



### Headlines

- The Bill will introduce a shortfall recovery mechanism to the existing Special Administration Regime (SAR) framework, which gives the Secretary of State and Welsh Ministers the power to recover HMG funding should there not be sufficient funds to pay HMG back at the end of a SAR.
- The Bill will introduce procedural rights for the Secretary of State and Ofwat during winding up petition proceedings, specifically guaranteeing rights to be notified of a petition and heard at the subsequent court hearing.

### Context

- A SAR enables a company which provides vital public services (e.g. water, energy, rail) to be put into special administration with a requirement that the public service will continue to be provided, pending rescue or transfer to new owners.
- Without a SAR, it is likely that the provision of the public service in question would cease.
- There is a high bar for the imposition of a SAR for a water company. Government would only consider applying to the courts for a SAR as a last resort. The Court would require evidence that a water company is insolvent or in serious breach of its statutory duties.
- SAR is not nationalisation. While government may fund the administration, the Court appointed Special Administrator is responsible for managing the business, property and affairs of the company as an Officer of the Court until it is sold or rescued. Government funding should then be recovered at the end of the SAR, as a cost of the administration.
- Government would seek to recoup all the funds spent on financing the SAR through the sale or rescue of the water company after the administration's conclusion. The Bill will provide new powers to do this, which would only be considered for use if it was not possible to recover taxpayer money spent in funding the administration.
- If this shortfall occurred, and Ministers decided to use this new power, the Secretary of State and Welsh Ministers must launch a consultation prior to this power being used. This will ensure that those affected (e.g. water billpayers) are able to provide their views. It will also ensure that the shortfall recovery mechanism is implemented in a way that means costs are recovered fairly.
- These legislative updates ensure an effective, efficient Water Industry SAR, and bring the legislation in line with SAR in other essential service sectors such as energy.

### What does the Bill do?

- Clauses 12 and 13 of the Water (Special Measures) Bill introduce new powers for the Secretary of State and Welsh Ministers to modify water company licences to recover any shortfall resulting from a SAR.
- Clause 14 introduces procedural rights for the Secretary of State and Ofwat during winding up petition being presented to the court (in the event of a water company's insolvency). This will guarantee the Secretary of State and Ofwat the right to be notified of a petition and heard at the subsequent court hearing.

## FAQs

### Would there be any impact on water supplies if a water company enters SAR?

- Customers can be reassured that there would be no disruption to their water supply or provision of wastewater services because of the financial position of their water company.
- The Statutory Purpose of a Special Administration order is to ensure that customers would continue to receive their water and wastewater services pending rescue of the water company or transfer to new owners.

### Is a SAR the same as renationalisation?

- SAR is not a form of renationalisation. It is a tool to ensure that vital public services continue to be provided after a company fails.
- Government would take no ownership or management of the company during a SAR. Instead, our role would be to apply to the courts to appoint an independent special administrator who would oversee the running of the company until it is either rescued or transferred to new owners.

### Why doesn't the government place all water companies into SAR?

- As set out in the 1991 Water Industry Act, there is a high bar for the imposition of a Special Administration Regime. It requires evidence that a water company is insolvent or needs to be placed in special administration on performance grounds (where water companies are in such serious breach of their principal statutory duties or an enforcement order that it is inappropriate for the company to retain its licence).
- Government is prepared for a range of scenarios across our regulated sectors. We will not hesitate to use our powers to request the court to place a company into special administration should the high bar for Special Administration be met.

### Will shareholders/creditors be compensated in a SAR?

- The purpose of a Special Administration is not to 'bail out' water company creditors or shareholders, it is to ensure the continued provision of water and wastewater services pending rescue of the water company or transfer to new owners.
- It is unlikely that in a SAR all creditors or shareholders would recoup the full value of their debt or shareholding.
- Under the current Special Administration legislation HMG does not take responsibility for, nor guarantee any shareholder or creditor debts.
- When a company is exiting from Special Administration, via either rescue (for example a debt restructure) or transfer (for example sale of the company), it would be for the Special Administrator to repay the company's creditors or pay the shareholders in accordance with the statutory order of priority.
- It is important to note that the role of a Special Administrator does not include a power to 'cancel debt'. Such a power would be a material departure from long established insolvency principles of fairness and treating creditors equally according to their rights.

## Would the shortfall recovery mechanism be used to compensate financial creditors or shareholders following a SAR?

- No. The shortfall recovery mechanism could only ever be used to recover a Government shortfall in the unlikely event of a SAR.

## What are the costs of a SAR?

- During a SAR customers will continue to pay water bills. HMG funding may be required to cover the costs of running the Special Administration and the capital requirements, for example for new investments, usually provided by creditors or investors.
- It is important to note that while there are administrative costs linked to special administration (the remuneration of the special administrator, adviser fees etc), the bulk of costs will be capital and operational expenditure needed to maintain services and meet the statutory objectives water companies are required to achieve.
- These costs are usually funded by investors and creditors and then factored into bills. During a special administration these costs may be funded by the government.
- In the event of a shortfall on recovery, these costs, which would usually be recovered through bills, would fall on the taxpayer.
- The shortfall recovery mechanism allows for these costs to be allocated fairly within the sector should the secretary of state deem it appropriate and subject to consultation with all stakeholders.