

## Overview

Ofwat is committed to playing its part in ensuring that the water sector enhances the natural environment, and we are committed to addressing long-term challenges such as those posed by the climate crisis and population growth.

As the independent regulator of water and wastewater companies in England and Wales, Ofwat's primary role in achieving action for biodiversity in Wales is in ensuring we put the right regulatory framework in place for the three Welsh water companies we regulate<sup>1</sup>; challenging them to provide high quality, value for money water and wastewater services while benefitting society and the environment.

This report demonstrates how we are complying with our biodiversity and resilience of ecosystems duty under section 6 of the Environment (Wales) Act 2016. We meet this duty alongside our other statutory duties, set out primarily in the Water Industry Act 1991, and in the context of Welsh Government priorities as found in the Welsh Government's statement of strategic priorities and objectives for Ofwat ("SPS").<sup>2</sup>

## Background

On 7 December 2022, the Welsh Government published a revised SPS for Ofwat<sup>3</sup>, which Ofwat must act in accordance with when carrying out relevant functions relating wholly or mainly to Wales. The Welsh Government has framed its SPS within the context of the Well-being of Future Generations (Wales) Act 2015 and its Programme for Government 2021-2026. The Welsh Government expects Ofwat to develop the regulatory framework as applicable to Wales on the basis of sound evidence relevant in a Welsh context. It sets out five strategic priorities for Ofwat in relation to climate and nature emergencies, environment, resilience, asset health, and customers and communities. In terms of biodiversity, the Welsh Government's SPS specifically sets an expectation for Ofwat to challenge companies to demonstrate how biodiversity and ecosystem considerations are embedded across activities, including any policies, plans, programmes, and projects.

In this report, we explain how our work has supported, and will continue to support, our compliance with the biodiversity and resilience of ecosystems duty, having regard to the

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<sup>1</sup> Hafren Dyfrdwy Cyfyngedig, Dŵr Cymru Cyfyngedig and Albion Eco Limited

<sup>2</sup> Published under s.2B of the Water Industry Act 1991

<sup>3</sup> [Written Statement: Strategic Priorities and Objectives Statement for Ofwat \(SPS\) \(6 July 2022\) | GOV.WALES](#)

United Nations Environmental Programme Convention on Biological Diversity of 1992 (“the Convention”). We then refer to objectives 1, 4 and 6 in the Nature Recovery Action Plan for Wales, as these refer to the Convention’s goals.

We are one of three regulators of the Welsh water sector. Ensuring that drinking water is safe and acceptable for customers is the responsibility of the Drinking Water Inspectorate, while most environmental regulation is primarily the responsibility of Natural Resources Wales. In order to achieve good outcomes for Welsh customers and the environment, we work closely with the other regulators. We make an important contribution to environmental regulation through allowing companies funding to improve the environment, challenging them on spending this funding efficiently, and providing companies with incentives to protect and improve the ecosystems on which they depend. We also have an enforcement role over some environmental duties on companies<sup>4</sup>.

A small number of customers in Wales are served by companies operating mainly in England. In this report, however, we focus on our regulation as it affects companies wholly or mainly in Wales.

## Our approach

Ofwat’s 2019 strategy *Time to Act, Together* is a means by which we have embedded the consideration of biodiversity and ecosystems into our work. The strategy was based on substantive engagement with stakeholders including the Welsh Government and NRW.

Our 2019 strategy made it clear we expect water companies to consider the environment an integral part of their business, inseparable from the services they provide. We also promise to ensure the environment will be integral to all that Ofwat does. We have fulfilled our commitment to open a Welsh office with a Director of Wales, which has enabled us to more closely align our work with the context and legislation in Wales, including as it relates to biodiversity and the environment in general.

Further supporting this, we have increased our engagement with Welsh environmental groups, building relationships and our understanding of the Welsh context. In 2022, we established a roundtable series to discuss key issues with environmental stakeholders in Wales which is ongoing.

In our publication [PR24 and Beyond. Creating Tomorrow Together](#) we noted that there’s increasing public concern about the potential harm to the environment from some of the

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<sup>4</sup> For example, Ofwat has an enforcement role in relation to companies’ general duty to provide a sewerage system which effectually deals with sewage under section 94(1)(b) of the Water Industry Act 1991, as supplemented by regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994.

water sector's activities. This includes the impact of abstraction on rivers and chalk streams and, most prominently, the use of storm overflows. We also recognised that there are also wider environmental concerns, including the level of emissions and threats to biodiversity.

