

The Welsh Government's Legislative Consent Memoranda on the Water (Special Measures) Bill

January 2025



1. Background

The Water (Special Measures) Bill

1. The Water (Special Measures) Bill¹ (the Bill) was introduced into the House of Lords and had its First Reading on 4 September 2024. It is sponsored by the Department for Environment, Food and Rural Affairs.

2. The long title to the Bill states that it is a Bill to:

*"Make provision about the regulation, governance and special administration of water companies."*²

3. The Explanatory Notes to the Bill as introduced state that:

*"The Bill makes provision for new policy to improve the regulation of water and sewerage companies and to extend the powers of the regulators: Ofwat, the Environment Agency, Natural Resources Body for Wales and the Drinking Water Inspectorate."*³

4. The Bill completed its passage through the House of Lords on 26 November 2024 and received its first reading in the House of Commons on 27 November 2024. At the time the Committee agreed its report, the Bill was at Report stage in the House of Commons.⁴

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum (LCM) is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

6. On 10 September 2024, Huw Irranca-Davies MS, the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs (the Cabinet Secretary), notified the Committee of his agreement to the application of some of the Bill's

¹ The Water (Special Measures) Bill, as introduced

² The Water (Special Measures) Bill

³ The Water (Special Measures) Bill, Explanatory Notes, September 2024, paragraph 7

⁴ The Water (Special Measures) Bill, stages

clauses to Wales, and that he had sought equivalent powers for the Welsh Ministers to the Secretary of State.⁵

7. On 18 September 2024, the Cabinet Secretary laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁶

8. The Business Committee agreed that the Legislation, Justice and Constitution Committee (the LJC Committee), and the Climate Change, Environment and Infrastructure Committee (the CCEI Committee), should report on the Memorandum by 22 November 2024.⁷ On 5 November 2024, the Business Committee agreed a revised reporting deadline of 10 January 2025.⁸ On 10 December 2024, the Business Committee agreed to extend the deadline for all legislative consent memoranda laid in respect of the Bill to 17 January 2025.⁹

Provisions for the which the Senedd's consent is required

9. The Welsh Government's assessment is that the following provisions in the Bill (as introduced) require the Senedd's consent as set out in paragraphs 8 to 11 of the Memorandum:

- clause 1 (Rules about remuneration and governance);
- clause 3 (Emergency overflows);
- clause 4 (Impeding investigations: sentencing and liability);
- clause 5 (Civil penalties: modification of standard of proof);
- clause 6 (Automatic penalties for certain offences);
- clause 7 (Abstraction and impounding: power to impose general conditions);

⁵ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 10 September 2024

⁶ Welsh Government, Legislative Consent Memorandum. The Water (Special Measures) Bill, September 2024

⁷ Business Committee, Timetable for consideration: Legislative Consent Memorandum on The Water (Special Measures) Bill, September 2024

⁸ Business Committee, Revised timetable for consideration: Legislation Consent Memorandum on the Water (Special Measures) Bill, November 2024

⁹ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No.4) on the Water (Special Measures) Bill, December 2024

- clause 8 (Charges in respect of Environment Agency and NRBW¹⁰ functions);
- clause 9 (Drinking Water Inspectorate: functions and fees);
- clause 11 (Modification by Welsh Ministers of water company's appointment conditions etc to recover losses);
- clause 12 (Winding-up petitions);
- clause 13 (Extent, commencement, transitional provision and short title).¹¹

10. The Welsh Government states that these provisions require consent as they relate to the water industry which is a devolved matter.¹²

11. The UK Government's devolution assessment¹³ concluded that all clauses required legislative consent except for the following clauses as they do not extend to Wales:

- clause 2 (Pollution incident reduction plans);
- clause 10 (Modification by Secretary of State of water company's appointment conditions etc to recover losses).

12. The Welsh Government agreed with the UK Government's assessment.¹⁴

Delegated powers

13. In the Memorandum the Cabinet Secretary states:

"The Bill includes direct and indirect powers for the Welsh Ministers to make subordinate legislation. Direct powers for the Welsh Ministers to make regulations are contained in clauses 3 and 6 and these powers are subject to the affirmative Senedd procedure. New regulation-making powers for the Welsh Ministers are inserted into the Water Resources Act 1991 by clause 7, which will be subject to the negative procedure. Finally, clause 13 provides Welsh Ministers with

¹⁰ Natural Resources Body for Wales (or National Resources Wales as it is commonly known)

¹¹ Memorandum, paragraphs 8 to 9

¹² Memorandum, paragraph 8

¹³ The Water (Special Measures) Bill, Explanatory Notes, Annex A, September 2024

¹⁴ Memorandum, paragraph 12

commencement powers which are not subject to any procedure.”¹⁵

The Welsh Government's position

14. The Welsh Government's position on the inclusion of provisions for Wales in the Bill is outlined in paragraphs 13 to 17 of the Memorandum:

“The Bill will bring positive changes and support our overall aim to reduce water pollution in Wales. The Bill legislates on a range of issues and policy matters on which the UK Government and Welsh Government share clear aims and objectives.

Water is an inherently cross-border issue, and the issue of environmental impacts of water quality is one we cannot solve alone. Welsh Government has always taken a collaborative approach within Wales to improving water quality and governance in the sector, and this Bill is an opportunity to extend that cooperation cross-border.

Some regulations and laws also apply in both England and Wales. A coordinated approach across is essential to ensure regulatory consistency.

Some elements of the Bill relate to reserved matters, notably on insolvency, therefore any legislation brought forward by the Senedd would not be as comprehensive as the current proposals.

Welsh Government has not yet agreed to the application of clause 2 to Wales, relating to putting Pollution Incident Reduction Plans on a statutory footing. We will continue to review options on this issue and work with NRW and Defra to agree an approach which is appropriate to the context and approach to the sector in Wales.”¹⁶

15. The Cabinet Secretary concludes:

“In my view it is appropriate to deal with these provisions in this UK Bill as its aims are wholly in line with Welsh Government

¹⁵ Memorandum, paragraph 10

¹⁶ Memorandum, paragraphs 13 to 17

policy, the matter is an inherently cross-border issue requiring collaboration and coordination between our two Governments, and some elements of the Bill relate to reserved matters. Therefore, I recommend that the Senedd supports the proposals and gives its consent.”¹⁷

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

16. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) on 4 November 2024 in respect of the Bill following amendments made to it at Lords Committee Stage.¹⁸

17. The Business Committee agreed that the LJC Committee and the CCEI Committee should report on Memorandum No. 2 by 10 January 2025.¹⁹ On 10 January 2025 the Business Committee agreed a revised reporting deadline of 17 January 2025.²⁰

Provisions for which the Senedd's consent is required

18. The five amendments to the Bill tabled by the UK Government during Lords Committee Stage relate to clauses 5, 6, 7 and 8.²¹

