

WORSHIPFUL COMPANY OF WATER CONSERVATORS
SUBMISSION TO THE HOUSE OF LORDS INDUSTRY AND
REGULATORS COMMITTEE

INQUIRY INTO UK REGULATORS

NOVEMBER 2023
AMENDMENT DECEMBER 2023

The hyperlink in para 30 in the paper submitted in November did not respond so that is corrected and this gives the WCWC an opportunity to draw the attention of the Inquiry to other Regulator fora.

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 Inquiry because of its professional roles in water and climate change policy, mitigation and adaptation. It is a member of the City of London Livery Climate Action Group.

SUMMARY

3. The WCWC offer a number of insights into what aspects the Inquiry might find rewarding in terms of regulation of the water and environment sector across the UK.

OVERVIEW

4 The House of Lords Industry and Regulators Committee is launching an inquiry into UK regulators, with a focus on their roles, remit, independence and accountability. The inquiry will examine 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 will also examine 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.

[\(https://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notice/2023/october-2023/lords-committee-to-scrutinise-relationship-between-regulators-and-the-government/\)](https://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notice/2023/october-2023/lords-committee-to-scrutinise-relationship-between-regulators-and-the-government/)

5 According to the Department for Business and Trade, 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 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), Ofgem, and the Office for Students. The Committee is now launching a 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.

6 The Committee is interested in answers to the following questions:

6.1) Are UK regulators being given a clear job to do?

6.2) 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?

6.3) 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?

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

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

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

6.7) 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?

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

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

6.10) 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?

6.11) 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?

7 The WCWC responded to the previous Inquiry into Ofwat in June 2022 and whilst this may be found on its website, to aid the clarity of this submission the key points are summarised here:

- S1. The Company submits that the Committee should not look at the work of Ofwat in isolation, it must, at the very least, assess the interplay between and effectiveness of economic and environmental regulation, and the links with Government policy. The key challenge facing Ofwat, and the sector, is how to secure improvements in environmental quality and resilience to drought and flood without creating an unaffordable bill burden. Current approaches will not achieve this.*
- S2. Part of the necessary changes should be a shift towards outcome-based environmental regulation. Rather than specifying outputs that water companies must deliver, Ofwat should instead specify outcomes that are needed. This would unlock the ability to look at problems in the round, drawing in all sectors that contribute to the root cause of problems that need resolution (agriculture, industry, developers) to work with the water sector to find best value solutions, stimulate innovation and increase the number of nature-based solutions.*
- S3. This submission is supported by some specific suggestions to help Ofwat, the other regulators and water companies, particularly in the examples in the Appendix [These are not appended in this response]. These have already been submitted to Defra in response to consultations earlier this year. Some relatively straightforward policy changes could be implemented, including:*
- Removing the automatic right to connect to the public sewer network*
 - Making water companies a statutory consultee in planning processes*
 - Requiring responses to the contributions from the statutory consultees.*
 - Tighter product regulation to reduce sewer blockages and reduce water consumption*
 - New developments should have a legal requirement to deliver SUDS (with exemptions in prescribed conditions)*
 - Improve the processes for dealing with disruption to roads and access when water infrastructure is being put in place or repaired*
- S4. Given the above, the Company suggests that Government should review its proposed Environment Act targets, which would work against the outcome-based approach. For example, the proposed target for phosphorus reduction is focused only on phosphorus reductions “from treated wastewater” will drive expenditure and focus from water companies only on the “end of pipe” issue, rather than the root cause, at great cost and with limited benefit to river health. Instead, wording that targeted “Good Ecological Status” in rivers, would drive actions from all sectors to deliver the outcome that is desired.*
- S5. The Company submits to Defra that Government should also bring forward a National Strategy for Water, and as already submitted to Defra, include a National Rivers Strategy and this would embrace a more coherent approach to inland bathing waters with a Royal Commission, or similar, to draw this together and build national consensus.*
- S6. The submission highlights that achieving our environmental targets will require a much broader national effort that just the triangulated nexus of Ofwat, the environmental regulators and water companies. It includes recognition of roles of other organisations*

and in particular what roles we must all play as individuals. And this is relevant to understanding the way forward on storm overflows, which the Committee refers to specifically.

S7. The deliberations on matters raised by Defra and the Committee, have suggested that there might need to be a review of national committees and consideration given to an extension of the Government's Foresight Programme, and even a revival of Royal Commissions.

