

WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE DEPARTMENT OF BUSINESS AND TRADE
CALL FOR EVIDENCE ON
SMARTER REGULATION AND THE REGULATORY LANDSCAPE

3rd JANUARY 2024

PROLOGUE

1 The Worshipful Company of Water Conservators ('WCWC') is a City of London Livery Company focussed on the long-term health of our water resources and the broader environment. Our members include senior professionals from water, environmental and related industries and regulators, along with others who share our concern for water and the environment. Our experience and knowledge ranges from the complexities of environmental sciences, through the application of engineering to deliver the goals identified by those sciences, and the subsequent management of the assets created. The WCWC's purpose is *promoting a diverse and sustainable environment*.

2 The WCWC is responding to the call for evidence by the Department of Business and Trade (DBT) because of the professional roles of its members in water and climate change policy, mitigation and adaptation. It is a member of the City of London Livery Climate Action Group. Its principal interest is in contributing on the effectiveness of regulators in impacting on the water and environment sector. The WCWC is pleased to have had the opportunity to respond to the call for evidence and looks forward to being able to make further inputs as requested in the future.

3 The WCWC is responding in taking advantage of the third option of the invitation to contribute ... "*If you are neither of those (i.e. regulated body or regulator, tell us who you are and give us your views, making clear in what capacity you were involved in each example. For example, we welcome responses from consumers and consumer groups*". So, the evidence it is providing is not in response to specific questions but will inform the conclusions arising from the assembly of more specific contributions.

This call for evidence

4 The call for evidence (<https://www.gov.uk/government/calls-for-evidence/smarter-regulation-and-the-regulatory-landscape>) by the Smarter Regulation Unit states that "*Stakeholder feedback and views is essential to informing the Smarter Regulation programme of regulatory reform, to improve outcomes for businesses and consumers. The first and principal focus of this call for evidence is to understand what works well and what could be improved in how regulators operate to deliver for the sectors they serve. We are particularly interested in success stories and areas for improvement on regulatory agility; proportionality; and consistency of approach. Second, we are also interested to understand any further steps we can take to reform the existing stock of regulation on the UK Statute book (both Retained EU Law and wider regulations) and ask a supplementary question on this.*

The questions that we ask are general and not specific to any given regulators. However, we welcome, where helpful in your answer, specific examples or case studies from your experience of interacting with individual regulators. For the purpose of this call for evidence, we welcome hearing about any central government public bodies with a regulatory function and a territorial scope of the whole UK, Great Britain or England and Wales only.

We welcome hearing from all stakeholders with views on regulatory reform and how independent regulation works. We are particularly interested in responses from small businesses and consumers.

We welcome responses from all stakeholders across all sectors in the economy, but note that we are not seeking views on financial services regulators and regulations. These are handled by HM Treasury, where there have been positive and industry-welcomed reforms in this space in recent years.”

Any responses to other consultations relating to Ofgem, Ofwat and Ofcom will be considered alongside responses to this consultation.

5 This consultation is part of a wider set of reforms by the DBT seeking to improve economic regulation. It is complementary to the parallel consultations:

- by the Smarter Regulation Unit on the revised statutory guidance to assist regulators in fulfilling their responsibilities under the growth duty to which the WCWC is also responding;

<https://assets.publishing.service.gov.uk/media/655e18c45395a900124635f1/consultation-on-the-growth-duty-draft-statutory-guidance.pdf>

- by the Economic Regulation Unit on strengthening the economic regulation of the utilities sector

<https://assets.publishing.service.gov.uk/media/655dee93d03a8d000d07fe75/strengthening-the-economic-regulation-of-the-energy-water-and-telecoms-sectors.pdf>.

The Brexit Opportunities Unit is also involved

7 The two consultations and this call for evidence have been issued separately and on examination are detailed facets of the same narrative and perhaps could have been better co-ordinated. **The WCWC has decided to respond to the two consultations and this call for evidence as a set but in a way which enables each response to stand alone.** The responses are informed by the experiences of members of WCWC who have worked in and with regulators, principally Ofwat, the Environment Agency (EA), Natural England (NE) and Natural Resources Wales (NRW), in the context of the thrust of the consultations. In the context of the regulatory landscape, experience of working with the Drinking Water Inspectorate is included **and the insights provided on the broader landscape may be of some assistance in evaluating regulators in other sectors.**

SUMMARY

8 The generation of these co-ordinated responses has presented a challenge in setting out headline points in context. So key suggestions and observations are highlighted in red to stand out but can be read in the context of an explanatory text and without too much

repetition in this summary. The response to the call for evidence provides some insights on what issues should be taken into account in determining a future smart regulator.

9 This response draws on the experiences of the members of the WCWC on the issues of practical delivery of smart regulation, but it takes the opportunity of exemplifying the answers to the questions posed by focussing on water regulation. It repeats many of the points submitted to the similar inquiry by the House of Lords Industry and Regulators Committee.

10 The delivery of a sustainable water environment supported by effective water services extends beyond the economic regulators, and, for example, the contributions of the EA and NE to water management are very different to that of Ofwat. Water is unique in having environmental regulators and an economic regulator sharing the front line in a high-profile sector. The roles of the EA and NE will have as much impact as that of Ofwat in post Brexit onshoring, as the WCWC has pointed out.

11 The WCWC suggests that the uniqueness of such a high profile requires an integrated approach in the water sector articulating the harmonised responsibilities of the regulators, and what is envisaged for Ofwat in these consultations should be part of that. This is needed urgently and, for example, should provide joint guidance on growth from DBT and Defra, as advocated in the submission by the WCWC on the guidance on the growth duty of utility regulators. It is justified by the magnitude of the investments needed.

12 The WCWC repeats that the missing pieces of this mosaic of consultations are references to the impacts of planning and development control by local authorities and that the intervention of the Department of Levelling Up, Housing and Communities (DLUHC) is needed to issue variations to the Planning Framework. In spite of good intentions by water companies and by Ofwat, planning restrictions can hinder major projects as the controversies on major water supply and storage schemes demonstrate. If the DBT agrees with the suggestion of an overview of the relationship of growth and the environment, the WCWC suggests that the DLUHC should also be involved in order to issue revisions to the planning framework.

