

The Water Industry in Wales

Research Briefing

September 2018



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Paper Overview:

This Research Briefing provides an overview of the water industry in Wales including relevant legislation, the devolution settlement, water companies in Wales, Welsh Government policy and the roles and responsibilities of key organisations.

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Introduction

The water and sewerage industry in Wales is one of the most complicated areas within the devolution settlement, mainly because of the cross-border nature of water company boundaries. However, recent structural changes in the water industry in Wales and the West Midlands have increased the alignment of water companies' appointment areas with national boundaries.

The industry is highly regulated to ensure high drinking water quality, adequate environmental protection and fair charging structures for customers and water companies alike.

This Research Briefing provides an overview of the industry in Wales, including the devolution settlement, the relevant legislation and policy, and the roles and responsibilities of key organisations.

Legislation

EU Directives

Water policy is heavily shaped by the UK's membership of the EU. The Welsh Government is responsible for implementing a number of EU Directives relating to water policy, including the;

- **Water Framework Directive;**
- **Revised Bathing Water Directive;**
- **Nitrates Directive;**
- **Urban Waste Water Treatment Directive;**
- **Drinking Water Directive;** and the
- **Habitats Directive.**

There is general agreement on a need for UK common frameworks in certain areas which are currently governed by EU law, once the UK leaves the EU.

On 9 March the **UK Government published** its provisional assessment of where such UK common frameworks might be required in areas of EU law that intersect with devolved competence. The assessment puts 155 powers into three categories: those which may require legislative frameworks (24 areas); non-legislative frameworks (82 areas); or no further action (49 areas).

The UK Government's **frameworks analysis** suggests that the areas relating to water policy require either no further action (water quality and water resources) or may require non-legislative common frameworks (waste management and biodiversity, including the Habitats Directive).

However, natural environment and biodiversity is identified as an area that 'will require more detailed discussion and may include a mixture of reserved and devolved competence.'

It is therefore possible that the Assembly's legislative competence will be subject to restrictions relating to natural environment and biodiversity until UK common frameworks are agreed in this policy area.

UK Legislation

The **Water Industry Act 1991** (as amended by the **Water Industry Act 1999** and the **Water Act 2003**) sets out the **regulatory, competition and consumer representation frameworks** for the water sector in Wales and England.

The **Water Resources Act 1991** (as amended by the **Water Act 2003**) provides for the regulation of water resource management, abstraction and impounding; and water quality standards and pollution control, in Wales and England.

The **Water Act 2014** provides for the reform of the water industry, primarily in Wales and England. This includes enabling business and other non-household customers to switch their water and sewerage suppliers from 1 April 2017 (though this is not in force in Wales; see 'Competition' section below). Part 4 of the Act makes provision for the introduction of affordable flood insurance for households at flood risk in the UK. The proposed flood reinsurance scheme **Flood Re** was **introduced by Ministerial direction** in 2015.

Devolution

The water and sewerage industry has been one of the most complicated areas within the devolution settlement. This is primarily because water company boundaries, which are based on water pipe and sewer networks, and predate devolution, reflect river catchments rather than the administrative border between Wales and England.

The **Government of Wales Act 2006 (GoWA 2006)** devolved a number of powers relating to the water industry to the Assembly, including water supply, water resources management (including reservoirs), water quality, consumer representation, flood risk management and coastal protection.

GoWA 2006 was amended by the **Wales Act 2017** (2017 Act). Sections 48-52, Schedule 7A and Schedule 7B of the 2017 Act introduce provisions for implementing several **Silk Commission recommendations** relating to water and sewerage. These include devolving powers over sewerage to the Assembly, introducing an intergovernmental protocol for managing cross-border water issues and removing the Secretary of State's power to intervene in cases where an Assembly Bill or the actions of a public body in Wales have serious adverse impacts on water resources, supply or quality in England.

The **water protocol (PDF 124KB)** for Wales and England **was laid before the Assembly** and the UK Parliament in November 2017. The Secretary of State's intervention powers were repealed and replaced by the protocol **in April 2018**.

Legislative and executive competence

Competences over the water industry are set out in the **Water Industry Act 1991**. The legislation distinguishes between '**undertakers**' and '**licensees**.' (or 'licensed suppliers'):

- undertakers are statutory appointees responsible for providing water or sewerage services in a region (appointment area) of Wales or England; and
- licensed suppliers are companies or persons with a right to use undertakers' infrastructure to supply non-household customers.

