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By email to consultation respondents, including water companies, environmental stakeholders and campaign groups, the Environment Agency, Natural Resources Wales, Natural England and CCW.

14 June 2023

Dear stakeholder

Updating the storm overflows performance commitment definition for the 2024 price review (PR24) – our decision

This letter sets out our decision on the storm overflows performance commitment definition for the 2024 price review (PR24). It follows:

- our PR24 final methodology in December 2022;
- responses to our draft performance commitment definition, due by 31 January 2023;
- workshops we have held with stakeholders in March and April 2023, including water companies, environmental regulators, consumer representatives and environmental stakeholders and campaign groups; and
- our [May 2023 consultation](#) on updating the performance commitment definition.

We received 23 responses to our consultation, which we have published [on our website](#). We consider the responses and set out our assessments and decisions in section 2. We include the updated performance commitment definition in Annex 1 and [on our website](#).

Companies must now take account of the updated performance commitment when submitting their business plans in October 2023. We will set their determinations, including the target levels and financial incentives for this performance commitment, in 2024. Our price review package will come into effect from 1 April 2025. In any case, companies must act now to reduce harm from storm overflows, meet their legal and regulatory obligations and deliver performance improvements in line with their existing commitments.

1. Background

Water and wastewater companies are monopoly providers of an essential service and play a vital role in protecting and enhancing the environment. This is reflected in their statutory

obligations, including those set out in section 94 of the Water Industry Act 1991 (with respect to the provision of a sewerage system) and the Urban Waste Water Treatment (England and Wales) Regulations 1994.

There are significant concerns that the sector is not meeting its obligations or public expectations on the safe treatment and return of wastewater to the environment. The rollout of comprehensive monitoring has revealed the frequent use of storm overflows as part of the day-to-day operation of the wastewater system. This is not what was intended when storm overflows were established as a way to deal with unusually heavy rainfall. It cannot continue.

Improving the sector's impact on rivers and reducing harm from storm overflows will require sustained actions to address their root causes. But companies must act now. There is nothing in the regulatory regime that prevents companies from tackling these issues immediately, and we will not hesitate to act if we find companies have breached their obligations.

1.1 Price reviews

Every five years, we assess companies' business plans and set revenue allowances for the largest water companies through our price review process. This limits the amount of money that companies can recover from their customers, and includes sufficient funding for companies to efficiently operate their networks and to meet their statutory obligations.

In addition to meeting their obligations, we use our outcomes framework to set levels of service that we expect companies to deliver. We specify measures of performance ('performance commitments') that reflect what companies are funded to deliver for customers and the environment. If they perform below or above their targets ('performance commitment levels'), there are financial consequences ('outcome delivery incentives').

Companies that underperform against their targets incur underperformance payments, which reduce the amount of funds that companies can recover from their customers each year through bills. This should reduce the amount of money that is available for companies to distribute to their shareholders. If companies exceed their targets, they can receive 'outperformance payments' which are funded by customers for improving outcomes beyond the level that they were funded for in our price reviews.

The aim of this framework is to align the interests of companies and their investors with those of their customers and the environment, by ensuring companies are sufficiently incentivised to maintain and improve outcomes for customers and the environment – and face the financial consequences of how they perform. We set out our approach in more detail in Chapter 5 of our [December 2022 final methodology for PR24](#).

Our approach to storm overflows reflects our statutory duties and the strategic policy statements of the UK Government and Welsh Government, which we must act in accordance with.¹ Our approach also aligns with the UK Government's storm overflows discharge reduction plan and the Welsh Government's storm overflows action plan.²

1.2 Wider regulatory tools

In addition to our price reviews, we have a wide range of regulatory tools to help drive the sector to meet the challenges we face. These include the use of markets, enforcement, assurance, monitoring, licence conditions, charging rules, campaigns, and partnerships. We also operate alongside quality and environmental regulators in the sector, and co-ordinate and collaborate with our partners in the interests of customers and the environment.

We often use these tools in combination with the price review process to deliver the most effective approach. We hold companies to account by monitoring their performance. We use [enforcement action](#) to address breaches of legal obligations that we are responsible for enforcing. Where we decide to take enforcement action and impose a financial penalty on a company for breaching an obligation, this penalty is separate to any underperformance or outperformance payments.

We have an [open investigation](#) into all wastewater companies in England and Wales, opened in November 2021. It is looking into how wastewater companies are operating their sewage treatment works, including whether sewage has been discharged into the environment at times when this should not be happening. The investigation currently includes enforcement cases against six wastewater companies.