13 The WCWC understands that there are proposals for smarter economic regulation common to the three utility sectors and that it is convenient for DBT, and makes common sense, to articulate these together in statutory guidance. In that sense the WCWC supports the proposals. These will be applicable however the integrated approach is packaged. It comments on some of these.

14 Smart economic regulation by Ofwat must not be seen as an end in its own right, it must be part of a strategy meeting defined in wider goals such as sustainable water services and environment. In the case of water management, it should form part of a national water strategy advocated by the WCWC. In the parallel submission on growth, the WCWC provides greater insights on the implications of this as part of smarter regulation. Growth should be a goal which includes happiness, wellbeing, fulfilment, and stable sustainability wherein the growth is planned etc. rather than just financial measurements. The WCWC suggests that there has not been sufficient consensus on what the overall role of water is in this balance and highlights the suggestion that it would be useful if water management was separated out from the debates about all regulators or all utilities.

15 The WCWC suggests that the best way of applying the principles of smart regulation to the water sector is to place it in the context of a national water strategy and to make it smarter by an urgent review of the price setting processes to reflect over thirty years of experience. The WCWC suggests that smart regulation of water must therefore include:

- A simpler, clearer ‘line of sight’ between the source of investment and the practical application of that investment with optimum return to investors and fair charges to customers. This must form part of the economic regulatory process.
- Integration of all the growth duties of all the regulators in the water sector, with separate guidance.
- Closer working of all relevant government departments and Defra arms-length bodies.
- A reduction of the fragmentation of policy and practice.
- Creation of a national consensus on water.
- A ‘once in a life time’ review of the price review and determination processes probably ready for 2029, implementing the lessons of almost 35 years of experience and acceptance of the economic and financial consequences of all the current demands for improvements to water services. This would embrace the principles of smart regulation.
- Attention to many specific issues which need resolution; the submission on the strengthening of economic regulation identified one such issue which can be resolved within the concept of the Growth Duty and that is the very high profile of the regulation of connections of foul and surface waters to sewers; it supports the proposed implementation of the Schedule 3 of the Flood and Water Act 2010 and suggests a review of S 106 of the Water Industry Act 1991. It looks forward to contributing to further consultations on these matters.
- Economic growth being environmentally sustainable.

16 The guidance for an integrated growth duty for all water regulators (emerging from one consultation) contributes in part to the strengthening of the role of Ofwat (the other consultation) which is part of a smarter regulatory landscape for all water regulators (emerging from the call for evidence) as expressed through a national water strategy.

17 Very important is that the search for new sources of investment and the objective of introducing competition must avoid fragmentation of the water services and compromise operational integrity. The balance of economic best practice must be balanced with operational best practice reflecting the avoidance of threats to the environment and health. This is explored in detail in the submission on the consultation on the strengthening of economic regulation.

18 In seeking to prepare an effective set of submissions, the WCWC offers a comment that the whole initiative on smarter regulation is starting to create a complexity in its own right which can be difficult to interpret in the context of the water sector. If the suggestion of standalone guidance on the water sector is accepted, it would be very useful to have an

explanation on how the two worlds, articulated for smarter regulation and for better water services, merge. At a time when there is so much scrutiny of the water sector, the approach to its management must be clear to all interested parties, but much of this consultation is couched in terms only comprehensible to the people most involved with the processes. So, in examining the experiences of regulation in this call for evidence, the DBT might also include some self-examination of smart regulation.

Smarter regulation to grow the economy - GOV.UK (www.gov.uk)

Better Regulation Framework - GOV.UK (www.gov.uk)

LANDSCAPE OF THE CONSULTATIONS AND CALL FOR EVIDENCE

19 The current consultations and this call for evidence pose some complex questions which require detailed responses. WCWC suggests that consideration needs to be given to the weight of consultation processes in order to avoid consultation fatigue. At the moment the processes seem fragmented. The issues of economic regulation in the sectors of water, energy and telecoms will be different for each sector but will share some common principles. The role of Ofwat, which has featured more than that of the other ALBs in Defra is much more intimately involved with the role of the EA and NE than energy or telecoms. **The WCWC suggests that it would be more effective to bring the fragmented elements on water regulation together, including the role water in growth, and separate this out from consultations on the regulation of energy and telecoms. A more detailed commentary on the economic regulation of water services is given below and in the responses to the parallel consultations by the DBT.**

20 The WCWC observes that there is a substantial series of relevant recent and ongoing consultations. At the same time the House of Lords Industry and Regulators Committee has called for evidence in its inquiry into independence and accountability of UK regulators <https://committees.parliament.uk/call-for-evidence/3260> to which the WCWC has responded. https://www.waterconservators.org/wp-content/uploads/HoL-Regulation-Dec-9-2023_2.pdf

Overlap with the inquiry by the House of Lords Industry and Regulators Committee

21 The inquiry is examining whether regulators as a whole have been given a clear job to do and whether their roles and remits are sufficiently discrete from one another. The inquiry is also examining whether regulators are appropriately independent of Government, including whether the right balance is being struck between strategic and political input from government and preserving regulators' operational independence. The inquiry will further examine how regulators should be held to account for their performance, and by whom – including the respective roles of the Government and of Parliament.

22 According to the DBT, there are 90 regulators across the UK, not including local authorities. They cover a wide range of areas and have a range of different powers and responsibilities; in some cases, they have been given a specific job to do by Parliament. Many regulators, though not all of them, are public bodies funded by the taxpayer. To date, the House of Lords Industry and Regulators Committee has conducted scrutiny of a number of regulators, including Ofwat (see the WCWC response to that in June 2022 on its website <https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>), and Ofgem, and the Office for Students. The committee launched this cross-cutting and thematic inquiry into UK regulators, drawing in part on the findings of its previous inquiries.

The inquiry will focus in particular on the relationship between regulators and the Government, and on how regulators are held accountable, including by Parliament.