Undertakers' appointment areas are based on river catchments and may therefore straddle the Wales/England border.

Legislative competence over water and sewerage undertakers is currently devolved on a '**wholly or mainly**' basis. The appointment and regulation of an undertaker is devolved if the undertaker's appointment area lies wholly or mainly in Wales ('Welsh undertaker'), and it is reserved if the undertaker's appointment area lies wholly or mainly in England ('English undertaker').

Regulation of licensed water suppliers operates on a similar basis. Regulation is devolved if the licensed supplier uses the system of a Welsh undertaker and reserved if it uses the system of an English undertaker.

Under the **Water Industry Act 1991**, executive competence in relation to the activities of the water and sewerage industry has largely been devolved in relation to undertakers wholly or mainly in Wales, although there are exceptions to this.

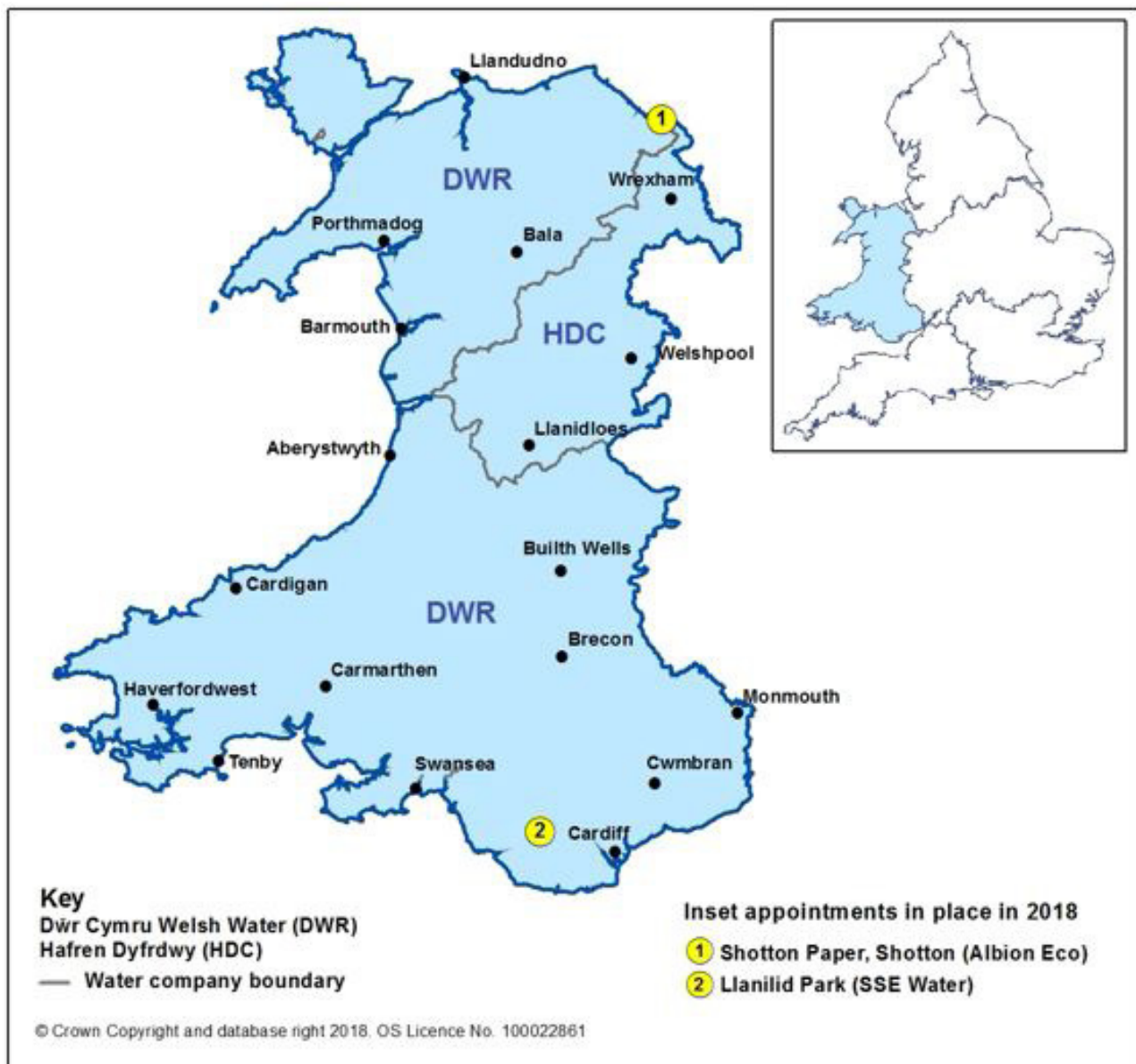
While these legislative and executive powers are largely symmetrical for Wales and England, there are several asymmetries in legislative competence. Areas of English undertakers that lie in Wales are reserved. However, areas of Welsh undertakers that lie in England are not devolved because they lie outside the Assembly's geographic competence (**section 108A(2)(b) of GoWA 2006**, as amended by 2017 Act).

