15th October 2026

Dear

ATISN 27155 – Internal Review report

Thank you for your 10th June email requesting an Internal Review (Annex A details this request) in response to the 10th June Welsh Government correspondence *Welsh Government Response - Further to TO/HIDCC/00480/26*. This request scope was further confirmed by you in your latest email of 7th August.

As indicated in my 16th July *Acknowledgement* email, I have undertaken this Internal Review in accordance with the procedure outlined in the Requesting information from the Welsh Government, this is available by post on request or via this link. This email also offered the Welsh Government's apologies for the late acknowledgement of your 10th June request and the delay in responding to the points made in your email. I have subsequently apologised to you, a number of times, for the late receipt of this Review outcome letter.

As per Annex A, your request comprises seven components i.e. five detailed complaints, a summary and your expectation of what the Review will deliver. Accordingly, this Internal Review report addresses each of these five detailed complaints.

1. Misclassification of scope of request
    a. This relates to your 12th May email in which it was concluded that there was one sole request for recorded information regarding the below point 4: -
        - *4. Your response does not provide any guidance, directions, or commencement orders*
        - *I requested disclosure of:*
        - *• any guidance issued by Welsh Ministers,*
        - *• any directions to Ofwat or NRW,*
        - *• any commencement orders relating to the statutory consumer powers.*
        - *Your reply does not provide or reference any such documents.*
    b. The Welsh Government's 10th June response provided the below reply: -

- *Your email contained one valid FoI/EIR request, where you asked for copies of information regarding any guidance by Ministers or commencement orders related to consumer panels. After reviewing your request, we have established that this information does not exist as the powers related to consumer panels are set out in the Water (Special Measures) Act 2025 which received royal assent 24th February 2025, becoming UK law as an Act of Parliament. There are no commencement orders relevant to the section 1 powers in the Water (Special Measures) Act 2025 as these are commenced automatically under section 17(2) of that Act.*

c. I have considered your request for each of the documents listed above under FOI and EIR as you requested and can confirm that none of these documents are held by the Welsh Government. Accordingly, the original decision is upheld.

2. <u>Failure to confirm or deny information held</u>

a. You challenged the failure of the Welsh Government to identify what searches were undertaken, which directorates were consulted and whether internal briefings, ministerial submissions, or policy papers exist.

b. I am satisfied that the search was undertaken in a reasonable manner and that all relevant areas were searched. All documents held by the Welsh Government are stored on a single corporate database. There is no requirement under the EIR or FOIA when refusing an information request to set out in detail the methodology used when searching for information or to identify the matters you have queried above.

c. My review has also concluded that the original search for Guidance or Commencement Orders was a rational and methodical search of the Welsh Government's corporate database, and that the finding that no information related to Guidance nor Commencement Order exists was reasonable and fair. With specific regard to Directions to Ofwat or NRW, it is now confirmed that the above search also resulted in the conclusion that no information related to such Directions exists. Please accept our apologies for omitting this specific response in the 10th June reply.

d. Subsequently, your Internal Review request, see Annex A, also asks whether *Ofwat, NRW, CCW, or other bodies were contacted* in providing our 17th August response. No contact was made as there is no duty on us to seek information or

establish what information may be held by other organisations when responding to a request.

e. Accordingly, the original decision is partly upheld and partly reversed

3. Inconsistency between the Welsh Government's statutory claims and the documents provided

   a. The letter sent to you on 30 April incorrectly stated that consumers would have "*the power to summon board members*". Please accept our apologies for this error.

   b. The Water (Special Measures) Act 2025 provides regulators with a range of additional powers to strengthen oversight of the water sector and to take tougher and faster action where companies fail in their responsibilities to customers and the environment.

   c. The Act does not provide a power for consumers or customer panels to summon water company board members. However, the new customer panels are intended to strengthen transparency, scrutiny and accountability by providing consumers with a stronger voice in challenging water companies on their performance and decision-making.

   d. As indicated in our 10th June email, should you have any further queries in respect to how these rules operate, you may wish to contact Ofwat directly via this link Freedom of Information - Ofwat.

   e. The original decision is reversed.

