

Julie James MS

Minister for Climate Change

31 March 2023

Dear Julie

The Construction Contracts (Exclusion) (Wales) Order 2023

At our meeting on 27 March 2023 we considered The Construction Contracts (Exclusion) (Wales) Order 2023 (the draft Order).

You will know that our report on the draft Order contains only one merits point relating to a lack of clarity around the point at which payments may be made under a relevant contract. At our meeting, we also considered the Welsh Government response to this reporting point and we concluded that it did not resolve our concerns completely.

We agreed that further clarity was needed and, as such, we would be grateful if you would provide the following information.

According to paragraph 4.9 of the Explanatory Memorandum, Ofwat has stipulated that water companies, funded by customer bills, should not make payments for relevant construction projects until after these projects have been completed and become operational.

It is unclear how article 3(1)(d) of the draft Order accords with the Ofwat stipulation as described in the Explanatory Memorandum, because:

- A contract may be within scope of the article 3(1)(d) if only **part** of the payment becomes due after completion of construction. This means that the contract may also include payment that is due **before** any construction is completed.
- A contract may be within scope of article 3(1)(d) if payment becomes due after completion of **one part** of construction operations, and not only after completion of the entire project.



We would welcome clarification of the precise wording of the Ofwat stipulation, and how this interacts with the requirements set out in article 3(1)(d).

I would be grateful to receive your response by 17 April 2023.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

