

17<sup>th</sup> March 2022

Llyr Gruffydd MS  
Committee Chair  
Climate Change, Environment, and Infrastructure Committee  
Senedd, Cardiff

Dear Mr Gruffydd

I represent Salmon & Trout Conservation in Wales.

I am delighted to read the Report just published by your Committee into storm overflows in Wales. I believe that the Recommendations provide a sound basis upon which there can be significant progress in Wales.

If I may, I would like to raise two issues relating to Recommendations 2 and 3.

**Recommendation 2** of the Committee report concludes that NRW must demonstrate progress to bring unpermitted storm overflows within the regulatory regime.

I have to confess this rather shocked me that, 30 years after privatisation of the water industry, such unpermitted storm overflows still existed.

To explain, at privatisation, it was realised by the then DoE in London that there were many storm or emergency discharges operated by the then state-owned water authorities' networks that did not have discharge consents (now called permits). To ensure that the companies were not 'floated' with unlawful discharges built-in, everything that was happening on day one of privatisation was granted what was called a temporary or 'deemed consent'. In essence, a consent with no conditions.

The idea was that these consents would all be reviewed over time and given proper conditioned consents, with conditions appropriate to the discharges being made, the receiving waters and treatment levels etc.

That review process took a painfully long time and, in essence, by 2007, had stalled completely.

It was only after pressure I brought to bear, while Head of Legal at Fish Legal, including threatening a judicial review of the failure of the Environment Agency (then still responsible for Wales) to apply proper conditions to these discharges, that, in April 2009 the Agency finally granted a large number of discharge consents for these mainly intermittent discharges. The Agency did so by a notice and schedule issued to each water company, covering discharges from combined sewer overflows (CSOs), emergency overflows from pumping stations, and storm tank discharges at some sewage treatment works. That included Dwr Cymru.

The new discharge consents, covered by these notices and schedules, replaced the temporary or deemed consents which had been granted at or shortly after privatisation.

Guy Linley-Adams Solicitor  
Office E3, Grange Court, Pinsley Road, Leominster HR6 8NL  
07837 881219  
[guy@linley-adams.co.uk](mailto:guy@linley-adams.co.uk)  
[www.linley-adams.co.uk](http://www.linley-adams.co.uk)

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In 2010, there followed a significant appeal by several water companies, in which the water companies were partially successful, against this imposition of standard permit conditions on all outstanding 'deemed' consents. These are the details of that appeal:

*PINS References: APP/WQ/09/2704-8*

*Welsh PINS Reference: 515323*

*In the matter of the Water Resources Act 1991 and The Control of Pollution (Application, Appeals and Registers) Regulations 1996 and in the matter of Appeals made to the Planning Inspectorate under Section 91 and Regulation 8 thereof by Severn Trent Water Limited, Yorkshire Water Services Limited, Anglian Water Services Limited, Dwr Cymru Welsh Water, Thames Water Utilities Limited and United Utilities Water Plc against The Environment Agency's Final Determination of Discharge Consent applications for intermittent discharges submitted at or shortly after water industry privatisation, in replacement of temporary/ deemed consents*

The appeal, which was in fact held in Cardiff, ended with agreed, but less onerous, standard conditions being applied to the previously temporary or deemed consents.

So how it is that there can remain unpermitted discharges in Wales is not clear to me.

In relation to **Recommendation 3**, on the publication of annual data or information or close-to-real-time data on sewage discharges, by both NRW and the water companies, I think the Committee needs to know that the Environmental Information Regulations 2004 apply to both NRW and water companies and, per Regulation 4, there is and has been a duty on both to proactively publish any environmental information they hold.

Regulation 4 reads:

*Dissemination of environmental information*

*4.—(1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds—*

*(a) progressively make the information available to the public by electronic means which are easily accessible; and*

*(b) take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.*

This has been the law for approaching 20 years and, therefore, the position we now find ourselves in, where NRW and the water companies currently do not publish information as rapidly and as accessibly as they can and should, represents a failure of those two bodies to comply with the 2004 Regulations.

Regrettably, the UK Information Commissioner is not able to issue formal decisions relating to breaches of Regulation 4. Effectively, the Commissioner is limited by law to issuing decisions only in response to failures to respond lawfully to specific requests for information made by a member of the public.

Indeed, as an aside, as FOI law is firmly within those matters devolved to Wales, I would welcome a conversation with you as to how Wales might seek to establish its own Information Commissioner (perhaps as per the Scottish model). I think this is an area in which Wales might again show, as it did with the Well-being of Future Generations (Wales) Act 2015, significant leadership over the UK position. With another 'hat' on, I lecture part-time at the Cardiff University Law School and I know there would be interest at the School in developing proposals, if that were considered helpful.

Returning to rivers, I am very pleased to see that **Recommendation 10** of the Committee requires the Minister to report back to the Committee on the problem of pollution in Welsh rivers from sources other than storm overflows. Of course, that will be a fairly massive undertaking because that appears to incorporate the problems being caused across Wales by agriculture, including the 'thorny' issues of intensive chicken units and dairy units. Salmon & Trout Conservation would be very pleased to assist the Committee with information on the impacts such pollution causes.

I would like to thank you and the Committee again for the publication of the Report. Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely

Guy Linley-Adams  
Solicitor