

Smarter Regulations and the Regulatory Landscape call for evidence – Link evidence

17 January 2024

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

This Link evidence is supported by: Angling Trust, Bat Conservation Trust, CHEM Trust, Compassion in World Farming, Froglife, Institute for Fisheries Management, National Trust, People's Trust for Endangered Species, Surfers Against Sewage, The Wildlife Trusts, and the Woodland Trust.

Covering letter

UK regulation and regulators have an essential role, beyond just the benefit of businesses and the protection of individual consumers: environmental regulation is essential to the design and delivery of sustainable development for [the wellbeing of people, environment and economy](#). The public, civil society groups, experts, not just industry, must be involved in the design and determination of regulations.

A healthy natural environment is central to meeting [the Government's environmental ambitions](#) and [legally-binding environmental targets](#) and to [people's health and wellbeing](#), but crucially it is also the [prerequisite for a healthy economy](#) and a successful [development sector](#).

Effective environmental regulation is also [vital for, and appreciated by, businesses](#). Regulations set out requirements and minimum standards that ensure compliance with environmental law, create [a level playing field for the sector](#), and [promote well-designed and sustainable development in the right place](#), providing certainty and stability for investment. Further benefits of effective environmental regulations include [the creation of new jobs and skills](#) and [stimulated innovation and investment](#) in the development sector.

Existing environmental regulation has been reviewed time and time again and both [Government](#) and [external reviews](#) have found it fit-for-purpose. However, the

implementation of environmental regulations in England, including through the land use planning system, [could be improved](#). (Wildlife and Countryside Link's remit is England so our comments and response are limited to England, but similar comments could apply to other UK nations.)

Poor implementation, for example, too long and unfocused reports, can result in poor outcomes for nature, as well as delays in the planning system. This is an implementation issue, not a fault with the regulations themselves.

Lack of sufficient resources and expertise is a significant barrier to effectively implementing regulation. Regulators, for example, Natural England and the Environment Agency, do not have the capacity nor expertise and skills for robust and effective advisory, monitoring, and enforcement regimes. Environment Agency funding [fell 63% between 2009 and 2019](#), total staff fell 25%, leading to a lack of enforcement: the number of Environment Agency enforcement notices [fell 69.5% between 2012 to 2019](#). [A decline of 72% from 2010 to 2019](#) in funding for Natural England has meant the body has not been able to properly fulfil its statutory duties such as the monitoring of SSSIs (in 2021, [78% of SSSIs had not been monitored](#) in the past 6 years).

Further uncertainty and potential for poor and inconsistent implementation of regulation is created by the Retained EU Law Act 2023. The Act gives Government the power to amend, revoke, or replace thousands of pieces of EU-derived legislation, many of which relate to the protection of the environment. Furthermore, unlike other government departments, [Defra does not currently have immediate plans](#) to restate EU interpretive effects via secondary legislation in 2023. The Government REUL dashboard suggests that a significant number of retained EU laws have yet to be reviewed. That the future of so many pieces of legislation and interpretative effects of case law remain uncertain further undermines the long-term clarity of the regulatory framework, and risks creating contradiction and confusion within regulation and regulatory activities.

Responses to selected questions

Question 1: Based on your experience, do you think that UK regulators are supportive of the individual businesses they regulate in a way that appropriately balances considerations of consumers and other businesses within the sector more broadly? Please provide detail here. Examples are welcomed.

No Link response.

Question 2: Please name the UK regulator(s) you engage with most frequently. Please specify here:

Natural England, the Environment Agency, Rural Payments Agency, Ofgem, Ofwat, Health and Safety Executive, Marine Management Organisation, Cefas, Forestry Commission England, and Inshore Fisheries and Conservation Authorities.

Question 3: What do you consider to be the most positive and/or negative aspect of how the UK regulators that you engage with operate? Please provide your answer here. Examples are welcomed – you may wish to include the basis of your interaction with a regulator(s), e.g. your regular communication with regulators. You may also wish to consider both the outcomes that regulators deliver and the process through which they go about delivering these outcomes, including how they interact with those they regulate.

No Link response.

Question 4: Based on your experience or understanding of UK regulators, do you find it clear what the overall purpose and objectives of individual regulators are? Please provide further detail here if this question applies to you. Examples are welcomed.

Environmental regulators in the UK have responsibility to regulate for the protection of the environment. However, high-level steer and general ambition passed from Government to regulators on the importance of protecting and enhancing the environment is not consistently backed with specific statutory duties, strategic guidance, detail, and sufficient resources.

To provide one such example, [Government's instruction to the Environment Agency](#) to monitor, advise, but not enforce the Farming Rules for Water regulations demonstrates how Government steer can complicate and contradict regulatory objectives and functions, and ultimately undermine the purpose of legislation intended to protect the water environment from agricultural pollution.

Further uncertainty and potential for poor and inconsistent implementation of regulation is created by the Retained EU Law Act 2023. The Act gives Government the power to amend, revoke, or replace thousands of pieces of EU-derived legislation, many of which relate to the protection of the environment. Furthermore, unlike other government departments, [Defra does not currently have immediate plans](#) to restate EU interpretive effects via secondary legislation in 2023. The Government REUL dashboard suggests that a significant number of retained EU laws have yet to be reviewed. That the future of so many pieces of legislation and interpretative effects of case law remain uncertain further undermines the long-term clarity of the regulatory framework, and risks creating contradiction and confusion within regulation and regulatory activities.

A clearer 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, is required.

In giving strategic guidance to regulators, Government must provide a much clearer indication of what it expects the regulated sector to deliver to meet its short- and longer-term priorities, including by noting specific outcomes. This expectation must then be consistently reflected across Government decision making, to ensure that this steer is consistent across the policy landscape. This strategic regulatory framework should be consistent with, and promote the achievement of, legally binding targets for nature and climate, including to halt the decline of nature by 2030, to ensure species abundance is higher in 2042 than 2022, and to achieve net zero by 2050.

Question 5: Within these overall objectives (as considered in the preceding question), do you find it clear what the specific statutory duties (i.e required by legislation) of individual UK regulators are? Please provide further detail here if this question applies to you. Examples are welcomed.

Yes, it is clear what the specific statutory duties of individual UK regulators are, but we believe these could be improved - please see the response to Question 6 for more detail.

Also, as detailed in the response to Question 4, the high-level steer and general ambition passed from Government to regulators on the importance of protecting and enhancing the environment is not consistently backed with specific statutory duties, strategic guidance, and detail.

Question 6: Do you think that the statutory duties (i.e required by legislation) imposed on UK regulators:

- 1. Cover the right issues?**
- 2. Are clearly stated in relevant statute, including where supplemented by relevant guidance?; and**
- 3. Are sufficiently consistent across regulators, where this is relevant?**

Please provide further detail against each of these three points, if this question applies to you. Examples are welcomed.

Institutional improvement to UK regulators could be improved by setting nature's recovery and tackling climate change - in particular the achievement of statutory nature and climate targets - as statutory purposes.

This would give UK regulators a clearer environmental purpose and objective and enable better join up across regulators, provide consistency and minimise conflicting drivers.

For example, the creation of a 'Resilience Duty' for Ofwat in 2014 seems to have had little influence on the regulators' focus on *environmental* resilience as part of its financial oversight of the sector, despite this being critical to both the sector's operation and reputation. Further components of a resilient sector, such as asset, process and financial resilience, could arguably already have been driven through Ofwat's existing core function as an economic regulator. A more specific environmental duty here could have better clarified the weight Ofwat should give to environmental outcomes in its financial decision-making, complementing the role of the Environment Agency as the sector's environmental regulator. We discuss the need for a clearer environmental or 'green' duty for Ofwat further throughout this response. Similarly there is sometimes a lack of consistency in the chemicals and agriculture space, where both HSE and RPA have roles as regulators but only HSE has a policy-making role as well.