The committee is interested in answers to the following questions:

23.1) *“Are UK regulators being given a clear job to do?”*

23.2) *Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?*

23.3) *Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?*

23.4) *Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?*

23.5) *Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?*

23.6) *How effectively do regulators co-operate with one another, and how could this be improved?*

23.7) *Do the UK’s regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?*

23.8) *Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?*

23.9) *How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?*

23.10) *What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?*

23.11) *Do any of the UK’s international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?”*

As stated earlier the response of the WCWC to this inquiry earlier in 2023 is also archived on its website.

24 **The WCWC poses the question - how do that inquiry and this call for evidence interact? Clearly the evidence will be too late for the inquiry, but the reverse is not too late - the results of the inquiry should be part of the evidence collected by DBT and may well inform the government response to the inquiry. But bearing in mind that this call for evidence has 48 questions, the DBT might wish to consider whether consultation fatigue might affect the**

results. The WCWC considers that a robust framework of regulations and regulators is essential for a diverse and sustainable environment.

Other consultations focussing on water

25 This is not the first time that evidence has been collected on the water regulatory landscape, which must be the focus of this response by the WCWC.

26 The DBT has already consulted on the extension of the growth duty, under the Deregulation Act 2015, to Ofwat to which the WCWC has responded in August 2023. https://www.waterconservators.org/wp-content/uploads/Ofwat-and-growth-09-08-2023.fin_.pdf

27 In June 2022 the House of Lords Industry and Regulators Committee held an inquiry into Ofwat powers, to which WCWC responded. <https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>

In March 2023 it published a report entitled ‘The affluent and the effluent: cleaning up failures in water and sewage regulation’ <https://publications.parliament.uk/pa/ld5803/ldselect/ldindreg/166/16602.htm>.

There was a follow up inquiry into Ofwat in the summer of 2023 with a final report in September 2023.

“The committee’s main conclusions and recommendations were:

- *The government and Ofwat must set “stretching targets” to reduce storm overflows across the water network.*
- *Ofwat and the Environment Agency “must go further” to hold water companies to account for environmental pollution through penalties and prosecution.*
- *Ofwat has “failed to ensure companies invest sufficiently” in water infrastructure, instead “choosing to keep bills low” at the expense of investment.*
- *Water companies have been “overly focused on maximising financial returns” at the expense of operational performance and protecting the environment.*
- *Ofwat should ensure that water company executives cannot receive substantial bonuses if their companies have missed performance and pollution targets.”*

<https://lordslibrary.parliament.uk/cleaning-up-failures-in-water-and-sewage-regulation-industry-and-regulators-committee-report>

28 There have been numerous consultations by Ofwat on the evolution of its role and powers to regulate the water industry, for example in putting customers first during November 2023 to which the WCWC has responded.

<https://www.waterconservators.org/wp-content/uploads/Ofwat-customer-first-a.pdf>.

29 The fragmentation of consultation processes reflects the fragmentation of policy making and practice in water management regulation. As articulated above, the WCWC has advocated the introduction of an integrated national water strategy which would overarch all the contributions of the regulators including those for the environment, which paradoxically have a growth duty at present, which Ofwat does not, for example. Indeed' not only should such an approach bring together all the ALBs in the water sector, but it should bring together relevant government departments such as DBT and Defra (which is not mentioned much in this consultation and is the principal sponsoring department). Collaboration is essential.

30 WCWC poses the question: is the current approach the smartest way of managing the economic regulation processes at a time of very substantial increases for demands for investment, rising public expectations and intense media and political scrutiny? This must involve the roles of the EA and NE, which the consultation on the Guidance for the Growth Duty for the utility economic regulators specifically excludes; while the EA and NE are covered by the current Growth Duty guidance and by this call for evidence. The roles of the EA and NE will have as much impact as that of Ofwat in post Brexit onshoring, as the WCWC has pointed out. Consideration should be given also to the role of the Office of Environment Protection.

31 The WCWC repeats that the missing pieces of this mosaic of consultations are references to the impacts of planning and development control by local authorities and by the intervention of the DLUHC. In spite of good intentions by water companies, and by Ofwat, planning restrictions can hinder major projects as the controversies on major water supply and storage schemes demonstrate. The need for greater collaboration is discussed subsequently.

KEY POINTS FOR THE SMARTER REGULATION TEAM IN THE DEPARTMENT

Some general points

32 The WCWC has drawn on the wide experience of its members to outline some principles which it has already shared with the House of Lords Industry and Regulators Committee; inevitably this submission focuses on the water sector to inform insights into the broader landscape, as explained earlier.

33 In short, the WCWC suggests that regulators should learn from the past, plan for the future, and act in the present. It is evident that the community at large is losing trust in regulations, regulators and the behaviour of regulated bodies. The WCWC observes, without comment, the focus on bodies in the water sector and other sectors, such as education, that building and maintaining trust in regulation is crucial, but in a way which avoids cynical ridicule.

34 The WCWC would like to highlight that the role of regulators is determined first by the legislation which established them, consequent regulations defining the control of activities assigned to them and by the policies and guidance of sponsoring departments. So, the role of regulators may be influenced by the politics of the day and by issues like the affordability of allocation of resources. Speed of decision making by Government is, therefore, critical to smart regulation. As this call for evidence also demonstrates, non- sponsoring government

departments can influence the work of an ALB. In the case of the water and environment sector the DBT and the DLUHC are good examples.

35 The WCWC is sure that the Smarter Regulation Unit will agree that smart regulation is best when its objectives are set out in the simplest way, but as it sets out subsequently and in the parallel; submissions on growth and strengthening of the economic regulation of utilities, it poses the question; is the current direction of travel for the water sector counter to the principles of smart regulation?

35 All legislation, be it primary or secondary, must be subjected to evaluation by the principles of better regulation, so any regulatory decision must be thought through right to the practical implementation on the front line

<https://www.nao.org.uk/wp-content/uploads/2021/05/Principles-of-effective-regulation-SOff-interactive-accessible.pdf>

As an example from the water sector, Section 82 of the Environment Protection Act 2021, however well intentioned, was one which did not appear to be so evaluated in the precise wording and this was referred to in the WCWC response to consultation on implementation of Section 82 on monitoring

<https://www.waterconservators.org/wp-content/uploads/Monitoring-18.2-May.pdf>

Defra subsequently issued a response which included recognition of the issues.

