

Sir Jon Cunliffe
Chair of Independent Commission - Water Sector Regulatory
System
2 Marsham Street
London SW1P 4DF

10 April 2025

Dear Sir Jon

Independent Water Commission – Call for Evidence

Thank you for your letter of 5 March 2025 seeking views in relation to the water sector in Wales and England.

The Legislation, Justice and Constitution Committee is the responsible committee, as set out in the Senedd's Standing Orders, for constitutional and legislative affairs. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs. As part of that role, the Committee reports on all primary and secondary legislation introduced to the Senedd. It also considers and reports on all legislative consent memoranda laid by the Welsh Government that make recommendations about whether the Senedd should grant its consent for Bills introduced to the UK Parliament that propose to legislate in a devolved area.

Following a Welsh Government written statement on 24 October last year about the launch of the Commission and its review, the Committee wrote on 13 November to Huw Irranca-Davies MS, the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, asking how the Welsh Government intends to approach this work, and how it will legislate to implement any recommendations that arise. In its response on 25 November, the Welsh Government said that if the recommendations of the Independent Commission necessitated legislative change, the Welsh Government would "carefully evaluate the most appropriate legislative pathway". It also said that, "Whether through a Senedd Bill or a UK Bill, we will prioritise solutions that reflect Wales' needs while maintaining our commitment to collaboration."

As you will note, our letter of 13 November was prompted in part by our consideration of the legislative consent memoranda laid in respect of the UK Government's Water (Special Measures) Bill. We reported on 20 January 2025, and on 21 January 2025 the Senedd passed a legislative consent motion agreeing its consent for the Bill.

In our report, we expressed concern that, in seeking to justify the use of a UK Bill, the Welsh Government had stated in its first legislative consent memorandum that "Water is an inherently cross-border issue, and the issue of environmental impacts of water quality is one we cannot solve alone."

Our report stated:

"Moreover, it is arguable that the phrase "Water is an inherently cross border issue" implies that water policy in Wales is, and potentially always will be, interconnected with policy in England. We believe that this view is at odds with the Welsh Government's policy set out in its 2015 water strategy and our understanding that rivers are regulated according to the political boundary."

In response to our report, a supplementary legislative consent memorandum replaced the reference to "water as an inherently cross-border issue" with alternative wording.

We also wish to highlight the following from our report:

- **Conclusion 2.** The Cabinet Secretary's justification for using a UK Government Bill introduced into the UK Parliament to legislate in the devolved area of water policy is weak. We believe this to be particularly the case because the evidence provided has at times been inaccurate and contradictory, and appears at odds with the Welsh Government's 2015 water strategy.
- **Conclusion 3.** The Welsh Government's use of the Water (Special Measures) Bill to seek provision for Wales is reminiscent of the executive devolution of the First and Second Assemblies, which is both unsatisfactory and regrettable.
- **Conclusion 4.** The Water (Special Measures) Bill and the provisions that apply to Wales have been driven by the UK Government and scrutiny in the UK Parliament, and in our view, this does not represent a satisfactory or acceptable way to make primary law for Wales.
- 125. We note that the Bill is one of three joint initiatives on water that the Welsh Government has announced recently. The other two initiatives relate to a joint Independent Commission to review the water sector and its regulation and a joint consultation with the UK Government on proposed changes to Bathing Water Regulations.

In our view, any primary legislative solutions recommended as a result of this work should result in Welsh Government Bills introduced to the Senedd and the Welsh Government should plan accordingly.

Recommendation 6. Any primary legislation in the future on water policy within the legislative competence of the Senedd should be in the form of Welsh Government Bills and the Welsh Government should not 'piggy-back' on, or rely on, UK Bills to deliver policy outcomes that it considers to be desirable.

We believe that these issues identified in our report should be important drivers for the work of the Commission.

We recognise that work between governments in the UK is important and relevant to the work of the Commission. However, we believe it is vital that, in framing and undertaking its work, the Commission should take account of:

- the importance of the devolution settlement;
- the role of the Senedd as a legislature;
- the role Members of the Senedd play in understanding the needs of Wales and its communities and drawing on that expertise in their scrutiny role.

We believe it would be helpful if the Commission explains how it has taken account of the distinct position in Wales (including the boundaries of the devolution settlement) in producing its final report and recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges
Chair