

**'Smarter regulation: extending the growth duty to Ofgem, Ofwat and Ofcom'
consultation**

Wildlife and Countryside Link response – August 2023

Wildlife and Countryside Link is a coalition of 78 organisations working for the protection of nature. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

This response is supported by the following Link members:

- Angling Trust
- Friends of the Earth
- Institute of Fisheries Management
- Keep Britain Tidy
- Marine Conservation Society
- People's Trust for Endangered Species
- Soil Association
- Surfers Against Sewage
- The Rivers Trust
- The Wildlife Trusts
- Waterwise

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Summary

Wildlife and Countryside Link welcomes the opportunity to respond to this consultation on extending the growth duty to Ofgem, Ofwat and Ofcom. As the largest environment and wildlife coalition in England, our response predominantly focuses on Ofwat and Ofgem, acknowledging their particular significance to nature and climate.

We disagree that the Deregulation Act 2015 Growth Duty should be extended to Ofgem, Ofwat, and Ofcom. This Growth Duty will weigh the balance too heavily toward economic costs, at the expense of environmental costs, benefits and needs. Economic considerations already enjoy considerable focus



from economic regulators; we do not accept the need or justification for introducing a further specific economic growth duty on these bodies.

Government has pledged to halt the decline of nature by 2030, to reverse this decline by 2042, and to achieve net zero by 2050. Government should set new legal duties for regulatory bodies to conserve, enhance and restore the natural environment in line with these targets, not introduce a duty that risks undermining their delivery.

Growth and nature's recovery are not incompatible goals. Indeed, protecting nature will protect and enhance economic resilience. However, the Deregulation Act 2015 Growth Duty does not recognise this, and risks setting back cost-effective opportunities for green growth. Government should instead consider a green growth duty for regulatory bodies, to contribute to growth through conserving, enhancing and restoring natural capital. This would benefit not only environmental and economic resilience, but also the customers whom Ofwat, Ofgem and Ofwat seek to protect.

We would be pleased to discuss any of the points in this response further.

Questions

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

No. Extending the growth duty to Ofcom, Ofgem and Ofwat will weigh the balance too heavily towards economic costs, at the expense of environmental costs, benefits and needs.

As economic regulators, Ofwat, Ofgem and Ofcom already give considerable attention to economic costs and benefits in their decision making, and struggle to adequately capture and consider environmental costs and benefits. We discuss this further in response to Q.6. For example, Ofwat already functions to unlock billions of pounds of private sector investment to deliver a safe public water supply and the removal and treatment of harmful effluent. The Price Review, and Ofwat's subsidiary functions, cannot be considered anything other than a major bedrock of and contributor towards economic growth. Whilst unlocking further investment would be beneficial, this should not be driven solely by financial costs and benefits. We therefore do not accept that there is either a need or a justification for introducing a further specific economic growth duty on Ofwat.

Government energy policy already provides a growth driver to the sector as major infrastructure is prioritised over local power generation and energy efficiency schemes. A separate growth duty on the regulator is superfluous and would worsen the impacts of energy infrastructure on the environment. Current Ofgem criteria constrain the delivery of sustainable development. Avoidance of impacts on the natural environment cannot be prioritised when electricity transmission infrastructure is strategically planned, due to Ofgem requirements that the primary consideration is cost to customer. We therefore do not accept that there is either a need or a justification for introducing a further specific economic growth duty on Ofgem.

The consultation document refers to the ‘economic importance’ of these regulatory bodies, given their contribution to GDP and UK private sector investment. Yet their environmental importance, also hugely significant, risks being undermined. Ofgem and Ofwat have explicit responsibilities and statutory obligations towards the environment in addition to their role as economic regulators, and both the energy and water industries are significant environmental stakeholders. In giving greater weight to economic costs, the Growth Duty risks distraction from or at times even fundamental contradiction with these statutory environmental functions.¹ This also risks contradicting and confusing existing Government guidance – for example, the most recent Strategic Policy Statement to Ofwat, which names ‘protect and enhance the environment’ as the top strategic priority for Ofwat and the water industry² – and the recommendations of the Government-commissioned Dasgupta Review.

This will also jeopardise the contributions of the energy and water industries towards Government’s legally-binding targets under the Environment Act and Climate Change Act, plus the delivery of the Environmental Improvement Plan. There is a funding gap of more than £19 billion in the UK for biodiversity when comparing existing funds and Government objectives, which increases to £44 billion for all nature-related objectives.³ Private sector finance will be vital to addressing this investment gap for nature, yet the Deregulation Act 2015 Growth Duty risks massively constraining the ability of the water and energy industries to contribute. Furthermore, it remains unclear how or whether the Green Book assessment to clarify the social welfare costs, benefits, and trade-offs of a policy change has been applied to this proposal to extend the Growth Duty.

The introduction of a sustainable or green growth duty on these regulatory bodies would be more appropriate. This would look beyond merely GDP, recognising the importance of protecting and enhancing natural capital for a resilient economy and society. We discuss this further in response to later questions.