In practice, this means that although Welsh Ministers can for example make certain secondary legislation in relation to the whole of Dŵr Cymru's (Welsh Water) appointment or supply area (thus affecting some customers in England) the legislative competence of the Assembly would not necessarily enable the Assembly to make primary legislation on the same matter.

The **Silk Commission recommended** aligning the boundary for legislative competence for water with the national border. This would effectively end the regulation of the industry in Wales on a 'wholly and mainly' basis. Provisions for implementing this recommendation are made in **section 48(1) of the 2017 Act**. However, as of September 2018, the relevant section has not been brought into force.

Water companies in Wales

The two main water companies serving customers in Wales are shown in the map below (note that company boundaries are indicative only). Both companies are undertakers by statutory appointment whose appointment area lies wholly or mainly in Wales.



Source: Drinking Water Inspectorate (DWI)

Dŵr Cymru (Welsh Water)

Dŵr Cymru is a water and sewerage company covering most of Wales and some adjoining areas of England. It serves over three million people and since 2001 has been owned by **Glas Cymru**.

Glas Cymru is a single purpose company formed to own, finance and manage Dŵr Cymru. It is a 'company limited by guarantee' and because it has no shareholders, any financial surpluses are reinvested into Dŵr Cymru.

Hafren Dyfrdwy (Severn Dee)

Hafren Dyfrdwy (previously Dee Valley Water) is a water and sewerage company serving **115,000 customers** in north east Wales. The company was **restructured and renamed in July 2018**, after Severn Trent Plc **bought Dee Valley Water** for £84 million in February 2017. The **Competition and Market Authority** investigated and cleared the purchase in 2016. **Correspondence between the Welsh Government and Severn Trent Water** previous to the purchase has been made available under the *Freedom of Information Act 2000*.

Hafren Dyfrdwy brings together Welsh customers previously served by Severn Trent Water and Dee Valley Water. Dee Valley Water used to be a water only company supplying around 258,000 customers in north east Wales and the north west of England. Severn Trent Water is a water and sewerage company covering much of the English midlands and, before July 2018, part of neighboring mid-Wales.

After purchasing the company, Dee Valley Water and Severn Trent Water **were granted a variation** (see section New Appointments and Variations) to effectively exchange the appointment areas of the two companies in a way that aligned with the border between Wales and England.

Since the variation, appointment areas in Wales are appointed exclusively to Welsh undertakers and fall under devolved competence. Previously, the UK Government regulated areas in mid-Wales that were served by the English undertaker Severn Trent Water. As a result of this restructuring, **customers in relevant areas fall under different regulations**. In particular, non-household customers in Powys who had previously switched suppliers under UK regulation became customers Hafren Dyfrdwy and, now under Welsh regulations, are only allowed to change suppliers if they use over 50 million liters per year (see section Competition).

Severn Trent Plc is traded on the **London Stock Exchange** and is a constituent of the FTSE 100 Index.

New Appointments and Variations

New appointments and variations (NAVS) (previously known as ‘inset appointments’) enable existing water or sewerage suppliers to be replaced by another, for a specific area. Under certain criteria, it allows some customers to choose a different supplier.

A new appointment occurs when a company is appointed for the first time to provide water and/or sewerage services for a specific geographic area.

A variation occurs when an existing appointed company asks to vary its existing appointment so that it can change or extend the areas to which it provides services.

