

Report on Legislative Consent Memoranda for the Water (Special Measures) Bill

January 2025

1. Introduction

1. On 18 September 2024, the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs ('the Cabinet Secretary') laid a Legislative Consent Memorandum for the Water (Special Measures) Bill ('the LCM') before the Senedd. On 24 September 2024, the Business Committee referred the LCM to the Climate Change, Environment and Infrastructure Committee ('the Committee') and the Legislation, Justice and Constitution ('LJC') Committee, with a reporting deadline of 22 November 2024.

2. On 4 November 2024, the Cabinet Secretary' laid a second Legislative Consent Memorandum for the Bill ('LCM2').

3. On 27 November 2024, the Cabinet Secretary' laid another Legislative Consent Memorandum for the Bill ('LCM3').

4. On 4 December 2024, the Cabinet Secretary' laid a further Legislative Consent Memorandum for the Bill ('LCM4') before the Senedd.

Our approach

5. The Committee considered the LCM on 16 October 2024, LCM2 on 27 November, LCM3 on 12 December, and LCM4 on 8 January.



6. The Committee's scrutiny focused on the first LCM. This included oral evidence from Natural Resources Wales ('NRW') on 3 October during a topical scrutiny session and from the Cabinet Secretary on 16 October 2024.

7. After initial consideration of the first LCM, the Committee agreed to write to stakeholders to request their views on the provisions in the Bill. The responses can be found on the Committee's website.

2. The Water (Special Measures) Bill

8. The Water (Special Measures) Bill ('the Bill') was introduced in the House of Lords on 4 September 2024.

Policy objective

9. According to its Explanatory Notes, the Bill seeks to "*ensure water companies are better held to account where they have failed to deliver for the environment and customers.*".

10. The first LCM laid by the Welsh Government echoes this: "The Bill is a response to the perceived widespread failures by the water sector in addressing pollution caused by sewage discharges and ageing infrastructure".

11. The Bill includes provisions to:

- ban bonuses for persons holding senior roles where water companies fail to meet required standards relating to consumer matters, the environment, financial resilience or criminal liability;
- introduce a fit and proper person test for water company executives;
- ensure consumer representation on water company boards;
- extend the sentencing power of the Courts to include imprisonment in all cases where individuals have obstructed Environment Agency, NRW and Drinking Water Inspectorate investigations;
- enable automatic penalties to be issued by the Environment Agency and NRW for a defined list of offences;
- lower the standard of proof for Environment Agency and NRW civil sanctions to enable more rapid penalties to be issued for minor to moderate offences;
- require publication of near real-time data on discharges from emergency overflows;
- require water companies in England to produce annual pollution incident reduction plans;

- introduce a new power for the Environment Agency and NRW to recover costs from water companies for enforcement activities;
- allow for improved cost recovery for the Drinking Water Inspectorate;
- modify water company licences to recover shortfall in the event of insolvency or serious breach by a water company; and
- ensure the UK Government and Ofwat are notified ahead of any winding up petitions.

Provisions for which consent is required

LCM

12. An LCM for the Bill was laid on 18 September 2024.

13. The UK and Welsh Government agreed that, at the time of its introduction in the House of Lords, legislative consent was required for all the clauses of the Bill, except clauses 2 (Pollution Incident Reduction Plans) and 10 (Modification by Secretary of State of water company's appointment conditions etc to recover losses), which did not apply to Wales.

LCM2

14. LCM2 was laid before the Senedd on 4 November 2024. LCM2 relates to amendments tabled by the UK Government at House of Lords Committee Stage. The Welsh Government described the amendments as “minor and technical in nature”. The amendments related to the following clauses –

- 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; and
- Clause 8 – Charges in respect of Environment Agency and NRW functions.

15. In line with their position in paragraph 13 above, the Welsh and UK Governments agreed that these clauses, as amended, would require legislative consent from the Senedd.

16. LCM2 states the Welsh Government was “seeking an amendment to extend Clause 2 (Pollution Incident Reduction Plans) to Wales” and that this amendment was expected to be introduced at Report Stage in the House of Lords.

LCM3

17. LCM3 was laid before the Senedd on 27 November 2024. LCM3 related to amendments tabled at House of Lords Report Stage. They include an amendment to extend Clause 2 (Pollution Incident Reduction Plans) to Wales, following a request from the Welsh Government.

18. According to LCM3, 65 amendments were tabled at this stage, which could be grouped as follows –

- Clause 2: Extending applicability to Wales;
- Clause 2: Making CEOs personally liable for the production of Pollution Incident Reduction Plans (PIRPs);
- Clause 2: Expand the duty to create PIRPs 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 the commencement of the new clauses and the extension of Clause 2 to Wales.

