

9 AUGUST 2023

**WORSHIPFUL COMPANY OF WATER CONSERVATORS' RESPONSE TO THE
DEPARTMENT OF BUSINESS & TRADE CONSULTATION ON EXTENDING THE
GROWTH DUTY TO THE ECONOMIC REGULATORS OFGEM, OFWAT AND
OFCOM**

1 This submission to the Department of Business & Trade ('DBT') has been produced by the Worshipful Company of Water Conservators in response to the *Smarter Regulation: Consultation on extending the Growth Duty to the economic regulators Ofgem, Ofwat and Ofcom*. It focusses on the role of water management in economic growth and the duties of Ofwat.

2 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 Company's purpose is *Promoting a diverse and sustainable environment*.

OVERVIEW

3 The WCWC suggests that this consultation must be determined against the broader issues of water management. Access to adequate water resources and opportunities to dispose or re-use waste water is a major enabler or impediment to development. Location is key for both domestic and industrial development. The WCWC assumes that, since the origin of this consultation is the DBT, this is more focussed on industrial growth. Although that growth often has consequences for local domestic demand.

4 Many industries are located in estuaries, for example, and their abstractions and discharges are not subject to the provision of water services by water companies (except, perhaps, for the provision of drinking water) and are regulated by the Environment Agency ('EA') in England and Natural Resources Wales ('NRW') in Wales. Where a water company provides the service for non-domestic services, there is no obligation under the Water Industry Act 1991 to supply water (as there is for domestic supply). Water companies are obliged to take discharges from domestic properties but can refuse to take trade effluents (subject to appeal).

5 Because there is no statutory obligation, Ofwat can refuse to include industrial supplies in water company plans. In contrast, the right to connect domestic waste can cause local sewer overloading and is the cause, in some cases, of sewer overflows at times of light rainfall. Whilst the impact of development on water is reflected in infrastructure charges, and in plans, such as those for drainage and water resources, the WCWC suggests there is an urgent need to reform the planning system (see paragraph 10). If the proposed duty is conferred on Ofwat there will need to be a commensurate variation of Water Company Licences under the Water Industry Act to require water companies to supply water to industrial premises of 1991 (but with the power of refusal where they cannot cope).

6 Is there any scope for legal equivocation by having one overall responsibility spilt between two pieces of legislation (Water Industry Act 1991 and the Deregulation Act 2015)? The WCWC suggests that there needs to be more coordination between DBT and Defra.

7 There is a fine balance between economic growth and sustainable environmental husbandry. The WCWC expects that any growth should be environmentally sustainable. The consultation does not recognise this properly. It is much more than just adding another duty for Ofwat which enhances the current duties.

8 The WCWC suggests that there needs to be a more strategic integrated approach which recognises future demands. As an example, there is a drive towards the green hydrogen economy and, if water resources are factored into that growth, it is more likely that such plans will be located in estuarial or coastal situations. What will be the water resources implications of the proposed battery giga-factory in Somerset? There are also growing concerns about the rising water consumption of the cooling units in data processing centres.

9 There is growing recognition that as far as water resources and water quality are concerned, sustainable land management is also important. In the Defra Water Plan, of which there is no mention in the consultation, it is made clear that catchment-based management will be a key engine to drive the Plan forward; and an extension of a sustainable growth duty to whatever emerges as a future statutory model will be very helpful. In fact, whilst growth is implicit in the Defra Water Plan, it does not really address the regulation of entities outside the sphere of influence of Ofwat.

10 The WCWC has already suggested a number of times, as have many other parties, that the planning process is often the impediment. The controversies over reservoirs highlight this. There is often conflict between housing development and environment protection, as the controversies over nutrient neutrality also highlight. Sustainable growth, with respect to water, must involve the Department for Levelling Up, Housing and Communities ('DLUHC').

11 The WCWC suggests that this initiative needs to be extended to regulators which have economic impact but are not classified as economic regulators and, in particular, in this case, the EA and NRW.

12 The WCWC suggests that this is another overly fragmented approach, with even more government departments involved. The WCWC repeats its suggestion that an overarching Water Strategy is needed to complement the Water Plan and this should embrace the proposed growth duty. 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.

13 The current water economic model and role of Ofwat have been in place without major review in over thirty years and inevitably there has been an accretion of many evolutionary changes. It was 'fit for purpose' in 1989 and needs refreshment. The WCWC has suggested that there needs to be a systemic review to reflect current needs. This proposal, to add a growth duty, would be yet another step adding to the accretions and would be better added to that review.

ANSWERS TO THE SPECIFIC QUESTIONS

Q1. Do you agree that Ofcom, Ofgem and Ofwat should be included in the scope of the growth duty specified in the Deregulation Act 2015?

14 Yes, as long as it does not undermine Ofwat's statutory obligations with regards to incentive-based regulation and its emerging role in using this to promote best environmental practice by the sector.

15 The PR24 process for AMP8 (2025-30) is well underway, with the Business Plans to be submitted on 2nd October 2023, the Draft Determinations due in May/June 2024 and the Final Determinations in December 2024. This means that this consultation is in effect chiefly concerned with changes which could have an impact on AMP9 (2030-35).

16 The limitations of Ofwat's regulatory remit must be borne in mind. For example, the water companies, and therefore Ofwat, are involved with 27-55% of the sources of ecological failure under the Water Framework Directive ('WFD') depending on the river basin. The rest lies out of its remit as elaborated in the Overview.

Q2. What additional guidance would be beneficial to support effective implementation of the growth duty for Ofwat?

