



Water UK's response to the Department for Business and Trade's consultation on strengthening the regulation of the energy, water and telecoms sectors

January 2024

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Introduction

Water UK is the trade association for the UK's water industry. Our members include all water and wastewater companies across England, Northern Ireland, Scotland and Wales.

We welcome this timely review. The water industry in England and Wales has proposed £96 billion of investment over 2025 to 2030, as part of its business plans for the 2024 price review (PR24), to deliver the environmental improvements that people rightly expect and meet the considerable challenges posed by population growth and climate change. An effective regulatory framework is vital for attracting and sustaining the increased investment that the country urgently needs.

The UK government has set out a number of helpful proposals which we support, such as a new infrastructure needs assessment that looks across sectors and seeks to unblock barriers to investment.

However, we strongly disagree with two proposals, which we believe would have deeply pernicious effects.

Changing the appeals process risks raising bills and deterring investment for no clear benefits

Adopting an energy-style appeal regime is likely to have the unintended consequence of raising water bills for the entire country.

There is no evidence that adopting the energy appeals process would be more effective or efficient, neither is there evidence that consistency between the regimes would improve investor confidence. Indeed, we have heard the opposite. Overturning decades of regulatory precedent to remove a 'gold standard' redeterminations regime would damage investor confidence.

As the consultation notes, the energy appeal regime leads to 'cherry picking' behaviour which is likely to lead to more appeals. More appeals are likely to delay investment. The government should not seek to bring about consistency across sectors by worsening the water sector's appeals regime.

Deterring investment and increasing bills to reduce administrative burdens for public bodies, while also reducing the accountability of the regulator, is not in the public interest. If the government wants to reduce burdens, it should instead press Ofwat to remove any undue complexity.

Removing Ofwat's financing and resilience duties puts investment at risk in an increasingly uncertain world

Independent economic regulators provide a fundamental role in building trust and confidence in the sector from both customers and investors.

We recognise the case for reviewing Ofwat's duties, but the proposed duties are the wrong duties. They neglect the public's concerns and priorities.

We strongly disagree with the proposal to remove Ofwat's financing and resilience duties. The requirement for Ofwat to ensure that companies can finance their functions facilitates necessary investment in the sector. Removing the resilience duty would reverse previous government policy to introduce the duty in the first place, to overcome emerging challenges through long-term resilience and investment. Removing either duty will put much-needed investment in the sector at risk and lead to significantly worse outcomes in an increasingly uncertain world.

Next steps

If the government seeks to go ahead with either proposal, it must consult fully, supported by robust evidence and a full impact assessment. The government should recognise that even such a consultation may put future investment at risk.

We set out individual responses to specific consultation questions in Appendix 1. We are happy to discuss this further.

Appendix 1 – Responses to consultation questions

1. DRIVING ECONOMIC GROWTH

1.1 Infrastructure needs assessment

Consultation proposal (1): A holistic infrastructure needs assessment in energy networks and the water sector should be delivered. This should enhance regulatory accountability, as well as supporting decision-making approaches, respectively.

Q1: The government welcomes views on appropriate terms of reference, including scope, for such infrastructure needs assessment, as well as views on who would be best placed to deliver this. The government welcomes any further views on this assessment.

- (1) We strongly support a new holistic infrastructure needs assessment. It would improve the collective understanding of the inventory and condition of current assets and help to inform future infrastructure requirements. It should consider the appropriateness of asset health standards for each sector.
- (2) It is important that this assessment is conducted independently – by neither the economic regulators nor the companies. The National Infrastructure Commission (NIC) is well-placed to carry this out with minimal implementation costs, with the added ability to look across sectors.
- (3) To meet increasing demand for water given climate change and population growth, and to achieve environmental improvements, a major increase in infrastructure investment in the water sector is needed over the coming years. There are similar needs for investment in the energy sector. Assessing these needs together will help to reduce supply chain deliverability challenges. If necessary, the infrastructure needs assessment can make deliverability trade-offs across sectors that individual sector regulators and companies simply cannot in isolation.
- (4) Such an assessment could also be useful where markets rely on each other. For example, future energy supplies from hydrogen and nuclear will likely require new water supplies, while improvements to water and wastewater infrastructure will likewise need increasing amounts of energy. Similarly, it can consider whether resilience standards should be consistent between sectors – there's little benefit in making water systems resilient to 1 in 200 year floods if the surrounding power infrastructure is only resilient to 1 in 50 year events. Therefore, considering the infrastructure needs holistically will be important to identify the best policy options and avoid unintended consequences. Transparently setting out future infrastructure needs in a holistic way can also support companies to engage with their supply chains and local labour markets, to help sequence work and support long-term plans.
- (5) As part of a holistic assessment, the NIC should also be required to consider challenges and risks arising from planning processes and other contributors to the underlying issues driving investment needs. This will provide a more realistic outlook on the speed of growth possible and what can be done to improve such processes.

