

Reforming regulation for the water environment

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This briefing is on behalf of nature and animal welfare coalition Wildlife and Countryside Link ([Link](#)).

This briefing is supported by the Angling Trust, Institute of Fisheries Management, Marine Conservation Society, River Action, Surfers Against Sewage, The Rivers Trust, and The Wildlife Trusts.

Executive summary

To deliver stronger, more effective regulation for the water environment, the Government must:

- Establish a clearer, more strategic regulatory framework that sets out the long-term vision for regulated sectors, and how this will contribute towards the achievement of environmental targets and outcomes.
- Set clearer duties and purposes for UK regulators, such as Ofwat and the Environment Agency, that are explicitly tied to delivering legally binding environmental targets. The Growth Duty must be removed.
- Ensure Ofwat and the Environment Agency have the necessary funding, resources, and capacity to deliver a robust and comprehensive advisory, monitoring, and enforcement regime; this should be sufficient to end reliance on industry self-reporting.
- Give stronger direction on the types of solutions needed, and ensure this is reflected in the regulatory framework, to enable greater uptake and use of catchment and nature-based solutions.

Introduction

UK regulators are struggling to effectively advise, monitor and enforce regulations to protect the water environment. This is driving poor environmental, social, and economic outcomes.

The combined impacts of agricultural and wastewater pollution, chemical cocktails, and unsustainable abstraction mean that not a single English waterbody is in good overall health. Freshwater biodiversity is declining and many species face extinction. We are not on track to meet the Government's own targets for clean and plentiful water, including those under the Water Framework Directive, or to [meet international targets](#).

The performance of regulated sectors is not improving, and non-compliance is commonplace. The [2022-2023 Ofwat performance report](#) shows that the water industry is not on track to meet key targets, continues to underspend on enhancement programmes, and is failing to demonstrate how [performance related pay decisions](#) are adequately reflecting environmental performance. Diffuse pollution from farming sources is recognised as the most common driver of waterbody failures under WFD, not helped by [mixed messages from Government](#).

Failings of the current approach

The current regulatory framework is not delivering positive outcomes for waterbodies, or the wildlife and water users they sustain. Regulators are underfunded and under-resourced, undermining their ability to fulfil statutory duties and deliver a robust and comprehensive advisory, monitoring and enforcement regime. Furthermore, inconsistent approaches across the Environment Agency and Ofwat are creating barriers to the use and uptake of environmentally beneficial actions, such as nature-based solutions.

Proposals from Government thus far have not tackled the root causes of why regulators and regulated industries are struggling:

- Proposals to [extend the Growth Duty to Ofwat](#) will simply [manufacture unnecessary conflict](#) and tension between promoting economic growth, and protecting consumers and the environment. As an economic regulator, Ofwat already gives considerable attention to financial costs, and [struggles to](#) adequately capture and consider environmental costs and benefits.
- The Growth Duty also risks [undermining the regulatory integrity](#) of non-economic regulators and their ability to fulfil their primary statutory duties and functions. There is

limited evidence to suggest that non-economic regulators such as the Environment Agency are failing to promote growth, or that requiring them to do so would be desirable or effective.

- Related proposals to enforce targets to speed up regulatory decision making in-line with GDP, without first addressing the significant funding and resource gaps responsible for delays, risks cutting corners and [undermining the rigour](#) of the regulatory process. Improved speed should not be achieved at the cost of upholding regulation.
- Government has removed the cap on the size of penalties that the Environment Agency can impose on the water industry for non-compliance. The purpose of penalties must ultimately be to deter environmental harm. Yet this deterrent can only be effective if the Environment Agency is adequately resourced to monitor and enforce legislation, and to impose the penalties. This is currently [not the case](#).
- The Government's Strategic Policy Statement to Ofwat names 'protect and enhance the environment' as the top strategic priority for Ofwat and the water industry, yet recent interventions in regulatory processes, such as the Price Review and the application of Growth Duty to Ofwat, risk encouraging [the very opposite](#). The steer that companies should explore phasing non-statutory obligations to future price reviews means that investment to tackle crucial challenges for biodiversity is now at risk of being watered down or scrapped entirely.
- Government has repeatedly signalled support for the use of nature-based solutions, for example in the Plan for Water. But [inconsistencies and barriers](#) across the Environment Agency and Ofwat are preventing this. The WINEP remains dominated with concrete, hard-engineered options, and nature-based solutions have been stripped from Water Resources Management Plans.