1.3 Our May 2023 consultation

Following engagement with stakeholders over March and April 2023, we published a consultation on [updating the storm overflows performance commitment for PR24](#), which closed on 23 May 2023.³ We received 23 responses, which included nine water companies, CCW, the Environment Agency, eight environmental campaign groups and three individual respondents. We have published their responses [on our website](#).

¹ See the [UK government's strategic priorities for Ofwat](#) (March 2022) and the [Welsh Government's strategic priorities and objectives statement to Ofwat](#) (December 2022).

² UK Government's [storm overflows discharge reduction plan](#) (August 2022) and the Welsh Government's [storm overflows action plan](#) (July 2022).

³ We have published slides from stakeholder workshops held on 4 and 12 April 2023 [on our website](#).

2. Performance commitments at PR24

In this section, having considered all responses that we received, we summarise those responses and set out our assessment and decisions.

2.1 Overall measure

2.1.1 Our draft proposals

Consistent with our December 2022 draft definition, in May 2023 we proposed to set the performance commitment based on a company's average spills each year – the number of spills divided by the number of storm overflows.

In line with [2018 guidance by the Environment Agency](#), we said the number of spills would be counted using the '12/24' method. This partially reflects the duration of spills, by counting each spill that lasts longer than 12 hours as more than one spill (with each additional 24-hour period counted as one additional spill). For example, a spill event that lasts 60 hours would be counted as three spills – one spill of 12 hours and two spills of 24 hours.

For the avoidance of doubt, we proposed that the performance commitment would include all spills from a company's storm overflows, including those that are within the terms of discharge permits issued by the appropriate agency.⁴ We said this should incentivise companies to reduce spills over and above any statutory obligations, including any legally binding targets required by the UK or Welsh Governments.

2.1.2 Stakeholders' responses

Eight respondents (three water companies and five other stakeholders) supported our proposed average spills measure, while eleven respondents (six water companies and five other stakeholders) disagreed, noting the following concerns:

- it may not reflect the environmental harm from storm overflows, and may not incentivise companies to reduce the volumes of discharges from storm overflows;
- it is oversimplified and does not accurately reflect performance that can be modelled or estimated; and

⁴ The 'appropriate agency' means (i) the Environment Agency in relation to England and (ii) Natural Resources Wales in relation to Wales.

- that it does not distinguish between legal and illegal spills.

Some stakeholders proposed variants or alternatives to our proposed approach:

- using volumes of spills (Windrush Against Sewage Pollution) or total spills (Detectronic);
- higher weightings for some storm overflows, such as where there is potential ecological harm and impact on recreational areas, or nearby population size (Blueprint for Water and the Marine Conservation Society);
- adjusting for weather and rainfall events, which could see companies receiving outperformance payments in drier years and underperformance payments in wetter years, with suggestions including a multi-year average (Southern Water, Thames Water and Yorkshire Water), setting a cap and collar on payments at $\pm 30\%$ from targets (United Utilities) and normalising by average annual rainfall (Yorkshire Water);
- applying an additional normalisation factor (kilometres of sewers) to reflect companies' circumstances and take account of the enhancement expenditure allowances that we make for each company (United Utilities); and
- setting company-specific targets to reflect their circumstances, such as how many of a company's storm overflows are on sewage treatment works and storm tanks (Thames Water) and the timing of investments (United Utilities).

2.1.3 Our assessment and decisions

Overall approach

We have considered stakeholders' responses and decide to **maintain our approach of using a measure based on a company's average spills each year** – the number of spills divided by the number of storm overflows.

We acknowledge that the average spills measure does not fully capture harm to the environment. But we consider it is the best option available to us for PR24. The number of spills from a storm overflow should correlate with environmental harm to some degree, in part because the 12/24 method reflects the duration of spills. This will help to address concerns from some stakeholders that the average spills measure may not sufficiently incentivise reductions in harm, including from spills with long durations. Because all spills may have an impact on the environment, we consider it appropriate to include them all in this measure – this does not stop us or other regulators from using enforcement powers where there are illegal spills from companies' storm overflows. Other performance commitments, such as for serious and total pollution incidents, should also provide additional incentives on companies to prevent harmful discharges.

