, post-Brexit, part of the law in England.

As such, the targets set out in the Plan are not only pathetically unambitious – they are also unlawful, in so far as they plan for continuing failure, in some case for up to 30 years, to meet legal requirements that have been in place at least since 1991.

The Plan also fails to recognise that water companies have, for 18 years, been under a duty to provide and publish any information they hold on storm overflows, under the Environmental Information Regulations 2004.

What is now required is massively increased independent inspection and monitoring of water company infrastructure and discharges, as against the existing law.

There must be an urgent review of all permits applying to both sewage works and storm overflows, which, by common consent, are no longer fit for purpose and have failed to prevent sewage pollution of very many rivers.

Most importantly, what is desperately needed is robust enforcement of the law, including much more frequent prosecution of the water companies.

On funding both the immediate ‘corrective’ investment that is now required, as well as long term infrastructure improvements, water companies need to be held to account by OFWAT. Finding the money is a matter for the companies and their shareholders. Water companies must be compelled to seek private sources of investment, as was the promise at privatisation. Importantly, the costs must not be allowed to fall solely, if at all, on water bill payers.

In the media release accompanying this consultation, Environment Secretary, George Eustice claims that this Government is "the first government to set out our expectation that water companies must take steps to significantly reduce storm overflows", a claim echoed by Parliamentary Under-Secretary of State Rebecca Pow in her Foreword.

However, it is the law, perhaps more than anything, that should set out any government's expectations.

The once state-owned water authorities were bought in 1989 by investors who were aware of section 67 of the Water Act 1989 - General sewerage functions (subsequently re-enacted as section 94(1)(b) of the Water Industry Act 1991), which placed a duty on those companies to make such provision as is necessary for effectually dealing, by means of sewage disposal works or otherwise, with sewage, which the Courts have defined as a requirement to treat sewage "in such a way as to render it reasonably harmless and inoffensive"[1].

Subsequently, in 1994, the Urban Waste Water Treatment (England and Wales) Regulations 1994[2] provided that sewage must, before discharge, be subject to treatment, and that sewage works must be "designed, constructed, operated and

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[1] Ramsey J in *Hanifa Dobson and others v Thames Water Utilities Ltd and another* [2007] EWHC 2021 (TCC), concluding that 'effectually dealing with' means the treating of sewage by way of sewage treatment systems:
"74….(2) If the obligation to deal effectually were limited to "getting rid" of the contents then it is difficult to see what more would have to be done that was not covered by the obligation to "empty" the contents.
(3) What has to be done is a matter of degree. The obligation under s 94(1)(b) expressly refers to "effectually dealing" as being "by means of sewage disposal works or otherwise". The fact that a sewage disposal works is one of the means indicates that such a process may be necessary. Under the WIA "disposal" is defined under s 219(1)(b) which states "disposal . . . in relation to sewage, includes treatment". In those circumstances, what has to be done to deal effectually with the contents of sewers includes treatment.…
(5) There is a requirement to have regard to environmental pollution as part of the duty under s 94(1)(b). This, in my judgment, is consistent with s 3(2)(c) of WIA and the amendment to s 94(1)(b) introduced by reg 4(4) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 which is premised on the basis that treatment may be included as part of the process of effectually dealing with the contents of sewers under s 94(1)(b).
(6) **One of the purposes of the requirement for effectually dealing with the contents is therefore to treat the sewage in such a way as to render it reasonably harmless and inoffensive…**".

[2] The Urban Waste Water Treatment (England and Wales) Regulations 1994 - Regulation 4 - Duty to provide and maintain collecting systems and treatment plants
"(4) The duty imposed by subsection (1)(b) of the said section 94 shall include a duty to ensure that urban waste water entering collecting systems is, before discharge, subject to treatment provided in accordance with regulation 5, and to ensure that—
…plants built in order to comply with that regulation are designed (account being taken of seasonal variations of the load), constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions"

maintained to ensure sufficient performance under all normal local climatic conditions".

