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By email: Llyr.Gruffydd@Senedd.Cymru

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee
Welsh Parliament

18 October 2024

Dear Mr Gruffydd

RE: Application of the Water (Special Measures) Bill in Wales

Thank you for your letter of 4 October 2024 and your questions in relation to the UK Government's Water (Special Measures) Bill. Many of the clauses you refer to in your letter relate to new powers given to other regulators, such as Natural Resources Wales. As such, I have focused this letter mainly on Clause 1 which relate to new rule making powers provided to Ofwat on remuneration and governance.

We are intending to launch a consultation later this month that sets out our initial thinking on how we might design the three rules that are currently required in the Bill, with the intention to apply them to both English and Welsh water companies, subject to the completion of the Senedd's legislative consent process. These three rules are:

- A rule to prohibit the payment of performance related executive pay (PRP) where company performance fails to meet specified standards;
- A rule to require companies to only appoint, and have in place, individuals in senior roles who meet certain standards of 'fitness and propriety'; and
- A rule to ensure consumers are represented in company decision making.

In reference to your question on how these provisions will help deliver the Welsh Government's overall aim to reduce water pollution, the Bill requires that the PRP rule must include standards, among others, on environment and criminal liability. This would place a greater importance on pollution and criminal offences in remuneration decisions than we see from companies' remuneration committees currently. Our consultation will be considering how these standards could look in addition to the other standards required in the Bill; "consumer matters" and "financial resilience of undertakers".

More broadly, we believe the rules could have potential to prompt a step change in companies' culture and leadership which can help rebuild customers' trust where it has been affected by poor performance like pollution incidents. The consultation proposes thinking on

how companies should involve consumers more in decisions that affect them as well as ensure those in senior roles are properly evaluated to ensure they have the right qualities and competences to do their job. After the consultation has closed, we will be continuing policy development before proposing a final design of each rule. These will be subject to further statutory consultation before we implement them.

Another clause in the Bill that relates to Ofwat's responsibilities is Clause 3 ("emergency overflows") which (provided general authorisation is given by the Welsh Ministers) will give Ofwat a duty to enforce a requirement on water companies to publish information on discharges from all emergency overflows in near real time. This will be a new requirement for Welsh companies, but we agree with the UK Government's policy statement on the Bill that this measure should improve transparency around pollution incidents and better hold water companies to account. We note that in England there is a similar near real time reporting duty for storm overflow discharges, arising from section 81 of the Environment Act 2021, but that this does not extend to companies based wholly or mainly in Wales.

We agree that the new legal requirements that will be enabled by the above clauses relate to areas where the Welsh Government has set out strategic priorities for Ofwat¹, notably around challenging companies to improve environmental performance and encouraging companies to develop plans that take account of customer and stakeholder expectations around harm and impact. We also agree with the observation in the Legislative Consent Memorandum for the Water (Special Measures) Bill that a coordinated approach across Wales and England is essential to ensure regulatory consistency.

The other relevant clause to Ofwat is Clause 11 ("Modification by Welsh Ministers of water company's appointment conditions etc to recover losses"). This clause enables Welsh Ministers to modify Welsh water company licences to recover a shortfall in government costs at the end of a special administration regime (SAR) as well as requiring that the Welsh Government and Ofwat are notified of any winding-up petition presented to the court and give both parties guaranteed representation rights at the subsequent court hearings. We understand this clause was the result of a review the UK Government did of the current SAR legislation which identified changes "necessary to modernise the regime and bring it in line with other Special Administration regimes in other sectors, for example, energy".

In relation to your question on applying Clause 2 ("Pollution incident reduction plans") to Wales, as this duty would be enforced by the environment regulator, we would advise this question would be best answered by NRW.

¹ See [Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991 \(gov.wales\)](#)

I hope this letter has been useful and that you and the committee. I will keep you informed of when our policy consultation has been launched and would be very happy to continue to update the committee on this work in the months ahead.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Black', is enclosed in a thin black rectangular border.

David Black
Chief Executive