

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

The Water (Special Measures Bill)

1. This Legislative Consent Memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. The Water (Special Measures) Bill (“the Bill”) was introduced in the UK Parliament, the House of Lords on 4 September 2024. I laid an LCM on 18 September 2024.
3. The UK Government tabled five amendments on 21 October for consideration at Lords Committee Stage, which commenced on 28 and 30 October 2024. The amendments make provision which fall within the legislative competence of the Senedd, as detailed in paragraphs 14 to 17 below.
4. The latest version of the Bill can be found at: [Water \(Special Measures\) Bill \[HL\] - Parliamentary Bills - UK Parliament](#).

Policy Objective(s)

5. The UK government introduced the Water (Special Measures) Bill to strengthen the powers of the regulator and address water pollution issues. The Bill was announced in the King’s Speech on 17 July and reflects the Labour Government’s manifesto commitment on cleaning up our waterways.
6. The Bill is a response to the perceived widespread failures by the water sector in addressing pollution caused by sewage discharges and aging infrastructure. The Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs has agreed that the provisions which relate to the regulation of the water industry should apply to Wales.

Summary of the Bill

7. The Bill is sponsored by the Department for the Environment, Food and Rural Affairs.
8. The key provisions of the Bill cover measures which will strengthen the powers of water industry regulators, including Ofwat, Natural Resources Wales (NRW) and the Drinking Water Inspectorate (DWI).
9. The UK Government sought the Welsh Government’s view on the proposed Bill early in the process. The Secretary of State for Environment, Food and Rural Affairs wrote to the Deputy First Minister

and Cabinet Secretary for Climate Change on 26th of July offering to work collaboratively and extend the provisions to Wales, if the Welsh Government wishes to do so. The Deputy First Minister and Cabinet Secretary for Climate Change agreed, in principle, to extend the provision to Wales and sought powers equivalent to those of the Secretary of State for the Welsh Ministers through the Bill. An initial draft of the Bill was received from Defra on August 20th and, following addition of several measures, a final draft Bill was shared by Defra on August 29th. Water policy officials have been engaging with colleagues in Defra in assessing the proposed measures and assessing their relevance to and impact on Wales ahead of introduction.

10. The changes implemented by the Bill are made by a combination of freestanding provisions and amendments to the Water Industry Act 1991 and the Water Resources Act 1991, with those two Acts comprising a significant proportion of the existing legislative landscape in respect of water.

Update on position since the publication of the first Legislative Consent Memorandum

11. Regular engagement between the UK and the Welsh Government has been continuing throughout the Parliamentary passage of the Bill, including as regards the technical amendments at Lords' Committee Stage.
12. The Welsh Government is seeking an amendment to extend Clause 2 (Pollution Incident Reduction Plans) to Wales. This amendment is expected to be introduced at Lords Report Stage.

Provisions tabled by the UK Government/agreed to the Bill for consideration at House of Lords Committee Stage for which consent is required

13. The amendments tabled by UK Government at this stage are minor and technical in nature, however I will give a brief explanation of their effect here. Amendment numbers quoted in this document refer to those used in the amendment paper published ahead of Committee Stage, which is available at this link: [HL Bill 17—1](#).
14. Amendment 68: Clause 5 (Civil penalties: modification of standard of proof)

A new insertion 5(6) intends to clarify and narrow down the scope to which clauses 5 and 6 (on automatic penalties) apply to ensure it is line with the policy intention and the clauses do not unintentionally capture companies which do not engage in sewerage activities. This is achieved by stating that an offence is only committed by a water supply licensee or sewerage licensee for the purposes of this clause where it is committed by the company in the course of activities to which its license relates.

15. Amendment 71: Clause 6 (Automatic penalties for certain offences)

A new insertion to clarify that offences to which automatic penalties under clause 6 can be applied in respect of water supply or sewerage licensees are only those committed by the company in the course of activities to which its license relates.

16. Amendments 76 and 77: Clause 7 (Abstraction and impounding: power to impose general conditions)

There are two amendments to Clause 7. These amendments provide that Clause 7 applies to water supply and sewerage licensees only in relation to their licensed activities.

17. Amendment 83: Clause 8 (Charges in respect of Environment Agency and NRBW functions)

Clause 8(b) is amended so that the definition of “water industry enforcement functions” in respect of water supply licensees and sewerage licensees only applies, as intended, to activities to which their licences relate. It has the same objective as the amendments listed in para 14-16.

18. 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.

UK Government view on the need for consent

19. 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.

Reasons for making these provisions for Wales in the Water (Special Measures) Bill

20. The reasoning set out in the previous LCM on this Bill as to why it is appropriate for UK legislation to make provision for Wales in this Bill still stands. I again restate my arguments here for ease of reference.

21. 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.

22. 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.

23. Some regulations and laws also apply in both England and Wales. A coordinated approach across is essential to ensure regulatory consistency.
24. 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.
25. 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.

Financial implications

26. The Bill itself does not introduce any additional financial obligations for the Welsh Government.
27. Clause 2 relating to Event Duration Monitoring does carry an implicit duty on water companies to install relevant systems on their infrastructure. However, this is already largely in place across Wales and would in any event form part of ongoing Price Review settlements for the sector by the regulator Ofwat.
28. Clauses 5, 6, 8 and 9 relating to civil sanctions, automatic fines and cost recovery for regulators will allow for greater cost recovery for regulators and the imposition of financial penalties on water companies in Wales at a lower cost and administrative burden to the regulators.
29. Clause 12 allows for cost recovery (among other functions) by the Welsh Government in the event of Welsh Government having to implement its powers on Special Administration. This builds on existing law around Special Administration and allows for reduced or no financial costs in the long term for Welsh Government in the event of a Special Administration.

Conclusion

30. 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 policy, the matter is an inherently cross-border issue requiring collaboration and coordination between our two Governments. Therefore, I recommend that the Senedd supports the proposals and gives its consent.

Huw Irranca-Davies MS
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs
4 November 2024