NAVS may be granted in cases where:

- an area does not contain any premises that receive services from an appointed water or sewerage company (it is ‘unserved’);
- a customer uses (or is likely to use) at least 250 million litres of water a year (in Welsh undertakers’ appointment areas) or 50 million litres of water a year (in English undertaker’s appointment areas) at each of its premises and wants to change its supplier; or
- the existing appointed company agrees to transfer part of its area to a different company.

Ofwat, the economic regulator of the Water sector in Wales and England, is responsible for consulting on and granting NAVS. The successful appointee can serve its new customer(s) either using its own resources or methods of treatment, or by requesting the use of the existing supplier’s assets. Ofwat has **granted four NAVs** in Wales as follows:

- Albion Water, at Shotton (Flintshire), granted 1 May 1999;
- SSE Water, at Llanilid (Rhondda Cynon Taf), granted 9 March 2009;
- Albion Eco, at Shotton (Flintshire), granted 28 July 2016; and
- **Dee Valley Water, Powys/Monmouthshire, granted 23 March 2018**

Welsh Government policy

The Welsh Government is responsible for setting the strategic policy for water in Wales, within which the following organisations operate:

- water companies **wholly or mainly** in Wales - Dŵr Cymru and Hafren Dyfrdwy;
- Ofwat;
- Natural Resources Wales;
- the Drinking Water Inspectorate; and
- local authorities.

Water Strategy for Wales

The Welsh Government published its **Water Strategy for Wales** in May 2015, accompanied by a strategic environmental assessment and a habitats regulations assessment. The strategy takes up commitments in the Welsh Government's **2011 Programme for Government** to develop a water strategy for Wales and to take measures to tackle water affordability. The Welsh Government **consulted on the strategy** between April and July 2014.

The strategy outlines policy direction within six key themes:

- 'Water for nature, people and business' - sustainable management of the quality and quantity of water resources;
- 'Improving the way we plan and manage our water services' – ensuring sustainable and resilient water services;
- 'Delivering excellent services to customers' - access to affordable water and sewerage services;
- 'Protecting and improving drinking water quality' – maintaining current high standards of public drinking water quality and ensuring compliance with the Drinking Water Directive;
- '21st century sewerage and drainage system' – managing waste and surface water in an integrated way; and
- Supporting delivery of objectives and key outcomes.

The document includes a high-level action plan outlining how the strategy will be delivered until 2025, together with a commitment by the Welsh Government to review and report on progress annually.

The most recent **update to the action plan** was published in September 2016. The update outlines the steps the Welsh Government has taken between 2015 and 2016 to deliver objectives set out in the Strategy. These include:

- the supply of additional funding to NRW to deliver a **metal mine remediation** programme;
- the publication of additional **charging guidance to Ofwat (PDF 316KB)**;
- extension of the remit of **NEST (the Welsh Government scheme for tackling fuel poverty)** to customers of Welsh water companies;
- the publication of **Water Resource Management Plan (Wales) Directions and guiding principles for developing Water Resource Management Plans (WRMP) for 2020**;
- **Implementation** of the **Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016** to protect waters from oil pollution, following a **Welsh Government consultation** in 2015; and
- the publication of **national advisory standards for sustainable drainage systems (SuDS)**.

The update also announced the commissioning of detailed charging guidance for developer charges, bulk supply charges and access pricing. The **guidance (PDF 336KB)** was published in 2017

Bad Debt Regulations

The Welsh Government laid its **Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014** before the Assembly on 3 December 2014. The Regulations came into force on 1 January 2015. Following a **consultation in 2013**, the Welsh Government proposed 'Bad Debt' Regulations to assist the water industry to reduce debt resulting from unpaid bills and help lower bills. The cost of debt from non-payment of water bills is currently covered by all paying customers of the water company. In 2014-15 this added **approximately £21** to each bill.

As many water debtors are tenants, the Regulations place a duty on landlords to provide details of their own address along with a tenant's name, date of birth and the date they started occupancy. If landlords do not provide this information they become jointly liable for payment of water charges at the tenanted property. The Welsh Government has published **non-statutory guidance in relation to the Regulations**.

Social Tariff Guidance

Under section 44 of the ***Flood and Water Management Act 2010***, the Welsh Government is required to issue guidance to water and sewerage companies and Ofwat for including social tariffs in their charging schemes.

