

## So 'water' now for sewage discharges?

It's safe to say that as the popularity of open water swimming has surged in the UK – being described as “*Britain's new craze*” - concerns about the levels of sewage discharged into British surface water bodies have also been on the uptick. From environmentalists to fisheries, from medical professionals to swimming enthusiasts, people are clamouring for tighter regulation of the sewage companies responsible for such discharges via storm or 'Combined Sewer Overflows' (CSOs), a practice which has increased in recent years due to greater levels of rainfall and an overburdened, ageing UK sewer system. But what is the legal *status quo* and what proposals are being put forward to address concerns?

### The legal framework

Under the Water Industry Act 1991 (WIA 1991) sewage companies have a duty to provide, improve and extend public sewers and make provision for emptying them (s.94). Discharges of sewage to surface water bodies as part of the sewer system are regulated by the Environmental Permitting (England and Wales) Regulations 2016 (EP Regulations). Problems caused by discharges whether lawful or unlawful are to be addressed via this statutory framework and do not give rise to common law liability (e.g., in nuisance or negligence): *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66.

In response to concerns that this framework was not effective, the Environment Act 2021 (EA 2021) amended the WIA 1991 to impose new obligations on sewage companies, the Environment Agency (EA) and DEFRA. These include:

- A duty on sewage companies to publish drainage and sewerage management plans (s.79). While this duty is not yet in force, guidance has been published by the EA (February 2022) and the government (August 2022);
- A duty on sewage companies to secure progressive reduction in the adverse impact of discharges from CSOs (s.83). This duty is not yet in force;
- A duty on sewage companies to report in near real time each discharge event which occurs (s.81). This duty is not yet in force;
- A requirement for each sewage company and the EA to publish annual discharge reports (s.80);
- A requirement for DEFRA to prepare a CSO discharge reduction plan before 1 September 2022 (s.80). The government published its first plan in August 2022, setting various targets and timeframes for sewage companies taking into account the sensitivity of different types of impacted area.

### What next?

The impact of these amendments is hard to assess in circumstances where the key duties imposed on sewage companies are not yet in force. The waters have been muddied further by the upcoming

judicial review challenge to the government's CSO discharge reduction plan, permission for which was granted in February 2023 (*Marine Conservation Society & Ors v SoS for the Environment* (CO/4445/2022)). There are also ongoing investigations into the issue by the EA, Ofwat and the Office for Environmental Protection, as well as government consideration of more stringent civil penalties. One thing can safely be said, however: sewage companies should swim with caution!

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