The much-trumpeted 'new' duty under the Environment Act 2021 on water companies to secure a progressive reduction in the adverse impact of discharges from storm overflows, is therefore, in practical effect, no more than a duty to comply with existing law.

Similarly, the new duty on government to produce a statutory plan to reduce discharges from storm overflows, is no more than a duty to plan to ensure the requirements of existing law are met. Under the Water Framework Directive, by way of the river basin management planning system, for many years governments have, in effect, been under an obligation to plan to reduce discharges from storm overflows and to curtail their adverse impact.

In the context of the statutory duty in section 94(1)(b) of the 1991 Act, there should not be any adverse impact of discharges from storm overflows. As repeated above, this has been allowed to develop because of the failure of governments past, and of Ofwat, to secure and provide for adequate investment by water companies in sewerage infrastructure.

Previous and current Secretaries of State, the economic regulator Ofwat, and the environmental regulator, the Environment Agency, were supposed to be collectively responsible for ensuring that there was sufficient investment in sewerage infrastructure. The relatively recent admission from Government that "an increase in extreme weather events and increased pressure from population has now brought the frequency of discharges to an unacceptable level" merely indicates the failure over many years to ensure that sufficient investment was made in sewerage infrastructure, pursuant to the statutory system put in place at privatisation under the 1991 Act.

The consultation now describes investment for the long-term. However, as well as long-term investment, because of the failure over the last 30 years to ensure sewerage infrastructure has kept pace with population growth and the effects of climate change, there is an urgent need to see rapid 'corrective' investment to 'fix the holes' in the system that have been allowed to develop. The system is, by any definition, broken and requires urgent action.

Public concern, indeed, anger about untreated and under-treated sewage discharges to English rivers is not a new issue, as the consultation suggests, but has been at the forefront of many NGO activities since water privatisation in 1989. It is undoubtedly convenient, but wholly wrong to suggest that the publicity that followed the publication of Philip Dunne MP's Sewage (Inland Waters) Bill - and the furore that followed - is something new. The consultation implies that the public has only recently made clear that discharges of untreated sewage are completely unacceptable, but many NGOs and local and community groups have been saying that -and taking legal action both in the UK and in Europe - for years.

As to what are being billed as 'new' monitoring and reporting frameworks, both Ofwat and the Environment Agency have had requisite powers since 1991 to require information from the water companies, for example by way of licence conditions in the case of Ofwat and under discharge consents, and later permit conditions in the case of the Environment Agency.

Continuous monitoring of storm overflows is not a new idea and can be traced back to the days of the National Rivers Authority, reference the Kinnersley Report, which nearly thirty years ago, recommended the use of continuous monitoring equipment to monitor and assess permit compliance.

It is shameful that any discharges, however intermittent, are not currently monitored at all, from whatever part of the sewerage infrastructure they emerge.

On providing information to the public, the water companies are public authorities, pursuant to the Environmental Information Regulations 2004 and, as such, have had a duty since that year to proactively publish the environmental information they hold, which should include all duration and quality monitoring of all their discharges (whether they be from treatment works or from CSOs).

The 'new' duty in the 2021 Act on water companies and the Environment Agency to publish data on storm overflow operation on an annual basis is in fact weaker than the existing law. The Environmental Information Regulations 2004 placed a duty on water companies and the Environment Agency since 2004 to publish proactively this type of environmental information, including data on storm

overflow operations that they hold and, in any event, in response to requests, to provide it within 20 working days.

Similarly, the ‘new’ duty on water companies to publish near real-time information on the operation of storm overflows merely reflects the duties that have been on water companies, which are public authorities for the purposes of the 2004 Regulations, for the last 18 years.