We also recommend that the Growth Duty introduced under the Deregulation Act 2015, to which many UK regulators are already subject (including, most recently, Ofwat and Ofgem)

should be removed. This duty can weigh the balance too heavily towards financial costs and benefits, at the expense of wider social and environmental costs, benefits and needs. The Growth Duty creates false tension between these different facets and risks undermining delivery of Government's environmental commitments and legal obligations. In fact, the work of many environmental regulators represents an important contribution to prosperity by ensuring a thriving natural environment upon which the economy ultimately depends. The Growth Duty can undermine the regulatory integrity of non-economic regulators and their ability to fulfil their primary statutory duties and functions.

The available evidence suggests that environmental regulation is not a brake on economic growth, a burden on British business or a barrier to international competitiveness. In fact, environmental regulation can drive innovation, reduce risks, create jobs and growth, create new business opportunities and boost the UK's international competitiveness. (For examples, see [HM Government Low Carbon Construction: Innovation & Growth Team \(2010\) HM Government Review on Low Carbon Construction](#); [Cole, M. A. and R. J. R. Elliott \(2007\) "Do Environmental Regulations Cost Jobs? An Industry-Level Analysis of the UK." The B.E. Journal of Economic Analysis & Policy 7\(1\)](#); [Rayment, M., E. Pirgmaier, et al. \(2009\) The economic benefits of environmental policy - Final Report, Institute for Environmental Studies.](#))

There is limited evidence to suggest that non-economic regulators are failing to promote growth, or that requiring such regulators to promote growth would be desirable or effective.

For Ofwat and Ofgem, which are already economic regulators, there is no justification or need to introduce a further specific growth duty. These regulators already give considerable attention to financial costs, and struggle to adequately capture and consider environmental costs and benefits. Extending the growth duty will create false tension between promoting economic growth, and protecting both consumers and the environment. Further detail can be found in [this Link response](#).

Investment challenges faced by economic regulators will *not* be met through focusing on GDP alone. The Growth Duty risks missing cost-effective and efficient opportunities through green growth, through investment in approaches such as catchment & nature-based solutions, and addressing historic underspend in both economic and environmental resilience.

The legal duty of Forestry Commission England is over a century old, to promote the interests of forestry, afforestation and the production and supply of timber. But it is unclear how this primary legal duty interacts with their more recent Government responsibility for regulating tree planting, felling and sustainable management of woodlands to protect and deliver wider

Government environmental standards and commitments. Whilst Government have a more recently added a legal duty to “ achieve a reasonable balance between the development of afforestation, the management of forests, the production and supply of timber and the conservation and enhancement of natural beauty, flora and fauna.” (1985), this balance isn’t legally defined. The FCE primary legal duty sits at stark contrast to Natural England’s purpose who have similar regulatory responsibilities on other land uses but a very different and clearer legal purpose tied to Environmental protection. This creates tension between responsibility areas on woodland areas, where Natural England have a clear biodiversity interest but this land is regulated by Forestry Commission who have a different legal duty. In addition, Forestry Commission England are one of the largest landowners in the country creating a potential conflict of interest between their role as a major commercial land manager and also Government regulator, so they effectively regulate themselves.

A shared strategy and strengthened legal duty to collaborate, at least between the Environment Agency, Natural England and Forestry Commission, could also secure better join up and better delivery of shared environmental objectives between these environmental regulators.

Question 7: As set out above, UK regulators have a remit that is set through legislation and guidance. Which of the below do you consider best applies?

- 1. Regulators always act within the scope of their remit;**
- 2. Regulators go beyond their remit in a way that may negatively impact the outcomes that they are required to deliver; or**
- 3. Regulators go beyond their remit in a way that supports the outcomes they are required to deliver**

Please provide further information for your response if applicable. Examples are welcomed.

No Link response.

Question 8: Do you often have to engage multiple UK regulators on the same issue or area?

- 1. Yes**
- 2. No**

Please provide further information for your response if applicable. Examples are welcomed.

Environmental eNGOs often engage with multiple UK regulators on the same issue or area. It is expected that regulators with explicit responsibilities and statutory obligations towards the

environment would have some overlap, due to shared aims and responsibilities to drive good environmental outcomes. However, as discussed further under Q.9, this can become problematic if regulators do not communicate and collaborate as effectively with each other as they should.

This is exemplified by the complexities of promoting the uptake and use of catchment and nature-based solutions (C&NBS) within the water sector. Working with nature to tackle issues such as [poor water quality](#) or to [build resilience to flooding and drought](#) is often cheaper than traditional, concrete-based hard engineering approaches. These approaches can also [deliver multiple wider benefits for people and nature](#), compared with traditional 'grey' solutions, including carbon sequestration, improved habitat for wildlife, and increased access to quality green and blue spaces for people. Despite the multiple benefits C&NBS can deliver, and the opportunities these approaches present for blended finance, uptake within the water industry has been limited. Current PR24 draft business plans have limited evidence of C&NBS uptake, and the WINEP appears to remain largely biased towards traditional, concrete-based hard engineered solutions.

It is unclear where barriers to the uptake of C&NBS rest; with water companies themselves, the regulators Ofwat and/or the Environment Agency, or in the steer provided to the regulators by Defra. Current economic regulation under Ofwat creates financial risks for C&NBS approaches, due to failures to fully incorporate environmental and social benefits into 'best value' assessments, and due to C&NBS being treated as operational expenditure within a single Asset Management Plan period, as opposed to long-term investment. Rationale for C&NBS options being stripped from water company Water Resources Management Plans and the WINEP remains unclear - these processes are jointly regulated by Ofwat and the Environment Agency.

It is essential that the regulators and Defra take an aligned and consistent approach to C&NBS, to remove these barriers to uptake and to mainstream their use. The Environment Agency and Ofwat should adopt joint, ambitious targets to accept these schemes when preferred by water companies and customers, for example, through setting an [aspirational sector-wide target of 10% of WINEP investment](#) going towards C&NBS.

Question 9: Do you consider that UK regulators collaborate effectively with each other and their international counterparts? Please provide your answer here if applicable. Please break down your response by national and international. Examples are welcomed.

UK regulators do not collaborate as effectively with each other as they should. The poor state of the environment suggests that UK environmental regulators are struggling to work collectively to share data on the state of the environment, and to advise, monitor, and enforce regulation in order to drive positive environmental outcomes.

A clearer strategic regulatory framework, setting out the long-term vision for regulated sectors, and how UK regulators should work collectively towards the achievement of environmental targets and outcomes, is required. Government should set new legal duties for regulatory bodies to conserve, enhance and restore the natural environment in line with Environment Act and Net Zero targets. This 'green duty' would not only ensure that regulated sectors are contributing towards the delivery of these targets, but would help to provide the necessary steer and strategic oversight for UK regulators to successfully work together on driving these outcomes.

A shared strategy and strengthened legal duty to collaborate, at least between the Environment Agency, Natural England and Forestry Commission, could also secure better join up and better delivery of shared environmental objectives between these UK environmental regulators.

For example, both Ofwat and the Environment Agency have a role in regulating the water industry, to ensure that environmental regulations are being upheld and that environmental obligations are being delivered. Yet the critical state of the water environment shows that Ofwat and the Environment Agency have faced significant challenges in tackling pollution, and effectively regulating the water industry to ensure that environmental obligations are being delivered. The Environment Agency continues to rely on industry self-reporting, and the latest Ofwat industry [performance reports](#) show that water companies are still failing to meet targets and deliver fully their statutory obligations. As discussed previously under Q.8, Ofwat and the Environment Agency also face challenges regarding the lack of an aligned, consistent approach to C&NBS in the water industry.

The 2019 Price Review saw a record number of water companies going through the CMA appeal process, to challenge decisions issued by Ofwat that placed several industry schemes to ease pressure on the environment and deliver significant environmental benefits at risk. These industry schemes were in line with sustainability principles and customer wishes.