37 Perhaps some of the thinking behind the questions posed in this call for evidence might also be of value in determining the effectiveness of support for the committee stages in the progress of a Bill through Parliament.

38 There are 46 questions seeking responses on technical issues, many focussed on the direct experience of a responding organisation and inviting commentary of its experience of its regulators. The membership of WCWC embraces many aspects of the work of regulators and regulated bodies; it does not offer any commentary on specific regulators, as sought in the call for evidence. The WCWC offers a strategic overview in the hope that it provides sufficient insights to help the call for evidence without addressing specific questions and answers some of the questions posed.

Some brief observations on water regulation

39 The WCWC draws attention to its previous detailed submissions on regulation of the water sector (archived on its website) and, in particular, to the House of Lords Committee in June 2022, which remains largely valid although in some suggestions matters have moved on. <https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>.

These and the current responses to the consultations on the growth duty for utility regulators highlight the need for strengthening the economic regulation of utilities. The WCWC has commented that after some 30 years of execution of the current role of Ofwat and the concomitant water company licence conditions, that there should be a major review to re-streamline the processes, rather than the constant nibbling at the licences and price review and determination processes. It has also advocated the creation of a multi departmental national water strategy.

40 Some headlines of the June 2022 submission to the House of Lords were:

- Creation of a national river strategy (which the WCWC is now advocating should be part of a national water strategy and into which water as a factor in economic growth would now also be factored). The Defra Water Plan is a step in that direction
- Creation of a national water consensus bringing all the relevant parties together to create a common ‘hymn sheet’
- And in part, this involves the revival of the formal national technical committees which used to underpin decision making. Could the revival of Royal Commissions be part of that process?
- Create a formal nexus of citizen science and citizen delivery recognising that we are all part of the problem and part of the solution e.g., in water use and the disposal of sanitary litter.

41 The issues of economic regulation in the sectors of water, energy and telecoms will be different but sharing some common principles. The role of Ofwat, which has featured more than that of the other ALBs in Defra is much more intimately involved with the role of the EA and NE. The WCWC suggests that it would be more effective to bring the fragmented elements on water regulation together, including the role of water in growth, and separate this out from the regulation of energy and telecoms. More commentary on the economic regulation of water services is given in the responses to the parallel consultations by the DBT.

42 The WCWC is very much aware of the ‘blame game’ in the water sector at present with the relevant parties being criticised differently by varied interests, which does not help. The performance of a regulator may be influenced by the interventions of different government departments and this is a dimension of the need for collaboration. The WCWC is also responding to the separate consultation by the DBT on the updating of guidance on the growth duty set out in the Regulations pursuant 2017 to the Deregulation Act 2015. <https://assets.publishing.service.gov.uk/media/655e18c45395a900124635f1/consultation-on-the-growth-duty-draft-statutory-guidance.pdf>

43 The ability of the water sector and its supply chain to meet the needs of a growth economy depends on good regulation and good management. The effectiveness of economic and environmental regulation is critical in terms of achieving a satisfactory balance between the pace of environmental improvement, the response to climate change, meeting the water service needs of local growth and the challenges of sector financeability and customer affordability. Good business management is vital but positive collaboration and adequate funding of the regulators is essential as is their own commitment and that of the companies involved, to processes which are not only collectively effective but also efficient. Regulators in the water sector have oversight and powers affecting every aspect of the business from raw water to the final customer bill.

44 The WCWC observes that there are a number of government departments involved in water regulation which can lead to fragmentation of policy. The WCWC repeats its suggestion that an overarching multi departmental national water strategy (but led by Defra) is needed to complement the water plan. The WCWC has suggested that, as a consequence of that plan, there should be greater coordination between the environmental regulatory parties:

it now suggests that the two planning departments (DBT and DLUHC) should be added to that caucus. It has already suggested that there must be greater coordination between local government and the water services sector by partnering between Water UK and the Local Government Association. And so ‘collaborative’ is a very important growth behaviour and it would be helpful if that collaboration could be articulated more clearly and effectively.

Overlap with the Inquiry by the House of Lords Industry and Regulators Committee

45 The WCWC draws particular attention to the House of Lords Industry and Regulators Committee inquiry (the inquiry) into UK regulators, with a focus on their roles, remit, independence and accountability. The inquiry is examining whether regulators as a whole have been given a clear job to do and whether their roles and remits are sufficiently discrete from one another. The inquiry is also examining whether regulators are appropriately independent of Government, including whether the right balance is being struck between strategic and political input from government and preserving regulators’ operational independence. The inquiry will further examine how regulators should be held to account for their performance, and by whom – including the respective roles of the Government and of Parliament.

46 According to the DBT, there are 90 regulators across the UK, not including local authorities. They cover a wide range of areas and have a range of different powers and responsibilities; in some cases, they have been given a specific job to do by Parliament. Many regulators, though not all of them, are public bodies funded by the taxpayer. To date, the House of Lords Industry and Regulators Committee has conducted scrutiny of a number of regulators, including Ofwat (see the WCWC response to that in June 2022 on its website <https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>),

and Ofgem, and the Office for Students. The committee launched this cross-cutting and thematic inquiry into UK regulators, drawing in part on the findings of its previous inquiries. The inquiry will focus in particular on the relationship between regulators and the Government, and on how regulators are held accountable, including by Parliament.

The Committee is interested in answers to the following questions:

46.1) “Are UK regulators being given a clear job to do?”

46.2) Is the right balance being struck between the responsibilities of regulators and those of the Government, particularly where there are political or distributional trade-offs that need to be resolved?

46.3) Are regulators appropriately independent of government? Is the right balance being struck between strategic and political input from government and preserving the operational independence of the regulators?

46.4) Does the Government provide too much or too little guidance to regulators in making decisions, particularly in deciding between different objectives and priorities?

46.5) Are the roles and remits of different regulators sufficiently discrete, or is there overlap and duplication?