When setting an incentive package, we need enough data over time to set effective performance commitment levels which reflect efficient expenditure allowances. We have this

for average spills based on the 12/24 method, which companies have reported over the last few years, with around 91% of storm overflows installed with event duration monitors by December 2022. As companies understand and better monitor the ecological impact of storm overflows, including by installing more sophisticated monitors under new legal requirements, we can consider a performance commitment based more directly on ecological impact in future price reviews.⁵

Stakeholders made the following alternative proposals:

- **Using volumes of spills.** We consider that volumes may not necessarily be more reflective of harm than average spills, for example, when large volumes of unconcentrated water discharge into a fast-flowing water body. We also lack widespread volume monitors on storm overflows to enable a volume-based performance commitment at PR24. But we have the option of using volume when specifying price control deliverables, which are likely to be targeted at specific projects funded through our expenditure allowances.⁶
- **Using total spills.** For the purposes of setting a performance commitment, we consider there is value in normalising this by a company's storm overflows to enable comparisons between companies despite their different sizes, helping customers and other stakeholders to better hold them to account for their performance.
- **Using higher weightings for certain storm overflows.** We consider introducing higher weightings for nearby population size or estimated environmental harm is likely to add undue complexity. But we expect to set price control deliverables targeted at improvement projects linked to the Water Industry National Environment Programme in England and the National Environmental Programme in Wales, which will put stronger incentives on water bodies at highest risk of environmental harm.
- **Adjusting for weather events or using a multi-year average.** While rainfall events may affect the number of spills from storm overflows, we consider attempting to estimate the impact of weather is challenging and would add undue complexity. It may also reduce incentives on companies to manage the impact of weather on customers and the environment, which we generally expect them to do under the outcomes framework. Because we intend to set symmetrical incentive rates for this performance commitment, payments linked to weather should broadly balance out over time. Companies can decide whether to take outperformance payments in some years, taking into account their circumstances and public perceptions. Because it is new, we will also set caps and collars on this performance commitment, which will help to manage risks.
- **Applying an additional normalisation factor.** We consider this would add undue complexity and is better addressed through company-specific targets.

⁵ For example, see the UK Government's [consultation on continuous water quality monitoring and event duration monitoring](#), published in April 2023.

⁶ See section 5.4.4 of [Appendix 9 \("Setting expenditure allowances"\)](#) of our PR24 final methodology, December 2022.

- **Setting company-specific targets.** In Appendix 9 of our final methodology, we said that companies can provide compelling evidence if they do not consider that they can meet a target of 20 average spills by 2025. We also expect to adjust final targets to reflect any enhancement expenditure allowances that we make in our PR24 determinations, to ensure customers do not pay twice for the same level of improvement.

2.2 Unmonitored overflows

2.2.1 Our draft proposals

We **proposed to incentivise companies to install and maintain event duration monitors on their storm overflows**, with the aim of making them feel the financial consequences for not doing so through underperformance payments. In line with their wider obligations, companies are required to monitor and record discharges from storm overflows. One way to do this is through the installation of event duration monitors. For the purposes of this performance commitment, when we refer to 'unmonitored overflows' we mean those storm overflows where an event duration monitor was not installed or not operational.

Recent data suggested that action is needed.⁷ Under the Water Industry National Environment Programme in England and the National Environment Programme in Wales companies are required to install event duration monitors on 100% of their storm overflows by December 2023. While some have achieved this, overall coverage was around 91% in December 2022, and some companies were even further away from full coverage – such as Thames Water (62%) and Anglian Water (68%).

Even when companies have event duration monitors installed, they may not work all of the time. Based on companies' annual returns, we estimated that companies' monitors worked 92% of the time over 2022. We also estimated that around 1 in 6 monitors worked less than 90% of the time over the same period. This includes companies that report full coverage, with Severn Trent Water reporting that its monitors only worked 87% of the time. More significantly, our analysis suggested that nearly 30% of that company's monitors worked less than 90% of the time and 8% of its monitors worked less than half of the time.

To address this issue, for the purpose of calculating outcome delivery incentive payments, we proposed an unmonitored overflows adjustment. We said this would require companies to assume a level of spills for any storm overflows that do not have monitors installed or are only partially monitored during the year. To provide strong incentives on companies to install and

⁷ Our analysis is based on the [annual returns from English companies](#) reported to the Environment Agency in England and data published by [Dŵr Cymru](#) and [Hafren Dyfrdwy](#) in Wales (April 2023).

maintain their monitors, we proposed that this would be well above the average measured by the company's monitored storm overflows.

As a starting point, we suggested 50 spills. Under our proposed approach, we said this assumption would scale down by the time that the monitor was working – for example, if a monitor works for only 50% of the time, the company would be required to assume 25 spills for when it was not monitored. We based this proposed adjustment on reported data for 2022 which showed that around 1 in 6 monitored storm overflows spilled more than 50 times each year (compared to a median average of 13 and mean average of 25).⁸

2.2.2 Stakeholders' responses

Most stakeholders supported our overall approach to assume 50 spills for when a storm overflow is completely unmonitored, which would scale down by the proportion of a year that a storm overflow was monitored. This included six water companies, CCW, the Environment Agency, four environmental stakeholders and two other respondents.