Ofwat's decisions [contradicted the recommendations](#) of a number of publications aligned around the need for increased investment and activity to secure sustainable water supplies, including the Environment Agency's National Framework for Water Resources.

There are also difficulties in UK regulators working effectively in collaboration on cross-border issues. This is evident in the challenges faced by the Environment Agency, Natural England and Natural Resources Wales on the River Wye, where despite agencies coming together cross-border to tackle pollution, water quality [continues to decline](#).

A more positive example of regulator collaboration can be found in the current Ofwat and Environment Agency investigation into permit breaches at over 2000 wastewater treatment works. The efficacy of this process should be reviewed, and lessons learnt taken to guide future collaborative working.

UK regulators must be adequately resourced and funded in order to facilitate successful collaboration. For example, the monitoring and classification of water protected sites is dependent on monitoring and data sharing between the Environment Agency and Natural England. Budgetary constraints on the Environment Agency's monitoring programme will therefore have direct implications for data sharing between the regulators, and ultimately the work of Natural England to assess the condition of protected sites.

Question 10: Where you engage with multiple UK regulators, do you find it clear which regulator is responsible for a specific issue or area, and how regulator mandates interact? Please provide further detail here if applicable. Examples are welcomed.

It is not always clear which regulator is responsible for specific issues, particularly where there are new or emerging issues or law changes. This is a key issue with an overwhelming focus on regulating processes rather than for environmental outcomes.

Often there are multiple regulators covering different aspects of a sector, but it is unclear why this is the case in some instances and muddles the statutory regulatory mandates (making the process expensive, inefficient and obstructive to delivering regulatory objectives). For example, seal shooting was outlawed in March 2023, but public authorities did not share the law change with fishers.

For example, following the loss of cross compliance in January 2024, it remains unclear who will be responsible for ensuring compliance with domestic laws, existing or future. The Rural

Payments Agency was previously responsible for undertaking cross compliance inspections. It served a crucial role in ensuring compliance with both cross compliance rules and rules that were contained in domestic law (e.g., the management of public rights of way). Following the end of cross compliance, Defra has [noted](#) that *“Existing regulators will continue to be responsible for monitoring, inspection and enforcing against domestic regulation that underpins most cross compliance rules. For example, Natural England’s role in enhancing protected sites and protecting biodiversity will not change, the Health and Safety Executive will continue to regulate use of Plant Protection Products and EA will continue to regulate, amongst other things, to protect water.”* Defra also indicated that the Environment Agency has increased compliance/enforcement visits to farms but it is not specified whether these visits are for water protection or something else. Therefore, their remit from January 2024 is unclear, and if the Environment Agency is expected to take on further compliance visits to regulate areas outside of water protection, this needs clarification. As highlighted in other questions, the Environment Agency is chronically under-resourced in terms of funding and capacity so it is unclear how they will adopt further duties.

The recent Defra Hedgerows [consultation](#) also indicated uncertainty in the exact delivery approach Defra takes to ensure compliance with future requirements, as it depends on the outcome of the consultation, but they specified the Rural Payments Agency was intended to be the regulator. The RPA does not have a statutory environmental duty so it is unclear how they will fulfil this role after cross compliance, or how they will work in conjunction with the Environment Agency and other regulators (or bodies with regulatory remit such as local planning authorities who are deeply underfunded and under-resourced). It is also unclear what other regulatory duties the RPA will have and how any gaps in regulation emerging on 1 January 2024 will be prevented considering the replacement regulator will not be in place by this point.

Another example is in hazardous chemicals and pesticides regulation. The right balance is not always achieved between the Health and Safety Executive (HSE), Defra and other regulators, particularly where HSE makes policy decisions (e.g. a decision was undertaken without consultation not to match new EU classifications to better identify endocrine disruptors unless and until they are agreed at international level). It is a responsibility of the Government to ensure that regulators have appropriate strategic steer and are well-resourced alongside other regulators such as the Environment Agency. There needs to be improved (and more transparent) coordination between the different agencies and parts of government responsible for minimising the harmful effects of hazardous chemicals. For example, there needs to be more emphasis on health impacts from hazardous chemicals than there is currently and better coordination between the Health and Safety Executive and the UK Health

Security Agency which is responsible for public health risk assessment advice to HSE. As a first step, there needs to be proper join-up between the Major Conditions Strategy and the Chemicals Strategy once they're published.

With regards to pesticides, the current regulatory system is too fragmented. The chain of command and the responsibility for pesticides is opaque, confusing and ill-defined. Split between the HSE/Department of Works and Pensions and Defra, with the Chemical Regulation Directorate in the middle, makes for a confusing approach to regulating, monitoring and enforcing pesticide regulations. In addition, the Department for Health and Social Care (DHSC) and other health bodies are entirely absent from the regulatory system since pesticides are viewed as an agricultural or environmental issue, with the health aspect very much neglected. Regulators – including the DHSC and other health bodies – urgently need to coordinate with each other in order to more effectively reduce the impacts of pesticides on both human health and the environment.

The picture is further complicated when it comes to derogations, with the Government [ignoring the advice of its own experts](#) in order to repeatedly authorise 'emergency' use of banned neonicotinoid pesticides on sugar beet crops. Farming Minister Mark Spencer will shortly decide whether to authorise the use of the banned chemical Thiamethoxam, for the fourth year in a row.

Question 11: Do you consider there to be underregulated areas of the economy, or gaps in regulatory responsibility between UK regulators? Please provide further detail here if applicable. Examples are welcomed.

There are areas of the economy that are not appropriately regulated (or face gaps in responsibility), with agriculture and the chemicals and pesticides sector being a key example of this.

Agricultural regulatory reform has been long-promised since the 2018 [Farming Inspection and Regulation Review](#). This review recommended changes to farming regulation, and even recommended a new independent regulator. Over five years later, the Government has yet to introduce any substantive regulatory reform. On its own, the Environmental Land Management System (the final offer of which is yet to be confirmed by Defra) and existing regulators/regulatory baseline are not going to be sufficient to meet environmental or climate objectives set out in different policies (e.g., the Agricultural Transition Plan or the Environmental Improvement Plan). In particular, the 'low confidence' allocated to most 2027

objectives set under the third round of River Basin Management Plans is likely, at least in part, to be related to the role of agricultural diffuse pollution. This is a ‘reason for not achieving good status’ in [40% of England’s WFD waterbodies](#) yet many of the mechanisms available for tackling this - such as Catchment Sensitive Farming support and ELMS uptake - are entirely elective. To achieve water objectives will therefore require strong baseline regulation with high compliance, as well as effective and attractive ELMS options. The case for improvements to farm regulation has to some extent been acknowledged by Defra in the Plan for Water, which commits to consulting on extending environmental permitting to dairy and intensive beef farms, and improving the effectiveness of environmental permitting of pig and poultry farms. A plan for further regulatory reform however is unclear, making the ongoing system inefficient.

Pollution from rural areas - the [majority of which](#) comes from agricultural diffuse pollution - is implicated in [at least 40% of waterbody failures under WFD](#). The current approach where the Environment Agency will generally prioritise giving advice and guidance before taking enforcement action has clearly not worked. The Environmental Act 2021 set a target to reduce nitrogen, phosphorus and sediment pollution from agriculture by 40% by 2038 compared to a 2018 baseline. This is of itself inadequate to reverse the trends in diffuse pollution from intensifying farming, but the target will certainly not be met without enforcement; indeed one scenario set out in the the Evidence Pack accompanying the Target consultation (which considered potential routes to achieving the target) spoke of requiring 100% compliance with regulation. Soft touch regulation and enforcement will likely, in a changing climate, ensure the extinction of iconic species such as Atlantic salmon.

Welfare standards often include an exception for special circumstances, and this is then interpreted so broadly that the “special” becomes the norm. For example, AHDB [guidance](#) is that “Routine tail docking [of pigs] is not legally permitted. It should only be done as a last resort”, but in practice it is [commonplace](#). This brings the regulation and enforcement into disrepute.