17 Public confidence in the water companies has been materially impaired through shortfalls in inland water quality (combined sewer overflow ('CSO') incidents are perceived to be the most visible manifestation of water pollution, even if they are a relatively minor component overall), bathing water (dry weather sewer discharges, beach closure notices and gastro-enteric illness) and leakage. Addressing these concerns has to lie at the core of any form of current or proposed regulation.

18 Improving inland and bathing water quality (and its perception) benefits the economy through encouraging tourism and recreation and the infrastructure and services necessary to support this. There is evidence that poor publicity has already affected the willingness of people to visit bathing waters in 2023.

19 Addressing these concerns also generates business. As matters currently stand, there is no adequate information as to the quantity of individual CSO discharges or their pollution loading. This will be addressed in a planned roll-out of inland water quality monitors from and by a date yet to be specified. This monitor roll-out is a growth opportunity in itself.

20 Guidance should also reflect the fact that regulation is most beneficially implemented at the catchment level. This means that Ofwat's potential contribution can be aligned with the other responses needed to improve inland water quality and flows.

21 The ability to service the needs of expanding businesses, as elaborated in the overview, must involve other aspects of water management, other than those within the sphere of influence of Ofwat and more in the bailiwick of the EA and NRW. The WCWC suggests that the growth duty should be extended to the EA and NRW as elaborated in the Overview.

22 As the consultation is being driven by the Department of Business and Trade, the focus of the consultation is more likely to be industry needs. Housing development is a separate matter but often linked to industrial development and there is a constant need to balance environmental needs with development to achieve sustainable growth. The impact of nutrient neutrality on housing development is a good example. This is a serious impediment on growth, which can be addressed through builders being obligated to develop effective separate storm and foul sewer systems and through using nature-based solutions and related approaches to minimise net surface runoff. For the water companies, additional and improved sewage treatment will be a source for growth and innovation and new assets can be added to their Regulatory Capital Values.

23 This also is a matter for both the DLUHC and Defra.

24 It is about getting planning right. This applies right across the spectrum of managing water in an expanding economy. It will influence the speed of delivery and location of schemes ranging from storm overflow tanks to large reservoirs.

25 Water companies are only obligated to provide for domestic and municipal customers. Ofwat does not allow for potential industrial growth to be factored in. Therefore, if there is any onshoring of industrial activity post-Brexit requiring public water supplies, this needs to be factored in when considering future water demand. The proposed growth duty will add to the sphere of regulation by Ofwat but this will be of no use if there is not a statutory obligation by the water companies to include this in their plans, so, it might need a modification of the Appointments of Water Companies.

Q3. How would you envisage a regulator's actions changing as a result of a growth duty? Please outline any benefits you can foresee.

26 This ought to be a case of the evolving Ofwat's role, rather than change for the sake of change. Ofwat has to balance the need for keeping down company water bills with the need to see improvements in river and coastal water quality while reducing leakage. There is a general agreement that the emphasis on minimising price rises in AMPs 6 & 7 has been at the expense of capital investment.

27 Excessive levels of dividends take funding out of the sector, which could be more beneficially used on capital investment, thereby reducing growth. Ofwat could encourage growth here by combining capital expectations with appropriate limits on gearing.

28 Benefits will emerge if increased capital investment results in both more spending on water and wastewater infrastructure and improved company performance. This will see an improvement in inland and coastal water quality and public trust. It will also be a driver for the innovation needed to effectively deliver these outcomes.

Q4. How do you foresee the growth duty interacting with existing statutory duties? Please provide examples.

29 Ofwat has a statutory duty to be the sector's economic regulator, using an incentive-based mechanism which rewards and penalises companies according to their performance against stated objectives or key performance indicators ('KPIs'). The potential relationship of existing duties and the proposed duty is set out earlier.

30 The KPIs in PR24 are going to reflect closer the current concerns about sewage discharges, CSOs and leakage.

31 Regulation of the sector is on a tripartite basis, with separate economic, drinking water and environmental regulators. The Drinking Water Inspectorate continues to perform strongly. It has sufficient funding, suitable testing systems and a strong and consistent track record of overseeing a material improvement in drinking water quality in England and Wales since 1990. Ofwat interacts closely with Defra, the EA and NRW. As elaborated earlier, the WCWC suggests that consideration should be given to extending the growth duty to the EA and NRW.

Q5. Is there any evidence that this will add significant costs to regulators or business? If so, why and what would those costs be?

32 This is a case of direct costs against indirect costs. There ought to be no material costs for Ofwat. This lies within its current activities. And it should not add to the EA or NRW costs as it will just be another factor in permitting and resources planning

33 For the water utilities, including industrial growth will entail more operating costs and capital investment and this may need a review of infrastructure charges.

Q6. Are there alternative or additional means by which we could improve growth outcomes in these regulated sectors?

34 By redoubling the incentives for innovation and supporting exports of water related technologies and services. The UK has a notably weak export record for water hardware and technologies (even where data are available) in relation to the size of its home market.

35 Better opportunities for using the water environment outside the sphere of influence of Ofwat by empowering the EA and NRW to deliver improved inland and coastal water quality.

And finally

36 The WCWC repeats its earlier suggestions that there needs to be greater alignment of environmental regulators, and to them it now adds the DBT and DLUHC. Whilst the WCWC understands the wish to bring harmony for the growth duty to all economic regulators it also suggests that this is a further fragmentation of government policy on water. This highlights the need for an overarching Water Strategy and for the growth duty to be linked more closely with the Water Plan. The addition of a growth duty should be included in a more systemic review of the current economic model and the role of Ofwat.