But some stakeholders disagreed, arguing that:

- it would create divergence with the numbers reported to environmental regulators; or
- it may encourage companies to fully monitor their storm overflows, which they say is not possible or desirable due to the disproportionate costs involved.

Some stakeholders made alternative proposals:

- five companies asked us to make an allowance of 90% for when some of their monitors do not function;
- some environmental stakeholders and one company suggested we assume more than 50 spills, with some suggesting using the 90th percentile (at an industry level, this is around 75 spills) or the worst spilling overflow plus 20% (at an industry level, this is 440 spills);
- one company suggested we use 40 spills and one group of environmental stakeholders suggested we use the company's average spills; and
- one environmental stakeholder suggested a separate performance commitment instead.

⁸ We estimate 17% of monitored storm overflows spilled more than 50 times in 2022 (23% in 2021).

2.2.3 Our assessment and decisions

We have considered stakeholders' responses and decide to **maintain our overall approach, but to strengthen the incentives on companies to install or maintain their monitors.**

Overall approach

While this approach may overstate the level of spills from a company's storm overflows, we consider this is outweighed by the benefits of providing a strong incentive on companies to consistently monitor their storm overflows in the first place. We also intend to clearly distinguish performance and payments associated with monitored and unmonitored storm overflows in our annual reporting requirements and communications to minimise any confusion among stakeholders.

In terms of the alternatives proposed by stakeholders, we do not consider they are appropriate. An allowance would provide substantially weaker incentives on companies, especially if it was set at 90%. Two companies currently report 98% operability of their monitors, while two companies reported around 87%, and this is before any incentives to maintain them are applied at PR24. This suggests that an allowance of 90% would have no incentive effects on almost all companies. Given our aims, we consider there are merits in having a continuous incentive to install and maintain monitors. Companies will make operational decisions about the extent to which they monitor their storm overflows, taking account of the clear financial consequences for not doing so, compared to potential expenditure, their regulatory obligations and other relevant priorities.

In terms of a separate performance commitment, we consider we achieve the same outcome because we will separately identify the unmonitored storm overflows adjustment in annual reporting. Importantly, this also mitigates the risk of a company earning outperformance payments due to poor quality data from failing monitors. We consider our proposed approach provides a strong incentive on companies to have operational event duration monitors on their storm overflows in the first place, reducing the risk that they financially benefit from unmonitored overflows, in a targeted and proportionate manner.

Setting the unmonitored storm overflows adjustment

We will **increase the unmonitored storm overflows adjustment from 50 spills to 100 spills.** This reflects stakeholder feedback and further analysis. Our draft proposal of 50 spills was based on around 1 in 6 storm overflows spilling more than this level in 2022. Our new adjustment is equivalent to spills greater than around 1 in 25 storm overflows.

We consider this provides a stronger incentive on companies to install and maintain their monitors and does not create disproportionate risk for them – we estimate the adjustment would increase average spills for the current best performing company by 2 spills (98%

operability) and by 13 spills for the current worst performing company (87%). And, if the incentive works as intended, with companies fully installing and maintaining their monitors, they will not bear any financial consequences.

While we could have increased the adjustment to as high as the worst spilling overflow,⁹ as suggested by some stakeholders, at this stage we consider this would be too high. This is because only 15 out of over 15,000 storm overflows spilled at this level in 2022. We consider 100 spills strikes the right balance and reflects our expectation that companies will have until 2025 to reduce their average spills to 20, or provide compelling evidence for why that is not possible in their business plans, in line with our final methodology for PR24.¹⁰ If necessary, we could increase this further if we do not observe improvements by our determinations in 2024, and this could also change in future price reviews.

As suggested by Yorkshire Water, we have simplified the calculation for the unmonitored storm overflows adjustment in the performance commitment definition (see Annex 1).

2.3 Mid-period changes

2.3.1 Our draft proposals

We **proposed that the number of storm overflows within scope can change during the period, with a provision for storm overflows that are closed.**

We noted that the number of storm overflows may change over the 2025–30 period, for example because new storm overflows are permitted by the appropriate agency (including when emergency overflows are reclassified as storm overflows), or they may be closed because they are no longer required. Companies' annual returns for 2022 also showed compared to 2021, with Thames Water reporting a net increase in storm overflows of 312 and Severn Trent Water reporting a net decrease of 192.

We considered it important to maintain flexibility within the performance commitment – with the number of storm overflows able to increase as new storm overflows are identified, and for new storm overflows to enter the performance commitment from the following 1 January. We proposed that all storm overflows and associated spills would be included in the performance commitment, regardless of whether they are permitted by the appropriate agency.

⁹ Under the 12/24 method, this is equivalent to 365 spills a year.