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

We do not envisage any benefits from extending the Deregulation Act 2015 Growth Duty, and as discussed, do not accept the need or justification for imposing this on Ofwat, Ofgem and Ofcom. Extending the Duty would weigh the balance too heavily toward economic costs, going against the very concept of sustainable development. As the Dasgupta Review reports, ‘Our unsustainable engagement with Nature is endangering the prosperity of current and future generations’.⁴ At best, extending the

¹ RSPB. (2022). ‘Nature’s Recovery in England’. https://community.rspb.org.uk/cfs-file/_key/communityserver-blogs-components-weblogfiles/00-00-01-39-93/5657.2555.4135.TP25687-England-ALB-report-V8.pdf

² <https://www.gov.uk/government/publications/strategic-policy-statement-to-ofwat-incorporating-social-and-environmental-guidance/february-2022-the-governments-strategic-priorities-for-ofwat>

³ Green Finance Institute, 2021, The Finance Gap for UK Nature

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962785/The_Economics_of_Biodiversity_The_Dasgupta_Report_Full_Report.pdf

duty would result in further complexity and confusion, and create a tension between promoting economic growth and protecting customers.

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

As stated, both Ofwat and Ofgem have important statutory obligations towards the environment in addition to their role as economic regulators. Extending the Growth Duty would place these environmental obligations at risk. This would also increase the false sense of conflict between the regulators' duty to growth, cost to customers, and the environment.

For example, as noted in the Dasgupta review, 'an economy could record a high rate of growth of GDP by depreciating its assets, but one would not know that from national statistics'.⁵ Similarly, an Ofwat Price Review could defer investment in addressing supply-demand balance, thereby artificially boosting company profits and therefore appearing to support economic growth whilst imperiling irretrievable natural capital assets.

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

Failing to protect the environment will harm and undermine the resilience of the economy. As the Dasgupta Review concluded in 2021, 'Our economies, livelihoods and well-being all depend on our most precious asset: Nature'.⁶ Regulatory bodies such as Ofwat and Ofgem can and do contribute to growth through protecting and enhancing nature, helping to deliver energy security, carbon reduction, and increased resilience to the impacts and economic costs of extreme weather such as flooding, drought, and wildfires.

The consultation document refers to 'investment challenges to efficiently deliver the infrastructure needs of current and future consumers of energy, water and telecoms' and the need to 'minimise bills for current consumers, bills for future consumers and protect the environment and consumers.' This cannot be achieved through a narrow focus on GDP alone, with all of its limitations. To improve growth outcomes in the water and energy sectors, Government should not extend the Deregulation Act 2015 Growth Duty, but rather should introduce a green growth duty for all regulatory bodies to conserve, enhance and restore natural capital. This would help ensure that these regulated sectors are contributing to enhancing both environmental and economic resilience.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962785/The_Economics_of_Biodiversity_The_Dasgupta_Review_Full_Report.pdf

⁶ The Economics of Biodiversity: The Dasgupta Review. (2021).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957629/Dasgupta_Review_-_Headline_Messages.pdf

For example, nature and catchment-based solutions that offer cost-effective approaches to tackling environmental and social challenges whilst providing multiple benefits for nature and society are routinely excluded from water company business plans, due to failures to fully consider natural capital in the Price Review process. Though Ofwat's requirement that companies consider 'best value' as opposed to simply 'least cost' is a welcome step in the right direction, focus remains overwhelmingly on upfront financial cost. Indeed, the PR24 methodology does not explicitly mention 'natural capital' or 'natural capital accounting' even once. An explicit green growth duty on Ofwat would help to ensure that natural capital is incorporated into the Price Review, that environmental costs and benefits can be adequately reflected, and therefore that these effective and efficient nature-based solutions can be utilised.

Ofwat has struggled to balance its duty to protect customers from monopoly power with the need to enable investment in resilient networks. Yet the drive to keep water bills artificially low has come at the expense of keeping water and sewerage infrastructure up to date and fit for purpose. As the Environmental Audit Committee report 'Water Quality in Rivers' concluded, Ofwat has 'hitherto focused on security of water supply and on keeping bills down with insufficient emphasis on facilitating the investment necessary to ensure that the sewerage system in England is fit for the 21st century'.⁷ PR14 saw Ofwat cut £1bn of capital investment from business plans, £100m of which was for Water Industry National Environment Programme (WINEP) schemes. Analysis by conservation eNGOs Angling Trust and WildFish Conservation suggests there has been a £10bn investment funding gap over the past 10 years, and that the consequences of failing to invest in water infrastructure will cost significantly more in the long term – £40bn versus £21bn, plus thousands of jobs.⁸ A green growth duty would help to address the issues behind this lack of investment, allowing companies to plan and invest with confidence – extension of the Deregulation Act 2015 Growth Duty will not.

For example, in July 2023, the Secretary of State for Environment, Food and Rural Affairs wrote to water companies to require them to explore trimming environmental investment from the forthcoming AMP, highlighting the tensions between necessary investments to secure both environmental and sector resilience, and costs to customers. However, as discussed, cutting back on essential environmental improvement will simply undermine both environmental and economic resilience, and ultimately increase costs to consumers. This is therefore a complete false economy. Wildlife and Countryside Link wrote to the Secretary of State to share this concern, and to highlight that alternative approaches such as greater and more effective use of nature-based solutions would in fact deliver 'more for less' with customer funds.⁹

⁷ Environmental Audit Committee. (2021). 'Water Quality in Rivers'.

<https://committees.parliament.uk/publications/8460/documents/88412/default/>

⁸ Angling Trust and Salmon & Trout Conservation. (2021). 'Time to Fix the Broken Water Sector'.

<https://anglingtrust.net/wp-content/uploads/2021/09/STC-AT-%E2%80%93-OFWAT-Report-final-draft.pdf>

⁹ https://www.wcl.org.uk/docs/WCL_Letter_Secretary_of_State_PR24_Ambition_10_08_2023.pdf