

Our Ref: CX24-175

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Senedd Cymru

By email only: SeneddClimate@senedd.wales

23 October 2024

Dear Llyr

Application of the Water (Special Measures) Bill in Wales

Thank you for your letter of 4 October, addressed to Clare Pillman.

As you know, NRW attended the CCEI Committee meeting on 3 October to give evidence on topical issues, including water quality and water industry compliance. Your subsequent letter refers to the Legislative Consent Memorandum (LCM) for the Water (Special Measures) Bill, laid by Welsh Government on 18 September.

To assist the Committee in its consideration of the LCM, you have sought our views on three points, to which we respond as follows:

Whether and how the provisions will help deliver Welsh Government's overall aim to reduce water pollution

As we outlined to the Committee, we remain concerned about water company performance and behaviours. We highlight in particular the performance of Dŵr Cymru Welsh Water (DCWW), which continues to be a 2* performing company under our Environmental Performance Assessment (EPA) metrics ([Natural Resources Wales / Annual performance report for Dŵr Cymru Welsh Water](#)). We have also reported on their storm overflow spill data ([Storm overflow spill data report – 2023](#)). DCWW is also a “Lagging behind” company under Ofwat’s assessment and Ofwat has extended its enforcement investigation into both Hafren Dyfrdwy and DCWW.

We therefore welcome that the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs has indicated his agreement to extend the provisions of the new

Bill to Wales and to strengthen NRW's regulatory powers to address water pollution caused by sewage discharges and ageing infrastructure. This will support our ongoing efforts to drive much-needed improvements in water company performance in Wales.

We welcome the intention of the proposed measures to ensure there is clarity and accountability for customers, regulators and government on how water companies in Wales are performing and responding to water pollution issues. The Bill aims to ensure the culture and practices within water companies are focused on tackling and reducing pollution, and where this isn't apparent, the measures will highlight the issue to stakeholders.

The Bill also increases and speeds up regulators' ability to respond and penalise water companies where it is evident that the behaviours and attitude to tackling pollution are found wanting. The potential for efficiency and adding to existing powers for regulators is a benefit, but we also recognise the detail and efforts required to ensure the secondary regulations meet the expectations set out in the Bill. We are confident that the Bill opens up new avenues and approaches that will see water pollution tackled in the coming years.

The Bill's provisions in relation to Wales (clause 1, clauses 3 to 9, and clauses 11 to 13)

Clause 1 – Rules about remuneration and governance

NRW strongly supports the proposed legal change. Irrespective of the DCWW not-for-profit operating model, we would support a new power for Ofwat to introduce a Code of Conduct for water companies, to ensure companies act in the interests of customers and the environment. Companies will be required to put in place arrangements for involving consumers in decisions that have a material effect on consumer interests.

We would like to see similar arrangements for the involvement of environmental interest representation on decisions that have a material effect on the environment (which many of the companies' decisions do). It feels right that, as proposed, the environmental standards are to be included in rules made for the purposes of imposing the pay prohibition. It would be sensible therefore, to include NRW as a relevant person so that we are consulted on those rules.

Clause 3 – Emergency overflows

We welcome the intention to improve transparency and facilitate better data-gathering regarding discharges and pollution incidents, and that water companies will be required to publish information from monitors in near real-time, to enable the public and regulators to better hold water companies to account. We welcome this change, particularly if brought in as intended alongside the ability to recover the costs of enforcement activity. Furthermore, it will benefit companies themselves in having better data so they can act to prevent harm and mitigate any pollution that occurs.

In Wales, Event Duration Monitors (EDM) are expected to be installed at all storm and emergency overflows by 2030. This is included in NRW's National Environment Programme (NEP), which requires installation of MCERT-accredited monitors on all emergency overflows by 2030 (during AMP 8), subject to Ofwat's final determination in December this year. This means 789 sites are in the NEP for 2030 delivery. Once installed, companies will be able to distinguish between normal operation and emergency overflow operation.

We believe this focus on emergency overflows may leave a legislative gap in Wales for the monitoring and reporting of live spill information from storm overflows. This reporting is, however, already being done in practice on a voluntary basis.

Clause 4 – Impeding investigations: sentencing and liability

We welcome the provisions in the Bill that would strengthen the sentencing power of the courts to include imprisonment in cases where NRW and Drinking Water Inspectorate (DWI) investigations have been obstructed by individuals, and new provisions to hold directors and officers equally to account in these circumstances. We would need to work closely with DWI and Ofwat on providing evidence where companies had obstructed investigations, especially as Ofwat's current enforcement activity overlaps and has strong parallels with our regulatory work.

Clause 5 – Civil penalties: modification of standard of proof

We welcome the provisions in the Bill that will allow regulations to be made for NRW to impose fixed and variable monetary penalties using the civil standard of proof ("on the balance of probabilities") for specific water industry offences. Lowering the standard of proof for civil sanctions will enable us to issue more rapid penalties for minor to moderate offences. The use of such sanctions will therefore be more cost effective.

As we note below, this would rely upon additional changes needed to introduce civil sanctions for Environmental Permitting Regulations (EPR) in Wales.

