

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO 3)**

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 and a Supplementary LCM on 4 November 2024.
3. The UK Government tabled 34 amendments on 13 November for consideration at Lords Report Stage, which commenced on 20 November 2024. The amendments make provision which fall within the legislative competence of the Senedd, as detailed in paragraphs 10-46 below.
4. The latest version of the Bill can be found [here](#).

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. The Bill is a response to the perceived widespread failures by the water sector in addressing pollution caused by sewage discharges and aging infrastructure. I have agreed that the provisions which relate to the regulation of the water industry should apply to Wales.

Summary of the Bill

6. The Bill is sponsored by the Department for the Environment, Food and Rural Affairs. The key provisions of the Bill cover measures which designed to strengthen the powers of water industry regulators, including Ofwat, Natural Resources Wales (NRW) and the Drinking Water Inspectorate (DWI). 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, which between them comprise a significant proportion of the existing legislation in respect of water.
7. I 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.

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

8. 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.
9. 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.

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

10. The amendment groups tabled by the UK Government apply to Clauses 2 (Pollution Incident Reduction Plans) and 13 (Extent, commencement, transitional provisions and short title), and introduce two new Clauses. Some of the amendments are consequential and technical in nature.
11. There were 65 amendments tabled to the Bill for Lords Report Stage, out of which 34 were tabled by government. The numbers quoted in this document refer to those used in the amendment paper published ahead of Lords Report Stage, which is available at this link: [HL Bill 45—I](#).
12. Thematically, the amendments can be grouped as:
 - 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 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.
13. Amendment 12 (Clause 2)
A consequential technical amendment which moves the new pollution incident reduction plan clause to elsewhere in the Water Industry Act

1991 (from before section 95 to after section 205). This is in consequence of the amendments extending Clause 2 to the water supply network.

14. Amendment 13 (Clause 2)
Consequential amendment to amendment 12 which re-numbers the first clause on PIRPs to 205A so as to address its new location within the Water Industry Act 1991.
15. Amendment 14 (Clause 2)
One of a group of amendments which this amends “sewerage undertaker” to “relevant undertaker” and extends the application of PIRPs to the water supply network.
16. Amendment 15 (Clause 2)
Removes the line “whose area is wholly or mainly in England” to extend the provision to Wales.
17. Amendment 16 (Clause 2)
Amends “sewerage system” to “system”. This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.
18. Amendment 17 (Clause 2)
Amends “sewerage system” to “system”. This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.
19. Amendment 18 (Clause 2)
Amends “sewerage system” to “system”. This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.
20. Amendment 19 (Clause 2)
This removes “*an assessment of the progress achieved in implementing measures specified in previous plans published under this section*” from the points that a PIRP must address.
21. Amendment 20 (Clause 2)
This amendment reflects the request of the Welsh government to extend Clause 2 to Wales. This amends “Secretary of State” to “Ministers” (defined later) in section 94EA(4)(h) to allow the clause to cover England or Wales as applicable.
22. Amendment 21 (Clause 2)
This is one of a group of amendments extending Clause 2 to Wales. This amends section 94EA(5) so that the consultation requirement prior to giving directions covers the relevant Ministers and the relevant agency (i.e. EA or NRW) as applicable.
23. Amendment 22 (Clause 2)

The amendment leaves out “sewerage” and inserts “relevant” This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.

24. Amendment 23 (Clause 2)
Replaces “Environment Agency” with “appropriate agency”. This amendment reflects the request of the Welsh Government to extend Clause 2 to Wales.
25. Amendment 24 (Clause 2)
This amends section 94EA(7), which requires consultation prior to issuing guidance, so that the references to Secretary of State and EA now cover Secretary/Welsh Ministers and EA/NRW as applicable. This amendment reflects the request of the Welsh government to extend Clause 2 to Wales.
26. Amendment 25 (Clause 2)
A new (7A) to clause 9EA of the Water Industry Act 1991 requiring pollution incident reduction plans to include a statement from the chief executive of the water company confirming they have personally approved the plan. This introduces a personal liability in relation to the plans.
27. Amendment 27 (Clause 2)
The amendment leaves out “sewerage” and inserts “relevant” This is one of a group of amendments extending Clause 2 so that it covers the water supply network as well as the sewerage network.
28. Amendment 28 (Clause 2)
This adds a new definition of “appropriate agency” to section 94EA(9) so as to cover either EA or NRW as applicable. This is one of the group of amendments which extends Clause 2 to Wales.
29. Amendment 29 (Clause 2)
This amendment defines “chief executive” for the purpose of amendment 25 and the introduction of personal liability in relation to PIRPs.
30. Amendment 30 (Clause 2)
This amends the new section 94EA, which contains the basic requirement to prepare and publish a PIRP, to remove “whose area is wholly or mainly in England” which currently limits the clause to England only. This is one of the group of amendments which extends Clause 2 to Wales.
31. Amendment 31 (Clause 2)
This adds a new definition of “system” as follows so as to extend PIRPs to the water supply network and it also addresses when an undertaker covers both:

“system”, in relation to a relevant undertaker, means—

(a) in the case of a water undertaker, its supply system within the meaning of Chapter 1A of Part 2 (see section 17B);

(b) in the case of a sewerage undertaker, its sewerage system within the meaning of that Chapter (see section 17BA(7)).

In the case of a relevant undertaker that is both a water undertaker and a sewerage undertaker, the duty in subsection (1) is to be discharged in respect of both of its systems in a single plan.”