4. Failure to address requests for implementation documents

   a. This detailed complaint asked for the six implementation documents below:

      i. implementation timetables;
      ii. internal planning documents;
      iii. ministerial briefings;
      iv. governance papers;
      v. operational frameworks;
      vi. documents identifying the responsible authority.

   b. With regard to (i) above, as part of the internal review, additional manual searches were conducted as a further assurance measure and this located an internal implementation timetable relating to the implementation of the Act, how it applies in Wales and the responsible authorities – this is attached as *Annex B – Water Special Measures Bill Implementation Table*. Please accept our apologies for not providing you with this information in our earlier reply. The Water (Special

Measures) Act 2025 is UK Government legislation. Any further information regarding the implementation of the Act should therefore be sought from the UK Government. We also note that information relevant to this request is available in the public domain, including the provisions of the Water (Special Measures) Act 2025.

c. It is understood that relevant information, re (ii) to (vi) is available in the public domain i.e. Water (Special Measures) Act 2025. Should you wish, you may choose to request specific information from the UK Government regarding its legislation by this link How to make a freedom of information (FOI) request: How to make an FOI request - GOV.UK.

d. Accordingly, part of the original decision is reversed and part is upheld.

5. Failure to address environmental governance information

a. This complaint also stated that in your 12th May correspondence, you requested recorded information relating to (i) sewage discharge hours per capita, (ii) NRW's enforcement performance, (iii) Dŵr Cymru's environmental performance and (iv) Welsh Government assessments of these issues.

b. In examining your original request, I can see that whilst the points (i) to (iii) are included, I am unable to locate point (iv). Our 10th June reply provides answers to these first three points, which were treated as a piece of official correspondence and not an FoI request.

c. As you have now clarified that you wish to receive recorded information on point (iv), this will be undertaken and its results communicated to you within 20 working days of this outcome letter.

d. Accordingly, the decision is being reconsidered.

Next steps

If you remain dissatisfied with this response you have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,

Cheshire,
SK9 5AF.

Yours sincerely,

Deputy Director

Environmental Protection Division

Annex A – Details of the Request for an Internal Review, dated 10th June

1. Misclassification of the FOI/EIR request

Your response states:

“Your email contained one valid FOI/EIR request…”

This is incorrect.

My correspondence included several distinct requests for recorded information, including:

• guidance issued by Welsh Ministers regarding statutory consumer powers;

• directions issued to Ofwat or NRW;

• commencement orders relating to the Water (Special Measures) Act 2025;

• internal documents concerning implementation, operationalisation, or governance of the statutory consumer mechanisms;

• documents identifying the responsible authority for administering the “power to summon board members”;

• internal assessments, reports, or data relating to sewage discharges, NRW enforcement, and Dŵr Cymru’s environmental performance.

Each of these falls within the scope of FOIA/EIR.

Restricting the request to a single item is procedurally flawed and requires review.

2. Failure to confirm or deny information held

Your response asserts:

“this information does not exist…”

This statement is incomplete and does not satisfy the statutory duty to confirm or deny.

You have not indicated:

• what searches were undertaken;

• which directorates were consulted;

• whether Ofwat, NRW, CCW, or other bodies were contacted;

• whether internal briefings, ministerial submissions, or policy papers exist;

• whether any documents exist explaining the Welsh Government’s earlier statement that consumers will have “the power to summon board members”.

Under FOIA/EIR, the Welsh Government must:

• confirm or deny whether information is held;

• identify any exemptions relied upon;

• provide a schedule of information held, withheld, or not held.

None of these requirements have been met.

3. Inconsistency between the Welsh Government's statutory claims and the documents provided

The Welsh Government previously stated that consumers will have:

"the power to summon board members."

However:

• the Water (Special Measures) Act 2025 contains no such power;

• Ofwat's Consumer Involvement Rule contains no such power;

• no commencement order, guidance, or direction establishes such a power;

• no operational mechanism exists.

The only relevant provision is paragraph 10 of the Rule, which states:

"the undertaker must make all reasonable efforts to ensure that at least one senior representative attends."

This is not a statutory summoning power.

It is not consumer-controlled and is not enforceable.

Your response does not explain the discrepancy between the Welsh Government's earlier statement and the absence of any legal basis for it.

I request disclosure of any recorded information that supports or explains the earlier assertion.

4. Failure to address requests for implementation documents

Your response reframes "implementation of the Act" as the issuance of Ofwat's Rule.

However, my correspondence sought:

• implementation timetables;

• internal planning documents;

• ministerial briefings;

• governance papers;

• operational frameworks;

• documents identifying the responsible authority.