¹⁰ See sections 4 and 5.2 of [Appendix 9 \("Setting expenditure allowances"\)](#) of our PR24 final methodology, December 2022.

Reflecting stakeholder feedback, we noted the potential for a company to be disincentivised from closing storm overflows and proposed a provision that would enable closed storm overflows to remain in the denominator provided they met certain conditions.

2.3.2 Stakeholders' responses

Most stakeholders supported our approach to mid-period changes. This included eight water companies, CCW and seven environmental stakeholders.

We received the following comments from stakeholders:

- companies may be disincentivised to close unneeded overflows, as they would prefer to keep low spilling storm overflows open to reduce their average spills;
- our proposal to update the number of storm overflows from the following 1 January may discourage companies from reporting any newly identified storm overflows until after that date – the Environment Agency proposed that instead we backdate new storm overflows to the previous 1 January and apply the unmonitored storm overflows adjustment;
- Thames Water suggested that it takes time to establish if a storm overflow is the responsibility of the water company and asked for clarity on when a new storm overflow should be counted within the performance commitment; and
- companies may misreport changes in their storm overflow figures.

2.3.3 Our assessment and decisions

We have considered stakeholders' responses and decide to **maintain our approach to in-period changes, so that the number of storm overflows within scope can change during the period, with a provision for storm overflows that are closed.**

While the number of storm overflows should be reasonably stable over the 2025-30 period, we consider it important to maintain flexibility within the performance commitment – with the number of storm overflows able to increase as new storm overflows are identified. If storm overflows are identified mid-year, to minimise complexity they will enter the performance commitment from the following 1 January. Companies will be required to report this in their annual performance reporting.

Under the performance commitment, all storm overflows and associated spills are to be included, regardless of whether they are permitted by the appropriate agency. This is so the onus is on companies to proactively and accurately identify and report their storm overflows. Performance commitments are one part of our toolkit. If we are concerned that the data a company has reported to us for this performance commitment is inaccurate, we will consider taking action to address this, using the relevant regulatory tool, for example through our price review reconciliation process or, if appropriate, using our enforcement powers.

We note the potential unintended consequence that a company may be disincentivised to close storm overflows when they are no longer required to discharge into the environment, for example due to changes in network configuration. This is because, mathematically, they would prefer an open overflow with zero spills to a closed overflow. While we expect relatively few closures prior to 2030, we consider it is proportionate to have a provision that enables closed storm overflows to remain in the denominator provided that the company provides evidence and assurance that the appropriate agency has confirmed a permit is no longer required in relation to that storm overflow.

In response to comments or requests for clarification from stakeholders:

- **Disincentivising companies to close storm overflows.** In response to concerns raised by some stakeholders, we confirm that the approach we have set out above ensures that companies will not be disincentivised from closing storm overflows that are no longer required to be used.
- **Encouraging timely reporting of new storm overflows.** We note the concern raised by the Environment Agency that a company may delay reporting a new storm overflow that it has discovered until the following calendar year. But we are concerned that while its proposed approach may create stronger incentives to identify a new storm overflow within the same year, it creates a stronger incentive to delay reporting until the following calendar year. As such, and to keep calculations for the performance commitment relatively simple, we will not make the proposed change. Instead, we will rely on our other regulatory tools to ensure that companies accurately report their number of storm overflows. In response to Thames Water's query, we have clarified in the definition that a new storm overflow that has initially been identified by a water company or another stakeholder will be counted unless the company has investigated and confirmed that it is not a storm overflow that is connected to its system.
- **Misreporting figures.** Companies must act in accordance with their licence conditions, which includes complying with their regulatory reporting requirements. We will not hesitate to use our enforcement powers, if appropriate.

2.4 Emergency overflows

2.4.1 Our draft proposals

We **proposed to introduce new reporting requirements relating to emergency overflows** and to keep them separate from the storm overflows performance commitment.

We noted that companies have 'emergency overflows' on their networks and that types of emergencies covered by emergency overflow permits issued by the environmental regulators may include electrical power failure or mechanical breakdown.¹¹

Unlike storm overflows, the installation of event duration monitors on emergency overflows at pumping stations will not be completed until after 2025. Most emergency overflows on other parts of companies' networks are also not currently monitored by event duration monitors. We noted that limited data currently suggested emergency overflows spill less than once a year on average compared to around 20 for storm overflows.¹²

We said we did not expect emergency overflows to be routinely used but that when they are used, we expect the majority of discharges from emergency overflows to be captured by the serious or total pollution incidents performance commitments at PR24. Each discharge will increase a company's underperformance payments to its customers (or reduce its outperformance payments) and so we considered companies should be adequately incentivised to minimise discharges from emergency overflows.

