

The Water Industry in Wales

April 2015

Introduction

The water and sewerage industry in Wales is one of the most complicated areas within the devolution settlement, mainly because of the cross-border nature of water company boundaries. However this may change after the Silk Commission recommended realigning legislative competence for water with the national border rather than company boundaries.

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

The UK **Water Act 2014** aims to make the industry more innovative, responsive to customers and resilient to natural hazards.

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

Legislation

EU Directives

The Welsh Government is responsible for implementing a number of European Directives that relate to water policy. They are the:

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

UK Legislation

The **Water Industry Act 1991** (as amended by the **Water Industry Act 1999** and the **Water Act 2003**) sets out the regulatory, competition and consumer representation frameworks for the water sector in Wales and England.¹

The **Water Resources Act 1991** (as amended by the **Water Act 2003**) provides for the regulation of water resource management, abstraction and impounding; and water quality standards and pollution control, in Wales and England.²

The **Water Act 2014**, provides for the reform of the water industry, primarily in Wales and England.³ This includes enabling business and other non-household customers to switch their water and sewerage suppliers from 1 April 2017 (though this is not in force in Wales; see 'Competition' section below). Part 4 of the Act also includes measures to deal with the affordability of flood insurance.⁴ The proposed scheme ('Flood Re') aims to address the availability and affordability of flood insurance for households at flood risk in the UK.⁵

¹ Defra, **Reforming the water industry to increase competition and protect the environment** [accessed 13 February 2015]

² Water UK, **Policy** [accessed 13 February 2015]

³ **Water Act 2014** (Chapter 21) [accessed 19 January 2015]

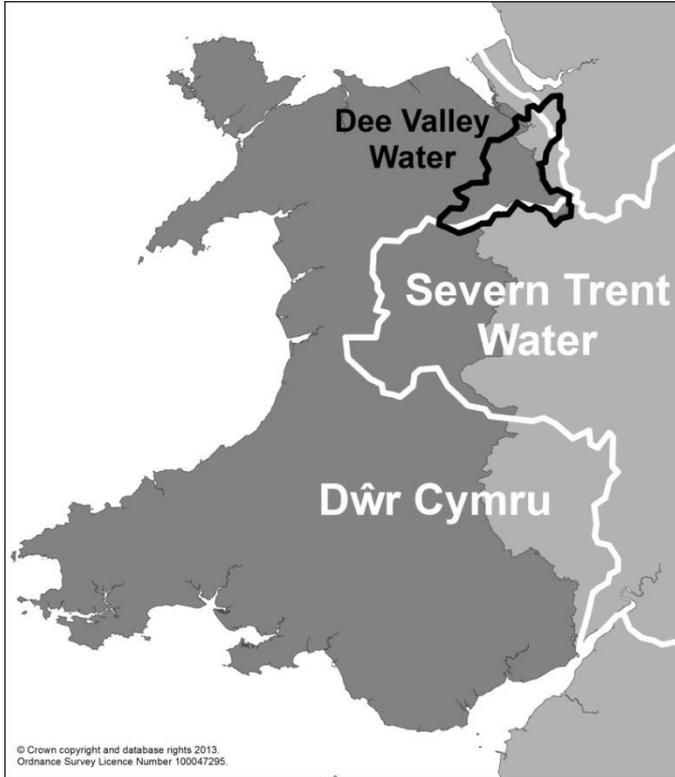
⁴ *ibid*

⁵ Defra, **The Flood Reinsurance Scheme - Regulations** [accessed 13 February 2015]



Water Companies in Wales

The three main water companies serving customers in Wales are shown in the map below (note that company boundaries are indicative only):



Wholly or mainly in Wales

Dŵr Cymru (Welsh Water)

Dŵr Cymru (Welsh Water) is a water and sewerage company covering most of Wales and some adjoining areas of England. It serves over three million people and since 2001 has been owned by Glas Cymru.⁶

Glas Cymru is a single purpose company formed to own, finance and manage Welsh Water. It is a 'company limited by guarantee' and because it has no shareholders, any financial surpluses are reinvested into Dŵr Cymru.⁷

⁶ Dŵr Cymru, Company Information, [Dŵr Cymru Welsh Water](#) [accessed 13 February 2015]

⁷ Dŵr Cymru, Company Information, [Glas Cymru](#) [accessed 13 February 2015]

Dee Valley Water

Dee Valley Water is a water only company serving customers in north east Wales and the north west of England. It has around 258,000 customers.