These are all requests for recorded information.

No response has been provided.

This omission requires review.

5. Failure to address environmental governance information

My correspondence requested recorded information relating to:

• sewage discharge hours per capita;

• NRW's enforcement performance;

• Dŵr Cymru's environmental performance;

• Welsh Government assessments of these issues.

Your reply does not confirm whether such information is held, nor whether any exemptions apply.

This is a breach of FOIA/EIR.

6. Summary of issues requiring review

The Welsh Government's handling of this matter is deficient because:

• multiple requests for recorded information were wrongly excluded from FOIA/EIR;

• the duty to confirm or deny was not met;

• no schedule of information was provided;

• no exemptions were cited;

• the response does not reconcile the Welsh Government's earlier statutory claims with the absence of any legal basis for them;

• environmental governance information was not addressed.

These issues require correction.

7. Requested outcomes of the Internal Review

I request that the Internal Review:

1. Reassesses the scope of the FOI/EIR request and identifies all recorded information falling within it.

2. Issues a corrected FOI/EIR response covering all categories of information requested.

3. Provides a schedule of information held, withheld, or not held.

4. Identifies any exemptions relied upon.

5. Clarifies the statutory basis (if any) for the Welsh Government's earlier claim that consumers have "the power to summon board members".

6. Confirms what steps, if any, have been taken to implement the statutory consumer accountability mechanisms described in earlier correspondence.

Annex B – Water Special Measures Bill Implementation Table

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
1 - **Rules about remuneration and governance** – duties are placed on Ofwat	As a result of Amendment at Report Stage in HOC, will be commenced automatically on RA.	**Ofwat** will publish guidance associated with the rules on performance related pay, fit and proper person's test and customer representation.		Ofwat launched policy consultation on 22 October which closed on 19 November – response expected in January 2025. Ofwat Consultation on rules on performance related pay will launch in Jan 2025 and will run for 4-6 weeks. Ofwat Consultation on fitness and propriety tests – May 2025 (4-6 weeks)	Rules on performance related pay expected to CIF via Ofwat by end of March 2025 Ofwat Guidance will be published alongside publication of the statutory consultation (March 2025 for rules on performance related pay and June/July 2025 for rules on fit and proper person tests and customer representation).	Same as Wales	Amendment on financial reporting added at ping pong – will require SLCM
2- **Pollution incident reduction plans.** Establishes a statutory duty on water companies to prepare & publish pollution incident reduction plans and implementation report on an annual basis.	Only comes into force by way of secondary legislation by Secretary of State in respect of England or Welsh Ministers in respect of Wales	Duty is on water companies; **NRW to provide guidance on content which is subject to consultation with WM and Ofwat**	This is commenced by way of secondary legislation – commencement order - made by the WM and does not apply prior to that.	NRW must consult the OFWAT and the WM before giving guidance, no need for public consultation.	**Non-procedure commencement order preferably in 2025, but ideally ahead of publication of first PIRP by 1 April 2026.**	Non-procedure commencement order in 2025, preferably before summer recess and ideally ahead of publication of first PIRP by1 April 2026	

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
			2(6) references guidance given by the appropriate agency (NRW) about the preparation and publication of a pollution incident reduction plan.		NRW needs to have completed Ofwat/WG/water company consultation.	EA guidance to be published by December 2025	
3 - **Emergency overflows** Sets a new requirement on water companies to publish near real-time data (within an hour) on discharges from all emergency overflows by April 2035.	only comes into force by way of secondary legislation by Secretary of State in respect of England or Welsh Ministers in respect of Wales	Lead: WG policy in terms of SI process	Secondary legislation made under **Affirmative procedure**, only if we make exceptions to the duty. Otherwise can be commenced via commencement order. The regulation making power here is only about the creation of exceptions to the duty.	Required under 5(6)	**Commencement SI needed** Timing TBC. Depends on resource being available to manage commencement order process. Recommend coordinating with Defra on their implementation plans, although only c290 EOs in Wales without EDMs (all DCWW)	Commncement options being considered in England (50% by 2030 and 100% by 2035) TBC	As part of implementation, need to consider the lack of statutory duty for CSO monitoring and reporting in Wales
4 – Nature based solutions New Clause added at Lord Report Stage; Duty on water	only comes into force by way of secondary legislation (commencement	WG policy lead in terms of SI process (agreement from WMs) and instructions to LS;	Commencement Order needed	N/A	Practical solution is to include in existing DWMP guidance review work led by	SI to commence in 2025 preferably prior to summer recess to	Needs policy consideration; Section 79 of the Environment