19. The Welsh Government in Memorandum No. 2 states:

“The UK's Government's view is that Clauses 5, 6, 7, and 8 to which the amendments relate to, require legislative consent from the Senedd. The Welsh Government agrees with this assessment.”²²

The Welsh Government's position

20. The Cabinet Secretary explains that the amendments tabled by the UK Government are “minor and technical in nature” and he provides a brief

¹⁷ Memorandum, paragraph 22

¹⁸ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), 4 November 2024

¹⁹ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 2) on the Water (Special Measures) Bill, November 2024

²⁰ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 4) on the Water (Special Measures) Bill, December 2024

²¹ Memorandum, paragraphs 14 to 18. Water (Special Measures) Bill, Marshalled List of Amendments to be Moved In Committee of the Whole House

²² Memorandum No. 2, paragraph 19

explanation of their effect.²³ He also notes that the Welsh Government is seeking an amendment to extend clause 2 to Wales.²⁴

21. The Cabinet Secretary also explains in paragraphs 20 to 25 of Memorandum No. 2 the reasons for the inclusion of provisions for Wales in the Bill, and in so doing re-states paragraphs 13 to 17 of the Memorandum.

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

22. The UK Government tabled a further 34 amendments to the Bill at Lords Report Stage. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum (Memorandum No. 3) to reflect these amendments on 27 November 2024.²⁵

23. The Business Committee agreed that the LJC Committee and the CCEI Committee should report on Memorandum No. 3 by 10 January 2025.²⁶ On 10 January 2025 the Business Committee agreed a revised reporting deadline of 17 January 2025.²⁷

Provisions for which the Senedd's consent is required

24. The amendments tabled by the UK Government amend clause 2, add a new clause after clause 3, add a new clause before clause 8, and amend clause 13 of the Bill.²⁸

25. A summary of the amendments tabled by the UK Government is provided by the Cabinet Secretary in paragraph 12 of Memorandum No. 3:

- “▪ *Clause 2: Extending applicability to Wales;*
- *Clause 2: Making CEOs personally liable for the production of Pollution Incident Reduction Plans (PIRPs);*

²³ Memorandum No. 2, paragraph 13 to 18

²⁴ Memorandum No. 2, paragraph 12

²⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\)](#), 27 November 2024

²⁶ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 3\) on the Water \(Special Measures\) Bill](#), December 2024

²⁷ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 4\) on the Water \(Special Measures\) Bill](#), December 2024

²⁸ Memorandum No. 3, paragraphs 13 to 46. Water (Special Measures) Bill, [Marshallled List of Amendments to be Moved on Report](#)

- *Clause 2: Expand the duty to create PIRPs so as to apply to water supply companies as well as sewerage companies;*
- *Clause 2: To require water companies to provide an annual implementation report alongside their PIRPs;*
- *Clause 2: To require the environmental regulators to consider water companies' record implementing these plans when exercising their core regulatory functions;*
- *New Clause: Expanding Ofwat's duties to include having regard to climate change and biodiversity targets which apply in England (but not in Wales); and*
- *New Clause: To include a duty for water companies to have due regard to nature-based solutions when producing drainage and wastewater plans (DWMPs).*
- *Consequential amendments to Clause 13 regarding commencement of the new clauses and the extension of Clause 2 to Wales."*²⁹

The Welsh Government's position

26. In paragraphs 8 and 9 of Memorandum No. 3 the Cabinet Secretary states:

"Regular engagement between the UK and the Welsh Government has been continuing throughout the Parliamentary passage of the Bill, including the amendments at Lords Report Stage.

*The Welsh Government sought an amendment to extend Clause 2 (Pollution Incident Reduction Plans) to Wales, which has been tabled as part of the Lords Report Stage. In addition to this the UK Government has further amendments relating to existing Clauses and creating new ones."*³⁰

²⁹ Memorandum No. 3, paragraph 12

³⁰ Memorandum No. 3, paragraphs 8 and 9

27. In Memorandum No. 3 the Cabinet Secretary provides a brief commentary on the 34 amendments tabled by the UK Government.³¹

28. On whether the amendments require the consent of the Senedd, the Cabinet Secretary states:

"The amendments proposed by the UK Government do not change my view of the requirement for consent for those clauses they amend. This is due to those clauses relating to a devolved matter, namely the water industry.

*The UK's Government's view is that Clauses 1, 2, 13, and the new clauses to which the amendments relate to require legislative consent from the Senedd. I agree with this assessment."*³²

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)

29. The Welsh Government laid another Supplementary Legislative Consent Memorandum (Memorandum No. 4) in respect of the Bill on 4 December 2024. Memorandum No. 4 reflects two non-government amendments tabled to the Bill at Lords Report Stage.³³

30. The Business Committee agreed that the LJC Committee and the CCEI Committee should report on Memorandum No. 4 (and all previous LCMs on the Bill) by 17 January 2025.³⁴

31. The opposition amendments (amendments 2 and 11) amend clause 1 of the Bill.

The Welsh Government's position

32. The Welsh Government and UK Government agree that the amendments require the consent of the Senedd.³⁵

33. The Cabinet Secretary however concludes that:

³¹ Memorandum No. 3, paragraphs 13 to 46

³² Memorandum No. 3, paragraphs 47 to 48

³³ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 4), December 2024

³⁴ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 4) on the Water (Special Measures) Bill, December 2024

³⁵ Memorandum No. 4, paragraphs 12 and 13

*"The two amendments detailed were not proposed, developed or supported by Government. They are contrary to the policy objectives of Clause 1 and Amendment 11 and go against our Principles on UK Legislation. Therefore, further engagement is required with UK Government on the development of these amendments. I will provide the Senedd with further updates on the Welsh Government's position in relation to these amendments following that engagement."*³⁶

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 5)

34. The UK Government tabled two amendments at Commons Committee stage to remove clauses added by the two non-government amendments at Lords Report stage. The non-government amendments were the subject of Memorandum No. 4.