19. The Welsh and UK Governments agreed that these provisions would require the legislative consent of the Senedd.

LCM4

20. LCM4 was laid before the Senedd on 4 December 2024.

21. LCM4 relates to two non-government amendments passed at House of Lords Report Stage. Both amendments relate to Clause 1 (Rules about remuneration and governance) of the Bill. The Welsh and UK Governments agreed that legislative consent from the Senedd would be required.

Welsh Government's position on consent

22. In LCM4, the Cabinet Secretary explains, "Water is an inherently cross-border issue, and the issue of environmental impacts of water quality is one we cannot solve alone." In reference to the desirability of the UK Parliament legislating on behalf of Wales, the Cabinet Secretary adds:

"Some regulations and laws also apply in both England and Wales. A coordinated approach across (sic) 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."

23. The Welsh Government's LCM4 concludes with the Cabinet Secretary's view that:

"it is appropriate to deal with these amendments to this UK Bill via a Legislative Consent Memorandum as its aims are wholly in line with Welsh Government policy, the matter is an inherently cross-border issue requiring collaboration and coordination between our two Governments."

24. The Welsh Government recommended that the Senedd should support the proposals and give its consent.

3. Evidence from stakeholders and the Cabinet Secretary

Remuneration and Governance (Clause 1)

25. Dŵr Cymru Welsh Water emphasised the need to ensure the proposals in the Bill could accommodate its not-for-profit governance model. It recommended that the Bill include provisions allowing Ofwat to tailor rules for companies operating under different models. Hafren Dyfrdwy stated that the proposed governance and remuneration rules should not apply retrospectively. They also argued that the rules should target only senior executives, such as statutory directors.

26. Ofwat's Chief Executive, David Black, stated that the proposals have the potential to "prompt a step change in companies' culture and leadership". He outlined Ofwat's plans to consult on the governance rules proposed by the Bill.

27. CCW expressed its support for the Bill, particularly the proposals requiring consumer representatives to participate in water company boards, committees, or panels. CCW proposed the establishment of independent consumer panels for each water company in Wales, to be led by CCW.

28. NRW supported the proposals, particularly the Code of Conduct, as a mechanism to ensure that water companies act in the interests of customers and the environment. NRW emphasised that it should be consulted on the development of the proposed governance rules in the Bill.

Pollution Incident Reduction Plans – PIRPs (Clause 2)

29. Dŵr Cymru had no objection to the adoption of annual PIRPs. They suggested that Welsh Ministers and NRW should play a role in determining the content and requirements of these plans. This would ensure they were aligned with Welsh Government priorities and environmental policies.

30. Hafren Dyfrdwy emphasised its strong record of environmental performance and investment in pollution reduction. It believed that existing mechanisms were already effective and felt there would be no disadvantages in the provisions applying in Wales.

31. NRW supported extending these provisions to Wales and recommended that water companies should be required to consult Welsh Ministers and follow NRW guidance when preparing their plans.

Emergency Overflows (Clause 3)

32. Dŵr Cymru confirmed that Event Duration Monitors (EDMs) are already installed on all their Combined Storm Overflows. Subject to Ofwat's approval of their Asset Management Plan for 2025-30 (AMP8 Business Plan), all emergency overflows will also have EDMs installed by 2030.

33. Hafren Dyfrdwy supported these provisions. They reported that EDMs were already installed on all of their storm overflows and were working to install additional EDMs on emergency overflows at pumping stations. They had launched a live storm overflow map in 2024 and were prepared to expand their reporting capabilities to meet the requirements in the Bill.

34. Ofwat also expressed support for the provisions in relation to emergency overflows and noted that a similar near-real-time reporting duty for *storm* overflow discharges was already contained within the Environment Act 2021. However, the provisions in that UK Act do not apply to companies based wholly or mainly in Wales.

35. NRW also welcomed these requirements. They highlighted that the installation of EDMs at all storm and emergency overflows in Wales by 2030 is part of NRW's National Environment Programme. However, NRW highlighted that live information from storm overflows, while currently reported voluntarily, is not required by law.

Civil Penalties: Modification of Standard of Proof (Clause 5)

36. While Dŵr Cymru acknowledged the Bill's aim to facilitate prosecution under the "polluter pays" principle, they raised concerns about lowering the evidential threshold. They stressed the importance of an appeals process.

37. Hafren Dyfrdwy did not oppose the proposed changes to the evidential threshold but emphasised the need for clear guidance to ensure that the provisions are applied consistently.

