

Llyr Gruffydd MS
Chair, Climate Change, Environment & Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

By email: seneddclimate@senedd.wales

15th October 2024

Dear Llyr,

Thank you for your letter (4 October 2024), asking for Dŵr Cymru Welsh Water's views on the Water (Special Measures) Bill to aid the Climate Change, Environment and Infrastructure Committee's consideration of the Legislative Consent Memorandum for the Bill.

We welcome the continued engagement with the Committee and are keen to ensure that any legislation, emanating from either Westminster or the Senedd, is drafted to deliver the best possible outcomes for our customers, the environment, and for Wales.

We understand the Bill's intention is to drive performance improvement and address accountability across the water industry. We are working hard with partners across Wales to improve water quality every day. We know there is more that can be done to tackle pollution incidents and that we must work harder to better explain to consumers what we are doing on their behalf across Wales to deliver improvements.

As you know, some elements of the regulatory system are devolved, and we also have an ownership model which is unique across the industry. It is important, therefore, that the Bill is reviewed within that context to ensure that the objectives of the legislation and the details of the new regulations work in Wales in the way in which they are intended.

Any wider review of the water sector and regulations affecting the wider water cycle will need to be reflective of the distinct situation in Wales, and we look forward to discussing these with you in more detail.

The following provides an outline of suggested considerations.

Clause 1: Remuneration and Governance

Since 2001, Welsh Water has operated on a "not for profit" basis. Without shareholders, our circa 60 Members play an important role in our corporate governance processes. Whilst the Bill provides additional responsibilities for the Authority (Ofwat) to issue rules in relation to governance, it will be important to ensure that those rules are not drawn up solely to reflect other ownership models, which might then cut across or not take into account, the role of Glas Cymru members in our governance model.

Our membership is drawn from consumers, experts and interested parties from across Wales with an open recruitment policy overseen by an Independent Members Selection Panel.

Members do not have any financial interest in the business and, whilst they are representative of the people we serve, they do not represent outside interests.

We're not-for-profit. Every single penny we make goes back into looking after your water and environment. You can contact us in Welsh or English.

Rydym yn gwmni nid-er-elw. Mae pob ceiniog a wnawn yn mynd i ofalu am eich dŵr a'ch amgylchedd. Cysylltwch a ni yn Gymraeg neu'n Saesneg.

Dŵr Cymru Cyf. (No./Rhif 2366777)
A limited Company registered in Wales:
Cwmni cyfyngedig wedi'i gofrestru yng Nghymru:

Linea, Fortran Road, St Mellons, Cardiff, CF3 0LT

At the Annual General Meeting each year, Members elect the Directors of the Board. Furthermore, Members vote on the remuneration policy at least every three years with the next review due in 2025. As our Members play a key role in deciding the remuneration of senior directors we would be keen to ensure that this important role on behalf of Welsh consumers can continue within any new framework.

Whilst Clause 1 makes provision for Ofwat (referred to as “the Authority”) to consult with Welsh Government (amongst others) on proposed rules, we believe the Clause should make explicit reference to allowing Ofwat to make specific rules for companies based wholly or mainly in Wales. This would ensure that any new rules are aligned with structures that may already exist in Wales but not in England.

Clause 2: Pollution Reduction Plans

Water companies in England have been required to prepare Pollution Reduction Plans since 2020. Whilst this Clause does not currently apply to companies based wholly or mainly in Wales, we, of course, have no objection to the principle of such an annual report. Should the clause be extended to Wales, we would expect Welsh Ministers and Natural Resources Wales to play a role in determining the requirements of the reports so that they align with Welsh Government policy and Welsh environmental guidance.

Clause 3: Emergency Overflows

All our Combined Storm Overflows currently have Event Duration Monitors (EDM) installed, and - subject to approval of our AMP8 Business Plan by Ofwat in December - all Emergency Overflows in Wales will have EDM monitors installed by 2030 with near-real time data being added to our [online live data map](#) as soon as possible after they have been installed.

Clause 4: Impeding Investigations

We have no further comment apart from seeking further clarification on the definition of “relevant officer”.

Clause 5: Civil Penalties: Modification of Standard of Proof and Clause 6: Automatic Penalties for Certain Offences

Both these clauses intend to allow the swift prosecution of companies for certain offences. There are a few aspects of these clauses that warrant further consideration.

Firstly, whilst we agree with the “polluter pays” principle, we also believe that companies should be given a fair hearing for any potential offence that has occurred especially where evidence may be subjective or contradictory to other data sources. Therefore, if the evidential bar is lowered there must still be an opportunity for companies to appeal the decisions where appropriate.

Secondly, it is universally acknowledged that significant investment is required in water infrastructure to improve services. With this in mind, we believe that specific provisions could be made in the Bill and associated regulations for greater use of Environmental Enforcement Undertakings that allow environmental regulators to accept funding of specific environmental improvement projects in the locality of the original offence, in lieu of prosecution and court fines.

Alternatively, ministers could consider ring-fencing the fines levied for reinvestment into directly funded environmental improvements.

It might also be important to clarify whether any fines levied in Wales are returned to the Welsh Revenue Authority to ensure that any environmental gains are delivered in Wales and according to Welsh environmental guidelines and policies.

Clause 8: Charges in respect of NRW and EA functions and Clause 9: Charges in respect of DWI Functions and Fees

We have no significant objection to the clauses other than to reiterate our general concern about the need for investment and that recouping additional fees without any cap on the maximum amount would naturally put further pressure on our plans.

Clauses 10,11 and 12: Recovery of losses and Winding-up petitions

We have no further comment on the remaining clauses.

We agree with the Deputy First Minister and the Secretary of State for Environment, Food and Rural Affairs, that greater collaboration is required from all stakeholders impacting the water environment. We also want to see the best possible solutions and frameworks put in place to benefit Wales, our customers and communities.

We would encourage any consideration of further changes or reviews to be considered within a Welsh context to ensure they are clearly aligned with policy, organisational and regulatory structures that exist within Wales and may differ from those in England.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Perry', written in a cursive style.

Peter Perry
Chief Executive