Dee Valley Water was formed in 1997 with the merger of the former Wrexham Water Company and Chester Water Company.⁸

Wholly or mainly in England

Severn Trent Water

Severn Trent Water is a water and sewerage company covering much of the English midlands and part of neighboring mid-Wales. It has over 4.2 million household and business customers and is part of a portfolio of companies owned by Severn Trent Plc.⁹

Severn Trent Plc is traded on the London Stock Exchange and is a constituent of the FTSE 100 Index.¹⁰

New Appointments and Variations

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

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

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

⁸ Dee Valley Water, [About Dee Valley Water](#) [accessed 13 February 2015]

⁹ Severn Trent, About Us, [Severn Trent Water](#) [accessed 13 February 2015]

¹⁰ London Stock Exchange, [Severn Trent](#) [accessed 13 February 2015]



NAVS may be granted in cases where:

- an area does not contain any premises that receive services from an appointed water or sewerage company (it is 'unserved');
- a customer uses (or is likely to use) at least 250 million litres of water a year (in Wales) or 50 million litres of water a year (in England) at each of its premises and wants to change its supplier; or
- the existing appointed company agrees to transfer part of its area to a different company.¹¹

The successful appointee can serve its new customer(s) either using its own resources or methods of treatment, or by requesting the use of the existing licensed supplier's assets. Ofwat has granted two NAVs in Wales as follows:

- Albion Water, at Shotton (Flintshire), granted 1 May 1999.
- SSE Water, at Llanilid (Rhondda Cynon Taf), granted 9 March 2009.

Devolution

The water and sewerage industry has been one of the most complicated areas within the devolution settlement. This is primarily because water company boundaries, which are based on water pipe and sewer networks, and predate devolution, reflect river catchments rather than the administrative border between Wales and England (as shown in the map on page 2). However, this may change as the Silk Commission has recommended aligning the boundary for legislative competence for water with the national border (detailed below) in the blueprint for the future of devolution in Wales.¹²

¹¹ Ofwat, **New appointments and variations – a statement of our policy**, January 2014 [accessed 20 January 2015]

¹² UK Government, **Powers for a purpose: towards a lasting devolution settlement for Wales**, 27 February 2015 [accessed 27 February 2015]

Legislative and Executive Competence

Paragraph 19 of Schedule 7 to the **Government of Wales Act 2006** devolves the following to the Assembly: water supply, water resources management (including reservoirs), water quality, the representation of consumers of water and sewerage services and flood risk management and coastal protection.¹³

Currently, the regulation and appointment of any water undertaker whose area is not **wholly or mainly** in Wales is not devolved.

There is also an exception for the licensing and regulation of licensed water suppliers within the meaning of the **Water Industry Act 1991**, apart from regulation in relation to licensed activities using the supply system of a water undertaker whose area is **wholly or mainly** in Wales.¹⁴

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

What this means in very simple practical terms is that whilst Welsh Ministers can for example make certain secondary legislation in relation to the whole of Dŵr Cymru or Dee Valley Water's appointment or supply area (thus affecting some customers in England) the legislative competence of the Assembly would not necessarily enable the Assembly to make primary legislation on the same matter. This is because Acts of the Assembly may not apply otherwise in relation to Wales (subject to Section 108 (5) of the **Government of Wales Act 2006**).

Silk Commission Recommendations

The announcement on 27 February 2015 which laid out the blue-print for the next devolution settlement stated that powers over sewerage should be

¹³ UK Government, **Government of Wales Act 2006** Chapter 32, 25 July 2006 [accessed 19 March 2015]

¹⁴ **Water Industry Act 1991** Chapter 56 [accessed 13 February 2015]

devolved to the National Assembly for Wales.¹⁵

The Silk Commission has recommended aligning the boundary for legislative competence for water with the national border. This would effectively end the regulation of the industry in Wales on a 'wholly and mainly' basis.

Though this recommendation was supported by the Welsh Government in its evidence¹⁶ to the Silk Commission, the UK Government took a different view¹⁷. The UK Government stated that any proposal to align the legislative competence of the Assembly and executive competence of Welsh Ministers with the geographic boundary would have significant implications in a range of areas. These include: management of water resources; potential stability of the regulatory regime; investment and asset management; and the inter-dependence of the cross-border water and sewerage industry.¹⁸

The Silk Commission recognised that this alignment of the legislative and the national border would be complex and noted the need for further work on the practical implications.¹⁹ It was stated in the 2015 St. David Day's announcement on the devolution settlement for Wales that a Joint Government Review Programme will be established to examine the implications of this proposed change with a view to implementing the recommendation if it is reasonably achievable to do so.²⁰ The timeframe for the review has yet to be decided.