While keeping emergency overflows separate from the storm overflows performance commitment, we proposed to introduce a new reporting requirement for companies' [annual performance reports](#) from 2023-24 on the number of spills from emergency overflows.

2.4.2 Stakeholders' responses

Nearly every stakeholder supported not including emergency overflows in the storm overflows performance commitment and to introduce new reporting requirements from 2023-24.

Some respondents said some emergency overflows may be acting as storm overflows and proposed we include those overflows in the storm overflows performance commitment.

The Marine Conservation Society summarised the results of a freedom of information request to the Environment Agency, which showed that event duration monitors are installed on around 10% of emergency overflows in England (686 out of 7,016). Around a third recorded spills in 2022 – with 60% of them (144 out of 233) spilling more than once a year. The Marine

¹¹ As set out in the Environment Agency's [guidance on environmental permits for storm overflows and emergency overflows](#) (September 2018) and Natural Resources Wales's '[How to comply with your environmental permit](#)' guidance (October 2014).

¹² Based on reported spills in 2022 from 460 of Southern Water's emergency overflows that have event duration monitors installed ('[Summary spill data 2022](#)').

Conservation Society proposed that we require all emergency overflows are monitored by 2026 and that we apply "punitive measures" for the frequent use of emergency overflows.

South West Water asked for early sight of our proposed reporting requirements for 2023-24.

2.4.3 Our assessment and decisions

We have considered stakeholders' responses and decide to **maintain our approach emergency overflows, with new reporting requirements** from this year, and to keep them separate from the storm overflows performance commitment.

As acknowledged by respondents, there are currently too few event duration monitors on emergency overflows across England and Wales to set a robust performance commitment at PR24. However, we note the concerns about the frequency of their use, reinforced by data provided by the Marine Conservation Society. We would expect discharges from emergency overflows to count towards the serious and total pollution incidents performance commitments, which have financial consequences for companies.

We will assess plans to install event duration monitors on emergency overflows as part of the determinations process for PR24, with reference to the projects associated with the Water Industry National Environment Programme in England and the National Environment Programme in Wales.

We will introduce a new reporting requirement for companies' [annual performance reports](#) from 2023-24 on the number of spills from emergency overflows. This will help us and stakeholders to assess how companies are performing as they install monitors on emergency overflows after 2025 and inform whether a change is required. If necessary, we will consider using all of the tools available to us, both within and outside of the price review.

Where emergency overflows are acting as storm overflows, we expect companies to comply with their legal and regulatory obligations, including the regulatory reporting requirements associated with the storm overflows performance commitment. We will not hesitate to use our enforcement powers, if appropriate.

In terms of early sight of our reporting requirements, we intend to introduce the following requirements for 2023-24. We will incorporate this into the next consultation on the Regulatory Accounting Guidelines (RAGs).

Table 1 – Proposed emergency overflows reporting requirements

	Proposed line title	Further detail on proposed line definition
X.1	Number of emergency overflows – all	We intend this to be an expanded version of the current RAG4 definition of 7C.9, which is the number of emergency overflows at sewage pumping stations, to include all of a company's emergency overflows. To be consistent with storm overflows reporting, we expect this to be as at 1 January of the reporting year. For example, for the 2023–24 reporting year, this would be 1 January 2023.
X.2	Number of emergency overflows with event duration monitors installed	The number of emergency overflows (as defined in X.1) that have an event duration monitor installed as at 1 January of the reporting year.
X.3	Proportion of the time that event duration monitors on emergency overflows were operational	A simple average of the percentage operability for each emergency overflow. We intend this to be consistent with how operability is reported for event duration monitors on storm overflows.
X.4	Number of spills from emergency overflows	The number of spills using the 12/24 method as measured by the event duration monitors on a company's emergency overflows, as defined in line X.1, for the reporting year.

2.5 Further comments

We address further comments raised by stakeholders that have not been addressed in earlier sections:

Summary of issue	Our response
Southern Water and United Utilities proposed that treated spills from storm overflows should not be included in this performance commitment.	At this stage we consider there is insufficient evidence to exclude treated spills from the performance commitment, but we may revisit this in our draft determinations. Our considerations will include how the UK Government and Welsh Government decide to handle treated spills in their respective storm overflows plans. If we do exclude treated spills from this performance commitment, we will consider the role of other performance commitments, such as the discharge permit compliance performance commitment, to ensure companies are appropriately held to account.
Wales Environment Link asked how we can ensure Dŵr Cymru is sufficiently incentivised if it has no shareholders.	We consider it appropriate to apply financial incentives to Dŵr Cymru because even though its ultimate shareholder is a not-for-profit company (Glas Cymru), it has similar characteristics of other water companies. This includes incentives to recover enough revenue to service debt repayments and incentivise managers through remuneration packages.
Wessex Water said that our performance commitment measures an output rather than an outcome.	We consider reducing the scale and impact of spills from storm overflows is an outcome that is of sufficient importance to customers and stakeholders to incentivise through the price control framework.