35. The Welsh Government laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 5) in respect of the Bill on 10 January 2025 to reflect the UK Government amendments tabled at Commons Committee Stage.³⁷

36. The Business Committee agreed that the LJC Committee should report on Memorandum No. 5 by 20 January 2025.³⁸

The Welsh Government's position

37. The Welsh Government and UK Government agree that the amendments require the consent of the Senedd.³⁹

The Welsh Government's principles for using UK Bills to legislate in devolved areas

38. In October 2021, the Welsh Government provided the Committee with its principles for using UK Bills to legislate in devolved areas.⁴⁰

³⁶ Memorandum No. 4, paragraph 20

³⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 5), 10 January 2025

³⁸ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 5) on the Water (Special Measures) Bill, January 2025

³⁹ Memorandum No. 5, paragraph 12

⁴⁰ Letter from the Counsel General and Minister for the Constitution, Mick Antoniw MS, 22 October 2021, response to question 1 and Annex B: Welsh Government's principles for UK Bills

39. In our Annual Report 2021/22,⁴¹ we stated:

*"We note the second sentence of the first guiding principle; in our view it effectively provides a catch-all exemption from the first sentence given that it makes reference to "circumstances in which it is sensible and advantageous" to use a UK Government Bill, without context provided about to whom that phrase applies and who therefore makes that judgement. Arguably, it has the effect of rendering the first sentence of little value as a core principle on which the Welsh Government is basing its approach. Our experience suggests that the use of UK Government Bills to deliver new law in devolved areas for Wales is extending beyond the list of examples provided in point 3 of the principles. Additionally, point 4 of the principles (which states, "it would be most unwise for the Welsh Government to adopt a self-denying ordinance in such circumstances") also has the effect of de-valuing the first sentence of the first guiding principle."*⁴²

40. In our Annual Report 2022/23⁴³, we noted:

*"In our 2021/22 annual report, we said we were not persuaded by the Welsh Government's principles for using UK Bills and considered them to be flawed. In light of our experience in 2022/23 that we highlight above, our view has not changed."*⁴⁴

41. On 4 December 2024, the Counsel General and Minister for Delivery, Julie James MS (the Counsel General), wrote to the Committee providing a refreshed version of the Welsh Government's principles on legislating in devolved areas.⁴⁵ We exchanged correspondence with the Counsel General on the refreshed principles.⁴⁶

⁴¹ Legislation, Justice and Constitution Committee, [Annual Report 2021/22](#), October 2022

⁴² Legislation, Justice and Constitution Committee, [Annual Report 2021/22](#), October 2022, paragraph 52

⁴³ Legislation, Justice and Constitution Committee, [Annual Report 2022/23](#), October 2023

⁴⁴ Legislation, Justice and Constitution Committee, [Annual Report 2022/23](#), October 2023, paragraph 98

⁴⁵ [Letter from Julie James MS, the Counsel General and Minister for Delivery](#), 4 December 2024

⁴⁶ [Letter to the Counsel General and Minister for Delivery](#), 17 December 2024 and [Letter from the Counsel General and Minister for Delivery](#), 9 January 2025

Background information on water policy issues

42. The water and sewerage industry is a complex policy area within the devolution settlement. This is primarily because water company boundaries, which are historically based on water pipe and sewer networks, and predate devolution, reflect river catchments rather than the border between Wales and England.⁴⁷

43. The *Government of Wales Act 2006*⁴⁸ (the 2006 Act), as amended by the *Wales Act 2017* (the 2017 Act)⁴⁹, includes powers for Wales related to water. These powers relate to water supply, sewerage, water resources management (including reservoirs), water quality, the water industry, consumer representation, flood risk management and coastal protection.

44. Section C15 (Water and sewerage) of schedule 7A to the 2006 Act includes some relevant reservations in this area. As such, Senedd Cymru does not have competence to do anything which relates to the:

- appointment and regulation of any water or sewerage undertaker whose area is not wholly or mainly in Wales (paragraph 92 of schedule 7A) (i.e. water and sewerage undertakers operating wholly or mainly in England); and
- the licensing and regulation of a water supply or sewerage licensee (paragraph 93 of schedule 7A). This reservation is subject to an exception for the regulation of a water or sewerage licensee in relation to licensed activities that use the supply or sewerage system of a water or sewerage undertaker whose area is wholly or mainly in Wales.

45. In March 2014, the Silk Commission recommended that “the boundary for legislative competence for water should be aligned with the national border”.⁵⁰

46. In May 2015, the Welsh Government published its water strategy. It states:

“If the people of Wales are to continue to benefit from our natural resources – and avoid compromising those benefits for future generations – we need to find new ways to enable Wales

⁴⁷ Senedd Research, *The Water Industry in Wales Research Briefing*, September 2018

⁴⁸ *The Government of Wales Act 2006*

⁴⁹ *The Wales Act 2017*

⁵⁰ *Commission on Devolution in Wales Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, recommendation R.16, March 2014

to grow sustainably and increase resilience supported by efficient management of our natural resources.

This Strategy sets out our long-term policy direction in relation to water. Our aim is to ensure we have a more integrated and sustainable approach to managing our water and associated services in Wales. This Strategy has been developed within this context and will contribute to the implementation of our wider natural resource management policy.”⁵¹

47. It also states:

“Our objectives are the alignment of the regulatory boundaries for water and sewerage with the geographical border between Wales and England. We will pursue the conferral of full legislative competence on the National Assembly in relation to all matters relating to water and sewerage and the removal of the unilateral power of the UK Government to intervene in respect of water resources in Wales. We want to move to a new settlement for both the existing functions conferred upon Welsh and UK Government Ministers and the legislative competence conferred upon the National Assembly for Wales. This approach is supported by the findings of the Silk Commission on the Powers of the National Assembly.

Aligning the regulation of water and sewerage services with the geographical border will better enable us to integrate water within our approach to natural resource management, ensuring that we make the most of the opportunities that Wales’ natural resources provide. Adopting the geographical border as the regulatory boundary will also provide clarity of accountability for consumers, water suppliers, policy-makers and legislators. A move towards a geographical split would ensure that the National Assembly for Wales had legislative competence in relation to all matters relating to water and sewerage, including licensing and the appointment and regulation of water undertakers. Using the geographical boundary with England for water services regulation would be

⁵¹ Welsh Government, Water Strategy for Wales Supporting the sustainable management of our natural resources, May 2015, page 4

in line with the legislative competence held for other Acts of the National Assembly for Wales."⁵²

48. In July 2016, the former First Minister of Wales, the Rt Hon Carwyn Jones AM, wrote to the former Secretary of State for Wales, the Rt Hon Alun Cairns MP, enclosing a document with proposals for amendments to the Wales Bill (which became the 2017 Act). The document states:

*"The Welsh Government is seeking full devolution of water and sewerage to be aligned with the geographical boundary with England, as set out in the Silk Report and the UK Government's St David's Day Command Paper."*⁵³

49. The Explanatory Notes to the 2017 Act state:

*"Section 48 aligns legislative competence for water and sewerage undertakers with the geographical boundary between Wales and England by removing the reservation relating to the parts of English undertakers' areas in Wales. When the section is commenced, the effect will be that legislative competence to implement the majority of the policy over the supply of water and sewerage services (i.e. the appointment and regulation of undertakers and the regulation of licensees) will be devolved to the Assembly in relation to Wales (rather than in relation to appointment areas). The licensing of water supply and sewerage licensees, the regime overseen by the economic and competition regulator of the water industry (Ofwat), will remain reserved."*⁵⁴