The Silk Commission also recommended a formal intergovernmental protocol on cross-border water issues, and to remove the Secretary of State's

¹⁵ UK Government, **Powers for a purpose: towards a lasting devolution settlement for Wales**, 27 February 2015 [accessed 27 February 2015]

¹⁶ Welsh Government, **The Future of Devolution in Wales**, 1 July 2014 [accessed 13 February 2015]

¹⁷ Gov.uk, **UK Government publishes its evidence to the Silk Commission** [accessed 13 February 2015]

¹⁸ Gov.uk, **UK Government publishes its evidence to the Silk Commission** [accessed 13 February 2015]

¹⁹ UK Government, **Powers for a purpose: towards a lasting devolution settlement for Wales**, 27 February 2015 [accessed 27 February 2015]

²⁰ *ibid*

powers of intervention in favour of mechanisms under the protocol. This was also advocated by the Welsh Government in its evidence to the Silk Commission.²¹

Welsh Government Policy

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

- Water companies **wholly or mainly** in Wales - Dŵr Cymru and Dee Valley Water;
- The economic market regulator – Ofwat;
- The environment regulator – Natural Resources Wales;
- The Drinking Water Inspectorate; and
- Local authorities.

Water Strategy for Wales

The Welsh Government is currently developing a new Water Strategy for Wales.²²

In its Programme for Government, published in 2011, the Welsh Government made a number of commitments relating to water policy. The principal actions were to develop a Water Strategy for Wales and to take measures to tackle water affordability.²³ The Welsh Government consulted on the strategy between April and July 2014.²⁴ The strategy will outline policy direction on a range of issues including:

- Land use and the environment;
- Water resource management and the value of water;

²¹ Welsh Government, **The Future of Devolution in Wales**, 1 July 2014 [accessed 13 February 2015]

²² Welsh Government, **Water Strategy for Wales**, 25 April 2014 [accessed 16 January 2015]

²³ Welsh Government, **Programme for Government, Environment and Sustainability**, 2011 [accessed 13 February 2015]

²⁴ Welsh Government, **Water Strategy for Wales Consultation**, 7 April 2014 [accessed 16 January 2015]



- Water efficiency;
- Future regulation of the water industry;
- Affordability and metering; and
- Water and sewerage services: public and private.²⁵

The final strategy is expected to be published soon.

Bad Debt Regulations

The Welsh Government laid its **Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014** before the Assembly on 3 December 2014. The Regulations came into force on 1 January 2015. In 2014 the Welsh Government proposed 'Bad Debt' Regulations to assist the water industry to reduce debt resulting from unpaid bills and help lower bills. The cost of debt from non-payment of water bills is currently covered by all paying customers of the water company. This adds approximately £20 per year to each bill.

As many water debtors are tenants, the Regulations place a duty on landlords to provide details of their own address along with a tenant's name, date of birth and the date they started occupancy. If landlords do not provide this information they become jointly liable for payment of water charges at the tenanted property.²⁶

Social Tariff Guidance

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

²⁵ *ibid*

²⁶ Welsh Government, **Consultation on tackling 'bad debt' within the water industry in Wales** [accessed 16 February 2015]

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

The Welsh Government has stated that it will review this guidance after its new water strategy is published.²⁷

Competition

The **Water Act 2014** – see section on UK legislation on page 1 – contains measures to allow businesses and other non-household customers to switch water and sewerage supplier if they so wish. However, **the Welsh Government does not agree with introducing competition into the non-household market in Wales.**

The then Minister for Natural Resources and Food, Alun Davies AM, stated that the Welsh Government had not received any clear modelling or evidence to demonstrate the benefits of competition²⁸ and that the Welsh Government does not want to follow the direction outlined by the UK Government by being 'overly dependent' on competition.

The Minister said:

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

²⁷ Welsh Government, **Social Tariff Guidance** [accessed 19 January 2015]

²⁸ National Assembly for Wales, Environment and Sustainability Committee, **ES(4)-13-13: Paper 1 – Inquiry into water policy in Wales - Evidence from the Minister for Natural Resources and Food**, 1 May 2013 [accessed 13 February 2015]

Regulation

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

Ofwat

Ofwat (or the Water Services Regulation Authority) is the economic regulator for Wales and England. It operates independently of industry and the UK and Welsh Governments, but within a policy framework set by UK and Welsh Ministers.³⁰

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

Ofwat limits the prices water companies can charge through its Price Review process. The majority of water companies operate as monopolies meaning that most consumers have no choice of provider. Ofwat therefore sets the price limits that each individual company can charge. It does this by scrutinising water companies' Business Plans and balancing the need for affordable water and sewerage services with the investment the companies need to make to maintain and improve infrastructure and meet environmental standards. Price reviews take place every five years; the price review for the period 2015-2020 was carried out in 2014.³¹