The 2021 Act also places a new ‘duty’ on water companies to produce statutory drainage and sewerage management plans. While, of course, such planning is extremely important, given that it is now 30 years since privatisation, it would be astonishing if the privatised water companies had not already planned how they should manage and develop their drainage and sewerage systems over the 25-year planning horizon suggested. Indeed, if no such planning has been conducted by the water companies to meet their statutory duties in respect of draining sewerage networks and dealing with the contents of those networks under section 94 of the Water Industry Act 1991, then they have been negligent and Ofwat should have intervened.

The 2021 Act duty now placed on water companies to monitor the water quality upstream and downstream of storm overflows and sewage disposal works is deeply concerning. The Environment Agency and DEFRA hopefully now realise that the introduction in 2010 of operator self-monitoring allowed the widespread cheating of the system carried out by Southern Water, and possibly other water companies, in terms of reporting on sewage treatment works performance. To now place duties on water companies to monitor water quality in-river, beyond the sewage treatment works’ fence, is to extend operator self-monitoring into receiving waters in a way that is unwarranted. Such monitoring must now be very closely audited by the Environment Agency and there must be no question of the water companies becoming the sole organisation responsible for assessing the impact of discharges of sewage or stormwater into receiving waters.

Particular comment needs to be made in relation to the work commissioned by Government on the complete separation of sewerage and rainfall systems, pursuant to section 84 of the 2021 Act, which sets up a false debate. Complete retroactive separation is not being seriously proposed by anyone. What is

proposed is that storm overflows should only operate after exceptional rainfall. It is perhaps ironic that the Government should set up this false debate by seeking to place a cost on complete separation, when the argument so often raised by the Government against, for example European environmental directives, was that they were responsible for excessive requirement for investments and “gold-plating”.

Therefore, when placed in their proper factual and legal context, the targets now put forward are unambitious in the extreme and seek to perpetuate unlawful discharges of untreated and undertreated sewage to English rivers for, in some cases, up to 30 more years.

Responding to the questions posed in the consultation:

Personal details:

1) Are you responding as: [individual/water company/charity/consumer organisation/other]

2) Do you know who provides your water and sewerage service? [Yes/No/Not applicable]

3) If yes, please select from list [Anglian/Northumbrian/Severn Trent/Southern/South West/Thames/United Utilities/Wessex/Yorkshire]

This response is submitted by Salmon and Trout Conservation (S&TC).

This response is applicable to all parts of England.

4) Confidentiality question: Would you like your response to be confidential? [Yes/No]

5) [If yes] Please give your reason.

S&TC does not need this response to kept confidential and will, in due course, publish it on its own website.

Questions:

6) Do you agree or disagree with the level of ambition of the ecology target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

7) Do you agree or disagree with the level of ambition of the public health in designated bathing waters target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

8) Do you agree or disagree with the level of ambition of the rainfall target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

9) Do you agree that this package of targets as a whole addresses the key

issues associated with Storm Overflows? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]
10)[if not] Can you explain why you do not agree?

6) Do you agree or disagree with the level of ambition of the ecology target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

S&TC does not support the headline target, and is appalled by the pointlessly unambitious deadlines of 2035, 2040 and 2050 being applied, given the requirements of the existing law.

The fact that the Government feels that only now should it be a target that "water companies shall only be permitted to discharge from a storm overflow where they can demonstrate that there is no local adverse ecological impact" ignores the existing law.

The Government needs to recognise that any storm overflows affecting important protected sites should have been eliminated under existing legislation. What was the Review of Consents process all about if it was not to stop damage to protected sites from permitted discharges? The fact that they have not been illustrates the failure of enforcement by the Environment Agency and in respect of protected sites a failure by Natural England to ensure those protected sites are properly protected as required by law.

If, as the consultation seems to conceded, high priority sites include Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), eutrophic sensitive areas, chalk streams and waters are still failing ecological standards due to storm overflows, then the Environment Agency has all the legal tools – under the Environmental Permitting Regulations 2016 – and has had them under forerunner legislation (the Water Resources Act 1991) to ensure that is not the case, by imposing stricter permit conditions on sewage discharges.