Clause 6 – Automatic penalties for certain offences

We would very much like to have a penalty regime applicable to the water sector, to enable NRW to issue automatic penalties for a defined list of offences. The provisions in the Bill will address this gap in NRW's enforcement capabilities by enabling fixed monetary penalties to be imposed in the form of automatic penalties for specific water industry offences. For certain categories of offences, this will allow us to impose penalties more quickly, without having to direct significant resources to lengthy investigations. It will fall to the government to make regulations to specify the list of water industry offences and the monetary value of the penalties.

NRW strongly welcomes the ability to do this, but we would highlight that some additional work on civil sanctions will be needed in Wales, in parallel, to deliver the outcomes. We do

not currently have the power to issue civil sanctions for water company offences, beyond those set out in the Regulatory Enforcement & Sanctions Act for salmon and freshwater fisheries and water resources offences.

The Committee will be aware that the Environment Agency has had civil sanctions for EPR since 2016. The recent CCEI Committee Report on the performance of DCWW recommended that Welsh Government consider extending NRW's enforcement powers to enable us to accept environmental undertakings for permit breaches under the Environmental Permitting Regulations (England and Wales) 2016. The then Minister accepted in principle and we have since provided input to Welsh Government's considerations on civil sanctions.

To be most effective, the package of changes would need to be brought in alongside the lowering of the standard of proof and ability to recover costs.

Clause 7 – Abstraction and impounding: power to impose general conditions

This will enable us to use automatic penalties for breaches of such conditions and general rules in water industry abstraction and impoundment licences.

Clause 8 – Charges in respect of NRW functions

We welcome that the Bill will amend existing charging powers and specifically expand the power available to NRW, enabling us to recover the cost of enforcement activities from water companies. This could provide us with an additional income stream and ensure our enforcement activities are fully funded, reducing reliance upon Grant in Aid funding, which itself is coming under increasing pressure.

The Bill defines “water industry enforcement functions” as functions performed for the purpose of assessing or securing compliance by water companies, or responding to failures on their part to comply, in relation to the pollution incident reduction plans; water abstraction and impounding; drought orders and drought permits; or regulation of certain facilities and activities under EPR. We welcome this broad definition.

The benefits and disbenefits of clause 2 applying in relation to Wales

Currently, clause 2, which would put pollution incident reduction plans (PIRPs) on a statutory footing, does not apply in relation to Wales. However, we welcome the intention, announced by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs at the CCEIC meeting, to seek an amendment to the Bill to put PIRPs on a statutory footing for companies wholly or mainly in Wales, alongside other measures to improve water company performance.

For many years we have asked companies to produce and present their plans for improving performance with us, so we lack confidence that making PIRPs statutory would alone lead to improved performance. On balance, however, we believe that making them

statutory as an interim step, and alongside other measures in the Bill, would be beneficial and there is certainly value in learning from best practice and enhancing visibility over plans and action to reduce pollution.

This would require the sewerage undertaker to have regard to guidance produced by NRW in producing their plans, after first consulting with Welsh Ministers. Companies that fail to comply with this duty may be prosecuted and liable to a fine. If introduced in Wales, NRW would be responsible for enforcing this duty and could issue civil sanctions (subject to us having powers to do so).

We understand that the production and publication of PIRPs by water companies will not prejudice any enforcement action that may occur as a result of any incidents described within the plans.

For your further information, the timeline for developing the Water (Special Measures) Bill has been very tight, and NRW has supported Welsh Government officials to ensure Wales' position is reflected.

We are mindful of the work yet to be done to realise the benefits of the provisions for Wales. It is important to consider the choreography and timing of the introduction of clauses, through secondary legislation as appropriate, so that NRW has the ability to undertake the new duties before the law comes into force. This will include the training of staff and the introduction of appropriate evidence-based charging and any necessary new IT systems.

We do not yet know the proposed timescales for implementation in Wales. We understand that the UK Government aims to have the measures in place in England in time for the next AMP (from April 2025), to signal the start of a new and improved regulatory landscape for the water industry. This will present a challenge for NRW, particularly in light of the additional steps required in Wales to ensure we have the powers and duties referred to in the Bill.

We are mindful too of our financial position and the proposals within our Case for Change, and hence some concern over our ability to undertake the necessary work at the required pace. However, we will endeavour to support Welsh Government in implementing the Bill given the benefits that the proposals in the round will bring for tackling water company derived water pollution in Wales.

Finally, we note that the UK Government has also announced an intention to undertake a more fundamental review of the water sector regulatory system. Given the range of pressures on the water environment, including and beyond the water industry, we would encourage a broader review, taking a systems approach and reflecting on a wider range of water legislation. We stand ready to support such an approach, should Wales wish to be part of the review and contribute to a second Water Bill. And we will of course provide advice and evidence to Welsh Government to ensure that any proposals protect and benefit Wales' natural resources.

Best wishes,



Sarah Jennings

Executive Director for Customer, Communications & Commercial

pp. Clare Pillman

Chief Executive, Natural Resources Wales

Croesewir gohebiaeth yn Gymraeg a byddwn yn ymateb yn Gymraeg, heb i hynny arwain at oedi.
Correspondence in Welsh is welcomed, and we will respond in Welsh without it leading to a delay.