Ofwat is also responsible for monitoring companies'

²⁹ National Assembly for Wales, Environment and Sustainability Committee, **RoP [para 5]**, 1 May 2013 [accessed 13 February 2015]

³⁰ **Ofwat** [accessed 13 February 2015]

³¹ Ofwat, **Price Review 2014** [accessed 19 January 2015]

performance in relation to key policy outcomes and for setting targets for efficiency and leakages. Ofwat has set annual leakage reduction targets up to 2015 and is able to take action if companies fail to deliver upon these targets.³²

The Welsh Government has a Memorandum of Understanding with Ofwat.³³

The *Water Act 2014* introduced a new statutory duty on Ofwat, and the Welsh Ministers and UK environment secretary, to ensure water and sewer systems in Wales and England are resilient to floods, droughts and changes to population and climate. In response, Ofwat set up an independent group in January 2015, to help define what water sector resilience means in practice and what Ofwat's regulatory role and responsibilities will be.

Natural Resources Wales

Natural Resources Wales (NRW) is responsible for managing water resources, and monitoring and improving water quality - including fresh, marine, surface and underground water in Wales.

NRW's powers and duties have been inherited from the former Environment Agency Wales³⁴ and the relevant legislation is set out in the **Natural Resources Body for Wales (Functions) Order 2013**.³⁵ It is responsible for implementing and enforcing regulations, policies and permits relating to:

- Surface and groundwater;
- Water abstraction, efficiency and quality;
- Managing water resources in Wales and ensuring water companies deliver Water Resource

³² Ofwat, **Leakage** [accessed 13 February 2015]

³³ Welsh Government, **Memorandum of Understanding between Welsh Ministers and the Water Services Regulation Authority (Ofwat)**, 10 December 2010 [accessed 13 February 2015]

³⁴ NRW was established on 1 April 2013 following the merger of Environment Agency Wales, Forestry Commission Wales, the Countryside Council for Wales and some functions of the Welsh Government.

³⁵ **Natural Resources Body for Wales (Functions) Order 2013** [accessed 13 February 2015]



Management Plans;

- Arbitration between sewerage undertakers and individuals in relation to mains sewerage connection;
- Regulation of private water supplies and septic tanks; and
- Considering how new developments impact on water through the Environmental Impact Assessment process.³⁶

Drinking Water Inspectorate

The Drinking Water Inspectorate operates in Wales and England and aims to provide independent reassurance that public water supplies are safe and drinking water quality is acceptable to consumers.³⁷ It is responsible for independently checking the tests completed by water companies and auditing water company laboratories.

Where failures in standards occur it can use its enforcement powers to require water companies to address the source of the problem, conduct investigations and make recommendations to ensure that problems do not arise in future. Its powers and duties are set out in the **Water Industry Act 1991**³⁸ (as amended by the **Water Act 2003**³⁹).

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

Consumer Council for Water

The Consumer Council for Water is not a regulator but is responsible for representing water and sewerage customers in Wales and England.⁴⁰ It was created under the **Water Act 2003** and has a committee and office in Wales.⁴¹

³⁶ NRW, **Water Policy** [accessed 13 February 2015]

³⁷ Drinking Water Inspectorate, **About us** [accessed 13 February 2015]

³⁸ **Water Industry Act 1991** Chapter 56 [accessed 13 February 2015]

³⁹ **Water Act 2003** Chapter 37 [accessed 13 February 2015]

⁴⁰ Consumer Council for Water, **CCWater - about us** [accessed 13 February 2015]

⁴¹ **Water Act 2003** Chapter 37 [accessed 13 February 2015]

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

Local Authorities

Under the **Water Industry Act 1991** local authorities have a duty to remain aware of the 'wholesomeness and sufficiency' of water supplies in their area.⁴² If they believe the water supply may become or has become insufficient then they have a duty to inform the water suppliers who have to take action upon receipt of this information. Local authorities are also responsible for the monitoring of private water supplies within their area and may from time to time sample public water supplies and bathing waters.

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

⁴² **Water Industry Act 1991** Chapter 56 [accessed 13 February 2015]

Further information

For further information about the **Water Industry in Wales**, please contact **Elfyn Henderson** (elfyn.henderson@assembly.wales) or **Katy Orford** (katy.orford@assembly.wales), Research Service.

See also:

- Research Service Quick Guide: **Water Quality in Wales**
- Welsh Government, **Water**
- **Ofwat**
- Natural Resources Wales, **Water Policy**
- **Drinking Water Inspectorate**
- Consumer Council for Water, **Wales**
- **Dŵr Cymru Welsh Water**
- **Dee Valley Water**
- **Severn Trent Water**

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