Soil regulation is a key example of [fragmentation](#) and under-regulation following the loss of cross compliance. It is unclear what the relationship between different elements of soil regulation are and who is responsible for enforcement. Soil regulation is principally covered by the Farming Rules for Water, but there were elements that were subject to cross compliance and the Rural Payment Agency inspection regime (Standards of Good Agricultural and Environmental Condition rules 4, 5 and 6). The GAEC rules have been phased out with the end to cross compliance in January 2024. There is also now the SFI standard which covers soil actions. Compliance on soils is difficult to assess due to the lack of an appropriate

regulator/regulatory framework, but there are concerning examples related to the Environment Agency's [poor enforcement of regulations](#) in the River Wye, as well as examples of [cattle farms in north Devon](#) and the River Axe Catchment, where, "[Despite over a decade of advisory visits in the period up to 2016, the catchment continued to decline and there were no significant improvement in farming practices. 95% of farms did not comply with storage regulations and 49% of farms were polluting the river Axe](#)". It is unclear how soil is caught within this regulatory regime without a soil focused regulator or specific standards on soils - the regulatory framework as it stands fails to appropriately accommodate soil degradation.

In respect of chemicals, the Health and Safety Executive has introduced new layers of evidence gathering and analysis before taking regulatory action which in our view is not required under the EU REACH legislation. For example, it's undertaking lengthy Regulatory Management Options Analysis on substances that have already been banned and restricted in the EU (on which there is ample evidence of the risks they pose and that the UK was subject to prior to exiting EU REACH). The result is delays to regulatory action which is inefficient, prolongs exposure, risks creating a burden to chemicals firms that operate across UK-EU borders (detering investment) and which obstructs HSE from meeting its primary regulatory obligation under UK REACH. It's unclear if HSE is assembling information that it considers is needed later on in Impact Assessments which must accompany secondary legislation bringing forward new regulation (requirements which have been introduced under the Better Regulation Framework Guidance). The effect, however, is that HSE is unable to act swiftly and with urgency to meet short and long term priorities, attract businesses to the UK or mitigate threats to human health and environmental outcomes.

The large welcome increase in tree planting, has exposed a gap of regulating the use of new and untested, potentially invasive, tree species. Currently Forestry Commission England aim to regulate this area but they have neither the regulatory powers or tools to regulate effectively and efficiently. In addition, their legal duty to promote afforestation/timber production and deliver stretching legal targets for tree planting is likely driving different approaches to regulate new tree species introductions compared to an independent regulator with a clearer and stronger environmental duty and legal purpose that fits more clearly with the specific role of regulating for the protection of the environment.

Question 12: Do you consider that guidance issued by UK regulatory bodies makes the regulatory system clearer and easier to understand? Please provide further detail here if applicable. Examples are welcomed.

No Link response.

Question 13: Do you find UK regulators to be agile and responsive to new and emerging issues? Please provide further detail here if this question applies to you. Examples are welcomed.

Overall, UK environmental regulators are not agile or responsive enough to new and emerging issues as they are undermined by insufficient budgets, resources and capacity to effectively monitor and enforce regulation.

There is a chronic lack of resources, capacity, skills and confidence for Natural England and the Environment Agency which prevents these regulators from being able to make quick and good decisions. Gaps in data and knowledge on the state of the environment are also pertinent. This is particularly the case on emerging issues or threats, such as shifting species ranges due to climate change, and the impacts and oversight of storm overflows and geoengineering projects (given the limited governance and oversight of these projects, which is a clear threat for industry, people and nature) In the case of storm overflows, there is no ecological standard for sewage overflows in coastal and estuarine water, which will make monitoring environmental impact very difficult for the regulator. The Government and Environment Agency don't have any research on this to go from, and in recent consultations were treated as open floors for ideas; the ecological standard for freshwater is not applicable for estuarine and coastal waters, and there is no international precedent to use. See for example, Wildlife and Countryside Link's response to the consultation on expanding the remit of the Storm Overflows Discharge Reduction Plan to include all marine storm overflows, particularly in response to Q.2: [WCL Response Storm Overflows Discharge Reduction Plan Consultation July 2023.pdf](#).

There are further examples of data gaps in chemicals data, monitoring and regulation which operates as both a deterrent to investment in the UK and places human and environmental health at risk. The Environment Agency would require a significant uptick in resources to effectively monitor all chemicals in the environment. Additionally, reviews by the [National Audit Office](#) and [Public Accounts Committee](#) found that a lack of operational capacity and loss of data is having a negative impact on HSE's ability to assess risks and carry out its work. The NAO found that HSE was facing challenges in recruiting experienced toxicologists and losing a quarter of staff time on training staff in-house, concluding that these capacity constraints 'may delay regulatory decisions'. The lack of capacity in the UK system to match the scale and pace of EU REACH is resulting in the UK prioritising [fewer](#), as well as [weaker](#) protections from harmful chemicals, and at a slower pace. This may be exacerbated by an ideological interest in less or more 'light touch' regulation. So far, UK REACH has initiated just two restrictions (which are not yet in force) on hazardous substances since the UK exited the EU, [compared](#)

[to 8](#) that have been adopted in the EU and another 17 that have been initiated. This is creating a protective gap with the EU that's set to become [a chasm](#) over the coming years. The [EU Restrictions Roadmap](#), which targets groups of widely used chemicals of key concern such as bisphenols and flame retardants, would, if fully implemented, lead to an estimated [5,000 to 7,000 chemicals](#) being banned by 2030.

Finally, the gaps outlined above regarding the loss of cross compliance and enforcement gaps create a risk that there will not be any regulatory response to gaps in soil, hedgerows and water. There needs to be a regulator managing compliance with the range of domestic laws on agriculture and relevant standards, regardless of any advice or awareness schemes released by Defra.

Question 14: What factors do you think work for and against UK regulators' ability to respond sufficiently rapidly? Please provide further detail here if applicable, covering both factors working for or against agility where possible. Examples are welcomed.

Where regulators receive appropriate resourcing and funding, as well as a clear, strategic regulatory mandate, this ensures they are able to fulfil their mandate in full.

These factors were largely covered in the responses to question 10-13, but in summary the factors working against UK regulator's ability to respond to issues effectively include:

- Lack of resourcing
- Lack of funding/investment
- Capacity constraints
- Poor systems for scientific data and evidence, as well as monitoring and enforcement systems, to flag issues and threats when they arise and ensure compliance where required
- Lack of clear, strategic regulatory framework and consistent steer and backing from Government on regulatory responsibilities, causing uncertainty and fragmentation
- Lack of transparency in decision making and stakeholder engagement
- Absence of long-term vision for regulated sectors, including how UK regulations aligns with international systems of best practice
- Poor interdepartmental communication with siloed systems
- In some cases, an overly economic focus

Question 15: Do you consider the processes that UK regulators have in place allow them to make decisions in an appropriate time frame? Please provide further detail here if applicable. Examples are welcomed. You might wish to consider whether the decision-making time frame effectively balances the trade-off between the benefits of reaching a quick decision versus those of reaching the right decision.

Decision-making processes led by the Environment Agency regarding the Water Industry National Environment Programme (WINEP) do not allow sufficient time or suitably coordinated deadlines for building the necessary partnerships for projects utilising catchment and nature-based solutions (C&NBS). The WINEP remains largely biased towards traditional, grey infrastructure approaches to tackling issues such as water quality, thereby missing the potential efficacy and efficiency of C&NBS and the multiple wider benefits these solutions can deliver.

A review of the WINEP commenced in 2020 considered opportunities to make the WINEP less prescriptive and more outcomes-focussed, in order to inform an updated WINEP methodology for the PR24 Price Review; whilst some methodology improvements have been seen, the impacts in terms of a more collaborative, company-driven and outcome-aimed WINEP have not been fully realised.

Question 16: In the sector(s) that you operate in, do you think there are specific improvements that UK regulators and / or the Government could make to facilitate a more agile implementation of rules and regulations? Please provide further detail here if this question applies to you. Examples are welcomed.