46.6) *How effectively do regulators co-operate with one another, and how could this be improved?*

42.7) *Do the UK's regulators have the necessary skills, capabilities and expertise internally to perform the roles they have been given? If they do not, how could this be improved?*

46.8) *Who should hold the regulators accountable for their performance against their objectives? What is the appropriate role of Parliament in performing this scrutiny role?*

46.9) *How should the Government and the regulators themselves facilitate appropriate scrutiny and accountability of regulators? Are regulators sufficiently transparent about their own performance?*

46.10) *What mechanisms and metrics could be used to hold regulators accountable on a regular and ongoing basis and to judge whether a regulator is performing well?*

46.11) *Do any of the UK's international comparators address the above questions particularly well? What lessons, if any, can the UK learn from other jurisdictions on these matters?"*

As stated earlier the response of the WCWC to this inquiry earlier in 2023 is also archived on its website.

Collaboration between government departments and relevant arms-length bodies

47 Much of this submission of evidence to DBT by the WCWC is a re-iteration and some elaboration of that submitted to the recent House of Lords Inquiry.

CONSULTATION RESPONSES - The Worshipful Company of Water Conservators

48 The WCWC was pleased that the broad points which it made in a previous submission to the committee on its inquiry into Ofwat's powers in May 2022 were reflected in the further inquiry.

<https://www.waterconservators.org/wp-content/uploads/H-of-Lords.pdf>.

The WCWC stands by the points it made before in both submissions and it does not offer any commentary, per se, on the regulators in the water sector, but offers some insights on principles based on the experiences of its members. The controversy over water management since June 2022 has focussed public attention on the performance of regulators in water and environmental management. This highlights the need for greater collaboration between regulators affecting water and this is part of the government's plan for water within England. <https://www.gov.uk/government/publications/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water>.

Thoughts on some other principles relevant to the call for evidence

Nature of the regulator

49 Regulators are ALBs. The Inquiry might like to pose the question: which is the right model for an arms-length regulator? The government's own website recognises different

types of bodies. When the Office for National Statistics (ONS) economically classifies an organisation as part of the public sector for the purposes of producing national accounts it is indicatively classified to one of three sub-sectors based on its characteristics. These sub-sectors are central government, local government or public corporations. If a body is indicatively classified as central government by the ONS it may be subject to a separate administrative classification by the Cabinet Office.

50 ALBs are a specific category of central government public bodies that are administratively classified by the Cabinet Office. There are three types of ALB:

- An executive agency (EA) is a clearly designated unit of a central government department. It is administratively distinct, but legally remains a part of it. It focuses on delivering specific outputs within a framework of accountability to ministers. Examples of EAs include DVLA, HM Prison and Probation Service and the Met Office, Drinking Water Inspectorate, Northern Ireland Environment Agency.
- A non-departmental public body (NDPB) is a body which has a role in the processes of national government. It is not a government department but operates at arm's length from ministers. NDPBs have different roles; some of them advise ministers whilst others carry out executive or regulatory functions. They work within a strategic framework set by ministers. Examples of NDPBs include the British Council, EA in England, NRW, Scottish Environment Protection Agency, and the Health and Safety Executive.
- A non-ministerial department (NMD) is a government department in its own right, but does not have its own minister. However, it is accountable to Parliament through its sponsoring ministers. A non-ministerial department is staffed by civil servants and usually has its own estimate and accounts. Examples of NMDs include the Food Standards Agency, HM Revenue and Customs, Ofgem, Ofwat, and the Forestry Commission.

[The Public Bodies Handbook: part one \(pdf, 888 kb\)](#) provides further information about the types of public bodies, and how they are classified.

[The Public Bodies Handbook: part two \(pdf, 843 kb\)](#) sets out the ministerial approval process for the establishment of new arm's length bodies.

[Executive agencies: a guide for departments \(pdf, 1,010 kb\)](#) describes the characteristics and structures of executive agencies and provides guidance on the processes for their creation, review, merger and abolition.

51 The WCWC observes that there does not seem to be any consistent algorithm to determine the nature of an arms-length body, as defined in the primary legislation creating them. The WCWC is aware of all three types of bodies functioning in the sector of water and environmental management across the UK and it suggests to the inquiry that this offers an opportunity to determine which model is functioning best. The WCWC note for example:

- That the environmental functions in Wales are vested in one body, but not elsewhere.

- There is not even consistency in which countries are served, for example Ofwat serves water in Wales and England, Ofgem serves power in Wales, Scotland and England,
- The Water Industry Commission of Scotland serves water in Scotland, but the Utility Regulator serves both functions in Northern Ireland.

52 The WCWC notes that these models are already under review in the public bodies reform programme 2020 to 2025.

<https://www.gov.uk/guidance/public-bodies-reform>

The joint HM Treasury and Cabinet Office public bodies reform programme was established in November 2020. Its mission is for accountable, effective and efficient public bodies that are aligned to its five priority workstreams:

- A new strategy for public bodies.
- Improved gateways for establishing and reviewing public bodies.
- Good governance: enhanced departmental sponsorship and boards of public bodies.
- Data: improved data collection and the use of data to change behaviours.
- Identifying greater efficiencies.

53 The WCWC suggested that the Inquiry might investigate progress in this review with respect to the water and environmental regulatory functions particularly in England. The WCWC submits that there are a number of aspects worth investigating further as set out in the context of the questions. Any review would need to be mindful that the appointment of a water company is the mechanism which requires the economic regulator to adjust charges to reflect changes of circumstances introduced by other regulators and this mechanism (complex and sometimes frustrating) underpins the ability of the sector to attract external finance and thus fund growth and environmental improvement.

Role of secondary legislation

54 The clarity of regulation is paramount as is the balance of what is contained in primary versus secondary legislation, which gives greater flexibility to respond to changing circumstances. As referred to earlier the Defra consultation on the Section 82 of the Environment Act 2021 demonstrated the problems that too much detail in primary legislation can cause (see the WCWC response to this on its website).

CONSULTATION RESPONSES - The Worshipful Company of Water Conservators.

Another aspect of this is that if the regulatory envelope is adjusted too often there can be an accumulation of changes which become difficult to piece together and hence every so often there must be a strategic review. The WCWC have suggested such a review for appointments of water companies and the attendant role of Ofwat.