50. Section 50 of the 2017 Act makes provision enabling the establishment of an intergovernmental protocol to oversee cross border water issues. In November 2017, the UK and Welsh Governments agreed an Intergovernmental Protocol on Water Resources to safeguard water resources, water supply and water quality for consumers in England and Wales.⁵⁵ The Protocol came into force on 1 April 2018 and coincided with the replacement of the previous intervention powers the UK

⁵² Welsh Government, Water Strategy for Wales Supporting the sustainable management of our natural resources, May 2015, page 55

⁵³ Letter from the First Minister for Wales to the Secretary of State for Wales, 5 July 2016

⁵⁴ Explanatory Notes, Wales Act 2017, Chapter 4, paragraph 629 (see also paragraph 203)

⁵⁵ Welsh Government, Wales Office, Intergovernmental Protocol on Water Resources, Water Supply and Water Quality, November 2017

Government held in relation to the exercise of functions in Wales that had an effect on water related matters (see section 52 of the 2017 Act).⁵⁶

Evidence from the Cabinet Secretary

51. We held an evidence session with the Cabinet Secretary at our meeting on 21 October 2024.⁵⁷

The Welsh Government's Position

52. We asked the Cabinet Secretary why he believes it is appropriate for provisions for Wales to be included in a UK Bill rather than in a Bill introduced to the Senedd. The Cabinet Secretary responded:

*"The reason we think it's appropriate is because there's clearly significant cross-over here in terms of waters—no boundaries—but also in terms of the regulatory approach within the UK. The water quality in our rivers and our seas is clearly a matter of public concern. It's a priority for this Government, as for the UK Government."*⁵⁸

53. The Cabinet Secretary further stated that:

*"... a Bill introduced in the UK Parliament is an effective approach now to deal with our shared goals (...) We have within the UK Labour Government's manifesto in terms of dealing with water quality and water regulation, and the structures and the penalties and so on, clear ambitions, and it mirrors very much what we share with those ambitions here in Wales, in the health of our water bodies."*⁵⁹

54. In Plenary on 17 September 2024, during a written statement about cleaning up rivers, lakes and seas in which the Cabinet Secretary referenced his agreement to the extension of the Bill to Wales, he said "on a point of principle" the Welsh Government would propose legislation where it has "the time and the space and the focus and the priority to do it".⁶⁰

⁵⁶ Welsh Government, [Law Wales - Water - what is devolved?](#), 24 June 2021 [accessed 2 December 2024]

⁵⁷ Legislation, Justice and Constitution Committee, [21 October 2024](#)

⁵⁸ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [9]

⁵⁹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [12]

⁶⁰ [Plenary 17 September 2024](#), RoP [362]

55. In relation to the Welsh Government's legislative capacity and the introduction of a Bill on water, the Cabinet Secretary said:

*"... why wasn't this in a Welsh Government programme? We've got other Bills coming forward in Welsh legislation, which is very busy—coal tip legislation, environmental governance, the bus Bill, and so on. Ours is packed already, but we can engage with this and we can direct resource from our end to make the differences as this Bill goes forward."*⁶¹

56. The Cabinet Secretary went on to say:

*"... we're not resiling here from our principled approach to making legislation within Wales within our devolved competences whatsoever. This is a pragmatic response, I have to say, to a Bill coming forward in the King's Speech. But I do know as well—. I think both the Counsel General and Minister for Delivery and I will both be back in front of the committee in a few weeks' time, not too long, where we can explore in great detail then the approach that we're taking forward and how that affects the wider UK legislation. Because this, of course, is not the only Bill that has been identified within the King's Speech that may give opportunities for Wales. And I think that is an important point: it's opportunities for Wales, as opposed to hanging on the coat tails of something that's come along for the sake of it. We wouldn't even be involved in this space."*⁶²

57. The Memorandum outlines the Welsh Government's view that "Water is inherently a cross-border issue".⁶³ We challenged whether this signifies a break from the Welsh Government's previous stance (set out in its 2015 water strategy) that the "political border should be the border for water".⁶⁴ The Cabinet Secretary responded:

"We're not changing our policy and we're not changing our position; we're actually being agile (...)

The LCM recognises that there are significant areas of cross-border policy when it comes to the current regulatory structure,

⁶¹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [16]

⁶² Legislation, Justice and Constitution Committee, 21 October 2024, RoP [32]

⁶³ Memorandum, paragraph 14.

⁶⁴ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [23]

and also the way that we need to work together on water quality (...) That doesn't mean that we don't do the water policy in Wales. We have our devolved competences here across water policy (...) it doesn't take away at all, (...), from the fact that we control our water policy here within Wales, our environmental approach, our pollution on rivers and all of that, and much of the regulatory structure.”⁶⁵

58. When we suggested that it may continue to confuse the statute book, by having responsibilities for water in Wales but using UK Government legislation to deliver on those legislative responsibilities, the Cabinet Secretary said:

“... the statute book on water regulation is already, because of that cross-border nature of it and the regulatory structures and the regulatory bodies, and will continue to be, actually, a mixture of England-and-Wales legislation and regulation, and Wales-only regulation. It'll continue to be. The task of, if you like, a major consolidation to bring it all entirely into Wales, when we have UK-wide regulatory structures and bodies within it as well, is partly in my defence ...”⁶⁶

59. We noted that Ofwat and the Drinking Water Inspectorate could be replaced with Welsh-only bodies and that the approach adopted by the Welsh Government was a policy decision.⁶⁷ The Cabinet Secretary responded:

“... we're playing with the deck as we currently have. There is a regulatory structure, and our approach to this Bill reflects exactly where we are now. In future, there may well be arguments for further devolution of the regulatory bodies et cetera, but neither is that within this current Bill nor does it reflect where we currently are. So, this is actually a very pragmatic approach (...) where the current regulatory body sits, where the current regulatory structure is, the mixture of England-and-Wales and Wales-only regulations that flow from the various legislation that's out there, rather than a future look at what could be at some point. But I do take your point—it could be done at some time in the future, if parties put forward the proposals and there was a consensus from the people of

⁶⁵ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [26 and 28]

⁶⁶ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [20]

⁶⁷ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [21]

Wales and the Senedd to do it; it's just not where we are quite now."⁶⁸

60. We asked the Cabinet Secretary whether, following the 2017 Act, there is any intention to provide the "power over every element of water in Wales".⁶⁹ An official accompanying the Cabinet Secretary explained:

*"So, the enactment of section 48(1) of the Wales Act is what you're referring to, I think. So, our position has been that the creation of Hafren has meant that there's less of an immediate need to do that, because there are no longer any water companies operating mainly in England that provide services to Wales. So, there is less of an incentive, because, effectively, we do have full control over the water within our boundaries. However, we have committed to commencing the provision. It's a complex piece of work that will impact on several other areas of legislation. That needs to be properly considered, and it is taking some time. Our priority, at the moment, is to properly resource the Water Act and the work that goes behind that, whilst also still trying to keep the section 48(1) work progressing."*⁷⁰

Delegated powers in the Bill

61. The Cabinet Secretary referred to the Bill as a "framework Bill".⁷¹ He explained that the Bill is:

*"... a framework, in essence. We will take forward the secondary regulation here in Wales, giving us the opportunity to engage with stakeholders, to consult and to get it right for Wales, and to have that proper engagement."*⁷²

62. The Cabinet Secretary told us that as regards the provisions for Wales:

"... when we bring them forward in secondary regulation, we will then have the opportunity in Wales to make sure that they are

⁶⁸ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [22]

⁶⁹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [52]

⁷⁰ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [56]

⁷¹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [34 and 48]

⁷² Legislation, Justice and Constitution Committee, 21 October 2024, RoP [10]

fully consulted on and scrutinised, and also, in terms of secondary regulations specifically, that they are bilingual".⁷³

63. We sought more information on the scope the Senedd would have in choosing which elements of the Bill will be implemented in Wales. An official accompanying the Cabinet Secretary said:

"There are a number of regulation-making powers contained in the Bill that sit with the Welsh Ministers in relation to Wales, including on reducing the standard of proof for certain civil sanctions, automatic penalties, potentially, in terms of pollution incident reduction plans. So, there are a number of regulation-making powers where that sits firmly with the Welsh Ministers."⁷⁴

64. The Cabinet Secretary explained that the "speed of this Bill has meant that we have not been able to do the normal widespread consultation on it" but added that "we've engaged with a wide range of stakeholders to get a Welsh perspective on the fundamental principles of this framework Bill".⁷⁵

65. The Cabinet Secretary also indicated that when subordinate legislation is taken forward by the Welsh Government, stakeholder engagement and public consultations will be completed.⁷⁶

66. When we asked whether any commitment had been made to undertake a consultation with the relevant stakeholders on draft versions of the regulations, an official accompanying the Cabinet Secretary explained:

"I don't think we've got to the stage where we have fully ironed out the implementation. My understanding is that it would be clause specific, so we wouldn't necessarily consult on all of the regulations. But I think that will be decided as we progress, as the Bill goes through."⁷⁷

67. The Cabinet Secretary was not able to provide a timeline for when consultations on the relevant regulations would take place, stating:

⁷³ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [13]

⁷⁴ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [51]

⁷⁵ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [48]

⁷⁶ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [48]

⁷⁷ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [67]

*"We don't have a specific timeline, because the Bill is proceeding at pace, but we want to see the measures that flow from this Bill implemented in a timely manner with no significant delay from what might happen on an England basis. We're trying to do this in collaboration. There's sense as well in getting there roughly on the same timescale. I would anticipate, as the Minister taking this forward, that we might have a slight delay on some of the individual clauses, because we want to go out and consult and make sure it's right for Wales, but no significant delay. We don't have a specific timetable yet, because we haven't got the Bill progressed yet through Westminster."*⁷⁸

68. We sought to explore the appropriateness of the balance of powers between what is on the face of the Bill versus what is left to subordinate legislation.

69. Clause 6 of the Bill contains delegated powers which would allow the Welsh Ministers to specify in regulations the offences where automatic penalties must be imposed by Natural Resources Body for Wales. We asked the Cabinet Secretary whether he believed that it is appropriate that these powers are delegated. We also sought clarification as to whether the list of offences should be on the face of the Bill. The Cabinet Secretary responded:

*"We do. That is our judgment, because to have all the specific offences set out on the face of the Bill may not offer the flexibility that is required, and would not, actually, give the opportunity for us to come forward in that manner I've described, where we can bring forward the secondary regulation, properly engage with stakeholders, do consultations as necessary, and then fit it to Wales. But the secondary regulation model, as the committee will well know, also gives that flexibility for 'in future as well', for futureproofing it. So, rather than bolt it down in immutable black and white on the face of the primary legislation, giving that engagement going forward, and flexibility, we think, is the right way."*⁷⁹

70. Clause 7 of the Bill amends the *Water Resources Act 1991* to insert a new section 46B to confer on the Welsh Ministers (in relation to Wales) and the Secretary of State (in relation to England) a power to impose conditions or rules

⁷⁸ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [69]

⁷⁹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [64]

into water industry licences (for water abstraction and impoundment activity). The Cabinet Secretary confirmed that these regulations would be subject to the negative procedure, explaining:

*"... we think this is right, by the way. We've looked at previous precedent on this, because what this is looking to do is move the abstraction and the impounding activities into a different spot within the legislative framework. It's largely administrative, it's aimed at futureproofing, as opposed to a significant policy development. So, on that basis and based on precedent of these sort of things, a negative procedure seems to us to be the right one. It's certainly been DEFRA's analysis. We've looked at that analysis as well. We concur with that analysis that this should be a negative procedure."*⁸⁰

71. We asked if the Cabinet Secretary had asked for these powers to be made subject to the draft affirmative procedure, to allow a greater role for the Senedd in scrutinising and approving any proposed legislation. The Cabinet Secretary answered:

*"It's because we see this as primarily an administrative measure, in moving those aspects of abstraction and impounding activities into another area. It's not fundamentally changing policy; it's just where they will be dealt with in legislation. So, on that basis, it seems more appropriate that a negative procedure is relevant for that. And, as I say, it's also based on previous precedent in similar changes within regulation."*⁸¹

Intergovernmental working

72. During the evidence session the Cabinet Secretary stated that in relation to seeking the inclusion of Wales in the Bill: "... we wouldn't be doing this, just to make it clear, unless we felt that there was really effective engagement and collaboration, and that is a signal mark of this Bill".⁸²

73. The Cabinet Secretary explained that adjustments to the Bill were being made as a result of engagement at both the official and ministerial level between

⁸⁰ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [71]

⁸¹ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [73]

⁸² Legislation, Justice and Constitution Committee, 21 October 2024, RoP [12]

the two governments.⁸³ We asked for clarification as to what changes the Welsh Government has been successful at obtaining to the Bill. The Cabinet Secretary answered:

*"So, some of the significant ones we've already had include things such as making sure that the responsibilities of Welsh Ministers in this space are reflected within this Bill so that Welsh Ministers hold the powers. Also, you may have picked up that there was one aspect quite early on that we opted out of, because we weren't sure that it was directly applicable to Wales, but we took some time to look at that, and that was the pollution incident reduction plans, where we already have them on a voluntary basis within Wales, and we thought, 'Well, that probably does the job.' But, actually, on reflection, we've put forward now an amendment to actually seek to have Wales as part of that as well, and I think it reflects (...) the fact that there's a genuine live engagement here and a willingness to engage with the Welsh approach."*⁸⁴