In addition to institutional changes to UK regulators set out in our response to Questions 4 and 6, including by setting out nature's recovery and mitigating climate change (including achieving statutory targets) as consistent statutory purposes across environmental regulators, removing the growth duty, and creating a clearer, strategic regulatory framework which is explicitly tied to the achievement of environmental targets, additional resources and expertise and skills are the most important improvement enabling change needed for UK environmental regulators to better implement rules and regulations.

Environmental regulations, underpinned by high quality and appropriate environmental data, must be considered and applied as early as possible, in any process, in order to achieve good outcomes in a swift and certain manner.

For example, Natural England and the Environment Agency also have important roles in implementing and enforcing environmental regulations. Unfortunately, years of under-resourcing of these agencies has left them lacking the sufficient resources, capacity, and expertise to fulfil their statutory functions.

[Between 2009- 2019](#), Environment Agency funding fell 63%, total staff fell 25%, and prosecutions of businesses fell 88%. This has resulted in a lack of enforcement: the number of Environment Agency enforcement notices [fall 69.5% between 2012 to 2019](#).

Natural England's functions have also suffered from a lack of funding over the last decade: [a decline of 72%](#) from 2010 to 2019. the body has not been able to properly fulfil its statutory duties such as the monitoring of SSSIs (in 2021, [78% of SSSIs had not been monitored](#) in the last 6 years) and exercising its regulatory tools to secure the good management of SSSIs (these tools have [been used on 9 occasions](#) in the last 20 years, covering 0.2% of SSSIs). The National Audit Office (NAO) looked specifically at [SSSIs as a case study in a briefing to the Environmental Audit Committee on environmental compliance and enforcement in 2022](#) and highlighted a number of questions raised by the available evidence. These included the extent to which Natural England has assurance over SSSI condition, given the shortfall in condition data; why enforcement actions on SSSIs had fallen substantially (from 151 in 2013/14 to 39 in 2020/21); how Natural England assesses the effectiveness of its monitoring work; and how it plans to improve SSSI condition, given the failure to meet previously established targets.

Question 17: Do you think UK regulators have the appropriate mix of skills to deliver their objectives? Please provide further detail here if this question applies to you. Examples are welcomed.

It is essential that the skills of UK regulators reflect and keep pace with the scale of need. Many UK regulators are not explicitly 'environmental regulators', yet they and their regulated industries have significant duties to the environment. All regulators and regulated industries must have the necessary mix of skills to support delivery of legally binding targets under the Environment Act, including to halt the decline of nature by 2030, and the legally binding target to reach net zero by 2050. This is not currently the case.

For example, both consumer and political interest in the health and wellbeing of the water environment has increased significantly in recent years, and the state of the freshwater environment remains critical. Pollution from wastewater is cited in failures across 36% of water bodies under the Water Framework Directive (WFD), with the water industry

significantly implicated in this. Yet Ofwat, responsible for regulating water company performance and the delivery of environmental obligations, is ultimately an economic regulator. Ofwat has historically given considerable attention to economic costs and benefits in its decision making, and has struggled to adequately capture and consider environmental costs and benefits.

It is essential that the capacity and expertise of Ofwat's environmental teams are sufficient to meet delivery challenges, and to ensure that environmental resilience is at the heart of all decision making. This should include the capacity and necessary skills to incorporate a natural capital accounting approach into the Price Review, so that 'best value' decisions reflect the full suite of environmental - and social - costs and benefits, rather than financial cost alone.

Longevity of staff is vital to build the necessary mix of skills, expertise and general capacity needed to enable a holistic understanding of the opportunities, risks, and potential solutions. For example, the Marine Management Organisation (MMO) has faced difficulties due to a very rapid staff turnover undermining their ability to effectively respond to issues.

UK regulators generally must be adequately resourced and funded to ensure that environmental skills and expertise can be fostered and maintained. Current gaps in resourcing, and the challenges this causes, are further discussed in response to Q.18.

Question 18: Do you think UK regulators are appropriately resourced to discharge their duties? Please provide further detail here if this question applies to you. Examples are welcomed.

UK regulators are not appropriately resourced to discharge their duties. Years of under-resourcing and cuts to funding have left regulators without sufficient resources, capacity, and expertise to fulfil their statutory functions and, critically, to drive positive environmental outcomes.

Increased funding and ecological expertise are urgently needed for Natural England, the Environment Agency, and other regulators in order to comprehensively and confidently apply environmental regulation, and to advise and conclude on environmental assessments and decisions.

For example, [analysis in 2022](#) has shown that the Environment Agency's budget has been cut by over 50% over the past decade. [From 2013-2019](#), the number of water quality samples

taken by the Agency fell by 45%, and the number of sampling points by nearly 40%. There has been [an 84% decline](#) in enforcement action undertaken by the Agency from 2012-2022. [Between 2009-2019](#), total staff fell by 25%, and prosecutions of businesses fell by 88%.

This has had direct implications for the Agency's capacity to advise, monitor, and enforce regulation. In 2022, Environment Agency [staff were being instructed](#) to ignore 'low-impact' pollution incidents due to a lack of capacity. It was also reported that self-monitoring by water companies [was 100 times less likely](#) to detect breaches of compliance than Agency monitoring. Of the 4,074 enforcement actions taken against companies by the Agency during the 2012-2022 period, [60% did not result in a fine](#).

This also has implications for the Agency's ability to retain and foster environmental skills and expertise. In January 2023, [UNISON announced](#) that Environment Agency staff had voted to strike for the first time in the Agency's history, following [2022 media reports](#) that the Agency's capacity had been constrained so significantly that staff were unable to do their jobs and that the regulator no longer functioned as an effective deterrent to polluters.

The functions of Natural England have also suffered due to a lack of funding. Natural England programme expenditure [has fallen by £30 million](#) since its formation in 2003, with [a 72% decline in funding](#) between 2010 and 2019. In summer 2023, it was revealed that Natural England has capacity for [just one member of staff](#) to carry out condition assessments for every 73 Sites of Special Scientific Interest (SSSI). 78% of SSSIs [have not been monitored](#) in the last 6 years, and Natural England's regulatory tools to secure good management of SSSIs have [only been used on 9 occasions](#) in the last 20 years, covering 0.2% of SSSIs.

Question 19: Do you think existing processes enable UK regulators to test new regulatory reform proposals? Please provide your answer here if this question applies to you. You might wish to consider whether the decision-making time frame effectively balances the trade-off between the benefits of reaching a quick decision versus those of reaching the right decision. Examples are welcomed.

There are few examples that we are aware of that enable regulators to test regulatory reform proposals. However within the water sector, this year Ofwat invited companies to submit proposals for 'A-WINEP' or Advanced WINEP schemes (see for example [Anglian Water's proposal](#)). The purpose of the A-WINEP is to explore ways of delivering more value for the environment and customers than the standard WINEP framework allows, with companies to share learnings from these innovative approaches so they can be operationalised more widely

in future. Whilst successful schemes will only just be getting underway, meaning the benefits of this initiative will not be clear for some time, the *principle* of using proposals which push at the limitations of existing regulation to test out new approaches, is a welcome one.

Question 20: Do you consider UK regulators to be proportionate in the measures they take, e.g. in applying regulations or responding to emerging issues?

Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 21: In making decisions that involve risk, which of the below do you consider most accurate?

- 1. UK regulators are too risk averse in their decision making**
- 2. UK regulators achieve the right balance of risk in their decision making**
- 3. UK regulators allow for too much risk in their decision making**

Please provide further detail here if this question applies to you. Examples are welcomed, including being specific on the type of risk you are referencing.