On that issue, S&TC therefore requests from the Agency:

- a full and detailed list of those “high priority sites include Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), eutrophic sensitive areas, chalk streams and waters are currently failing ecological standards” referred to in the consultation
- a list of all relevant sewage discharge permits that could be or are known to be affecting those protected areas, for each site
- the date at which the Agency last (i) reviewed those permits and (ii) inspected the premises, per Regulation 34 of the EPR 2016 - *“Review of environmental permits and inspection of regulated facilities*
34.—(1) The regulator must periodically review environmental permits.
(2) The regulator must make appropriate periodic inspections of regulated facilities”.

For those permits that need to be tightened, where investment would be required to ensure that was possible, then Ofwat has the powers under the 1991 Act to ensure that the investment is provided for, either from bill-payers or from shareholders or other sources of private finance (on that point, please see below).

Specifically, S&TC does not agree with the definition of “local adverse ecological impact” as proposed, limited as it is to dissolved oxygen and ammonia. Sewage pollution includes suspended solids, plastics and persistent chemicals. It would not be correct to assume that acceptable levels of ammonia and dissolved oxygen implies no local environmental impact. Nor therefore can it be assumed that meeting the headline target will mean that no water body in England will fail to achieve good ecological status due to storm overflow discharges or ensure no local impact. Nor will the target necessarily “protect biodiversity at both a local and national scale”. It will certainly not “result in the complete elimination of ecological harm from storm overflows”, which is a surprising claim, at best.

As to the sub-targets proposed, they describe little more than further planned failure and could easily be re-written as:

• we plan that 46 years after privatisation (2035), 25% of storm overflows discharging in or close to high priority sites will still be causing unacceptable local adverse ecological impact
• we plan to allow over half a century since privatisation (2040) for all overflows discharging in or close to high priority sites to stop causing unacceptable local adverse ecological

• we plan to allow water companies until over 60 years since privatisation to stop storm discharges causing unacceptable local adverse ecological at all other sites

Following this consultation, any decision to confirm such targets would be unlawful as against a number of existing legal obligations.

7) Do you agree or disagree with the level of ambition of the public health in designated bathing waters target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

S&TC has no remit with respect to bathing waters, but please refer to the comments made elsewhere in this response.

8) Do you agree or disagree with the level of ambition of the rainfall target? [strongly agree, agree, neutral, disagree, strongly disagree, don't know/no answer]

The Government's target - that storm overflows must not discharge above an average of 10 rainfall events per year by 2050 - is in fact a plan to allow water companies to continue unlawful discharges.

As long ago as October 2012, the European Court of Justice ruled that, in a case concerning the lack of capacity in sewerage systems and sewage treatment in the UK leading to regular discharges of untreated sewage and non-compliance with the Urban Waste Water Treatment Directive, that "the United Kingdom's line of argument seeking acceptance that discharges might take place even outside exceptional situations cannot…be upheld".

Professor Chris Whitty, the Chief Medical Officer for England, is quoted in the press release to this consultation as saying that the discharge of raw sewage from storm overflows into waters used by the public "should be an exceptionally rare event".

In fact, Professor Whitty re-states the existing law.

As to the first two sub-targets, it is a shocking indictment that the Government appears to be happy to accept that poorly screened or unscreened discharges should be allowed to persist until 2050.

Almost all permit conditions applied to sewage discharges – even those applied belatedly, under threat of judicial review, to those deemed consents left over for proper determination some 10 year after privatisation[3] – applied basic screening conditions.

It is true that “storm overflows were originally designed and intended to operate in unusually heavy rainfall events”. It is also very clear that “storm overflows are currently being used significantly beyond this original purpose”.

The problem is that these conditions have been and remain largely unenforced by the Agency. What the Government now plans is a continued breach of the law and is unacceptable. What is required is - yet again - robust inspection and monitoring of discharges, and enforcement of existing permits drawn under the existing law.