32. Amendment 32 (Clause 2)

This amendment requires water and sewerage undertakers to publish annual reports on their implementation of previous pollution incident reduction plans. The amendment adds a new section 94EAA that sits in-between the new sections 94EA and 94EB. This adds a new requirement to produce an additional report together with each PIRP except for the first one assessing:

(a) the extent to which it succeeded in implementing the planned measures during the preceding calendar year, and

(b) to the extent that it failed to implement those measures during that year—

(i) the reasons for that failure, and

(ii) how the undertaker intends to avoid repeating that failure in respect of any measures in its current plan that are the same as, or similar to, those in respect of which the failure occurred.

The amendment also adds in a provision that extends the duty on undertakers to take into account PIRP guidance regarding these additional plans.

33. Amendment 33 (Clause 2)

This amendment is consequential to the other government amendments extending the Clause so that it covers the water supply network, the Minister’s amendment at page 5, line 38, and the Minister’s amendments extending Clause 2 to Wales.

34. Amendment 34 (Clause 2)

An amendment to the offence in 94EB(2) of the Water Industry Act 1991 for failing to publish a pollution incident reduction plan. This is split into two, so where the undertaker fails to do so, offences are now committed by both (a) the undertaker and (b) the chief executive, subject to a provision under which the chief executive has a possible defence.

35. Amendment 35 (Clause 2)

A consequential amendment to amendment 34.

36. Amendment 36 (Clause 2)

This amends the requirement in section 94EA(6) for sewerage undertakers to have regard for guidance given to cover guidance from either the EA or NRW as applicable. This is part of the group of amendments extending Clause 2 to Wales

37. Amendment 37 (Clause 2)

This amendment requires the environmental regulators to consider water companies' record of implementing PIRPs when exercising their core regulatory functions.

38. Amendment 38 (Clause 2)

This amendment is consequential to other amendments, including the amendments to extend Clause 2 to Wales.

39. Amendment 42 (New Clause)

A new clause after Clause 3 to include a duty for water companies to have due regard to nature-based solutions when producing drainage and wastewater plans (DWMPs). This is achieved by amendment to section 94A(3) of the Water Industry Act (as inserted by section 79 of the Environment Act 2021) to add the use of nature-based solutions as an additional area that drainage and sewerage management plans must cover. Section 79 of the Environment Act 2021 has yet to be commenced in Wales.

40. Amendment 48 (New Clause)

A new clause inserted before Clause 8 which places a new duty on Ofwat to have regard to environmental targets when undertaking its regulatory functions and contribute to achieving compliance with the duties on the Secretary of State under Section 1 of the Climate Change Act 2008 and Section 5 of the Environment Act 2021.

The Climate Change Act 2008 applies to the whole of the UK. The relevant provisions of the Environment Act 2021 only apply in England. The amendment has been drafted so as to give both the Secretary of State and the Welsh Ministers commencement powers for the duty relating to the Climate Change Act 2008. The provisions in the Environment Act 2021 relate to targets for air quality, water, biodiversity and waste reduction.

A similar duty already exists for Ofwat in respect of Wales. Welsh Ministers' 2022 Strategic Policy Statement (SPS) which was published pursuant to Section 2B of the Water Industry Act 1991 and set out the Welsh Government's strategic priorities against which we expect Ofwat to regulate water companies operating wholly or mainly in Wales.

Two of these priorities are:

Climate & Nature Emergencies – Water companies should adopt practices and behaviour which sets them as an exemplar and to positively enable change to achieve a net zero carbon society in Wales.

Environment – we want to see a shift to a catchment based, outcomes-led approach with nature-based partnership (including customers) solutions that address problems at source. Companies should wherever possible meet or exceed the requirements of all environmental legislation and deliver wider environmental and social benefits while carrying out their functions.

41. Amendment 60 (Clause 13)
This is a consequential amendment which supports the extension of Clause 2 to Wales. It amends the commencement provisions in clause 13 by deleting the old subsections (3) and (4) and replacing them with new provisions so that the commencement of clauses 1, 2 and 3 are by way of regulations by either Secretary of State or Welsh Ministers as applicable. This was previously done with subsection (3) covering the Secretary of State and (4) covering the Welsh Ministers, as at that point they were slightly different (as clause 2 didn't apply in Wales) however as they now mirror each other they are covered in one provision, albeit still spread out over two subsections
42. Amendment 61 (Clause 13)
This amendment provides for the commencement by regulations in England of the new Clause on nature based solutions after Clause 3.
43. Amendment 62 (Clause 13)
This amendment provides for the commencement by regulations in England of the new Clause on Ofwat having regard to environmental targets, inserted before Clause 8.
44. Amendment 63 (Clause 13)
This amendment is consequential on the amendments extending Clause 2 to Wales.
45. Amendment 64 (Clause 13)
This amendment provides for the commencement by regulations in Wales of the new Clause on nature based solutions after Clause 3.
46. Amendment 65 (Clause 13)
This amendment provides for the commencement by regulations in Wales of the new Clause on Ofwat having regard to environmental targets, inserted before Clause 8.

Welsh and UK Government views on the need for consent

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.

48. 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.

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

49. 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.

50. 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.

51. 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.

52. 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.

Financial implications

53. The amendments do not introduce any additional financial obligations for the Welsh Government.

Conclusion

54. In my view 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. 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
November 2024