Freedom of action

Relative balance of decision-making

55 The relative balance between strategic and tactical policy making is important. The sponsoring government department is responsible for the former and the ALB for the latter as it is much closer to the operational details of regulatory application. In addition, as a mirror of this the WCWC suggests that an ALB should have the role of being a ‘critical friend and adviser’ to the sponsoring department.

Freedom to act

56 A function of this balance is the freedom to act by the ALB. For example, the balance between the ALB, sponsoring department, and for example Independent Commissioner of Public Appointments on matters of appointments to boards etc, and indeed any parliamentary scrutiny. There must be a balance between oversight and determination of the processes. The role of advisory bodies is influential in this context. The speed and content of government policy making can impede action by regulators. A very good example has been the resolution of problems caused by sanitary litter in sewer overflows and the WCWC has responded to a recent Defra consultation.

<https://www.waterconservators.org/wp-content/uploads/Wet-wipes.pdf>.

As this consultation demonstrates non sponsoring government departments can influence the work of an ALB. In the cases of the water and environment sector these are the DBT and the DLUHC.

57 Another aspect of this is the funding of the bodies. Regulators can only be effective if adequately funded. There is much public debate at the moment over the funding of the regulators in water and environmental management. (Core funds may be sourced by Treasury control or department grant subject to Treasury control). But there is a difference between public spending and spending by the public. There should be opportunities for the ALBs to raise funds directly but there is concern about the final impact of such charges on businesses and individuals in society. The demand for better execution of regulation will usually result in higher customer bills by whatever circuitous route. The Inquiry and this call for evidence might look at the control of funding mechanisms in this context and determine if the current schemes in the water and environment sector are adequate, for example the scheme managed by the EA.

<https://www.gov.uk/guidance/environment-agency-fees-and-charges>.

58 The WCWC is aware of the wide spread concern about the cuts in the budgets of the Environment Agency.

<https://assets.publishing.service.gov.uk/media/636257ded3bf7f04e58cdd19/EA-Annual-Report-2021-22.pdf>

At the same time, it notes the value of technical innovation contributing to the efficient husbandry of resources. For example, the use of drones for environmental inspections will probably be more effective in many situations than manual inspections and will probably be cheaper. It refers to this in its submission on the Consultation on Proposals for Guidance on the Duty of Growth.

[Flying high! Using drones to collect evidence of illegal waste sites - Creating a better place \(blog.gov.uk\)](https://blog.gov.uk)

59 The WCWC notes that some regulators have commercial arms which must be kept ring-fenced, for example Natural Resources Wales and the Forestry Commission manage publicly owned forests.

60 Of course, this is tied in with which model of ALB is adopted and what is contained in the primary and secondary legislation, so Parliament itself takes account of these points in considering Bills.

Complexity of operation

61 A further point is the complexity of the regulatory framework in which a regulator operates. There are usually many pressures apart from the relationship of the sponsoring departments. For a start, other government departments may impact on the ALB, for instance the DBT and DLUHC are both influencing water and environment policy. **There are other ALBs which might impact and other kinds of regulators. To simplify matters the WCWC categorises these into three groups.**

Non-arms-length bodies with regulatory powers

62 Water companies have regulatory powers on such matters such as the physical criteria for sewer connections, water fittings and trade effluent discharges. This may have been overlooked by the terms of the inquiry.

63 Local authorities, excluded from this review, regulate planning and building construction and may ignore the advice of the water companies. Local authorities may not follow rules which work well with the water company responsibilities, for water fittings for example. They are regulators of private water supplies (all under the Water Industry Act 1991) and have powers regarding environmental nuisance. They could well play a role as Approving Bodies in the framework for Sustainable Urban Drainage Systems (SUDS, and this is articulated by the WCWC in the submission to the Consultation of the strengthening of economic regulation). Other examples include, local flood risk management authorities. <https://www.gov.uk/government/collections/flood-and-coastal-erosion-risk-management-authorities>.
<https://www.gov.uk/government/collections/environmental-permitting-resources-for-local-authorities>

64 The WCWC understands the requirement of the inquiry to be limited and not to include the functioning of local authorities, per se, but suggests that the impact of these activities on the regulators within the remit of the inquiry should be included and that the inquiry should look at the impact of the planning framework. **Will this DBT call for evidence extend out to embrace the impact of these bodies?**

Parallel and over-lapping regulators

65 The impact of local authorities is outlined above but certainly in England there are several regulators working in the water and environment sector (even within a single department, Defra). At the very least there need to be more joined up approaches as the WCWC advocated in its responses, particularly in response to the plan for water. **If the DBT wants to take an overview of the relationship of growth and the environment the WCWC suggests that it and**

Defra and the DLUHC should collaborate and decide what is needed for all the regulators in the water sector and agree the best way forward

<https://www.gov.uk/government/publications/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water>.

66 In preparing the set of three submissions to the DBT the WCWC has been reminded of the role of several such regulators in the water sector; as outlined in the section on non ALBs. These include the water companies themselves as regulators of water fittings and trade effluents, local authorities and the Drinking Water Inspectorate, SUDS Approving Bodies (as note above, in the future), local flood risk management authorities.

Non-regulatory ALBs

67 There are many bodies which are advisory to government, for example, but still have impact on the role of a regulator. For instance, in the water and environment sector there is the Climate Change Committee, Customer Council for Water, National Infrastructure Commission, although there are statutory relationships with Ofwat processes. The WCWC suggests that the interrelationships of non-regulatory ALBs would be worth exploring. It advocated in its June 2022 submission on Ofwat that the role of advisory committees should be reviewed as well.

External audit

68 The WCWC suggest that the relevant national audit offices and the Office of Budget Responsibility should play a prominent independent role in assessing performance and it recognises that very important role of the Office of Environment Protection. The WCWC poses the question about the relationship of their responsibilities and the Growth Duty under the Deregulation Act 2015.

69 The WCWC does not offer any detail on the performance criteria which should be used, but it does offer the insight that it is as important for a regulator to be judged on how it achieves goals as the achievement of targets. Hence any framework should be based on a balanced score card approach.