1.2 Use of comparators and standardisation across regulators

Consultation proposal (2): When reporting on funding decisions, Ofwat and Ofgem should include comparisons to figures outlined by other public bodies, for example the NIC and the CCC, and future figures outlined in the infrastructure needs assessment. The government welcomes Ofwat and Ofgem's greater focus on the long term in their price reviews, PR24 and RII03 approaches, respectively.

- (6) We support the greater focus on long-term thinking in PR24 and beyond. We strongly support requiring Ofwat to explain how its funding decisions meet the infrastructure needs assessment, and other relevant reports by the NIC or other bodies – and if not, why not. This will help to identify whether long-term needs are likely to be met, while also ensuring Ofwat is publicly accountable to customers and other stakeholders.
- (7) The consultation says that many stakeholders consider the price control process has become “unnecessarily complex” which may deter investment. We share this concern. Company business plans are thousands of pages in length and planning for business plan submissions takes almost the full five years between each price review.
- (8) Much of the existing complexity is self-imposed by Ofwat. Instead of designing overly complex mechanisms that attempt to try to squeeze out potential inefficiencies from company proposals, Ofwat should increase its focus on supporting the priorities of consumers, which relies on much-needed investment. It is a regulatory failure that PR19 did not directly address storm overflows, despite public concerns raised as early as 2020, and Ofwat's rigid framework has delayed a meaningful response.
- (9) That said, we recognise that a balance needs to be struck between minimising undue complexity, while also ensuring there are proportionate mechanisms that manage risk, in order to attract necessary investment. Some mechanisms are justified.

Consultation proposal (3): The government strongly supports steps taken by Ofgem and Ofwat so far in considering major infrastructure projects outside of the standard price review processes. The government encourages Ofwat to take innovative approaches to project funding, where needed, and welcomes steps taken so far, such as through its Havant-Thicket reservoir approach. The government similarly encourages Ofgem to continue to take innovative approaches where appropriate.

- (10) We agree with this approach, which we consider supports a more long-term focus that can adapt to changing circumstances.
- (11) The existing framework is too slow and designed for a ‘steady state’ system that no longer makes sense for a changing world with increasing challenges that demand agility and flexibility.

Q2: To what extent, in the standardisation of processes and procedures, is there greater scope for regulators to learn from each other?

- (12) Regulators already share best practice, supported by the UK Regulators Network (UKRN).
- (13) Regulators could make greater use of standardised assumptions. For example, supported by the proposed cross-sector infrastructure needs assessment, regulators could use consistent forecasts

on population growth, ensuring both the water and energy sectors meet long-term needs caused by new property developments.

- (14) Consistent approaches may also create opportunities to reduce administrative costs for regulators, which customers ultimately pay for.

Q3: To ensure the outcome is fit for purpose, are there any other examples of regulatory best practice or efficiency that should be considered in addressing complexity?

- (15) The complexity and cost of Ofwat, as well as the non-economic regulators, has grown substantially over time. Customers ultimately pay for the direct cost of these public bodies, as well as water companies' regulatory compliance costs.
- (16) While some of this reflects the need to increase the transparency and accountability for the water sector, some of it is self-imposed. Regulatory reporting requirements by Ofwat have significantly grown in recent years and not taken account of more modern approaches such as open data. For example, Ofwat's guidance for its annual performance reports has gone from 69 pages in 2016 to 193 pages in 2023.¹ Every price review, companies are required to manually submit business plan data tables (using excel spreadsheets), some with thousands of data points – they have increased from 116 at PR19 to 171 at PR24 – on top of many more data requests to water companies that are not published.²
- (17) Complexity can be justified. While Ofwat has to take account of better regulation principles, and is required to report on progress to reduce regulatory burdens in its annual report under the Regulatory Enforcement and Sanctions Act 2008, this has clearly not worked. Ofwat faces no meaningful incentive to ensure that its policies and processes are themselves cost efficient and delivering best value for customers and the environment.