The Welsh Government published its **Social Tariff Guidance** for water companies in 2013. The Social Tariff Guidance allows water companies to set up a cross-subsidy to help households who struggle to pay their water bills. Although the Welsh Government has not set an upper limit, it believes a reasonable level of cross subsidy should be up to 2.5 per cent of a company's average water and sewerage bill.

The Welsh Government also expects water companies to consider measures to improve water affordability such as offering water efficiency advice, measures to improve the management and payment of bills and advice to households on opting for a meter to lower their bills

The Welsh Government **announced reviewing the Social Tariff guidance** after launching the new water strategy. As of September 2018, no new guidance has been published.

Competition

Wales and England have different regulations regarding customers' ability to change water and sewerage services suppliers. Note that the Regulations described in this section specify under what conditions individual customers may change suppliers. This is different from NAVS, which appoint companies to a specific geographic area, although they are sometimes used to the same effect.

Non-household customers

The ***Water Act 2014*** contains measures to allow businesses and other non-household customers to switch water and sewerage supplier if they so wish. Since April 2017, all non-household customers in English undertakers' appointment areas **are able to switch water suppliers** under the Act. Previously, non-household customers in these areas were only allowed to change suppliers if they used more than 5 million litres per year.

The Welsh Government did not agree with introducing competition into the non-household market in Wales. In 2013, the then-Minister for Natural Resources and Food, Alun Davies, stated that the Welsh Government **had not received any clear modelling or evidence (PDF 171KB)** to demonstrate the benefits of competition and that the Welsh Government does not want to follow the direction outlined by the UK Government by being 'overly dependent' on competition. During an **evidence session with the then Environment and Sustainability Committee**, Alun Davies said:

I think that, in Dŵr Cymru, we have a company that is doing an excellent job, and that, in Glas Cymru, we have a framework and a supply system that works for the people of Wales, which has brought investment into that system and has reduced bills. ... So, we would not want to see the kind of competition that the Westminster Government is considering at present for our system in Wales.

As of July 2018, the Welsh Government still operates on provisions of the *Water Act 2003*. These provisions allow non-household customers to change suppliers if they use more than 50 million litres a year and historically had **very limited uptake (PDF 342KB)**.

Household customers

Under existing legislation, household customers in Wales and England are unable to change their water or sewerage service providers. In November 2015, **the UK Government asked Ofwat** to provide an analysis of the costs and benefits of introducing competition to residential customers in England. The **final report**, published September 2016, states that introduction of competition would likely result in a net benefit. As of July 2018, the UK Government has not announced further steps in this direction.

When asked whether the Welsh Government was considering undertaking a similar assessment for the domestic market in Wales, the Minister for Environment, Hannah Blythyn, **stated in April 2018**:

The Consumer Council for Water, in response to the Ofwat review, warned that customers would end up disappointed if household water competition were to be introduced based on an overly optimistic review by Ofwat.

Regulation

The water industry is highly regulated. The roles and responsibilities of the various regulators and other relevant organisations are set out below.

Ofwat

Ofwat (or the Water Services Regulation Authority) is the economic regulator for Wales and England. It operates independently of industry and the UK and Welsh Governments, but within a policy framework set by UK and Welsh Ministers.

Its **main duties** are to ensure good quality services are provided to customers, ensuring that water companies have the finances in place to deliver their services properly. It also encourages competition where this benefits consumers. Its primary duties are set out in the **Water Industry Act 1991** (as amended by the **Water Act 2003**). Ofwat also has **secondary duties** which are to contribute towards sustainable development and to promote efficiency.

Ofwat limits the prices water companies can charge through its **price review process**. The majority of water companies operate as monopolies meaning that most consumers have no choice of provider. Ofwat therefore sets the price limits that each individual company can charge. It does this by scrutinising water companies' business plans and balancing the need for affordable water and sewerage services with the investment the companies need to make to maintain and improve infrastructure and meet environmental standards. Price reviews take place every five years. The **price review for the period 2015-2020** was carried out in 2014. Ofwat published its **final methodology** for the price review for 2020-25 in December 2017.