The Welsh Government Biodiversity Deep Dive<sup>5</sup> identified actions to protect and effectively manage at least 30% of Welsh land, freshwater and sea for nature by 2030. The recommendations reinforce the need to take ambitious and integrated action to put nature on the path to recovery and reverse biodiversity decline, and note that links between land and water represent an active area for integrated Other Effective Area-based Conservation Measures (OECMs). Following this Dŵr Cymru hosted a series of workshops at their annual WaterSource conference in November 2022 to explore the enablers and barriers to delivering freshwater catchment scale action. Entitled Enabling Effective Collaborations, the conference was one of the first to be held following the Welsh Government's Biodiversity Deep Dive, and was designed to support the recommendations which arose from it. Invited guests were asked to commit to a 'Team Wales' approach. By working together and pooling resources, expertise and determination there is a real chance of achieving multiple benefits beyond drinking water quality that will help address the Nature and Climate Emergencies.

Ofwat is committed to building stronger links with NRW, including by continuing to collaboratively work on the Welsh National Environment Programme (NEP) delivery and future NEP design.

## **The five-yearly price review**

A major route through which we incentivise biodiversity action for the incumbent Welsh based water companies (Dŵr Cymru and Hafren Dyfrdwy) is the five yearly price review. By setting clear expectations and stretching targets, we challenge companies to provide great public value, delivering more for customers, society and the environment.

Throughout the current price review period (2020-25; known as PR19) and continuing into PR24, we set wider common environmental performance commitments including on total pollution incidents and treatment works compliance, ensuring all companies will be rewarded or penalised based on the value they add to – or take away from – the environment.

For the price control for the 2025-30 period (PR24) we want to see companies deliver more environmental and social value by exploring different approaches to their core activities. We want to encourage companies to routinely consider the wider, long-term benefits to communities and the environment when putting forward solutions, using a systems-oriented

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<sup>5</sup> <https://www.gov.wales/biodiversity-deep-dive-recommendations-html>

approach. For example, nature-based solutions can not only deliver direct benefits like better water quality, but can also improve biodiversity, reduce flooding, reduce emissions, and help to eliminate harm from storm overflows.

For PR24 we are introducing a broader range of environmental performance commitments including improving biodiversity as well as reducing the use of storm overflows, eliminating serious pollution incidents, improving bathing water quality and delivering reductions in greenhouse gas emissions.

One of these new performance commitments is a [new biodiversity common performance commitment](#) for all companies in Wales and England. In Wales, this will support water companies' contribution towards protecting and effectively managing at least 30% of land, freshwater and sea for nature by 2030 and also the wellbeing indicators: 'Areas of healthy ecosystems in Wales' and 'Status of biological diversity in Wales'.

We will base the performance commitment on a [biodiversity metric](#) developed in England over the last ten years to assess the quality of a wide range of habitats. We have worked with Natural Resources Wales to adapt the metric so that it is suitable for use in Wales. This will ensure that companies have incentives to respond to the nature emergency declared by Senedd Cymru in June 2021 in relation to Wales.

Natural Resources Wales will advise on the distinctiveness or condition of habitats for companies to apply to the scoring in Wales, and the performance commitment will measure changes in biodiversity on company owned and third-party owned land. In Wales, companies will select land from within areas of Strategic Significance defined and agreed in advance with Natural Resources Wales.

Improvements in biodiversity that arise as a result of conditions or obligations relating to other forms of regulation, including planning processes, will be excluded from this performance commitment. Habitats should be assessed by people with relevant experience and qualifications conducting site visits at appropriate times and using the baseline pre intervention assessment for each visit. Site visits will be conducted every four-years. A change can only be recorded after the second site visit, four years from the first visit. Companies should start these site visits before 2025 in order to record increases in biodiversity in the 2025-30 period. If companies start site visits in 2023-24, then they could start to measure biodiversity increases/decreases in 2027-28. Rather than all sites being assessed in a single year, we envisage site visits being a rolling assessment across the four-year period.

We will also expect companies to provide assurance that overall biodiversity across sites which are not included in the performance commitment is not deteriorating in order to receive outperformance payments.

Under the biodiversity performance commitment for PR24, water companies undertaking biodiversity activities in Wales will need to demonstrate that they are considering all aspects of the DECCA framework in promoting ecosystem resilience under the Environment (Wales) Act 2016. Companies will prepare a “Net Benefits for Biodiversity Report” as part of their annual reporting detailing how the additional biodiversity units they have delivered, or are working towards, are contributing to the maintenance and enhancement of biodiversity and promoting ecosystem resilience. Natural Resources Wales will provide guidance on how to complete this report.

Throughout our PR24 methodology, we make clear our expectations that water companies must demonstrate how they consider the environment in their commitments with common PCs such as biodiversity, storm overflows and river water quality. Part of the way we evaluate the different types of schemes to see the wider benefits is by doing a best value assessment. This allows Ofwat to ensure the highest return on investment for the environment i.e. with biodiversity enrichment and nature-based solutions.