9) Do you agree that this package of targets as a whole addresses the key issues associated with Storm Overflows? [strongly agree, agree, neutral, disagree, strongly disagree, don’t know/no answer]
10)[if not] Can you explain why you do not agree?

As already described, the package of targets is wholly unambitious and is, in effect, a plan to continue unlawful discharges of sewage for a further 30 years.

The crux of the matter is that the timetable for delivery appears to be is firmly linked by the consultation to the supposed cost of the improvements required.

However, there has been and remains an alarming lack of recognition of the role to be played by water companies in seeking investment not from bill-paying customers, but from financial markets and from shareholders.

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[3] See PINS References: APP/WQ/09/2704-8
Welsh PINS Reference: 515323
In the matter of the Water Resources Act 1991 and The Control of Pollution (Application, Appeals and Registers) Regulations 1996 and in the matter of Appeals made to the Planning Inspectorate under Section 91 and Regulation 8 thereof by Severn Trent Water Limited, Yorkshire Water Services Limited, Anglian Water Services Limited, Dwr Cymru Welsh Water, Thames Water Utilities Limited and United Utilities Water Plc against The Environment Agency's Final Determination of Discharge Consent applications for intermittent discharges submitted at or shortly after water industry privatisation, in replacement of temporary/ deemed consents

It is pleasing to note that Government recognises that “most water and sewerage services in England and Wales are not provided in competitive markets and water services are largely provided by licensed monopoly companies”. Government then says, because competition is limited it is necessary to control prices charged to customers.

However, it is also necessary to require such licensed monopolies to seek long-term investment from private financial markets and from their shareholders. That is both possible and fairer to bill-payers because the companies were handed, at privatisation, extremely low-risk businesses with an extremely stable customer base and income flow.

Indeed, that was one of the main selling points of privatisation, which has not been sufficiently driven forward by Ofwat and governments past and present.

As the Earl of Caithness, then Minister of State for Environment, put is for the Government in 1989[4]:

“Only privatisation can unlock the door to access to private sector funds, ending the present position where spending on water industry infrastructure competes annually with spending on hospitals and schools for a share of the public purse”.

Repeated promises were made at privatisation that the privatised water companies would be able to secure long-term investment at low-interest rates from the financial markets to put right the creaking sewerage infrastructure they inherited at privatisation over a short period of time, paying for it by way of long-term loans at low-interest rates.

If historic underinvestment in sewerage infrastructure is to be addressed that must now happen. The duties of the water companies at privatisation were well-known to the institutional investors that bought those companies from the state-owned water authorities.

[4] Hansard Water Privatisation: Policy - Volume 504: debated on Thursday 9 March 1989 https://hansard.parliament.uk/Lords/1989-03-09/debates/df8dc042-fcc7-4fea-a3bf-f4352d8a89f5/WaterPrivatisationPolicy

At that time, the right to pay away profits made, in the form of dividends to investors and shareholders, came with a responsibility to meet the legal requirements set down in the privatisation legislation, more particularly the Water Industry Act 1991, which was and remains enforceable by Ofwat and the Secretary of State.

It is noteworthy that, at page 6 of 24 in the consultation, the Government accepts that, when breaches of environmental permits occur, "all financial penalties are borne by shareholders rather than customers". So should the cost of investment in adequate sewerage infrastructure, as was the prospectus when the industry was sold off.

Government should not forget the speech of then then Environment Secretary, Michael Gove, delivered in March 2018[5] to Water UK's City Conference.

"Far too often, there is evidence that water companies - your water companies - have not been acting sufficiently in the public interest.

Some companies have been playing the system for the benefit of wealthy managers and owners, at the expense of consumers and the environment.

Particularly in the last decade, some companies have not been as transparent as they should have been. They have shielded themselves from scrutiny, hidden behind complex financial structures, avoided paying taxes, have rewarded the already well-off, kept charges higher than they needed to be and allowed leaks, pollution and other failures to persist for far too long.