Ofwat is also responsible for monitoring companies' performance in relation to key policy outcomes and for setting targets for efficiency and leakages. Ofwat **sets leakage reduction targets** and is able to take action if companies fail to deliver upon them. The final methodology for the 2019 price review announced a **leakage reduction target for all companies of 15%** by 2025. Previously, leakage targets were set individually for different companies based on **sustainable economic level of leakage (SELL)**. SELL required companies to repair leaks where the cost of doing so is less than the cost of not doing so. According to the final methodology, the new leakage target is one percent higher than the largest reduction commitment in the 2014 price review.

The Welsh Government has a **memorandum of understanding (PDF 63KB)** with Ofwat. In 2017, the Welsh Government published **two additional guidance documents for Ofwat** ('Strategic priorities and objectives statement to Ofwat' and 'Charging guidance to Ofwat relating to developer charges, bulk supply charges and access charges').

The **Water Act 2014** introduced a statutory duty on Ofwat, and the Welsh Ministers and UK Secretary of State, to ensure water and sewer systems in Wales and England are resilient to floods, droughts and changes to population and climate. In response, Ofwat set up a **resilience task and finish group** in January 2015, to help define what water sector resilience means in practice and what Ofwat's regulatory role and responsibilities will be. The group published its **final report** in December 2015.

Natural Resources Wales

Natural Resources Wales (NRW) is responsible for managing water resources and monitoring and improving water quality - including fresh, marine, surface and underground water in Wales. It is also **implements and enforces Regulations, policies and permits** relating to:

- surface and groundwater;
- water abstraction, efficiency and quality;
- managing water resources in Wales and ensuring water companies deliver Water Resource Management Plans (see below);
- arbitration between sewerage undertakers and individuals in relation to mains sewerage connection;
- regulation of private water supplies and septic tanks; and
- considering how new developments impact on water through the environmental Impact assessment process.

Water Resource Management Plans (WRMPs)

Under the ***Water Resources Management Plan Regulations 2007***, water companies in Wales and England are required to produce **Water Resource Management Plans (WRMPs)**. The plans detail how water companies intend to balance water supply and demand in their area over the next 25 years, taking into account climate change projections, population growth and new developments. Water companies are required to consult on draft WRMPs and respond to the input they receive. The Welsh Government can either request a hearing or inquiry, or direct the company to publish its final WRMPs. Water companies need to publish WRMPs every five years and provide annual reviews to the Welsh Ministers. The Welsh Government provides **directions and guidance** on WRMPs (both from 2016).

Drinking Water Inspectorate

The **Drinking Water Inspectorate** operates in Wales and England and aims to provide independent reassurance that public water supplies are safe and drinking water quality is acceptable to consumers. It is responsible for independently checking the tests completed by water companies and auditing water company laboratories.

Where failures in standards occur it can use its enforcement powers to require water companies to address the source of the problem, conduct investigations and make recommendations to ensure that problems do not arise in future. Its powers and duties are set out in the ***Water Industry Act 1991*** (as amended by the ***Water Act 2003***).

The Chief Inspector for Drinking Water is appointed jointly by UK and Welsh Ministers.

Consumer Council for Water

The **Consumer Council for Water** is not a regulator but is responsible for representing water and sewerage customers in Wales and England. It was created under the ***Water Act 2003*** and has a committee and office in Wales.

The Council can take up customer complaints with water companies where they have tried and failed to raise these issues directly with the company. The Council also undertakes research on customer experiences and views and feeds this to the other authorities. It also plays a role representing customers in Ofwat's price review process.

Local Authorities

Under **section 77 of the Water Industry Act 1991**, local authorities have a duty to remain aware of the 'wholesomeness and sufficiency' of water supplies in their area. If they believe the water supply may become or has become insufficient then they have a duty to inform the water suppliers who have to take action upon receipt of this information. Local authorities are also responsible for the monitoring of private water supplies within their area and may from time to time sample public water supplies and bathing waters.

Local planning authorities also have a role through the planning process to assess the adequacy of water and sewerage supplies to new development and the impacts of any potential developments on sustainable urban drainage systems and local flood risk.

Key sources

- Welsh Government, [Water](#)
- [Ofwat](#)
- Natural Resources Wales, [Water management](#)
- [Drinking Water Inspectorate](#)
- Consumer Council for Water, [Wales](#)
- [Dŵr Cymru Welsh Water](#)
- [Hafren Dyfrdwy](#)
- UK Government, [Water industry](#)