1.3 Water transfers and infrastructure

Q4: What challenges are faced at present when attempting to transfer water and how could these be mitigated?

Q5: Does RAPID currently have the right scope? Should it be expanded? If so, please elaborate.

- (18) We agree with reviewing the Regulators' Alliance for Progressing Infrastructure Development (RAPID).
- (19) In terms of water transfers, we consider the following are key barriers:
- **Low confidence in the reliability of supply.** Each water company has a legal duty to supply its own customers (under section 37 of the Water Industry Act 1991) but not the customers of another company. This makes companies reluctant to trade because there is limited confidence that their supply needs will be met, despite any contractual agreements.
 - **Overly restrictive planning and cautious regulations.** Without a permissive planning system, water companies are unlikely to have sufficient supply available to transfer to neighbouring

¹ See Ofwat, RAG 4.06 and RAG 4.11.

² See Ofwat, [PR24 final methodology submission tables and guidance](#), accessed January 2024.

companies. Unlocking planning will help to build supply and confidence to transfer water more regularly. Similarly, concerns over how regulators will interpret the movement of water across the country between catchments may hold back agreements.

- **Weak and complicated financial incentives.** Because of how Ofwat accounts for water transfers when it sets price controls, companies would face no incentive to transfer water. Ofwat introduced water trading incentives as part of the 2014 price review and intends to keep them for the 2024 price review. However, they are weak, complicated and do not provide long-term confidence that exporting water companies will receive revenue over time to sufficiently cover the costs of providing supply or investing in new water resources.

(20) Ofwat and RAPID have started to consider these issues and we encourage the government to accelerate a review. It is too important to neglect this.

2. COMPETITION

2.1 Enabling wider use of the Specified Infrastructure Project Regulations (SIPR)

Q8: Should the government legislate to amend the test to allow more projects to be delivered under the Water Industry Act 1991 and SIPR? Please provide evidence.

(21) We consider the government should consider removing unnecessary barriers from the current arrangements where they are preventing new projects from being delivered under SIPR where it can provide clear benefits for customers. Greater competition isn't always the answer, but SIPR is likely to be better than direct procurement for customers in certain circumstances.

2.2 Streamlining application process for National Significant Infrastructure Projects (NSIPs)

Q11: Should the Planning Act 2008 definition of water NSIPs be updated? If your response is yes, what should the new definition be?

(22) We support removing barriers to new infrastructure projects. As well as amending the definition of NSIPs, we consider the overall planning system and permitting system should be reformed to remove unnecessary delays, speed up approvals and ultimately unblock new infrastructure development.

2.3 Use of comparative performance targets

Consultation proposal (6): In energy and water, regulators should consider introducing greater use of comparative metrics to promote greater competition on performance between companies.

(23) Comparative performance targets are well-established in the water sector. Supported by a clear focus on outcomes and symmetrical financial incentives, they can provide water companies with the flexibility to innovate, stretch their performance and create value for customers and the environment.

(24) However, they must be accompanied by a 'fair bet' which ensures that investors have a realistic prospect of securing financial returns that reflect the costs of investment, where a company does well. Failure to do so will increase risk, deter investment and raise customer bills for no clear benefit.

- (25) Ofwat has already extended the use of comparative metrics with financial incentives at PR24. They already cover all key areas and there are no obvious gaps. We instead recommend that Ofwat considers ways to overcome the unintended consequences of comparative targets, such as deterring collaboration between water companies – something that is likely to be increasingly required.

3. PROTECTING VULNERABLE CUSTOMERS

3.1 The need for a multi-sector Priority Services Register

Consultation proposal (7): The government will coordinate and work collaboratively with regulators, industry, and devolved administrations to explore the creation of a single, multi-sector Priority Services Register.

Q23: What are your views on the creation of a single, multi-sector Priority Services Register?