74. We asked the Cabinet Secretary what role Members of the Senedd could have in providing amendments on the Bill for the Welsh Government to present to the UK Government. The Cabinet Secretary responded:

*"... we'd welcome suggestions and ideas coming forward, and, if they aligned with our imperatives as Welsh Government, clearly, we'd want to work with suggestions that were coming forward, whether that was on policy, or whether it was on other areas pertinent to this committee."*⁸⁵

75. The Cabinet Secretary issued a Written Statement on 24 October 2024 in relation to the launch of an Independent Commission to review the water sector and its regulation.⁸⁶

76. The Independent Commission was jointly launched by the Cabinet Secretary and the UK Government Secretary of State for Environment, Food and Rural

⁸³ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [12]

⁸⁴ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [44]

⁸⁵ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [46]

⁸⁶ Welsh Government, Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 October 2024

Affairs. The Commission will consider both policy and regulation matters in the water sector. The Written Statement says that the Independent Commission:

*"... is a great example of the fresh approach of our two governments to cross-border cooperation on an issue which affects us all as consumers, investors and as stewards of the natural world. Our rivers and waterways cross borders, and water is a complex and highly sensitive aspect of the devolution settlement in Wales, which needs to be considered when developing future arrangements."*⁸⁷

77. The Written Statement also states:

*"We have clear priorities for reform and a shared sense of the work that will be needed across both countries' policy and regulatory regimes to make this change happen. There will need to be a consensus for action, and this includes where distinctive solutions are needed in Wales and in England to deliver a reset and secure a resilient water sector and framework that will work for the long term. The Commission will consider the unique situation of the industry and policy approach in Wales and will include a dedicated representative of the sector in Wales and seek the views of Wales' experts to ensure the Welsh perspective is considered at the highest level."*⁸⁸

78. We wrote to the Cabinet Secretary on 13 November 2024⁸⁹ seeking clarification about the legislative approach that would be followed as a result of the Independent Commission's recommendations. We received a response to our letter on 25 November 2024.⁹⁰ The Cabinet Secretary said:

"As I have said, our waterways are not confined by borders. The Commission's review and subsequent recommendations must respect the devolution settlement and ensure a coherent approach to shared challenges. I am pleased that both the

⁸⁷ Welsh Government, Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 October 2024

⁸⁸ Welsh Government, Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 October 2024

⁸⁹ Letter to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 13 November 2024

⁹⁰ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 25 November 2024

Welsh and UK Governments are committed to close collaboration in tackling these issues. Any solutions must be founded on consensus, recognising when cross-border alignment is essential and when distinctive approaches are required for Wales. Should the recommendations necessitate legislative change, we will carefully evaluate the most appropriate legislative pathway. This will involve discussions with the UK Government, particularly for areas that cross borders, to ensure any legislative solutions are practical, efficient, respect devolved responsibilities and maintain alignment where this is beneficial to both countries. Whether through a Senedd Bill or a UK Bill, we will prioritise solutions that reflect Wales' needs while maintaining our commitment to collaboration.”⁹¹

79. The Cabinet Secretary added:

“The Commission's independence and the collaboration between the Welsh and UK Governments provide a strong foundation for delivering meaningful reforms. I look forward to considering the Commission's recommendations and ensuring that Wales' unique context is integral to future changes to water governance.”⁹²

80. The Committee held a general scrutiny session with the Counsel General and the Cabinet Secretary on 9 December 2024.⁹³ During the session, we asked the Cabinet Secretary why the Welsh Government and the UK Government were working jointly on two water initiatives alongside the Bill, despite much of the area being devolved and that such initiatives are intended for short term purposes.⁹⁴ The Cabinet Secretary responded:

“... this is a case in point where we had really early engagement with the UK Government. They talked about what they were planning to do within this space, and was it broadly in the space that, if we had it within our final piece of legislation within these last 18 months, we'd be seeking to do something.

⁹¹ Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 25 November 2024

⁹² Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 25 November 2024

⁹³ ~~Legislation, Justice and Constitution Committee, 9 December 2024~~

⁹⁴ Legislation, Justice and Constitution Committee, 9 December 2024, RoP [126]

Well, we haven't prioritised that, but it would actually be something that fits squarely within what we might want to do in a seventh Senedd down the line, but we may or may not get to that. In which case, the conversation then switches to: do we want to be on board with this one, and is there really meaningful engagement with the UK Government on this, that they want us involved not just as a passenger somewhere sitting at the back of the coach, but properly in the driving seat?

So, yes, the water Bill is a very good case in point there, where there's clearly read across here in terms of the Welsh legislative space, and we are currently very productively working with the UK Government. And of course, the piece of work they've set up to review the regulations in this space we're fully involved with as well; in fact, there's been engagement with stakeholders in Wales. So, that's a very good case in point of how it works for Wales.”⁹⁵

81. The Cabinet Secretary went on to add:

“... we're reserving our position on this because we can see there's a cross-border element to these regulatory structures, many of them, but we have distinct devolved not just competences, but also variations in terms of a water ownership model and so on. So, the piece of work that's been taken forward by the independent water commission—and I've met with the commissioner already in these early days—the nature of the discussion has been very much that: make sure that you take into account, in your engagement, the differences within Wales; make sure that what you bring forward is not simply an England piece, that it is an England-and-Wales piece that would reflect those differences, so the recommendations that may flow from that—that we might want to consider bringing forward in regulations or legislation—would be absolutely based on what the Welsh context is. But there is an overlap here, so that's a piece that makes sense for us to do the work together, particularly when we haven't put a legislative slot for this right

⁹⁵ Legislation, Justice and Constitution Committee, 9 December 2024, RoP [127 to 128]

now. Well, we've got the opportunity, we're in the game—fully in the game.”⁹⁶

Financial and regulatory impact assessments

82. We asked the Cabinet Secretary if regulatory and financial assessments have been undertaken on the provisions of the Bill which impact on Wales. The Cabinet Secretary stated that:

“Because of the speed of the development in the introduction of this Bill, there’s been no opportunity to complete a regulatory and economic impact assessment”.⁹⁷

83. The Cabinet Secretary said that the required impact assessments would be provided with the secondary legislation stemming from the Bill in Wales.⁹⁸

Other evidence received

84. On 4 October 2024, the CCEI Committee wrote to stakeholders to seek their views on the Bill’s provisions in relation to Wales.⁹⁹ The Consumer Council for Water copied their consultation response to the Committee on 17 October 2024.¹⁰⁰

2. Committee consideration

85. We considered our report at our meeting on 13 January 2025 and agreed it outside of Committee by e-mail.

Our view

86. We note the Welsh Government’s assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum, Memorandum No. 2, Memorandum No. 3, Memorandum No. 4 and Memorandum No. 5.