And when there has been acknowledgement that change is required – following public pressure or actions by regulators – far too often there has been prevarication and procrastination, ducking and diving and dragging of feet. Change having been promised in many cases, hasn't happened, or hasn't happened quickly enough".

Mr Gove highlighted the issue of excessive dividends payments:

"In cash terms, over £18.1billion was paid out to shareholders of the nine large English regional water and sewerage companies between 2007 and 2016.

[5] https://www.gov.uk/government/speeches/a-water-industry-that-works-for-everyone

Of course, generous dividends can be justified if they've been generated by the lean and efficient running of an operation – and have been paid out after appropriate capital investment.

But the £18.1 billion paid out in dividends was actually almost all of the profit made by water companies after tax – the total profit was £18.8billion over the same period.

95% of the profit went in dividends to shareholders".

The failures of Government, the Agency and OFWAT to date cannot be undone, but, given the 'easy ride' that the water companies have had from OFWAT and Government, the timelines should be very much shorter than is being proposed, with the companies required to raise the required capital privately, and paying it off over the many decades of the expected life of the infrastructure.

Achieving the targets
Holding water companies to account
Government actions
Public support
Deliverability and costs

Although the consultation asks no specific questions in relation to the above listed sections of the consultation, dealing with each in turn:

Achieving the targets

At page 14 of 24, the consultation lists eight specific requirements on water companies to achieve the targets

1. Regulatory Compliance

It is important that regulatory compliance is not an option and water companies must meet their permit conditions. However, many permits relating to sewage treatment works and CSOs are not fit for purpose and have not been reviewed regularly.

An immediate review of all sewage permits should be conducted by the Environment Agency to bring them up to date. Specifically, the use of spot sampling and 'look up table' compliance must end and sewage permits based on a requirement for continuous monitoring of the quality and volume of discharges made as against limits designed to protect receiving waters, both locally and at water body and catchment scales.

2. Mapping of Sewer Networks

As well as the consultation itself, the press release accompanying the consultation notes that water companies will now be expected to map their sewer networks.

It is astonishing that 30 years after privatisation, water companies still have not mapped their sewer networks. Arguably, the failure to so do illustrates a negligent approach to long-term planning that has characterised the industry since privatisation. The mapping of sewers and sewerage infrastructure should be pursued by Ofwat as a matter of urgency using its licensing powers under the 1991 Act.

3. Reducing Surface Water Connections

This is not a new commitment and has been urged on the water companies over many years by Government, water companies and NGOs alike. For example, over a decade ago DEFRA's own National Policy Statement for Waste Water: A framework document for planning decisions on nationally significant waste water infrastructure, November 2010[6] dealt with this at length.

S&TC would suggest that, in future, if surface water connections are made by private landowners to the sewer network then that needs to come with a penalty and an immediate requirement to disconnect.

For existing properties, water company charging for sewerage services should be revised, such that properties that are certified as having separated rainwater from sewerage prior to discharge to water company sewerage infrastructure should pay a sewerage charge at a lower rate than those properties that cannot be so certified.

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228680/9780108509520.pdf

Collectively, those actions would create incentive for new builds, large developments and re-developments to separate the rainwater and sewerage networks.

4. A Natural Capital Approach

While a natural capital approach is generally acceptable, caution must be applied in relation to natural capital and the ecosystem services provided by the wider environment.

Specifically, the ‘de facto’ treating of sewage in-river is not an ecosystem service upon which England should ever seek to rely to any extent, because untreated or under-treated sewage is inherently polluting (NH3, oxygen demand, suspended solids, nutrients etc) and is harmful to ecosystems. Sewage discharges also contain persistent chemicals, plastics and other debris that are not amenable to assimilation by the natural environment.

5. Treating Discharges

It is unclear what is meant by “in some cases it may be a better solution to treat discharges rather than to reduce their frequency”.

It would seem obvious that treating discharges rather than allowing untreated or undertreated discharges to inland waters should be the norm.