The Marine Conservation Society said we should ensure that companies cannot recover financial penalties from their customers.	We confirm that companies cannot recover underperformance payments from their customers. We ensure this by reducing the amount of revenue that companies can recover from their customers.
Blueprint for Water asked what assurance processes we will use to ensure that companies are not rewarded for meeting their legislative requirements.	We will set targets that reflect our expenditure allowances, including enhancement expenditure, to ensure that customers do not pay twice for the same level of improvement. We have also set out assurance requirements in the performance commitment definition. Companies must report accurately against the definition, and we will not hesitate to use our enforcement powers, if appropriate.
Severn Trent Water proposed that we do not cap outperformance payments, given stakeholder support for improvements.	As we set out in our final methodology, we will set a cap and collar on new performance commitments.
The Environment Agency proposed requiring companies to retain data for 10 years, and a requirement to "ensure broken monitors are fully operational as soon as reasonably practicable".	We agree and have amended the performance commitment definition.

3. Next steps

We have now published all common performance commitment definitions, including the river water quality (phosphorus) performance commitment following a report by Jacobs and stakeholder engagement. Companies must take account of these definitions when preparing their business plans for submission by 2 October 2023.

We will produce draft determinations in mid-2024, with our final determinations in December 2024. Our price review package will come into effect from 1 April 2025. Until then, companies must meet their legal obligations and we expect them to deliver performance improvements in line with their existing commitments, including the 2019 price review (PR19) determinations and broader commitments.¹³

Yours sincerely

Jeevan Jones
Principal Economist, Ofwat

¹³ Including commitments made alongside the UK Government's [storm overflows discharge reduction plan](#) (August 2022) and improvements associated with the [accelerated infrastructure delivery project](#) (April 2023).

A1 Updated definition for the storm overflows performance commitment

Note: this draft definition is shown relative to the version we published in May 2023 with amendments in red and reflects stakeholder feedback.

Purpose: This performance commitment is designed to incentivise a progressive reduction in the adverse impacts of discharges from the company's storm overflows.

Benefits: Storm overflows must only be used in exceptional circumstances. This performance commitment encourages the company to operate and maintain its network and equipment in such a way as to reduce the adverse impacts of storm overflows on public health and the environment.

Version control

Version	Date of issue	Performance commitment changes
0.1	22 December 2022	Published at final methodology
0.2	9 May 2023	Revised version for consultation
1.0	14 June 2023	Published following consultation

A1.1 Detailed definition of performance measure

The average number of spills per storm overflow will be calculated to two decimal places as follows:

$$\frac{\text{Number of monitored spills}}{\text{Number of storm overflows}} + \text{Unmonitored storm overflows adjustment}$$

For the purpose of this performance commitment the 'Number of monitored spills' is the number of spills monitored by event duration monitors over the reporting period from all of the company's storm overflows as at 1 January of the reporting period. The 'unmonitored storm overflows adjustment' is set out in section A1.2.

A1.2 Additional detail on measurement units

Counting the number of spills

Spills shall be counted using the 12/24 counting method, as follows:

- Start counting when the first discharge occurs.
- Any discharge (or discharges) in the first 12-hour block are counted as one spill.
- Any discharge (or discharges) in the next and subsequent 24-hour blocks are each counted as one additional spill per block.
- Continue counting until there is a 24-hour block with no discharge.

For the next discharge after the 24-hour block with no discharge, begin again with the 12-hour and 24-hour block spill counting sequence. Monitoring frequency should be no longer than 2-minute intervals for high amenity waters and 15-minute intervals for medium and low amenity waters.¹⁴

Counting the number of storm overflows

For the purposes of this performance commitment, 'storm overflow' means any structure or apparatus: (a) which is comprised in the company's sewerage system, and (b) which, when the capacity of other parts of the system downstream or of storage tanks at sewage disposal works is exceeded, relieves them by discharging their excess contents into inland waters, underground strata or the sea.