⁹⁶ Legislation, Justice and Constitution Committee, 9 December 2024, RoP [131]

⁹⁷ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [76]

⁹⁸ Legislation, Justice and Constitution Committee, 21 October 2024, RoP [76]

⁹⁹ Letter to stakeholders from Llyr Gruffydd MS, Chair, Climate Change, Environment and Infrastructure Committee, 4 October 2024

¹⁰⁰ Submission by the Consumer Council for Water to the Climate Change, Environment, and Infrastructure Committee

87. We also note the position of the UK Government as regards consent.

Conclusion 1. Subject to recommendation 1, we agree with the Welsh Government's assessments, as set out in the Legislative Consent Memoranda that we refer to in paragraph 86 above, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29.

88. However, we wish to highlight a lack of clarity that exists in Memorandum No. 3. The Cabinet Secretary states in paragraph 47:

"The amendments proposed by the UK Government do not change my view of the requirement for consent for those clauses they amend. This is due to those clauses relating to a devolved matter, namely the water industry."

89. However, in paragraph 12 of the Memorandum, the Cabinet Secretary notes that clause 2 does not apply to Wales and he agrees with the UK Government that consent is not required. The purpose of some of the amendments that are the subject of Memorandum No. 3 is to extend clause 2 to Wales. As such, we believe that Memorandum No. 3 should have been explicit in stating in paragraph 47 that consent is now required for clause 2. This is important because Members of the Senedd should be provided with absolute clarity on what they are being asked to consent to. However, this may not be the case should the legislative consent motion refer to the legislative consent memoranda rather than to specific clauses in the Bill. In the absence of that clarity, there may be merit in the Cabinet Secretary tabling a further supplementary legislative consent memorandum to make it clear that the Senedd's consent is being sought for clause 2.

Recommendation 1. The Cabinet Secretary should consider laying a supplementary legislative consent memorandum to make it clear that the Senedd's consent is being sought for clause 2 of the UK Government's Water (Special Measures) Bill.

90. We wish to comment on the justification used by the Cabinet Secretary for pursuing provisions in a UK Government Bill.

91. In paragraph 14 of the Memorandum the Cabinet Secretary states that "Water is an inherently cross-border issue, and the issue of environmental impacts of water quality is one we cannot solve alone."

92. We recognise that some rivers and river catchment basins cross the Wales-England border. However, there are many rivers in Wales that do not cross the

Wales-England border. 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. We do not therefore share the Cabinet Secretary’s view when he said:

“We’re not changing our policy and we’re not changing our position; we’re actually being agile...”

93. We consider therefore that the first sentence of paragraph 14 of the Memorandum is misleading, representing a change in the Welsh Government’s policy position. We believe that this sentence, at the very least, needs to be re-phrased before the Senedd votes on the relevant legislative consent motion.

Recommendation 2. The Cabinet Secretary should lay a supplementary legislative consent memorandum, in which he withdraws the statement that “Water is an inherently cross border issue” and instead provides a more accurate narrative of the Welsh Government’s position as regards its 2015 water strategy.

94. We note that it has been the Welsh Government’s position that the creation of Hafren Dyfrdwy¹⁰¹ has meant that there has been less of an immediate need to commence section 48(1) of the 2017 Act. We also note in particular the comment that as a result “there is less of an incentive, because, effectively, we do have full control over the water within our boundaries.”

95. However, in our view, the creation of Hafren Dyfrdwy should be a driver and incentive for commencing section 48(1) of the 2017 Act rather than a reason to delay it.

96. Commencement of section 48(1) would provide the Senedd with wider powers to make primary legislation in relation to water by removing the reservation in paragraph 92 of schedule 7A to the 2006 Act, as well as amending the reservation in paragraph 93. The Welsh Government could therefore use these additional powers to regulate water or sewerage undertakers, and water supply or sewerage licensees, whose area is not wholly or mainly in Wales, for example in relation to the extraction of water.

¹⁰¹ Hafren Dyfrdwy

Recommendation 3. The Cabinet Secretary should explain in more detail why section 48(1) of the *Government of Wales Act 2006* has not yet been commenced and provide a timetable for commencing that section.

97. We note that paragraph 13 of the Memorandum advises that the UK Government and Welsh Government “share clear aims and objectives” on the subject matter of the Bill, while paragraph 15 states that “A coordinated approach (...) is essential to ensure regulatory consistency”.

98. However, a co-ordinated approach between Wales and England does not, in our view, require the same UK legislative vehicle; the Cabinet Secretary effectively acknowledges this point by taking regulation-making powers for the Welsh Ministers.

99. As such, there is a contradiction in the Welsh Government's approach; on the one hand a UK Government Bill is required to achieve the same objectives and outcomes as the UK Government, yet that argument does not seem to apply to the use of subordinate legislation for the same purpose, where powers will be exercised by UK Ministers in England and the Welsh Ministers in Wales.

100. In our view, it would have been possible for the Welsh Government to use a Bill introduced to the Senedd to achieve the same objectives that the UK Government Bill aims to deliver. Legislating in parallel in this way would also overcome the Welsh Government's concerns about the legislation not being comprehensive as a consequence of some matters being reserved.

101. Furthermore, the existence of good intergovernmental relations that has been highlighted by the Cabinet Secretary should mean that there would be no barriers to making legislation in parallel. As the Cabinet Secretary acknowledges in relation to the timeframe for making subordinate legislation, there would also be no drawback if the legislation proceeds to a slightly different timeframe.

102. We note the Cabinet Secretary's suggestion that using a UK Government Bill progressing through the UK Parliament “is an effective approach” to deal with shared goals between the UK and Welsh governments. While such a view may be relevant from the perspective of the Welsh Government, it does not hold true from the perspective of the Senedd, given that many of the issues in the Bill are within its legislative competence.

103. As a consequence, once again, the Senedd is being sidelined as a legislature. The approach the Welsh Government has adopted prevents elected Members of the Senedd from having an opportunity to have a full say on legislation affecting

rivers that flow through their constituencies. While MPs in England will be able to table amendments to the Bill on matters that will affect Welsh rivers, Members of the Senedd are being denied that opportunity.

104. When we asked the Cabinet Secretary what role Members of the Senedd could have in proposing amendments to the Bill which the Welsh Government could raise with the UK Government, he said he would welcome and work with suggestions put forward. While we welcome that offer and the open engagement it signifies, it is difficult to factor in such work without a clear timetable and understanding of the timeframes to which the Welsh Government is working, given that it itself is working to a timetable set in the UK Parliament.

105. However, and notwithstanding our concerns about the use of UK Government Bills to legislate in devolved areas, we see merit in the Cabinet Secretary's suggestion.

