

WORSHIPFUL COMPANY OF WATER CONSERVATORS' CONTRIBUTION TO THE DEPARTMENT OF BUSINESS & TRADE INTENTION TO EXTEND THE GROWTH DUTY TO THE ECONOMIC REGULATORS OFGEM, OFWAT AND OFCOM

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. WCWC's purpose is promoting a diverse and sustainable environment.

2 In July/August 2023 the Department of Business and Trade (DBT) consulted on the extension of the Growth Duty under the 2015 Deregulation Act to include Ofgem, Ofwat and Ofcom. The WCWC response is archived on its website

<https://www.waterconservators.org/wp-content/uploads/Ofwat-and-growth-09-08-2023.fin.pdf>

3 The DBT has now responded <https://www.gov.uk/government/consultations/smarter-regulation-extending-the-growth-duty-to-ofgem-ofwat-and-ofcom> and will be proceeding with this extension, presumably by further additions to the consequent regulations of 2017 under the 2015 Deregulation Act.

<https://www.legislation.gov.uk/ukxi/2017/267/article/2/made>

4 At the same time DBT opened another consultation on the wider issues of Guidance on the Growth Duty to which the WCWC will be responding.

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

Current Statutory Guidance was issued in 2017

<https://www.gov.uk/government/publications/growth-duty>

The implementation of the 2015 Growth Duty for Ofwat

5 The WCWC suggests some issues which need to be addressed. Growth has already been part of the Price Review and Determination processes; it is part of the Regional Water Resources Plans, but there is much more to growth than this as the Ofwat documents show, for example the provision of expanded sewerage systems, sewerage treatment, water distribution and water treatment. And there are charges for new connections to the system

<https://www.ofwat.gov.uk/regulated-companies/markets/connections-market/new-connections/>

[Charges Scheme Rules from April 2023 - Ofwat](#)

5 In the current circumstances there remains the constant tension between asset investment and management, for growth, replacement and enhancement. No doubt all of this will be resolved by DBT and Defra in implementing the extension of the 2015 Growth Duty

6 The WCWC would like to elaborate a point it made in its submission to the Consultation. A lot of the language in many of the texts refers to customers and non-domestic uses of water, there needs to be clarity of what is meant. Indeed, there should be more specific clearer references to non-domestic customers specifically. There is also inconsistency in the use of the terms ‘obligation’ and ‘duty’ [Duty vs Obligation: When And How Can You Use Each One? \(thecontentauthority.com\)](https://www.thecontentauthority.com/2018/05/01/duty-vs-obligation-when-and-how-can-you-use-each-one/)

7 The WCWC points out that Sections 94/106 of the 1991 Water Industry Act give domestic customers the right of connection to sewers in England and Wales, but no such right exists for non-domestic customers, except insofar that they have the right to connect domestic sewage from employee facilities to the public sewerage system. A water company in England and Wales has an obligation to provide the additional service to non-domestic customers for trade effluent connections, but it can refuse an application to discharge, or can impose demanding conditions in a consent. The applicant has the right of Appeal to Ofwat under Section 122 of the 1991 Water Industry Act. While a water company has an obligation to provide water services to domestic customers under Section 37 of the 1991 Water Industry Act, there is no such obligation for non-domestic supplies.

8 The WCWC suggests that if the Growth Duty is extended to Ofwat, then in terms of symmetrical regulation there has to be an obligation for water companies to supply water to non-domestic customers. And it is likely that this will be, on the whole, welcomed as it will be part of a sound legal basis for the inclusion of such growth in services in Asset Management Plans. But such an obligation may be impossible to discharge in some circumstances, just at a time when there is suggestion that Section 106 of the 1991 Water Industry Act needs revision to prevent sewerage assets being overwhelmed. So, to recognise the dilemma of a Duty of Growth and extended obligations of water companies and avoiding unacceptable impact on water services of any application for development, the WCWC suggests that if a water company also has the power to refuse an application for non-domestic water supply, the applicant should have the right of appeal to Ofwat. This brings the supply of water to be in line with the discharge of used water into a sewer and would aid the Growth Duty for Ofwat. The WCWC reminds the DBT that industrial growth brings associated domestic growth on a local basis with challenges for the impact of residential development and Growth as part of the existing Ofwat Price Reviews.

9 No doubt the lawyers within DBT and Defra will give careful consideration to this as it may need an amendment of the 1991 Water Industry Act in some way, or it may be achieved by a variation of water company licences. This does highlight the need for DBT and Defra to work together, which will no doubt require further public consultation, and it would be very useful if it could be introduced by April 2025 for the next price period.

10 The WCWC re-iterates its contribution to the discussions that any changes in Ofwat’s duties and water company obligations must be set in an overall review of water company licences and in the context of a national water strategy and hence this will have implications for a review of the Growth Duty of environmental regulators and this will be addressed in the WCWC response to the Consultation on statutory guidance on the Growth Duty, in general.

11 The WCWC suggests those aiming to deliver the Growth Duty for water management generally should cover not only water that is subject to treatment for human consumption and also soiled water post human consumption, but also waterways, including canals, and natural flood waters. These currently fall to two different regulators: Ofwat and the Environment

Agency. The WCWC suggests that an innovation might be for the two regulators together to agree a method of regulation that facilitates and delivers the Growth Duty at the same time as driving economic efficiency in monitoring and detection of pollution events and in setting clear parameters for the protection of the environment in the United Kingdom, resulting in a more sustainable environment.

December 7th 2023