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
company to incorporate new requirement into drainage and sewerage management plans; This is achieved by amendment to section 94A(3) of the Water Industry Act as inserted by section 79 of the Environment Act 2021	order) by Secretary of State in respect of England or Welsh Ministers in respect of Wales	and guidance development to water companies			*REDACTED [using section 40(2) FOIA (personal information)]* and *REDACTED [using section 40(2) FOIA (personal information)].*	provide regulatory certainty to water companies; expected to apply to Drainage and sewerage plans from 2027 Defra to produce additional guidance on instructions re NBS clause – some in Jan 2025, maybe additional guidance after RA	Act 2021 has to be commenced in Wales (in progress) DWMP guidance would need to include NBS as new requirement under the Bill
5 - **Impeding investigations: sentencing and liability**. introduce provisions that will enable the courts to include imprisonment as a sanction in cases where the regulators' investigations have been obstructed.	automatically comes into force two months following Royal Assent	NRW as regulator – update to their enforcement and sanctions policy / guidance	N/A	N/A NRW would have to consult on updates to the their enforcement and sanctions policy (similarly to the EA)	N/A	The EA will launch their consultation once the Government response to Defra's consultation on the AP and LSP measures has been published; therefore, their timelines are dependent on Defra's.	Not an issue for Wales Defra are consulting the DWI as well – need to liaise on this point

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
						Under this timeline, updates to the EA enforcement and sanctions policy will likely be published in Summer 2025.	
6- **Civil penalties: modification of standard of proof.** Allows the required standard of proof to be modified in relation to offences specified in secondary legislation to a reduced "balance of probabilities."	Automatically comes into force on the date the Bill gets Royal Assent The provision doesn't do anything in the absence of secondary legislation.	WG policy to lead SI process NRW to establish the offences to which provision applies.	WM must lay secondary legislation to enable regulators to issue variable monetary penalties (VMP) to the lower, civil standard of proof. Secondary legislation made under RESA which is subject to **affirmative procedure**.	Required - gov to consult on implementing VMPs in relation to APs and civil / lower standard of proof. NRW would have to consult on updates to the their enforcement and sanctions policy (similarly to the EA)	TBC – requirements to proceed are: 1. List of applicable offences from NRW 2. NRW/WG complete consultation on changes 3. Affirmative SI procedure to be completed	Defra consultation on implementing VMPs in relation to APs and civil / lower standard of proof early 2025. The EA will launch their consultation once Defra's government response to consultation has been published; therefore, their timelines are dependent on Defra's. The EA have estimated this will be completed in Summer 2025	Works in conjunction with Clause 7; needs more detailed consideration

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
						VMP SI to be laid in June 25 AP SI by Oct 25	
7 - **Automatic penalties for certain offences** To place a duty on the regulator to impose a fixed monetary penalty whenever they are in possession of sufficient evidence to show that a relevant offence has been committed by a water company	Automatically comes into force on the date the Bill gets Royal Assent; The provision doesn't do anything in the absence of secondary legislation	WG policy to lead statutory consultation and SI process Need to establish the offences to which provision applies in consultation with NRW	This only applies to offences set out in secondary legislation made under section 5, which is subject to the **affirmative procedure.**	There is no statutory consultation requirement, but Defra will consult; Similar situation in Wales; It could be that sections 6 and 7 are dealt with in a single instrument.	As above	Defra will consult on the implementation of automatic penalties, ahead of introducing secondary legislation. The consultation on these measures will be combined with the consultation on variable monetary penalties outlined above; The SI timeline for automatic penalties is dependent on the EA's operational readiness to fulfil their duty to impose the penalties once this commences.	Works in conjunction with Clause 6; needs more detailed consideration
8- **Abstraction and impounding: power**	Automatically comes into force on	NRW as regulatory SI development – policy	Requires secondary legislation which	*REDACTED using regulation 12(5)(b) of the*	As above	Tied to Clause 7 and follow same timeline	Linked to Clause 7 on AP