Recommendation 4. The Cabinet Secretary should write to the Business Committee, and to this Committee, setting out firm proposals as to how Committees of the Senedd can engage with the Welsh Ministers in respect of proposing amendments to UK Bills that make provision in devolved areas.

106. However, in making his offer in respect of the Bill, he appeared to add a caveat, namely that he would work with suggestions "if they aligned with our imperatives as Welsh Government". Such a filter on proposals to amend legislation would not arise in circumstances where a Welsh Government Bill is introduced to the Senedd: Members of the Senedd are free to probe and challenge legislation by suggesting amendments through Stage 2 and Stage 3 proceedings, and without the prior approval of the Welsh Government.

107. Using a Welsh Government Bill introduced into the Senedd in parallel with a UK Government Bill in the UK Parliament would also allow Members of the Senedd to consider whether regulatory consistency was desirable, and if not, to advocate for different regulatory measures taking account of the specific circumstances of water quality in Wales and therefore tailored to Welsh needs.

108. We also note the Cabinet Secretary's view that the Welsh Government "is not resiling here from our principled approach to making legislation within Wales within our devolved competences whatsoever" and that it is "a pragmatic response". While we acknowledge that it may be a pragmatic approach from the Welsh Government's perspective, we cannot understand how it is not also a

breach of the principled approach the Welsh Government advocates. It appears to us that this pragmatism does represent such a breach.

109. Earlier in this report we drew attention to our view that we consider the Welsh Government's 2021 principles for using UK Bills to legislate for Wales to be flawed. We note the Cabinet Secretary's comment that amendments to the Bill that are the subject of Memorandum No. 4 "go against our Principles on UK Legislation".

Recommendation 5. The Cabinet Secretary should explain further his comments regarding amendments to the Bill that are the subject of Memorandum No. 4, in particular the reasons why the amendments go against the Welsh Government's principles for using UK Bills to legislate for Wales.

110. Overall, the evidence provided by the Welsh Government to support this approach to using a UK Government Bill to legislate for Wales has not been persuasive.

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.

111. In justifying his approach, the Cabinet Secretary also described the Bill as a "framework Bill".

112. As this is a UK Bill, we do not undertake an assessment of whether we would consider it to be a framework Bill because that is a matter for the UK Parliament and its committees to come to a view on.

113. In determining whether a Bill introduced to the Senedd is a framework Bill, we look at whether too much policy detail is left to be introduced by subordinate legislation, through powers delegated to the Welsh Ministers. Where that is the case, the Committee will often recommend that more detail is added to the face of the Bill at amending stages of the Senedd's legislative process.

114. Where we would agree with the Cabinet Secretary is that the effect of the legislation is to provide regulation-making powers to the Welsh Ministers enabling them to set out policy detail in subordinate legislation.

115. However, this policy detail is subject to more limited scrutiny than if it had been included in a Welsh Government Bill, not least because subordinate legislation is not amendable.

116. The result of the Welsh Government's approach in 'piggy-backing' on a UK Government Bill is, in effect, to create a legislative framework for the Welsh Government, with those powers being delegated by the UK Parliament, rather than the Senedd, which has legislative competence in this area. This approach is reminiscent of the executive devolution of the First and Second Assemblies.

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.

117. We also wish to highlight another important point. The Cabinet Secretary's evidence notes that consultation with stakeholders has not been widespread, has been based on "the fundamental principles of this framework Bill", and that consultation on subordinate legislation would enable "proper engagement". Furthermore, the Cabinet Secretary has noted that "there's been no opportunity to complete a regulatory and economic impact assessment".

118. It would appear, therefore, that the decision to include provisions for Wales in the Bill was not based on any rigorous policy development and analysis by the Welsh Government. We are concerned that the Welsh Government's opportunism of applying to Wales provisions in a UK Government Bill designed for England has been undertaken in too short a period of time and potentially not been fully thought through. As a predecessor Committee has said before, rushed legislation is rarely good legislation.¹⁰² Furthermore, it is clear to us that the primary legislation for Wales has been driven, designed and led by policymakers in England. In our view this represents a retrograde step.

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.

119. Our concern about the approach being adopted and the Bill as a vehicle to legislate is illustrated by the application of clause 2 to Wales, concerning pollution incident reduction plans, which was an important part of Memorandum No. 3. In

¹⁰² Constitutional and Legislative Affairs Committee, [Making Laws in Wales](#), October 2015, paragraph 72

his evidence on 21 October 2024, the Cabinet Secretary highlighted the uncertainty surrounding the application of this clause to Wales, noting:

"... there was one aspect quite early on that we opted out of, because we weren't sure that it was directly applicable to Wales, but we took some time to look at that, and that was the pollution incident reduction plans, where we already have them on a voluntary basis within Wales, and we thought, 'Well, that probably does the job.' But, actually, on reflection, we've put forward now an amendment to actually seek to have Wales as part of that as well".

120. The amendments proposing the application of clause 2 to Wales were tabled on 13 November and Memorandum No. 3 laid before the Senedd on 27 November 2024.

121. This highlights the challenges faced in scrutinising legislative consent memoranda by Committees. The application of clause 2 to Wales took place late in the legislative process during amending stages. As a result, there has not been much time for Committees to consider in depth the implications of such a significant clause. This position has not been helped by the inadequate information contained in Memorandum No. 3. It does not provide information about the purpose of clause 2, appropriate analysis of how clause 2 will impact on existing practice in Wales and the amendments to that clause are also poorly explained, without appropriate detail or context.

122. We note the Cabinet Secretary's comments on clause 6. In our view, there may have been merit in including offences on the face of the Bill to provide certainty to stakeholders, with the ability to add offences as necessary through subordinate legislation subject to the affirmative procedure. If we were reporting on a Welsh Government Bill, it is likely that we would have made a recommendation to that effect.

123. We also note the Cabinet Secretary's comments on 'futureproofing' provisions within primary legislation. Respectfully, and while there can be nuances as to what 'futureproofing' means in practice, we disagree with the broad thrust of the Cabinet Secretary's comments. In particular, this is because we do not consider it appropriate for Welsh Ministers to advocate the use of a UK Government Bill to provide (potentially broad) executive powers to the Welsh Ministers, effectively promoting executive devolution at the expense of the Senedd as a fully functioning legislature.

124. As regards clause 7, again we note the Cabinet Secretary's response. If regulations under this clause had been subject to the affirmative procedure, it would have guaranteed a debate in the Senedd on these matters, and at least given the Senedd some element of a formal role on another aspect of legislation relating to water (and in the absence of a meaningful scrutiny role in the relevant primary legislation). This again illustrates the point we make above, in that the position in Wales is being determined and led by decisions taken at Westminster.

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.