Our approach to Welsh companies in the price review process has encouraged companies to engage with customers and stakeholders on sustainable management of natural resources and sought to incentivise companies to manage their natural resources in a way that restores the environment and is sustainable for the long term. Using our regulatory tools, we can deliver benefits for biodiversity and the environment through ensuring the Welsh water companies meet the goals and expectations we set.

## Enforcement

One of our roles as a regulator is taking action where companies fall short of fulfilling the statutory and licence obligations we are responsible for enforcing .

Compliance with obligations relating to the treatment of wastewater is an important part of the role companies play in protecting water quality and the environment. On 18 November 2021 Ofwat and the Environment Agency announced investigations into all water and wastewater companies in England and Wales related to the management and operation of waste water treatment works<sup>6</sup>. This was after several water companies explained that they might not be treating as much sewage at their wastewater treatment works as they should be, and that this could be resulting in sewage discharges into the environment at times when this should not be happening. We have opened enforcement cases into six water companies. Beyond our enforcement cases, all water and wastewater companies in England and Wales remain subject to our on-going investigation into whether their wastewater treatment works are operating as they should.

Through investigating compliance with these obligations, we are contributing to the protection and enhancement of biodiversity, including with respect to protecting the resilience and condition of ecosystems.

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<sup>6</sup> Further information is available on our website here: [Investigation into sewage treatment works - Ofwat](#)

## Nature Recovery Action Plan for Wales

As is suggested in the Guidance for Section 6 – The Biodiversity and Resilience of Ecosystems Duty, we have based the remainder of this report on the Nature Recovery Action Plan objectives 1, 4 and 6. As we do not own, occupy, or manage land, we consider ourselves to be ‘Group 1’ (as set out on page 3 of the Reporting Guidance). The last update of NRAP was in October 2020 and we have left the below in as information.

### **NRAP Objective 1: Engage and support participation and understanding to embed biodiversity throughout decision making at all levels**

In our 2019 strategy, we made a clear commitment to ensuring that the environment will be integrated into all that we do. We continue to adhere to this commitment throughout our organisational structure'.

We also committed to developing a framework to understand and evaluate social and environmental value; a significant aspect of our ambition to see companies deliver greater public value for the people and places they serve. Following extensive engagement and consultation with the sector and wider stakeholders, in March 2022 we published our final public value principles which seek to encourage companies to create further social and environmental value in the course of delivering their core services. This principles-based framework is designed to facilitate the delivery of social and environmental benefits, including for example through enhancing biodiversity and improving the resilience of ecosystems.

### **NRAP Objective 4: Tackle key pressures on species and habitats**

#### **Delivery through the price review**

Resilient ecosystems and biodiversity underpin many of the key services provided by companies. Promoting ecosystem resilience and biodiversity is a key part of the decision-making process for ensuring resilient services (where this is consistent with companies’ role as providers of water and wastewater services).

In PR19 we evaluated companies’ plans for ecosystem resilience and biodiversity.

In our final determinations for the 2019 price review, we allowed Dŵr Cymru £212 million and Hafren Dyfrdwy £6.5 million to improve the environment by efficiently delivering their obligations as set out in the National Environment Programme. Both of their plans included activities that are designed to protect and enhance habitats, ensure the resilience of ecosystems, and conserve biodiversity.

Although our 2019 price review set stretching targets to drive up performance over the five years from 2020 – 2025 we're now looking ahead and thinking about how we can encourage companies to build on progress to date for PR24 which will cover 2025–2030. This will include stretching environmental performance commitments aimed at improving biodiversity as well as reducing Green House Gas (GHG) emissions, improving river water quality, reducing storm overflows and reducing pollution incidents. However, as some of these performance commitments are new for PR24 we will also commit to monitoring their impact over the AMP and improving them where necessary at PR29.

## **NRAP Objective 6: Put in place a framework of governance and support for delivery**

### **Our people**

As we continue to build our expertise on environmental and biodiversity matters, we will ensure that this knowledge is shared throughout our organisation. Collaboration is a crucial aspect of our work, and we will continue to work with environment groups, local community groups, and experts – including those in Natural Resources Wales – in order to further embed and develop the delivery of our biodiversity duty in Wales.

### **Assurance**

We will continue to review and report on our progress in meeting our biodiversity duty in Wales in our Annual Report and Accounts, as and when is stipulated by the Environment (Wales) Act 2016.

As Chief Executive of Ofwat, David Black takes ultimate responsibility for the delivery of our biodiversity duty in Wales.