

December 2019

# **Biodiversity and the resilience of ecosystems** **– Ofwat's report**

**Ofwat**

[www.ofwat.gov.uk](http://www.ofwat.gov.uk)

## Overview

As the independent regulator of water and wastewater in England and Wales, Ofwat's primary role in achieving action for biodiversity in Wales is in ensuring we put the right rules and incentives in place for the two Welsh water companies we regulate; 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 duty under s6 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](#).

In our report, we explain how our work over the last three years<sup>1</sup>, in particular the 2019 Price Review (PR19) and the plans we have made in our recently published strategy for the future, have supported our compliance with the biodiversity and resilience of ecosystems duty, having regard to the 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 environmental regulation is 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 have no formal role as an environmental regulator, but we make an important contribution through allowing companies funding to improve the environment, challenging them on spending this funding efficiently so that it delivers the most it can for the environment, and providing companies with incentives to protect and improve the ecosystems on which they depend.

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.

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 climate crisis and population growth.

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<sup>1</sup> i.e. since the biodiversity duty came into force on 21 May 2016

## **The five yearly price review**

A major route through which we incentivise biodiversity action for the Welsh water companies (Dŵr Cymru and Hafren Dyfrdwy) is the five yearly price review. By setting clear expectations and stretching targets, we challenge companies to ensure that they deliver resilient and sustainable water and wastewater services for customers and the environment.

Our [final determinations](#) for PR19 were published on 16 December. They allow £218 million of funding through customer bills for delivery of National Environment Programme (NEP) schemes for the period 2020-2025. We have welcomed the scope of the NEP developed by Natural Resources Wales, and we scrutinised companies' plans to make sure that they deliver the programme efficiently.

There are specific provisions for biodiversity within the determinations, set within the context of wider sustainable management of natural resources. We accepted a bespoke performance commitment from Hafren Dyfrdwy, for example, around number of hectares of land managed for biodiversity.

## **Enforcement and licence obligations**

One of our roles as a regulator is ensuring that water companies deliver the responsibilities that are set out in legislation and in company licences.

We recently completed enforcement action against Southern Water in relation to their failure to operate a number of wastewater treatment works properly, including by not making the necessary investment in a timely manner. Southern Water's failures led to equipment breakdowns and spills of wastewater into the environment. As a result, we agreed a package of payments and penalties worth £126 million.

This enforcement action, of course, relates to a water company wholly in England, but with only 17 water companies in the sector, we know that enforcement action taken against one company has a very substantial impact upon all other companies. We expect such strong enforcement action to signal to all companies that we consider investment decisions that result in poor consequences for the environment unacceptable.

In this instance, Southern Water's failure had a direct impact on the environment; and, while the Environment Agency in England are undertaking a separate investigation on the environmental damage, the size of the package of payments and penalties Southern Water must pay indicates how seriously we take this issue.

## **Our future strategy**

In October, we released our new long-term strategy for the water sector, [Time to act, together](#). This strategy was based on substantive engagement inside and outside the sector, including with the Welsh Government and Natural Resources Wales, and is a means by which we have embedded the consideration of biodiversity and ecosystems into all our thinking going forward.

Our new strategy makes 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. And we commit to opening a Welsh office, to make sure that we are properly participating in Welsh policy discussions. Opening this office and more closely engaging with stakeholders and regulators in Wales will allow us to evolve our approach to regulation, closely aligning with the context and legislation in Wales, including as it relates to biodiversity and the environment in general.

We expect that a number of our commitments will present opportunities to progress further action on biodiversity, which we elaborate on throughout this report.

## **Nature Recovery Action Plan for Wales objectives**

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).

### **NRAP1: Engage and support participation and understanding to embed biodiversity throughout decision making at all levels**

In our new strategy, we make a clear commitment to ensuring that the environment will be integrated into all that we do. This commitment will be filtered throughout our organisational structure, embedded in a framework and a series of principles that will apply to all relevant programmes of work. Development of these principles will be informed by our statutory duties, including our s6 duty.

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.