- (26) We are open to the long-term development of a single multi-sector Priority Services Register (PSR) and are willing to be involved. We encourage the government to build on the substantial collaborative work already underway between the energy and water sectors.
- (27) However, it is important not to underestimate the complexities and challenges involved. There are legal risks relating to the sharing of personal data under the General Data Protection Regulations (GDPR) that need to be managed by all organisations involved.
- (28) At the same time, any mechanism should have a clear purpose and be targeted and focused. In the water sector, companies are responsible for owning their relationships with their residential customers. Water companies should be able to balance providing excellent customer service to individual households with the implementation and management of a cross-sector priority services system that supports vulnerable customers during emergency incidents.

Q24: What are the best data sources of vulnerability that the PSR should use? Who should be able to input data?

- (29) Vulnerability data could either be sourced 'locally' from customers, their relatives, neighbours or carers or from other 'formal' agencies, such as social housing providers, local authorities or the NHS. Either approach should recognise that not all customers with vulnerabilities are able to provide the information themselves, such as those with communication difficulties. All methods need to be assessed for compliance with applicable data protection laws.
- (30) The data sources for a single, multi-industry PSR also depend on its purpose – for example, a register designed to provide physical safety in the event of a water or power supply failure may require health data.

Q25: What vulnerabilities and services should the PSR cater for?

- (31) We consider the primary focus of a single multi-sector PSR should be those vulnerabilities that would require support in the event of an emergency.

- (32) Our initial view is that given the sensitivity of financial vulnerability and the nature of that data, a single multi-sector PSR should not include financial vulnerability data. We consider sharing data relating to financial vulnerability is better handled by bespoke arrangements by individual water companies at this stage.
- (33) The data stored within a multi-sector PSR could be based on a outcomes-based format. Different needs can lead to the same required outcome – for example, people with mobility, physical health or cognitive impairment issues may all require assistance during an emergency.

3.2 Communication and promotion of affordability support

Consultation proposal (8): For UKRN to convene work with regulators, industry and the government to ensure greater consistency in how affordability support and bill changes are communicated, within and across sectors, looking at both household and business customers.

Q26: How can existing affordability support be better communicated to increase customer awareness?

- (34) We support exploring whether there can be greater consistency in communicating affordability support and bill changes across sectors, but we note that sector-specific messages are likely to still be required. The household water sector in England is a regulated monopoly and the business retail market in England is open to competition with price controls for the majority of business customers. Comparisons to more competitive sectors may cause confusion and so tailored messaging is likely to be desirable in most cases.
- (35) Third parties such as local authorities and charities can play a role in communicating affordability support for vulnerable customers.

4. DUTIES AND FUNCTIONS

Consultation proposal (10): The government, led by sponsor departments, will work with regulators to conduct a thorough review of duties, with a view to rationalise duties and enable regulators to focus more on economic duties and functions. This exercise will consider the following:

- a) *Which duties are still essential in today's economic landscape and whether they are fit for purpose.*
- b) *If there are unnecessary regulatory burdens, the government should consider how best these could be streamlined or reassigned to another organisation.*
- c) *Existing duties should be reviewed to ensure they are outcome focused and delivering their intended outcomes.*
- d) *Considering how the duties all interact with one another, where there are trade-offs, and understand how these are impacting the sectors. To avoid continued layering, any new duties would need to be thoroughly considered between regulators and the government on how best to interpret these duties and how to deal with interactions and tensions between the multiple duties.*

Q28: What would be a suitable timeframe in which to conduct a review of these regulators' duties?

- (36) Any review of regulators' duties must take account of the regulatory rhythms in each sector, to avoid putting future investment at risk through excessive uncertainty. Reviewing regulators' duties during the height of a price review is likely to create unnecessary uncertainty and risk, deterring investment and increasing customer bills.
- (37) In practice, it may not be feasible to review the duties of all economic regulators at once due to the differences in their regulatory cycles.

Q29: What is an effective remit for economic regulators? How can regulators improve delivery of both economic and non-economic functions?

- (38) Compared to other regulators, Ofwat has relatively few non-economic functions. While this enables Ofwat to focus on promoting the interests of consumers including by facilitating efficient financing for investment, without regard to wider priorities can risk Ofwat taking decisions that lead to under-investment or significantly delayed delivery of key national infrastructure and environmental improvements.
- (39) An integrated water policy or strategy, supported by the proposed infrastructure needs assessment, would enable a holistic view of policy making which could support the delivery of much-needed investment in networks and the natural environment. Ofwat should not lose sight of these wider priorities and challenges.