There are some instances of regulators being too risk averse in their decision making. For example, in decision making processes within PR24 and the WINEP, both Ofwat and the Environment Agency cite the [‘risk’ of utilising catchment and nature-based solutions](#) - as opposed to traditional, hard engineered solutions - to explain why these solutions are not being preferentially selected. Regulators are failing to sufficiently embed natural capital accounting into the Price Review process, and to capture the value of environmental and social costs and benefits - in addition to economic costs and benefits - into the concept of ‘best value’.

Regulators could also be considered risk-averse when it comes to enforcement and prosecution. An [unwillingness to take cases](#) which face a higher risk of defeat in the courts can mean that offenders generally do not see the risk of prosecution as a deterrent.

However, on the whole, UK regulators allow for too much risk in their decision making. The precautionary principle is not integrated enough in all regulatory decision-making processes and regimes. Regulators are also allowing for too much risk where they fail to sufficiently enforce existing regulations (i.e. the Farming Rules for Water, as outlined above) or invest in

long-term resilience, for example relating to water scarcity and climate adaptation (e.g., flood defences).

In relation to the regulation of hazardous chemicals, the regulator is in our view allowing for too much risk in their decision-making, a trend which is increasing. A restriction is a measure to protect the environment or human health from risks posed by specific chemicals or mixtures thereof. HSE has introduced new layers of evidence gathering and analysis before taking regulatory action, which in our view is not required under the EU REACH legislation. An example of this is HSE undertaking lengthy Regulatory Management Options Analysis on substances that have already been banned and restricted in the EU (on which there is ample evidence of the risks they pose and that the UK was subject to prior to exiting EU REACH). The result is delays to regulatory action, which is prolonging exposure and which obstructs HSE from meeting its primary regulatory obligation under UK REACH. It's unclear if HSE is assembling information that it considers is needed later on in Impact Assessments which must accompany secondary legislation bringing forward new regulation (requirements which have been introduced under the Better Regulation Framework Guidance). The effect, however, is that HSE is unable to act swiftly and with urgency to meet short and long term priorities or mitigate threats to human health and environmental outcomes. There are also instances where HSE is taking regulatory action on substances banned by the EU, but is proposing less protective measures. For example, the HSE recommendation for a restriction on hazardous substances in tattoo inks and permanent makeup has many similarities to its counterpart in the EU. However, in contrast to the EU, it [adopted derogations \(exemptions\) for 19 substances as it failed to find evidence that these pigments are unsafe \(in contrast, the EU could not rule out the risk of cancer and other hazards\).](#)

Question 22: Do you consider that individual UK regulators have the appropriate level of discretion when taking decisions that involve risk? Please provide further detail here if this question applies to you. Examples are welcomed, including being specific on the type of risk you are referencing.

No Link response.

Question 23: If you are a business or consumer, how does the approach that UK regulators take to risk impact your own decision-making? Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 24: UK regulators often need to balance delivery across a range of different legislative duties or regulatory requirements, some of which may involve trade-offs. Do you consider that they balance these trade-offs effectively and transparently? Please provide further detail here if this question applies to you. Examples are welcomed.

UK regulators do not consistently balance trade-offs effectively and transparently. Regulators have several duties, principles, and regulatory requirements that must be factored into decision making and regulatory function; however, these are not consistently balanced appropriately, with negative economic, social, and environmental implications. For example, the Health and Safety Executive (HSE) appear to consistently favour industry in decision making processes, and fail to implement the precautionary principle, as discussed under Q.21.

Similarly, Ofwat - as an economic regulator - has struggled to balance its duty to protect customers from monopoly power with the need to enable industry investment in resilient networks. This drive to keep water bills artificially low has come at the expense of keeping water and sewerage infrastructure 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'. 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.

In order for regulators to be held fully accountable for their performance against their statutory objectives, and on how trade-offs are made and balanced, decision-making processes must be communicated with greater transparency. For example, there is a lack of clarity around how some decisions are made in the regulation of the water industry. Options making use of NBS have been stripped from water company and regional water resources management plans between rounds of drafts, despite the industry initially opting to include them; the rationale for this has not been clearly communicated.

Similarly, decision making processes for the WINEP - including which industry schemes have not been successful, and the criteria for this - are not available to stakeholders such as consumers and eNGOs. Ideally, stakeholders should be able to work from drafts to final versions of the planning documents, to then understand which schemes are being taken forward in the WINEP and ultimately the delivery strategies and business plans themselves.

Further ambiguities are found in Ofwat's regulation of Performance Related Pay (PRP). A 2023 consultation on proposals to strengthen Ofwat's approaches to regulating PRP lacked detail on how Ofwat will determine whether a link between PRP and environmental performance is 'substantial', or how different factors will be assessed and weighted in decision making.

The legal duty of Forestry Commission England is over a century old, to promote the interests of forestry, afforestation and the production and supply of timber. But it is unclear how this primary legal duty interacts with their more recent Government responsibility for regulating tree planting, felling and sustainable management of woodlands to protect and deliver wider Government environmental standards and commitments. Whilst Government have a more recently added a legal duty to "achieve a reasonable balance between the development of afforestation, the management of forests, the production and supply of timber and the conservation and enhancement of natural beauty, flora and fauna." (1985), this balance isn't legally defined. The FCE primary legal duty sits at stark contrast to Natural England's purpose who have similar regulatory responsibilities on other land uses but a very different and clearer legal purpose tied to Environmental protection. This creates tension between responsibility areas on woodland areas, where Natural England have a clear biodiversity interest but this land is regulated by Forestry Commission who have a different legal duty. In addition, Forestry Commission England are one of the largest landowners in the country creating a potential conflict of interest between their role as a major commercial land manager and also Government regulator, so they effectively regulate themselves.

Question 25: If you are a UK regulator, are there specific areas where you consider it would be beneficial to seek further steer or guidance from the Government? Please provide further detail here if applicable. Examples are welcomed - you may wish to consider the extent to which existing steers support you to balance trade offs in decision making.

No Link response.

Question 26: In general, do you consider the approach that UK regulators take to requests for information to be proportionate to any burden they may impose on you?

1. Yes
2. No
3. N/A

Please provide further detail here if this question applies to you. Examples are welcomed.

There is a need for greater accessibility and transparency from regulators in communicating and sharing information. Whilst some information is publicly available, some is obtainable only through Freedom of Information requests (FOIs) that are a burden both on eNGOs to develop, and regulators to respond to.

For example, it has taken external organisations such as [Violation Tracker UK](#) to provide an accessible, easy-to-use database of corporate regulatory infringements, and any enforcement action taken. Data on the number of enforcement actions taken, and whether these have been followed up with penalties, is being [obtained through FOIs](#); it should instead be made publicly available by the Environment Agency.

Question 27: Do you ever receive duplicative requests for information from the same or multiple UK regulators? (i.e., requests asking for essentially the same information)?

1. Yes
2. No
3. N/A

Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 28: Do you consider that UK regulators have in place the right governance structures to deliver the best outcomes? If not, how can they be improved? Please provide further detail here if this question applies to you. Examples are welcomed.

Regulators must have clear, strategic, and consistent steer and backing from the Government to uphold regulation in order to deliver the best outcomes.

A strategic regulatory framework should set out the long-term vision for regulators and regulated sectors, and how this will contribute towards the achievement of environmental

targets and outcomes - for example, halting the decline of nature by 2030, and achieving net zero by 2050. Regulatory governance structures should be built around this long-term vision, and targets. A 'green duty' for UK regulators, as discussed in response to Q.9., would help to reinforce this.

Furthermore, this would support long-term planning and decision making by regulators, and provide some stability against political interventions and fluctuations that can be contradictory and confusing, undermining the delivery of the best outcomes. For example, [Government's instruction to the Environment Agency](#) to monitor, advise, but not enforce the Farming Rules for Water regulations has contradicted the regulatory objectives and functions of the Agency, and has ultimately undermined the purpose of legislation intended to protect the water environment from agricultural pollution. Agricultural pollution is responsible for at least 40% of waterbody failures under WFD. In October 2023, [a judicial review was granted](#) over claims that the Agency has failed to enforce the Farming Rules for Water on the River Wye, due to difference between the written law and guidance from the Secretary of State interpreting the law.