38. NRW welcomed the proposals to lower the evidential threshold. However, they noted that their existing powers to issue civil sanctions are limited and called

for changes to enable the application of civil sanctions to water company offences under the Environmental Permitting Regulations (EPR).

Automatic Penalties for Certain Offences (Clause 6)

39. Dŵr Cymru supported in principle the use of penalties but suggested that the Bill or supporting regulations should make greater use of Environmental Enforcement Undertakings, which allow regulators to direct the proceeds of fines toward local projects aimed at improving the environment.

40. Hafren Dyfrdwy supported the principle of automatic penalties but called for greater clarity on the offences to which these penalties would apply and a cap on fines.

41. NRW also supported the proposals.

Charges in Respect of EA and NRW Functions (Clause 8)

42. NRW welcomed the Bill's provisions to enable the organisation to recover the costs of enforcement activities. Hafren Dyfrdwy expressed concern about recent significant increases in permitting and licensing charges and believed that funds resulting from the provisions should be ring-fenced.

Implementation

43. NRW expressed concern about the proposed timescales for implementing the provisions in the Bill. They understood that the UK Government was aiming to implement measures in England by April 2025, but a similar timeline would be challenging in Wales in light of the financial pressures NRW was experiencing.

Evidence from the Welsh Government

44. The Cabinet Secretary expressed support for the provisions in the Bill around the governance of water companies. He acknowledged that the not-for-profit operating model of Dŵr Cymru Welsh Water would require special consideration.

45. The Cabinet Secretary emphasised the Welsh Government's preference for funds arising from penalties to remain in Wales and to be used to support bodies such as NRW and the Drinking Water Inspectorate. Discussions with the UK Government on this matter were progressing.

46. The Cabinet Secretary noted that the Bill's provisions seek to ensure NRW can recover costs for enforcement and permitting, which was aligned with the Welsh Government's objective to allow regulators to recover such costs fully.

47. In reference to the provisions for expanding civil sanctions, Adriana Kiss (Welsh Government) clarified that NRW already has civil sanction powers under the Regulatory Enforcement and Sanctions Act 2008 and that an Order made in 2010 specified the "types of legislation or specific legislation that NRW can utilise for civil sanctions—the various fixed monetary penalties or variable monetary penalties". The Cabinet Secretary highlighted that the Bill's proposal to lower the evidential threshold would enable easier enforcement of environmental offences.

48. In response to concerns about Wales being excluded from statutory pollution reduction plans in the Bill that was introduced, the Cabinet Secretary said the Welsh Government's position on this had changed following discussions with NRW. Consequently, the Welsh Government would be seeking an amendment to extend the Clause 2 requirements to Wales.

49. Regarding monitoring emergency and storm overflows, the Cabinet Secretary assured the Committee that EDMs for storm overflows were already in place. The installation of EDMs for emergency overflows was progressing and was expected to be completed ahead of the 2035 deadline set by the Bill.

4. The Committee's conclusion

The Committee supports the provisions in the Bill. However, there are questions about the desirability of the UK parliament legislating on behalf of Wales on devolved matters. This is a matter we have raised consistently in our reports on LCMs.

In terms of the detailed provisions, the Committee believes the governance provisions in the Bill must be able to accommodate the unique ownership model of Dŵr Cymru Welsh Water. We would be grateful for reassurance from the Cabinet Secretary that this will be the case.

We support the proposals to strengthen consumer input through independent consumer panels, as suggested by CCW. The Cabinet Secretary should engage with CCW on their proposals on this matter.

The Committee welcomes the provisions in the Bill in relation to Event Duration Monitors (EDMs) for emergency overflows. We also welcome the assurance that all storm overflows in Wales now have EDMs in place. We note, however, that unlike in England, there is no statutory requirement in Wales for EDMs to be in place for storm overflows. We seek the Cabinet Secretary's assurance that the standards being met voluntarily in Wales are at least as high as those in England as required by the Environment Act 2021. If this is not the case, the Cabinet Secretary should consider legislation to bring practice in Wales into line with England.

The Committee supports the suggestion from several stakeholders that funds arising from penalties or through other aspects of the legislation should be returned directly to Wales. The Cabinet Secretary told us he supports this position and that the Welsh and UK Governments were discussing how it might be achieved. We would appreciate an update from the Cabinet Secretary on this matter.

Finally, the Committee was concerned by the comments from NRW about the feasibility of meeting the UK Government's proposed timeline for implementing the provisions in the Bill. We would be grateful for an update from the Cabinet Secretary on his discussions with NRW and stakeholders on this matter.

Subject to the matters raised above, the Committee sees no reason to object to the Senedd giving consent to the UK Parliament to legislate on the Senedd's behalf on the relevant matters set out in the report.