

## Department for Business and Trade

### Smarter regulation: extending the growth duty to Ofgem, Ofwat and Ofcom

#### Background to CIWEM

CIWEM is the leading independent Chartered professional body for water and environmental professionals, promoting excellence within the sector. Established in 1895 and with over 11,000 members globally, the Institution provides independent commentary on a wide range of issues related to water and environmental management, environmental resilience, and sustainable development. CIWEM welcomes the opportunity to respond to the consultation on extending the growth duty to Ofgem, Ofwat and Ofcom.

In drafting this response, we received input from expert professionals who are members of CIWEM.

#### Consultation questions

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

Our comments relate to Ofwat only. We do not agree that Ofwat should be included. The water industry faces considerable need to improve performance on multiple fronts which include:

- The resilience of the supplies provided to customers in the face of population growth, demographic change and climate change;
- harm to the environment resulting from its abstractions and discharges;
- its ability to engage customers in improved water-using behaviours, which has been harmed by loss of confidence and trust in it, and
- its ability to sustainably finance the investment needed to deliver the kind of performance standards which many customers, campaign groups and politicians want to see.

Applying a growth duty to Ofwat, hung under deregulation legislation, will address none of these challenges and, given how environment and sustainability needs are often presented as "red tape" and barriers to growth risks perpetuating and exacerbating existing water challenges.

Customers and the environment have suffered from the effects of deregulation particularly over the past decade, including failures to keep a check on corporate excesses and a strong emphasis on maintaining low bills when there was a need for higher levels of infrastructure investment and maintenance. Further emphasis on deregulation as a means of enabling economic growth would be both a fallacy and wholly unacceptable. Stronger regulation of the water industry, not less, is essential to driving longer-term economic growth off the back of improved sustainability and resilience.

If Ofwat was included in the scope of the growth duty, regulations that protect consumers, other businesses and the environment would risk even lower levels of enforcement and prioritisation in investment decisions than exists currently and which has been widely observed to be inadequate. This would only harm the public and the economy in both the short and long-term.

We acknowledge reference in the consultation to existing growth initiatives such as innovation funds and programmes. We welcome and support Ofwat's innovation fund and consider that there is considerable need for innovation within the water industry in many areas not least process efficiency and new technologies. These represent potential growth opportunities however we do not consider there is any need for a specific duty to build upon these kinds of initiatives.

## **2. What additional guidance would be beneficial to support effective implementation of the growth duty?**

The growth duty should not apply to Ofwat. It would undermine existing regulatory compliance and processes which are necessary to ensure water is planned and managed safely so that water companies limit the risks of droughts, floods and pollution. Such events have significant economic consequences; Ofwat's priority must be to ensure the water industry prevent these risks.

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

Ofwat and the water sector would not benefit from the growth duty. Water companies operate as regional monopolies providing an essential public good. Whilst there has been competition to a point this has not extended to domestic customers which constitute the bulk of public water supply and would form the basis of any market driven direction and growth priority. Ofwat cannot encourage growth in the same way as for other regulatory bodies in competitive industries. With the performance challenges of the water sector at the present time, a growth duty would only undermine efforts to establish long-term investment and delivery programmes independent of political interference.

The only beneficial contribution Ofwat can make to growth aside from enabling the fundamental contribution the water industry already makes through providing essential

resources, would be from providing for the avoidance of economic loss and damage to infrastructure and the environment resulting from inadequate capital and operational expenditure. However, this does not appear to be the kind of priority the consultation or the Statutory Guidance on the Growth Duty are pointing towards given the emphasis in the guidance on minimising regulatory barriers, self-regulation and assurance.

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

The growth duty, as it appears to be framed by the legislation and regulations would undermine existing duties, particularly Ofwat's resilience duty.

**5. Is there any evidence that this will add significant costs to regulators or business? If so, why and what would those costs be?**

Deregulation in the context of the water industry has always been justified on the basis of cost reduction, which may be the observed outcome in the short term but in the almost certain event that it leads to reduced investment, resilience, and environmental performance it will add to costs to businesses, customers, and the wider economy in the longer-term.

In the long run, it will add significant economic burden on the water industry if growth and short-term savings are prioritised over maintenance, repair, and upgrade of the existing infrastructure. The water industry cannot be operated to short-term priorities but must be set in the context of the long-term sustainability, resilience and recovery of natural resources and ecosystem services. This is the most fundamental contributor to growth which can be unlocked for this industry.

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

The primary means by which the water industry can enable growth is if it is regulated effectively for the long-term to deliver supplies resilient to climate change impacts and wastewater and sewerage services which do not have a negative impact on other economic areas of activity, such as tourism or food production (e.g. shellfish). It can enable housing development more sustainably through the delivery of whole-catchment nutrient management schemes rather than a myopic focus on wastewater treatment works upgrades.

Current Government policy direction is running counter to such outcomes with water company investment programmes coming under politically expedient pressure from Ministers because of short-term customer bill impacts, and one-dimensional approaches to managing nutrients in sensitive waters only through wastewater treatment works upgrades which are often expensive, high-carbon solutions.

A more appropriate duty to be placed on the water regulator would be an overarching sustainability (sustainable development) duty that sits above all its primary duties and

prioritises long-term, low-carbon, multi-beneficial infrastructure and service delivery focused on environmental, social and economic outcomes. We strongly urge the Government to prioritise such a duty as a long-term growth and economic resilience enabler. Ofwat's existing sustainability duty is a secondary duty only, which underpins the regulator's ongoing focus on short-term cost rather than long-term value to society and economy.