Every storm overflow as at 1 January of the reported year is to be included, regardless of whether it is permitted by the appropriate agency (the Environment Agency in England and Natural Resources Wales in Wales). This includes combined sewer overflows (on gravity sewers, pumping stations or sewage treatment works) and settled storm overflows. **A new storm overflow that has initially been identified by the company or another stakeholder will be counted unless the company has investigated and confirmed that it is not a storm overflow that is connected to its system.**

The number of storm overflows may change between reporting years for the following reasons:

¹⁴ The 12/24 counting method corresponds with the Environment Agency's approach to counting spills set out in 'Water companies: environmental permits for storm overflows and emergency overflows' of September 2018. Regarding the counting method and spill monitoring frequency, we expect to take the approach set out in the Environment Agency's guidance which is in effect at the date of our PR24 final determinations, subject to the outcome of the PR24 determinations process.

- **New storm overflows.** Companies must report new storm overflows as they are identified or permitted by the appropriate agency. For the purposes of this performance commitment, new storm overflows and their associated spills must be included from 1 January after the date that they are identified or permitted and reported accordingly.
- **Closed storm overflows.** By default, storm overflows that are closed are to be removed from the denominator of this performance commitment in the following reporting year. This is because the denominator is based on the number of storm overflows as at 1 January of the reporting year. However, a storm overflow which is the subject of a permit may remain in the denominator for the remainder of the 2025-30 period provided that the company provides evidence and assurance that the appropriate agency has confirmed a permit is no longer required in relation to that storm overflow.

Unmonitored storm overflows adjustment

In line with their wider obligations, companies are required to monitor and record discharges from storm overflows. One way to do this is through the installation of event duration monitors. For the purposes of this performance commitment, when we refer to 'unmonitored overflows' we mean those storm overflows where an event duration monitor was not installed or not operational. A monitor is considered 'operational' if it was functioning and could reliably record discharges if one occurred.

If a storm overflow is fully or partially unmonitored by an event duration monitor during the reporting year, the company is required to assume a level of spills for the period of time that it was unmonitored. In doing so, the company must assume ~~50~~ 100 spills if a storm overflow is not monitored for the whole of the reporting year. This assumption scales by the period of time that it was monitored by an event duration monitor.

The **unmonitored storm overflows adjustment** (USOA) is calculated as:

$$USOA = \frac{(1 - A) * B * C}{C}$$

$$USOA = (1 - A) * B$$

Where:

- **A: Uptime.** Percentage of the reporting period that a company's event duration monitors were operational (for all storm overflows as at 1 January of the reporting period). This is a simple average of the percentage of the reporting period that the monitor is reported as operational. For the purposes of this calculation, the reporting period is 1 January to 31 December, regardless of when an event duration monitor was installed. Storm overflows without event duration monitors should be considered to have 0% uptime.
- **B: Fixed assumption.** ~~50~~ 100.

- ~~C: Number of storm overflows. Number of storm overflows for the reporting period in line with the definition above.~~

A1.3 Specific exclusions

None.

A1.4 Reporting and assurance

The company must keep the spill records required for the 12/24 spill counting method set out above for at least ~~6~~ 10 years from the date the company made the records. ~~The company must ensure broken monitors are fully operational as soon as reasonably practicable.~~

The company will provide external third-party assurance, on an annual basis, that the company implements appropriate processes to identify event duration monitors that do not accurately report spills. The company will also provide a reconciliation of the performance reported under the performance commitment with any publicly available information, including that reported to each appropriate agency.

As part of this process, and to provide transparency for stakeholders on the number of reported storm overflows, within its annual reporting the company must separately report the number of storm overflows that have been:

- identified or newly permitted by the appropriate agency during the reporting year but will be included in the following reporting year;
- added to the reporting year because ~~it was they were~~ identified or newly permitted in the previous reporting year ~~and are: (i) confirmed as being connected to its system, or (ii) under investigation after initially being identified by the company or another stakeholder;~~
- ~~now confirmed as not being connected to its system after it was previously reported as a storm overflow that had initially been identified by the company or another stakeholder in the previous reporting year;~~
- closed but remain subject to a permit during the reporting year; and
- closed and the appropriate agency has confirmed a permit is no longer required in relation to those storm overflows during the reporting year – with supporting evidence provided by the company to Ofwat.

The company shall ensure that its outcome delivery incentive payments only relate to real performance changes and not definitional, methodological or data changes in performance commitments.

Table 1 – Definition parameters

Parameters	
Measurement unit and decimal places	Average number of spills per storm overflow, reported to two decimal places.
Measurement timing	Calendar year
Incentive form	Revenue
Incentive type	Outperformance and underperformance payments
Timing of underperformance and outperformance payments	In-period
Price control allocation	100% wastewater network plus
Frequency of reporting	Annual, on a calendar year basis. For example, performance assessment for 2025-26 will be based on the calendar year 2025, and 2029-30 assessment will be based on the calendar year 2029.
Any other relevant information	N/A
Links to relevant external documents	N/A