

Marine Conservation Society response to the consultation on extending the Growth Duty to economic regulators Ofgem, Ofwat and Ofcom – August 2023

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

No.

We do not believe that Ofcom, Ofgem and Ofwat should be included in the growth duty. Ofwat, Ofgem and Ofcom already invest significant time and resources into the economic return of their business plans. By further emphasizing the importance of economic growth above all else, the risk of the Government failing to meet its own obligations under the Environment Act grows significantly. It also stands in opposition of the government's own pledge to reach net zero by 2050.

What's more, Ofwat describes its own top strategic priority and protecting and enhancing the environment—which stands in stark contrast to the imposition of a growth duty. Adding specification of a growth duty is also highly likely to undermine the own Governments guidance which named 'protect and enhance the environment' as the top strategic priority for Ofwat and the water industry.

The terms laid out in the consultation document run the risk of these bodies being cemented as purely economic regulators with no concern given to the environment. With reference to Ofwat and Ofgem in particular, there exist specific statutory obligations relating to the environment. More broadly, the functioning of Ofwat and Ofgem has huge implications for the environment.

We are particularly concerned about the implications of a growth duty would exacerbate the existing issue of widespread sewage pollution. While the Storm Overflow Discharge Reduction Plan (SODRP) sets out broad targets and a roadmap, it doesn't in and of itself contain legal duties. While this investment within PR24 is specifically noted in the consultation Annex as an example of growth- we find it reproachable that the Government is wanting to make it a legal requirement for growth. Given that Ofwat is already an economic regulator- this duty would be a further step away from the priority of environmental protection and undermine long term economic resilience. It is highly likely to drive further profits for water companies and increase costs for domestic customers- who notably have no choice of suppliers for water.

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

We do not believe a growth duty should be implemented. Guidance does not prevent the growth duty encouraging the named regulators from prioritising economic return over environmental benefits, nor can guidance prevent the potentially irreversible environmental harm which will occur as a result. Prevention of environmental harm should take precedence over any potential growth, as a healthy environment is key for the maintenance of a resilient

economy. The impact of environmental harm is greater than the economic returns a growth duty would produce.

The 2013 consultation on duty to regard growth for non-economic regulators stated that, “2.3 To be clear, compliant growth is the objective, not non-compliant or illegal economic activity that undermines markets to the detriment of consumers, the environment and legitimate businesses”. Despite this assurance, we have seen the continued undermining of the Environment Agency since growth duty was imposed on it. To apply this legal duty to Ofwat would further undermine its ability to function as a stringent regulator of water companies and that the public are able to see that it is fulfilling its obligations of ensuring water companies are fully undertaking the wastewater treatment and not discharging sewage into our rivers and seas, causing adverse harm.

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

We cannot foresee any tangible benefits aside from economic. Prioritising economic growth of our regulators, particularly those at such a close nexus with the environment, is short-sighted. We do not accept the justification of imposing a growth duty on these organisations, nor do we believe it is necessary.

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

We foresee the growth duty negatively impacting existing statutory duties, from both the government and the named organisations. As the government’s own 2022 report stated, “increasing complexity of existing duties risks both stifling regulatory decision making and limiting the effectiveness of new duties where they are introduced”.

Ofwat and Ofgem are already bound by statutory duties relating to the environment, with Ofwat going so far as to state that protecting the environment is their top strategic objective. The imposition of an additional growth duty would actively conflict with these existing duties. Ofwat already functions as an economic regulator, and imposing the growth duty would only function to further erode its responsibilities toward the environment.

Under regulation from Ofwat, water companies have already shown scant regard for the environment, and placing further emphasis on economic growth through growth duty will further undermine their environmental responsibility. A pro-growth agenda under a privatised system essentially means that water companies will further increase profits at the expense of their customers during a cost-of-living crisis.

Furthermore, the growth duty is likely to be hinder the Government’s existing duties to halt nature’s decline by 2030; to reserve nature’s decline by 2042; and to reach net zero by 2050. It will also hinder achieving the plethora of targets under the Environment Act and Climate Change Act.

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

N/A

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

Prioritising economic growth over environmental benefits will—in the long-term—negatively impact growth more than anything. A resilient environment is the lynchpin of a resilient economy. The Dasgupta review stated that “Our economies, livelihoods and well-being all depend on our most precious asset: Nature”. Regulatory bodies can contribute to economic growth by protecting and restoring nature. As such, we suggest that a green growth duty would be more fitting. This duty would impose a condition by which regulators are actively conserving the environment with a side effect of economic growth – rather than a purely economic growth duty with a side effect of harming the environment.

In order to improve growth through a green growth duty, Nature Based Solutions (NBS) should be rolled out at catchment scale, with care given to placement and type of solution. NBS provide long term and often cost-effective solutions which provide multiple benefits for the environment, communities, and the wider economy.

Despite the fact that nature’s economic value has been repeatedly evidenced, Ofwat’s PR24 methodology does not refer to natural capital. This indicates that Ofwat already fails to prioritise the environment in their economic decisions—despite citing the environment as their top strategic priority. Perhaps as a consequence of Ofwat’s lack of focus in this area, water companies often exclude NBS in their planning. This represents a huge missed opportunity, and government and regulators would be better served directing their attentions to this area, rather than to the imposition of a growth duty.