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
to impose general conditions. imposes conditions or general rules into water industry licences for water abstraction and impoundment activity. The new section will enable the use of the provisions set out in clause 7 in relation to abstraction and impoundment licences.	the date the Bill gets Royal Assent Provides the Welsh Ministers with regulation making powers Makes A&I subject to changes in clauses 6/7.	This allows new conditions to be applied by way of secondary legislation.	would be subject to **the negative procedure**.	*EIR- disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature*			Need to explore legal context and how it links to abstraction reform
9- Requirement for Ofwat to have regard to climate change etc 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; New clause added at Lords Report Stage	The Climate Change Act 2008 applies to the whole of the UK. The relevant provisions of the Environment Act 2021 only apply in England.	WG policy	Will require a commencement statutory instrument. The amendment has been drafted so as to give both the Secretary of State and the Welsh Ministers commencement powers. No additional guidance required.	Not required;	TBC – depends on outcome of IWC. Can be incorporated if needs be into the general non-procedure commencement orders for clauses 2 & 3. No urgency from Welsh Gov policy side as provision not originally our idea and seen as largely redundant.	Not known at present; may be seen as temporary solution and may become obsolete following the outcome of the Cunliffe review	Problematic for Wales and may need to be addressed via LTT; A similar duty already exists for Ofwat in respect of Wales - Welsh Ministers' 2022 Strategic Policy Statement (SPS) pursuant to Section 2B of the Water Industry Act 1991
10 - Charges in respect of Environment	automatically comes into force on the date the Bill gets Royal Assent	The EA and NRW operate separate but corresponding charging schemes.	Secondary leg not specified; charging scheme will	Not specified but The EA and NRW will need to consult those	Dedicated work needed to establish what is needed for	EA is already considering implementation	Treasury approval needed – needs to be

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
Agency and NRW functions. Bill will expand the powers available to the Environment Agency and NRW, enabling them to recover their costs for enforcement from water companies.		Welsh Government will lead on all aspects of implementation of this clause for NRW.	need approval by WMs	impacted on changes to their respective charging regimes to enable them to recover enforcement costs from water companies.	commencement, and what fees are appropriate for NRW to charge for enforcement.	and timeline TBC The EA will need Defra Secretary of State and HM Treasury approval The EA may need to update their guidance and processes on fees and charges.	considered; not clear from the clause if this applies to Wales.
11- **Drinking Water Inspectorate: functions and fees**. amendments to sections 86 and 86ZA of the Water Industry Act. This will allow for subsequent amendments to be made to the Water Quality and Supply (Fees) Order 2016	automatically comes into force on the date the Bill gets Royal Assent	this relates to charging scheme made by DWI	*REDACTED using regulation 12(4)(e) of the EIR - requires the disclosure of internal communications*	No statutory requirement but need to consider WG guidance DWI will informally engage with water companies on the new fee structure.	To be in place by start of 2026/27 FY DFM agreed to implement on composite basis with Defra. EJ will manage as part of Drinking Water work.	To be in place by start of 2026/27 FY	Timeline aligned between En and Wales
12 Consumer charges	England only SST provision						
13 Modification by Secretary of State of water company's appointment conditions etc to recover losses. This	automatically comes into force two months following Royal Assent;		Secondary legislation will be needed to apply the shortfall provision to			Defra will lay secondary legislation in early 2025 on applying shortfall	

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
does not relate to Wales so has not been considered	DOES NOT APPLY TO WALES		licensed infrastructure providers.			provisions to licensed infrastructure providers, alongside a wider package of related measures.	
14 - Modification by Welsh Ministers of water company's appointment conditions etc to recover losses Provision relates to a special administration regime which applies when a water company is in insolvency	automatically comes into force two months following Royal Assent	Completes the update to WISAR and brings the regime in line with modern insolvency law. These powers only apply on a case by case basis.	Secondary legislation will be needed to apply the shortfall provision to licensed infrastructure providers only if we are in SAR situation	No	TBC. Not needed unless we have an administration situation	N/A	
15 - Winding-up petitions Requirement that government and Ofwat are notified of any winding-up petition presented to the court	automatically comes into force two months following Royal Assent	This will apply automatically from commencement.	No	No	N/A	N/A	
16 - Extent, commencement, transitional	N/A	N/A	N/A	N/A	N/A	N/A	

Clause/Section	Coming into force	Implementation requirement and lead	Secondary legislation / guidance	Consultation	WG timeline	Defra timeline	Issues and Risks
provision and short title. This clause sets out when and how provisions of the Bill will come into force							