Best practice

Regulators Code

70 The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. The regulators and regulatory functions to which the Regulators' Code applies are specified in the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended in 2009, 2010 and 2014. Nearly all regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities. The Office for Product Safety and Standards works to support the effective implementation of the Regulators' Code.

71 The Legislative and Regulatory Reform Act 2006 was extended by the Enterprise Act 2016 requiring regulators other than local authorities to formally report on the effect that the

Regulators' Code has on the way they exercise their regulatory functions and the impacts of this on business. The available website states that this additional obligation is not yet in force, and BEIS (Business, Energy & Industrial Strategy, now DBT) will engage with regulators before it is introduced. **This suggests that it might be time for a review and update and this recommendation on better regulation might emerge from the inquiry (and in the reaction by DBT to the responses to this call for evidence). The WCWC suggests that this should examine the balance of uses of the enforcement functions available to regulators.**

<https://www.gov.uk/government/news/marking-five-years-of-the-regulators-code> 2019

<https://www.gov.uk/government/publications/regulators-code-and-the-environment-agency/how-the-environment-agency-meets-the-regulators-code> (updated later in 2021)

Best practice networks

72 From personal experience of members of the WCWC, the Economic Regulators Forum (the Forum) has proved invaluable. It meets on a quarterly basis and provides a unique opportunity to keep abreast of developments in UK economic regulation. It has delegates from: Ofcom, Ofwat, Civil Aviation Authority CAA, Office of the Rail Regulator ORR, the Northern Ireland Utility Regulator, CICRA (the Channel Islands Competition and Regulatory Authority), Commission for Communications Regulation Ireland Comreg, Monitor, Ofqual and the Water Commission for Scotland and has previously included Postcomm, Ofgem, the Legal Services Board and Consumer Focus.

<https://slgeconomics.co.uk/the-regulators-forum>.

The WCWC is also aware of the UK Regulators Network to which Ofwat and the NI Utility Regulator belong,

<https://ukrn.org.uk/>

along with the consultation on improving the efficiencies of the utilities, where reference is made to the use of this network.

73 **No such body exists for the water and environment sector across the UK (although Ofwat is represented in the Forum) and the WCWC suggests that establishing this would be of great value. The WCWC is aware that the environmental regulators do meet outside a formal network; it has been made aware of the LSE Centre for Analysis of the Risk of Regulation, Previous Regulators Forum.**

<https://www.lse.ac.uk/accounting/carr/events/regulators-forum>

and the International Institute of Communications, International Regulators Forum.

<https://www.iicom.org/core-event/international-regulators-forum> .

The WCWC suggests that a review of all such best practice networking bodies might be worthwhile.

74 The WCWC observes that there are a number of government departments involved which can lead to fragmentation of policy. The WCWC repeats its suggestion that an overarching multi departmental national water strategy (but led by Defra) is needed to complement the water plan and this should embrace the existing and extended growth duties. The WCWC has suggested that, as a consequence of that plan, there should be greater coordination between the environmental regulatory parties: it now suggests that the two planning departments should be added to that caucus. **It has already suggested that there must be greater coordination between local government and the water services sector by partnering between Water UK and the Local Government Association. And so 'collaborative' is a very important**

regulatory behaviour and it would helpful if that collaboration could be articulated more clearly and effectively.

Collaboration

75 The WCWC has used the water sector to demonstrate that the execution of duties by a regulator will often be in a complex web of interrelationships including other ALBs and even non sponsoring government /departments. Collaboration is vital. In addition to the commentary in this response, this is examined in detail in the submissions to the consultations on the Guidance for the Growth Duty and on the strengthening of the economic regulation of utilities.

Customer care (referred also in the submission in the consultations on the growth duty guidance and in the consultation on strengthening the economic regulation of utilities.

76 The relationship between regulated and regulator must be supportive but does not condone inappropriate behaviour. The behaviours outlined in the consultation on growth duty guidance do not address customer orientation especially as a behaviour expected of a regulator with the people and bodies regulated.

77 This is encapsulated in the concepts of customer service. But this a rather dated concept as modern business goes well beyond this into customer care, indeed, into customer delight <https://www.taskus.com/insights/customer-care-beyond-customer-service>.

But what does this mean in terms of smarter regulation? First it is evident that the community at large is losing trust in regulations, regulators and the behaviour of regulated bodies. The WCWC observes, without comment, the focus on bodies in the water sector and other sectors such as education that building and maintaining trust in regulation is crucial but in a way which avoids cynical ridicule. As an example, Ofwat has proposed a change in the licence conditions for water companies to put customers first. The WCWC has responded. <https://www.waterconservators.org/wp-content/uploads/Ofwat-customer-first-a.pdf>.

The WCWC suggests that the broad multi- functionality of customer care should be embedded in the role of all regulators.

QUESTIONS FOR WHICH ANSWERS ARE EXPECTED

Section One: Questions on the Landscape of Regulation (Required)

Please note that any questions asked about a ‘regulator’ is pertaining to the relevant regulatory body to your answer. We are not seeking information about individual persons employed by regulatory bodies.

Question 1: “Based on your experience, do you think that UK regulators are supportive of the individual businesses they regulate in a way that appropriately balances considerations of consumers and other businesses within the sector more broadly?”

“Please provide detail here. Examples are welcomed.”

Response: Yes, in the water sector but in a way which is constrained.

Question 2: “Please name the UK regulator(s) you engage with most frequently:

Please specify here”

Response: Ofwat, Environment Agency, Natural England.

Question 3: “What do you consider to be the most positive and/or negative aspect of how the UK regulators that you engage with operate?

Please provide your answer here. Examples are welcomed – you may wish to include the basis of your interaction with a regulator(s), e.g. your regular communication with regulators. You may also wish to consider both the outcomes that regulators deliver and the process through which they go about delivering these outcomes, including how they interact with those they regulate”

Response: No comment; the impact of government policy is more significant.