However, it would not be acceptable for discharges to continue, perhaps with some rudimentary level of treatment, as an alternative to reaching final effluent standards achieved by way of full treatment received at a sewage treatment works. This applies whether or not the discharges are caused by groundwater infiltration or the like.

6. Long-term Collaborative Planning

It is obvious that water companies should set out both short-term and long-term planning for their drainage and wastewater infrastructure and it would be surprising to say the least if they had not already been doing this. If it is the case that planning to date has been inadequate, then the fault of that must lie with Ofwat as the economic regulator.

However, long-term planning must sit alongside short-term ‘corrective’ planning and investment in infrastructure to clear the ‘backlog’ of underinvestment that has been allowed by Government and regulators to build up at the expense of the environment.

7. Evidence-based Decision Making and Maximising Co-benefits

While reference is made to delivering wider environmental or societal value as part of stormwater overflow performance improvements, S&TC would merely note that under the statutory system set up under Water Industry Act 1991, water companies have been subject to environmental and societal obligations since privatisation[7]. S&TC would expect compliance with those to be demonstrated in any future investments.

8. Innovation

S&TC agrees that water companies should proactively investigate novel solutions to reducing harm from storm overflows and particularly support nature-based solutions.

However, such nature-based solutions must not be funded from contributions made by water companies breaching environmental legislation and offering Enforcement Undertakings to third parties to deal with those offences. That would be unacceptable and would undermine enforcement of existing environmental legislation.

Holding water companies to account

S&TC notes the consultation suggests that water companies will increasingly provide better information and enforcement will be made easier – “game changing”.

However, both Ofwat and the Environment Agency have had requisite powers since 1991 to require information from the water companies, for example by way of licence conditions in the case of Ofwat and under permits in the case of the Environment Agency and have had the ability to take enforcement action where needed.

[7] See, for example, Water Industry Act 1991- General duties – section 3 - General environmental and recreational duties, section 4 - Environmental duties with respect to sites of special interest.

On providing information to the public, the water companies as public authorities, pursuant to the Environmental Information Regulations 2004, have had a duty since that year to proactively publish environmental information they hold, which would include details of duration and quality monitoring of all their discharges (from treatment works and from CSOs).

It is not for the water companies to selectively publish what they wish to publish because as public authorities under the 2004 Regulations they have a duty to publish environmental information they hold, even embarrassing information.

Government actions

In relation to rainwater management of properties, it has been an often repeated message that surface water connections to sewers must be avoided. It falls to Building Regulations and planning control to ensure that separation of sewerage and surface water systems becomes mandatory, including for retrofit of existing properties.
S&TC proposes that planning permissions for any extension or alteration to existing properties should come with an obligation to retrofit the entire property to remove existing rainwater discharge to sewers.

The consultation suggests that water companies are given the right to discharge rainwater to watercourses. If that is to proceed, it must be made absolutely clear - and be enforceable - that that right merely relates to clean rainwater only, not surface water that carries other pollutants from built-up areas, such as oils, plastics and other detritus. Rainwater should mean just rainwater.

Public support

To increase public support to reduce the mis-use of sewers still requires a programme of education, but the sale of ‘unflushable’ wet wipes and other plastics deliberately flushed into sewerage networks, must end.

There have been many taskforces and working groups to discuss what to do about plastic debris in sewers that leads to blockages, over many years, and there is no need to further deliberation.

S&TC would support an early ban on sale to stop the problem at source, because the evidence is overwhelming that, despite well-intentioned campaigns such as “Bag It and Bin It”, the sale of such products leads inevitably to their being flushing into sewers.

S&TC notes the intention to call for evidence on options, but that can only delay the necessary ban of the use of plastic in wet wipes and any sanitary products that do not break down as rapidly as they need to ensure that sewerage infrastructure can operate properly.

Deliverability and costs

Questions:

11) Would you be willing to pay more in your monthly water bill in order for water companies to tackle sewage discharges as outlined in this consultation? [Yes/No/Don’t know/ N/A]

See above for discussion of water company investment.