Q30: The government's provisional view is that regulators' economic core duties are:

- (a) **Fostering economic growth;**
- (b) **Ensuring effective competition;**
- (c) **Delivering Net Zero and protecting the environment;**
- (d) **Protecting consumers.**

Are these the correct set of core economic duties regulators should be focused on? If not, what should regulator duties be focused on?

- (40) These are the wrong duties and would neglect the public's concerns and priorities. They fail to reflect the increasingly urgent need for Ofwat to secure long-term investment and resilience.
- (41) Removing Ofwat's duty to ensure companies can finance their functions will put much-needed investment in the sector at risk. Without it, Ofwat will have no requirement to set revenue allowances that facilitate necessary investment in the sector. Facilitating efficient investment is in the long-term interests of consumers and the environment and requires Ofwat to have an explicit duty to maintain the confidence of existing and prospective investors, especially as the sector faces substantial new investment needs.
- (42) Similarly, removing the resilience duty is likely to have significant consequences for investment. It would reverse previous government policy to introduce the duty in the first place, which was designed to overcome emerging challenges through long-term resilience and investment. Since the introduction of the resilience duty in 2014, Ofwat has changed its regulatory approach to support investment, such as by challenging the sector to reduce leakage after decades of

unambitious targets. Removing it would both send the wrong signal and lead to significantly worse outcomes in an increasingly uncertain world.

Q31: What are key benefits of this approach? What might any risks or unintended consequences be?

- (43) Removing Ofwat’s financing and resilience duties is likely to have materially negative impacts on inward investment, resilience and ultimately customers and the environment.
- (44) We consider pursuing consistent duties between regulated sectors provides minimal benefit – in practice, investors are able to sufficiently understand and engage with each sector’s specific circumstances.

5. APPEALS

5.1 Appeals panels, deadline extensions and consumers

Consultation proposals (11):

- a) *The government should provide the CMA with the necessary powers to appoint more than three members, where considered appropriate, in a group to hear appeals.*
- b) *The government should provide the CMA with the necessary powers to directly extend, when considered appropriate, a deadline in water and energy appeals, rather than needing to request an external party for the extension.*
- c) *The government will explore whether to give the CMA and CAT the necessary powers to be able to recover reasonable costs from the losing party incurred by an intervener when they have acted on a ‘consumer interest’ basis.*

Q32: The government welcomes your views on enabling the CMA to have the additional flexibility to appoint larger groups to hear non-price control water appeals and energy appeals. What might be the downsides of this approach? Do you have any evidence of alternative models e.g., international comparators?

- (45) We support enabling the Competition and Markets Authority (CMA) to appoint larger panels. The experience of a larger panel during the PR19 redeterminations was positive, with the five-person panel enabling a greater variation of skills and experience of panel members.

Q33: What are the risks to consider before giving CMA power to directly extend deadlines in energy and water appeals? What opportunities do you feel this proposal may create? Do you have any evidence regarding this proposal that the government should consider?

- (46) We support giving the CMA the power to directly extend deadlines in water appeals, which should remove steps and streamline the process.
- (47) However, to protect the interests of stakeholders, parties should have an opportunity to comment on any proposals by the CMA to extend the default initial statutory deadline, with all such comments taken into account by the CMA.

Q34: In what other ways can the consumer voice be represented during energy, water and telecoms appeals?

- (48) CCW, the consumer body in the water sector, has played a prominent role in the last three water price redeterminations, making submissions and participating in hearings. The CMA also heard from the consumer representative groups for each appellant company (the ‘independent challenge groups’) during the PR14 and PR19 redeterminations.
- (49) The redetermination process itself allows all interested stakeholders to submit representations during the process. The level of transparency during a redetermination process, where the vast majority of substantive submissions from all parties are made public (subject to redaction of confidential and commercially sensitive information) enables interested stakeholders to contribute and inform the CMA’s decisions.
- (50) In contrast, energy-style appeals are significantly less transparent. Fewer submissions are public, and the CMA only publishes a summary of its provisional findings. Interested parties can only make representations if they are accepted as a formal intervener in the process (which may have cost consequences) or must exceptionally convince the CMA to accept a submission.
- (51) Maintaining the redeterminations process is therefore the best way to maintain and enhance the voices of consumers and other stakeholders.