Action needed to secure stronger, more effective regulation for the water environment

The next Government can ensure stronger, more effective regulation of the water environment by **setting clearer environmental duties and purposes for all UK regulators**, including Ofwat and the Environment Agency. A clearer regulatory framework must be established, which sets out the long-term vision for regulated sectors – including the water industry – and how this will contribute towards the achievement of environmental targets and outcomes.

This should include **introducing a strong new ‘Green Duty’ for Ofwat**. This would require Ofwat to contribute, wherever possible, to the delivery of environmental targets under the Environment Act 2021 and the Climate Change Act 2008. In tying Ofwat’s duties as a regulator explicitly to delivering environmental targets, this would ensure that these become main drivers of Ofwat’s work and decision-making processes.

This Green Duty should also **relate Ofwat’s function and priorities more strongly to protected site condition and the Habitats Regulations**, to ensure that nature’s recovery is at the heart of processes such as the Price Review and regulating water company performance, and therefore that decisions are made with regard to how investment will deliver the best environmental outcomes. Guided by the Green Duty, Ofwat’s decision-making processes would enable delivery of low carbon, multi-benefit infrastructure by default.¹

The Growth Duty should be removed from all Defra Arm’s Length Bodies, including the Environment Agency, and **should not be extended to Ofwat**.

The Government must also **address current capacity and resourcing gaps faced by regulators, through increasing funding**. This will ensure that regulators have sufficient budgets to maintain robust and comprehensive advisory, monitoring and enforcement regimes, and to end reliance on water industry self-reporting, which is shown to be as much as [one hundred times less accurate](#) than monitoring by regulators. This will also enable regulators to hire and retain staff with the necessary ecological expertise to fulfil statutory duties, and to unpick barriers to the uptake of catchment and nature-based solutions.

To support this, Government **must issue a stronger direction to regulators to prioritise nature-based solutions, and ensure that this is reflected in the regulatory framework. This should direct all regulators towards facilitating the uptake and use of NBS, and provide investors with the framework and incentive to invest**. This should include national guidance for ensuring high-quality NBS projects and a nutrient offsetting code to ensure high quality projects (such as wetland creation) and genuine environmental benefits. Government must also provide more funding for NBS, for example, through CaBA partnerships, a dedicated pot in the flood grant-in-aid fund, and through better rewards and incentives for farmers under ELMS.

Facilitation of NBS by regulators could include adopting joint, ambitious targets to accept NBS schemes when these are preferred by water companies and customers; setting a ‘nature first’ commitment that would require water companies to always explore NBS options before progressing with more traditional solutions; and stronger incorporation of natural capital

¹ Further detail on the multiple benefits that nature-based solutions can deliver for people and nature is available in Link’s policy briefings [here](#) and [here](#).

accounting into decision-making processes, so that ‘best value’ assessments by the regulators fully incorporate environmental and social benefits.

Key tests for reforming Ofwat and the Environment Agency

To drive better outcomes and improve the state of the water environment, any reform of the regulatory institutions Ofwat and the Environment Agency must meet these key tests:

1. Ofwat and the Environment Agency have the necessary budget and capacity to fulfil their statutory duties, and to deliver a robust and comprehensive advisory, monitoring and enforcement regime in a timely and transparent manner. This extra capacity should enable detailed and accessible advice for farmers and land managers in particular, to ensure they are fully supported as new farming regulations bed in.
2. Ofwat and the Environment Agency have clear environmental duties to contribute to the delivery of targets under the Environment Act 2021 and Climate Change Act 2008.
3. Ofwat and the Environment Agency are not subject to the Growth Duty.
4. Ofwat and the Environment Agency are empowered to take a consistent, ambitious approach to accepting and facilitating the use of nature-based solutions wherever possible, and in particular when these options are preferred by water companies and consumers. As such, Ofwat’s and the Environment Agency’s decision-making processes enable delivery of low carbon, multi-benefit infrastructure by default.

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 83 organisations to use their joint voice for the protection of the natural world and animals. Wildlife and Countryside Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519.

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This briefing is supported by the following Link members:

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