Section Two: Complexity and Ease of Understanding the Regulatory System

“The large number of regulators in the UK is driven in part by the scale of our economy and the range of different sectors and activities that require some form of regulation, whether to ensure markets work well or to otherwise protect workers, consumers, and other members of the public. While this structure may have advantages in terms of scope, we also recognise that it creates risks of overlaps or duplications between the mandates of different - potentially increasing complexity for those being regulated and the burden of regulation. Statutory duties are placed on the regulators through legislation. Regulators often have a set of duties across different primary and secondary legislation which they must fulfil in carrying out their core functions. They also frequently have wider objectives, for instance as set out in statutory guidance. We are aware that not all questions will be relevant to all respondents. Please address as many questions as are relevant to your experience.”

Question 4:” Based on your experience or understanding of UK regulators, do you find it clear what the overall purpose and objectives of individual regulators are?

Response: In the water sector the complexity of regulations and government policy sometimes obscures the overall purpose, as explained in the text.

Please provide further detail here if this question applies to you. Examples are welcomed.”

“Question 5: Within these overall objectives (as considered in the preceding question), do you find it clear what the specific statutory duties (i.e required by legislation) of individual UK regulators are? Please provide further detail here if this question applies to you. Examples are welcomed.”

Response: See answer to Q4. The complexity in water policy and regulation is difficult for all but the most involved to understand, often leading to misunderstanding.

Question 6: “Do you think that the statutory duties (i.e. required by legislation) imposed on UK regulators:

1. Cover the right issues?”

Response: In the water sector the current silo effects precludes an effective overall harmonisation of processes. Government policy interventions such as more housing, keeping water charges down etc clash with the impact of very substantial investments needed to meet growing demands on the water environment.

2. “Are clearly stated in relevant statute, including where supplemented by relevant guidance?”

Response: An overarching national water strategy and an overhaul of the economic regulatory model is needed urgently.

3. “Are sufficiently consistent across regulators, where this is relevant?”

Response: See the extended text on the need to bring greater integration even to what the DBT itself is doing for the water sector.

Question 7: As set out above, UK regulators have a remit that is set through legislation and guidance. Which of the below do you consider best applies?

1. Regulators always act within the scope of their remit;
2. Regulators go beyond their remit in a way that may negatively impact the outcomes that they are required to deliver; or
3. Regulators go beyond their remit in a way that supports the outcomes they are required to deliver.

Response: The complexity of the water sector provides examples of all three behaviours.

Question 8: “Do you often have to engage multiple UK regulators on the same issue or area?”

Response: 1. Yes.

Question 9: “Do you consider that UK regulators collaborate effectively with each other and their international counterparts?”

Response: The WCWC cannot comment on current formal practice, but does recall that there was extensive cooperation in Europe before Brexit. The WCWC recommends the benefits of best practice networks, and the active participation in professional networks such as the European Water Association and can provide more details.

Question 10: “Where you engage with multiple UK regulators, do you find it clear which regulator is responsible for a specific issue or area, and how regulator mandates interact?”

Response: See the commentary which describes the complexity of relationships of government departments and ALBs which needs integration.

Question 11: “Do you consider there to be underregulated areas of the economy, or gaps in regulatory responsibility between UK regulators?”

Response: Water sector is heavily regulated but an overarching strategy is needed and better collaboration.

Question 12: “Do you consider that guidance issued by UK regulatory bodies makes the regulatory system clearer and easier to understand?”

Response: There are numerous volumes of guidance, some out of date. And some sorely needed like that providing integrated advice on the role of water in a surgent UK economy.

Section Seven: Concluding Questions (Required)

Question 39: “If you could suggest a single reform to improve how UK regulators operate, what would it be? Please provide further detail here. Examples are welcomed”

Response: In water a national water strategy with reform of the price review process for water companies.

Question 40: “Are there any examples of international approaches to regulation that you think set best practice that UK regulators could learn from? Please give examples and provide further detail here”.

Response: See answer to Q4.

Question 41: “What is the best designed regulation you face, and why? Please provide further detail here. Examples are welcomed”.

Response: No comment.

Question 42: “Are there any further points you would raise about regulation, including the functioning of the regulatory system or any recommendations you have on the stock of regulations from the Government which should be removed or reformed and modernised?”

Response: See in the text the WCWC proposal for reform.

Question 39: “If you could suggest a single reform to improve how UK regulators operate, what would it be?

Please provide further detail here. Examples are welcomed.”

Response: Better coordination particularly between government departments.

Question 40: “Are there any examples of international approaches to regulation that you think set best practice that UK regulators could learn from?

Please provide further detail here. Examples are welcomed”.

Response: Formal support to contributing to the European Water Association.

Question 41: “What is the best designed regulation you face, and why?

Please provide further detail here. Examples are welcomed”.

Response: No comment.

Question 42: “Are there any further points you would raise about regulation, including the functioning of the regulatory system or any recommendations you have on the stock of regulations from the Government which should be removed or reformed”

Response: See the substantial reforms advocated by the WCWC in the preceding text.

Question 43: “In what capacity do you interact with UK regulators or regulated businesses?

(Please select the most appropriate option that represents you, and respond according to your primary responsibilities)”

Response: Academic or think tank.

If you selected other, please specify here:

Question 44: If you are a business, how many employees do you have?

Response: Not Applicable – not a business.

Question 45: “Please name the Sector(s) that you operate in - you may wish to reference Standard Industrial Classifications

Please provide further detail here.”

Response: Water management and conservation.

Question 46: “If you are a regulated business, how much as a percentage of turnover does demonstrating compliance with regulation cost your business?”

Response: Not Applicable.

“If possible, please provide more specific figures on the cost of compliance with regulation here. Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance. Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance to the regulator. It is these costs we are concerned with, rather than the costs of delivering the policy intent of the regulation.”

Question 47: “What is your name, or the name of your organisation?

Please provide further detail here”.

Response: Worshipful Company of Water Conservators

Question 48: What is your e-mail address (optional response)?

Response: clerk@waterconservators.org <clerk@waterconservators.org>;

Question 49: We usually publish a summary of all responses, but sometimes we are asked to publish the individual responses too. Would you be happy for your response to be published in full?

Response: Yes