Further uncertainty and potential for poor and inconsistent implementation of regulation is created by the Retained EU Law Act 2023. The Act gives Government the power to amend, revoke, or replace thousands of pieces of EU-derived legislation, many of which relate to the protection of the environment. Furthermore, unlike other government departments, [Defra does not currently have immediate plans](#) to restate EU interpretive effects via secondary legislation in 2023. The Government REUL dashboard suggests that a significant number of retained EU laws have yet to be reviewed. That the future of so many pieces of legislation and interpretative effects of case law remain uncertain further undermines the long-term clarity of the regulatory framework, and risks creating contradiction and confusion within regulation and regulatory activities.

Question 29: Do you consider that UK regulators use digital systems in their interactions with you in an efficient fashion? (e.g. data transfer or other digitised methods)? Please provide further detail here if this question applies to you. Examples are welcomed.

UK regulators could use their digital systems in a more efficient and effective manner, to ensure greater transparency of information, and to enable stakeholders to hold regulators to account.

For example, much Environment Agency data - whilst technically available to the public - is not accessible or understandable to the majority of stakeholders. Information stored online in systems such as Catchment Data Explorer is largely unintelligible without prior knowledge, meaning that members of the public are unable to easily discover the state of their local water bodies. The public must rely on external organisations to provide accessible, easy-to-use digital systems to fill this gap - for example, [Violation Tracker UK](#) for a database of regulatory infringements and enforcement action, and the [Surfers Against Sewage 'Safer Seas and Rivers Service'](#), and [The Rivers Trust's Sewage Map](#) for information on sewage releases and water quality to inform water users.

The process of engaging with Ofwat and the water industry Price Review process is similarly hindered by a lack of accessibility. Ofwat does not provide and communicate accessible breakdowns of factual data from water company business plans, digitally or otherwise. To understand the state of the Price Review, stakeholders must work through multiple separate plans and appendices; a huge task that is again largely inaccessible to stakeholders such as consumers who may lack the necessary skills or prior knowledge.

A more positive example of regulators using digital systems can be found in the Discover Water website. Run by several organisations, including the regulators Ofwat, the Environment Agency, and Natural Resources Wales, the [Discover Water website](#) provides an accessible digital dashboard of water company performance in England and Wales. The efficacy and efficiency of the Discover Water website could be further improved through evolving the dashboard to track progress within Asset Management Plan (AMP) periods, helping to improve stakeholder knowledge and engagement with the regulatory process beyond solely the Price Review period.

Question 30: Do UK regulators sufficiently communicate the processes they follow to make decisions?

1. Yes
2. No
3. N/A

Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 31: Are you provided sufficient opportunity to input into decision making by UK regulators processes (e.g., via consultations, workshops etc)? If not, how would you suggest improving the process? Please provide further detail here if this question applies to you. Examples are welcomed.

Stakeholder engagement with regulators is not always available, clear or transparent. Decision-making on regulatory processes is not always readily available.

An ongoing example of this is in chemicals regulation, where most of the stakeholder engagement takes place through Defra and there have been limited opportunities for stakeholder engagement once a restriction has been initiated. The EU REACH system serves as a good template for stakeholder engagement. The committee structure within the European Chemicals Agency helps to ensure its decisions can be challenged and the best information is available for its discussions, helping to avoid mistakes and to ensure that decisions are made more independently and transparently. It also helps to resolve potential differences of opinions on draft decisions, as well as to ensure that the decision-making process and scientific basis underlying it have credibility with all stakeholders and the public. The oversight mechanism within UK REACH while welcome is more limited, of ‘challenge panels’ of members of the REACH Independent Scientific Expert Pool (RISEP) that review HSE opinion.

It is disappointing that there has been limited opportunity for accredited stakeholders to ask questions about HSE opinions. Despite HSE [guidance](#) saying that “accredited stakeholders will be able to ask questions” at challenge panel discussions on restrictions, which took forward [commitments](#) made by the Government in 2019 not to “undermine the opportunities for public participation and stakeholder engagement in the REACH system in place after exit day.” It’s vital that stakeholders have the opportunity to respond and to challenge an opinion, which is distinct from inputting into a process, when opposing views can be ignored. In addition, it is important that agendas and minutes of challenge panel meetings are published on the HSE website, including all the comments received from public consultations and its response to them, in the same way as it is on the ECHA website.

HSE also took a decision not to match new EU classifications to better identify endocrine disruptors unless and until they are agreed at international level. HSE did not consult on this decision (independently or via Defra) nor was it announced publicly – it was uncovered in an answer to Parliamentary Questions. Undertaking full consultation processes and making decisions in a transparent way is vital for ensuring a wide range of views and appropriate scrutiny is undertaken.

Further examples of other regulators can be found in the response to Question 24. For example, there is a lack of clarity around how some decisions are made in the regulation of the water industry; the rationale for NBS schemes being stripped from water company plans, the criteria for successful WINEP schemes, and the full decision making process behind Ofwat's assessment of Performance Related Pay.

Question 32: Do you consider the processes that UK regulators follow deliver reasonable outcomes? Please provide further detail here if this question applies to you. Examples are welcomed.

The processes that UK regulators follow are important - but more funding and capacity is required to ensure the processes implemented deliver good outcomes.

The poor state of the environment and the lack of progress towards Government's environmental commitments demonstrates that 'reasonable outcomes' are not being delivered by many UK regulators.

For example, several water companies are consistently underperforming with respect to delivering on their target, year on year, despite the regulator Ofwat issuing performance reports for the water industry. A stronger and more well-resourced Ofwat is needed to ensure water companies follow regulation and meet their environmental commitments.

Question 33: Do you think UK regulators treat those that they regulate consistently? Please provide further detail here if applicable. Examples are welcomed, including any detail on how this impacts your planning and decision making. Examples are welcomed.

No Link response.

Question 34: As a business, do you think the process to challenge a UK regulator you interact with is sufficiently clear, robust and fair? Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 35: What steps, if any, do you think could be taken to further improve the effectiveness and clarity of the reviews and appeals processes?

Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 36: In your experience, have UK regulators that you interact with delivered on their stated objectives in that interaction? Please provide further detail here if this question applies to you. Examples are welcomed.

No Link response.

Question 37: Do you think UK regulator performance reporting is proportionate, objective and transparent? Please provide further detail here if this question applies to you. Examples are welcomed.

UK regulator performance reporting is not sufficiently proportionate, objective and transparent.

As discussed under Q.29, Environment Agency data on regulatory infringements, enforcement action, and the state of the water environment is often obscure, buried, and hard to interpret without prior knowledge. Stakeholders such as members of the public are reliant on other organisations to provide transparent, user-friendly sources of information.

Whilst the regulator Ofwat does report annually on various aspects of water industry performance, and during the Price Review period, updates on progress within Asset Management Plan (AMP) periods are lacking. Furthermore, it is unclear how the regulator is assessing these performance reports and reflecting on their own performance, as a regulator. Annual water company performance reports show that some water companies repeatedly underperform against certain targets or underspend on investment programmes; performance reporting that is not used to inform how the regulator will better enforce and uphold regulation to improve performance is not fulfilling its purpose.

Question 38: Do you think UK regulators report on the right set of criteria and metrics to monitor their performance and ensure accountability?

Please provide further detail here if applicable. Examples are welcomed. If you think that there are better criteria and metrics that regulators do not report on, please provide details.

No Link response.

Question 39: If you could suggest a single reform to improve how UK regulators operate, what would it be? Please provide further detail here. Examples are welcomed.

Years of under-resourcing of these agencies has left them lacking the sufficient resources, capacity, and expertise to fulfil their statutory functions. Between 2009- 2019, Environment Agency [funding fell 63%](#), total staff fell 25%, and prosecutions of businesses fell 88%. This has resulted in a lack of enforcement: the number of Environment Agency enforcement notices [fall 69.5% between 2012 to 2019](#).