Flourishing biodiversity, the resilience of ecosystems, and the sustainable management of natural resources will be critical to shaping that framework,

recognising the intimate connection between thriving wildlife and thriving communities.

Internally, Ofwat runs a series of seminars designed to provide important information for new starters, or to be refresher courses for all who would like to participate. Many of these courses, particularly those focused on operational aspects of the water industry, teach about our role in ensuring companies restore and enhance aspects of biodiversity.

## **NRAP4: Tackle key pressures on species and habitats**

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

Using our regulatory tools, we can deliver benefits for biodiversity and the environment through ensuring the two Welsh water companies (Dŵr Cymru and Hafren Dyfrdwy) meet the goals and expectations we set.

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.

Companies have been required to make common performance commitments related to 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. Throughout our [methodology](#), we make clear our expectations that water companies must demonstrate how they consider biodiversity and ecosystem resilience in setting their commitments.

Resilience was a core theme of our price review. As part of our PR19 methodology, we set out resilience planning principles, including:

#### **Principle 2: A naturally resilient water sector**

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).

We subsequently evaluated companies' plans for ecosystem resilience and biodiversity.

After our Initial Assessment of Plans, we requested Resilience Action Plans from each company, which were designed to outline a number of areas of resilience – including ecosystem and environmental resilience. Resilience continues to be a core issue for Ofwat, and more work to follow up on these plans will be delivered through our strategy.

In our final determinations for the price review, we have 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 include activities that are designed to protect and enhance habitats, ensure the resilience of ecosystems, and conserve biodiversity.

Dŵr Cymru have made a commitment around community education, such that they increase the number of children and adults visiting their education centres; and another to increase the number of visitors to their recreational facilities. This will ensure more Welsh people are able to learn about and interact with the natural world. We have further accepted Dŵr Cymru's plans to invest £5 million in new recreational facilities at reservoirs near Cardiff.

We are also supportive of the adoption of sustainable drainage approaches to surface water management to reduce spill from combined sewer overflows, such as Dŵr Cymru's Menai Straits programme.

### **Commitments in our strategy**

Going forward, we will also be playing our part to further encourage and incentivise delivery of biodiversity action. As such, our new long-term strategy makes a number of significant commitments.

We will work with environmental regulators and the Welsh Government more closely throughout the next round of environmental planning – including the National Environment Programme. This will allow us to ensure that future water company plans deliver the ambitions set by the Welsh Government around biodiversity and ecosystem resilience.

We will encourage companies to make more and better use of nature based solutions, such as wetlands and sustainable urban drainage systems. These can provide the opportunity for habitat creation and biodiversity enhancement.

We will work collaboratively on demand reduction and behaviour change initiatives, to reduce the customer-side pollution that places stress on our systems and natural environments.

We will strengthen the sector's approach to climate change mitigation and adaptation, such that water companies ensure the resilience of their ecosystems to the impacts to climatic instability and extreme climate disasters.

We will continue to encourage methods of accounting for value beyond financial – such as natural capital – so that water companies are able to articulate the social and environmental benefits of their various activities.

Additionally, our work on long-term strategic resources will allow us to better ensure new resources protect and enhance the environment. Our new joint team (the Regulators' Alliance for Progressing Infrastructure Development, or RAPID) is tasked with overseeing the strategic projects proposed by water companies and improving the regulatory framework for water resource planning, complementing existing decision-making and planning processes. This will bring coherence to the way water resources are considered for use across industries, and will provide the opportunity to ensure measurable improvement to the environment at every stage.

## **NRAP6: Put in place a framework of governance and support for delivery**

### **Our people**

As we build up our internal and external expertise on environmental and biodiversity matters, we will ensure that this knowledge is shared throughout our organisation.

Collaboration is a crucial aspect of our new strategy, and we will 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 s6 duty.

### **Assurance**

We will continue to review and report on our progress in meeting our s6 biodiversity duty in our Annual Report and Accounts, as and when is stipulated by the Environment (Wales) Act 2016.

As Chief Executive of Ofwat, Rachel Fletcher takes ultimate responsibility for the delivery of our s6 duty.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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