5.2 Water sector appeals

Consultation proposal (13): The government will seek to change Ofwat’s price control appeal regime from a redetermination to an energy style appeal regime and to consult on the detail of how this will be implemented.

Q37: What are the costs and benefits of moving the regime from a redetermination to an appeals standard? Do you have any evidence for this, for example, from other regulated sectors or international examples of appeals regimes?

Q38: What risks of making this change should be government be aware of?

- (52) As the consultation notes, the current redetermination approach is seen as the ‘gold standard’ by industry and investors. We are deeply concerned that overturning decades of regulatory precedent will create profound unintended consequences of deterring or raising the costs of investment – at the same time that the sector needs to attract new investment to deliver substantial improvements for customers and the environment.
- (53) Reflecting the issues raised by the consultation, we consider the following as key arguments for retaining a redetermination process:
- **Limited consistency with other sectors isn’t deterring investment.** Investors are able to sufficiently engage with and understand each sector’s specific characteristics, including the appeals regime. Indeed, artificially creating consistency by overturning decades of regulatory consistency and certainty risks deterring or raising the costs of investment. From our engagement with investors, we have seen no evidence that they are asking for greater

consistency. The Global Infrastructure Investor Association (GIIA) supports maintaining the current approach because it enables a merits-based assessment of all relevant issues.³

- **An energy-style process isn't necessarily less intensive or complex – and they may be justified to ensure robust decisions.** Four out of 17 water companies requested redeterminations in 2019, with only one company in 2014 and 2009, and none in 2004. This compares to eight out of eight energy companies appealing licence modifications in 2021. Similarly, during the appeals process for the RIIO-2 price controls, the CMA noted the “intensive and substantial” exercise involved, citing over 4,000 pages of submissions.⁴ Under the current approach for water, the CMA already uses considerable flexibility to manage the scope of appeals, for example choosing to deprioritise the retail controls in its PR19 redeterminations. While minimising undue complexity and regulatory burdens is desirable, it should be compared to the potential benefits. Given investment needs in the water sector are likely to run into the hundreds of billions of pounds over the next few decades, as recognised by the National Infrastructure Commission, some level of complexity is justified to ensure robust and balanced decisions.⁵
 - **The CMA provides an important safeguard for both companies and customers.** As previous redeterminations in the water sector have shown, the CMA is able to consider decisions ‘in the round’ to ensure that all relevant factors are taken into account. Unlike the existing approach in the water sector, an energy-style process may risk some issues not being considered material, despite having a key impact on the regulated business, or could see ‘cherry picking’ that results in a disjointed price review package that undermines investor confidence and ultimately leaves customers and the environment worse off.
 - **Greater consistency and reduced complexity can be achieved in other ways.** Nothing is stopping regulators from adopting consistent approaches and assumptions, where this makes sense and appropriately reflects the specific circumstances of each sector, and the UKRN already does this. Similarly, Ofwat can reduce the complexity of its regulatory framework to reduce administrative burdens on industry and the CMA during the redetermination process. This is a better way of saving money than throwing out decades of regulatory certainty.
- (54) We urge the government to reconsider adopting a regime that would significantly increase regulatory risk and uncertainty, and therefore the real cost of capital. Deterring investment and increasing bills to reduce administrative burdens on public bodies, while also reducing the accountability of the regulator, is not in the public interest. If the government wants to reduce burdens, it should instead press Ofwat to remove any undue complexity.
- (55) We also note that any change would require changes to both legislation and water company licenses. If taken forward, they must be subject to full consultation, supported by robust evidence and a full impact assessment, recognising that even such a consultation may put future investment at risk.

³ See GIIA, ‘[GIIA champions water investment in UK parliament](#)’, August 2023.

⁴ See CMA, ‘[Cadent Gas Limited \(etc\) vs the Gas and Electricity Markets Authority: final determination on costs](#)’, 22 June 2023.

⁵ See National Infrastructure Commission, ‘[Second National Infrastructure Assessment](#)’, October 2023.