Natural England's functions have also suffered from a lack of funding over the last decade: [a decline of 72%](#) from 2010 to 2019. the body has not been able to properly fulfill its statutory duties such as the monitoring of SSSIs (in 2021, [78% of SSSIs had not been monitored](#) in the last 6 years) and exercising its regulatory tools to secure the good management of SSSIs (these tools have [been used on 9 occasions](#) in the last 20 years, covering 0.2% of SSSIs).

Increased funding and ecological expertise are urgently needed for Natural England, the Environment Agency and other statutory nature conservation bodies in order to properly and confidently apply environmental regulation, and advise and conclude on environmental assessments and decisions, leading to better environmental outcomes and more surety for all involved.

Question 40: Are there any examples of international approaches to regulation that you think set best practice that UK regulators could learn from? Please provide further detail here. Examples are welcomed.

The Government needs to be clearer about the mandate for regulators, enabling their regulatory obligations to align with best-practice international standards. There also needs to be a concerted focus on accountability and transparency to ensure regulators fulfil their

mandates without having too close of relationships with industry actors who are the targets of regulation.

For example, EU REACH is considered the de facto international gold standard system for chemicals regulation. UK divergence from the EU framework is the reality, but HSE needs to be able to justify how UK use and exposure is significantly different and how the impact of EU decisions would have a significantly different impact on the UK. Ultimately, UK REACH needs to align with EU decisions to ensure appropriate fulfilment of the health and environmental regulatory objectives, as well as to ensure that chemical industry firms that want to export to Europe are not faced with undue burdens when operating across borders (which will be a deterrent to investment in the UK). However, at minimum a protective system should assume the applicability of EU risk management measures to the UK (and default to alignment), with divergence based on evidence that UK use and exposure is significantly different (higher, as well as lower).

Ahead of leaving EU REACH, many warned that the UK system lacked an equivalent level of transparency compared to the European Chemical Agency's open committee structure, which could result in a system that was more susceptible to industry and backdoor lobbying. The then Chair of the Environmental Audit Committee warned about the loss of these "important democratic oversight mechanisms". International practices, such as the IPCC framework and the Framework Convention on Tobacco Control and accompanying [UK national guidance on government engagement with the tobacco industry](#), have been established to keep industry bodies at arms length in decision- and policy-making. Engagement with industry bodies that are the targets of regulation should be managed through clear protocols for managing risks and conflicts of interest in stakeholder engagement. HSE needs to explicitly confirm, and regularly review, their policies for managing (and scrutinising) industry stakeholder input and be transparent about the due diligence on the state of the market and impact of any restrictions. Appropriate measures need to be in place and transparently outlined to mitigate any risks of industry (as one of the primary the groups being regulated), [conflicts](#) of interest, being too close to regulators or treated as preferred stakeholders. Policies that incorporate full transparency processes would ensure that decisions are correctly aligned with HSE's regulatory objectives and that all relevant information has been considered.

Question 41: What is the best designed regulation you face, and why? Please provide further detail here. Examples are welcomed.

No Link response.

Question 42: Are there any further points you would raise about regulation, including the functioning of the regulatory system or any recommendations you have on the stock of regulations from the Government which should be removed or reformed and modernised? Please provide further detail here. Examples are welcomed.

UK regulation and regulators have an essential role, beyond just the benefit of businesses and the protection of individual consumers: environmental regulation is essential to the design and delivery of sustainable development for [the wellbeing of people, environment and economy](#). The public, civil society groups, experts, not just industry, must be involved in the design and determination of regulations.

A healthy natural environment is central to meeting [the Government's environmental ambitions](#) and [legally-binding environmental targets](#) and to [people's health and wellbeing](#), but crucially it is also the [prerequisite for a healthy economy](#) and a successful [development sector](#).

Effective environmental regulation is also [vital for, and appreciated by, businesses](#). Regulations set out requirements and minimum standards that ensure compliance with environmental law, create [a level playing field for the sector](#), and [promote well-designed and sustainable development in the right place](#), providing certainty and stability for investment. Further benefits of effective environmental regulations include [the creation of new jobs and skills](#) and [stimulated innovation and investment](#) in the development sector.

Existing environmental regulation has been reviewed time and time again and both [Government](#) and [external reviews](#) have found it fit-for-purpose. However, the implementation of environmental regulations in England, including through the land use planning system, [could be improved](#). (Wildlife and Countryside Link's remit is England so our comments and response are limited to England, but similar comments could apply to other UK nations.)

Poor implementation, for example, too long and unfocused reports, can result in poor outcomes for nature, as well as delays in the planning system. This is an implementation issue, not a fault with the regulations themselves.

Lack of sufficient resources and expertise is a significant barrier to effectively implementing regulation. Regulators, for example, Natural England and the Environment Agency, do not have the capacity nor expertise and skills for robust and effective advisory, monitoring, and

enforcement regimes. Environment Agency funding [fell 63% between 2009 and 2019](#), total staff fell 25%, leading to a lack of enforcement: the number of Environment Agency enforcement notices [fell 69.5% between 2012 to 2019](#). A [decline of 72% from 2010 to 2019](#) for funding for Natural England has meant the body has not been able to properly fulfill its statutory duties such as the monitoring of SSSIs (in 2021, [78% of SSSIs had not been monitored](#) in the last 6 years).

Further uncertainty and potential for poor and inconsistent implementation of regulation is created by the Retained EU Law Act 2023. The Act gives Government the power to amend, revoke, or replace thousands of pieces of EU-derived legislation, many of which relate to the protection of the environment. Furthermore, unlike other government departments, [Defra does not currently have immediate plans](#) to restate EU interpretive effects via secondary legislation in 2023. The Government REUL dashboard suggests that a significant number of retained EU laws have yet to be reviewed. That the future of so many pieces of legislation and interpretative effects of case law remain uncertain further undermines the long-term clarity of the regulatory framework, and risks creating contradiction and confusion within regulation and regulatory activities.

Question 43: In what capacity do you interact with UK regulators or regulated businesses? (Please select the most appropriate option that represents you, and respond according to your primary responsibilities)

- Regulated entity (i.e. business)
- Consumer
- Regulator
- Academic or think tank
- **Other**

If you selected other, please specify here: Environmental NGO

Question 44: If you are a business, how many employees do you have?

- **Not Applicable – not a business**
- 1 – 9 employees
- 10 – 49 employees
- 50 – 99 employees
- 100 – 499 employees
- 500+ employees

Question 45: Please name the Sector(s) that you operate in - you may wish to reference [Standard Industrial Classifications](#)

Please provide further detail here.

Environmental policy

Question 46: If you are a regulated business, how much as a percentage of turnover does demonstrating compliance with regulation cost your business?

- **Not Applicable**
- Less than 1% of turnover
- 1 to 5% of turnover
- More than 5% and up to 10% of turnover
- Over 10% of turnover

If possible, please provide more specific figures on the cost of compliance with regulation here. Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance.

Compliance costs may for example include costs of staff responsible for engaging with regulators, responding to requests for information and demonstrating compliance to the regulator. It is these costs we are concerned with, rather than the costs of delivering the policy intent of the regulation.

Question 47: What is your name, or the name of your organisation? Please provide further detail here.

Wildlife and Countryside Link

**Question 48: What is your e-mail address (optional response)?
Please provide further detail here.**

emma.clarke@wcl.org.uk

Question 49: We usually publish a summary of all responses, but sometimes we are asked to publish the individual responses too. Would you be happy for your response to be published in full?

- Yes
- Yes, but without identifying information
- No, I want my response to be treated as confidential

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 82 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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The following organisations support this Link evidence: Angling Trust, Bat Conservation Trust, CHEM Trust, Compassion in World Farming, Froglife, Institute for Fisheries Management, National Trust, People’s Trust for Endangered Species, Surfers Against Sewage, The Wildlife Trusts, and the Woodland Trust.