8 So, the WCWC is pleased that the broad points which it made are reflected in this further Inquiry. The WCWC stand by the points it made before. 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. But 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 PRINCIPLES RELEVANT TO THE INQUIRY

Nature of the Regulator

9 Regulators are Arm's-Length Bodies (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. Arm's-length bodies

10 Arm's-length bodies are a specific category of central government public bodies that are administratively classified by the Cabinet Office. There are three types of ALB:

1. 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](#), Northern Ireland Environment Agency.
2. 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 advise ministers, while others carry out executive or regulatory functions. They work within a strategic framework set by ministers. Examples of NDPBs include the [British Council](#), [Environment Agency](#) in England, Natural Resources Wales, Scottish Environment Protection Agency, and the [Health and Safety Executive](#).

3. 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 & 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.

11 The WCWC observes that there does not seem to be any consistent algorithm to determine the nature of the 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, WICS serves water in Scotland, but the Utility Regulator serves both functions in Northern Ireland.

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

1. A new strategy for public bodies.
2. Improved gateways for establishing and reviewing public bodies.
3. Good governance: enhanced departmental sponsorship and boards of public bodies.
4. Data: improved data collection and the use of data to change behaviours.

13 The WCWC suggests 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.

Role of Secondary Legislation

14 The clarity of regulation is paramount as is the balance of what is contained in primary legislation versus secondary legislation, which gives greater flexibility to respond to changing

circumstances. The Defra consultation on the S82 of the Environment Act 2021 monitoring demonstrated the problems that too much detail in primary legislation can cause (see the WCWC response to this on its website). Another aspect of this is that if the regulatory envelope is adjusted too often, there can be an accretion 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

15 The relative balance between strategic and tactical policy making is important. Sponsoring government department 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.

16 So a function of this balance is the freedom to act by the ALB. A good example of this is the balance between the ALB, sponsoring department and Independent Commissioner of Public Appointments and indeed any parliamentary scrutiny. There must be a balance between oversight and determination of the processes.

17 Another aspect of this is the funding of the bodies. There is much public debate at the moment over the funding of the regulators in water and environmental management. And core funds may be sourced by Treasury control or via department grant still 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 might look at the control of funding mechanisms in this context and determine if current schemes in the water and environment sector are adequate for example that managed by the Environment Agency (<https://www.gov.uk/guidance/environment-agency-fees-and-charges>).

18 The WCWC notes that some regulators have commercial arms which must be kept ring fenced, for example NRW and the Forestry Commission manage publicly owned forests.

19 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

20 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 (Department of Business and Trade) and DLUC (Department of Levelling Up, Housing and Communities) are both influencing water and environment policy. There are other ALBs which might impact and other kinds of regulators. To simplify matters the WCWC categories these into separate groups.

Non-ALB bodies

21 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.

22 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. Local authorities have powers regarding environmental nuisance and have permitting powers (<https://www.gov.uk/government/collections/environmental-permitting-resources-for-local-authorities>).

23 The WCWC understands the requirement of the Inquiry to be limited 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.

Parallel and over-lapping regulators

24 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 needs to be more joined up approaches as the WCWC advocated in its responses, particularly in response to the Plan for Water <https://www.gov.uk/government/publications/plan-for-water-our-integrated-plan-for-delivering-clean-and-plentiful-water>.

Non-Regulatory ALBs

25 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 although there are statutory connections to Ofwat processes). The WCWC suggests that these interrelationships would be worth exploring. It advocated in its June 2022 submission that the role of advisory committees should be reviewed as well (see para 15).

External Audit

26 The WCWC suggest that the relevant national audit offices should play a prominent independent role in assessing performance.

27 The WCWC does not offer any detail of 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. In addition, there is the Regulators Code

Best Practice

Regulators Code

28 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.

29 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) will engage with regulators before it is introduced. This suggests that it might be time for review and update and this recommendation on better regulation might emerge from the Inquiry. 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

30 From personal experience of members of the WCWC, the Economic Regulators Forum has proved invaluable. This 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, CAA, ORR, the Northern Ireland Utility Regulator, CICRA (the Channel Islands Competition and Regulatory Authority), 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>)/

31 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 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>). Some senior members of the WCWC have occupied senior positions in Regulators and are not aware of these. The WCWC suggests that a review of all such bodies might be worthwhile.