



Department for
Business & Trade

Government Response to:

SMARTER REGULATION

**Consultation on extending the
Growth Duty to the economic
regulators Ofgem, Ofwat and Ofcom**

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Introduction

1. The productivity of British businesses is central to driving economic performance and growth of our economy. Economic growth is felt by every household, as it directly impacts individual prosperity. An economy that prioritises growth, is an economy which is better able to attract businesses to our shores, better able to innovate, better able to serve households, and delivers prosperity across our nation.
2. Regulation must be used only where necessary and be implemented in a way that provides the right foundations for our economy to thrive. Independent regulators themselves have the power to impose significant regulatory burdens on the sectors that they cover, so it is imperative that they do so in a way that is cognisant of the wider economic impacts.
3. The Growth Duty does not currently apply to Ofwat, Ofgem and Ofcom (responsible for the regulation of the water, energy and telecoms sectors respectively). These sectors alone account for 13% of annual private UK investment. Given the significant size and importance of those sectors, and following the consultation on extending the Growth Duty, the Government will apply the Growth Duty to these three regulators to ensure that they consider how best to promote economic growth as they carry out their core functions.
4. The Growth Duty is set out in Section 108 of the 2015 Deregulation Act (“the 2015 Act”) which establishes that any person exercising a regulatory function must have regard to the desirability of promoting economic growth. This requires the regulator exercising a regulatory function, to do so in a way which ensures that regulatory action is taken only when it is needed, and that any action taken is proportionate.
5. A consultation on the scope of the Growth Duty was first held in 2013 and in its response the Government announced its intention to apply the Growth Duty to over 50 regulators. A subsequent consultation on additional regulators to be brought into scope of the Growth Duty was launched in December 2014 and closed in January 2015. A final consultation on the scope of the Growth Duty was held between February and March 2016. This final consultation also sought views on the statutory guidance for regulators on discharging their obligations under the Growth Duty. The Growth Duty was subsequently applied to the

named regulators and regulatory functions as set out in The Economic Growth (Regulatory Functions) Order 2017.¹

6. In May 2023, the Government published the [Smarter Regulation to Grow the Economy Policy Paper](#) – the first in a series of ambitious announcements in the regulatory space.² Alongside this Government response to the consultation on extending the Growth Duty, we are also publishing a [consultation](#) on updating the Growth Duty statutory guidance, and a [consultation](#) on strengthening the economic regulation of the energy, water and telecoms sectors. This is complementary to the ongoing call for evidence on the regulatory landscape as part of the Government’s work on Smarter Regulation.
7. The Government is committed to boosting the growth of the UK economy. We are considering the use of all levers to ensure delivery of a strongly growing UK economy. In the decades since privatisation, we have seen the UK’s approach to regulating the sectors regulated by Ofcom, Ofgem and Ofwat successfully deliver competition, infrastructure investment and consumer protections.
8. Given the economic importance of these sectors, and that these sectors are foundational parts of the economy that can impact the costs of doing business across sectors, the Government sought to explore how Ofcom, Ofgem and Ofwat, as the economic regulators for these sectors, could best contribute to future economic growth.
9. The role of Ofcom, Ofgem and Ofwat is particularly important in the current economic context of high inflation, businesses and consumers struggling with high prices, and the cost of living. In the long run, productivity gains are a significant part of what determines the UK economy’s capacity to grow sustainably without further generating inflation.
10. The UK also faces investment challenges to efficiently deliver the infrastructure needs of current and future consumers of energy, water and (to a lesser extent) telecoms. We must also ensure that these investment needs consider intergenerational fairness for consumers. We therefore want these sectors to strive for maximum efficiency over a sustained period.
11. A well-regulated economy will deliver efficient outputs from its inputs, and thus drive economic growth and productivity. Applying the Growth Duty to Ofcom,

¹ <https://www.legislation.gov.uk/uksi/2017/267/made>

² National Infrastructure Commission: Strategic investment and public confidence, October 2019, p9

Ofgem and Ofwat will help create an efficient system delivered through effective growth-focused regulation.

12. This consultation sought views on whether Ofcom, Ofgem and Ofwat should be added to the scope of the Growth Duty as provided for in the 2015 Act. Views were also sought on whether and how the Growth Duty would help ensure that Ofcom, Ofgem and Ofwat prioritise growth within their sectors, supporting businesses and the investment needed to ensure a quality service to current and future consumers.

13. The following questions were asked in the consultation:

13.1. What additional guidance would be beneficial to support effective implementation of the Growth Duty?

13.2. How would you envisage a regulator's actions changing as a result of a Growth Duty? Please outline any benefits you can foresee.

13.3. How do you foresee the Growth Duty interacting with existing statutory duties? Please provide examples.

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

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

Conducting the Consultation

14. The consultation ran from 20th July 2023 to 24th August 2023 (5 weeks) and received 58 written responses from a range of stakeholders including industry representatives, businesses, regulators, and advocacy organisations.

15. 33 responses were received from industry representatives, including companies working in the supply and delivery of services in telecoms, postal, water and energy sectors. Two responses were received from investors and five from other private businesses and representative groups. Nine responses were received from advocacy organisations, representing environmental and consumer values. Three government bodies (including regulators), one legal representative, and five members of the public responded. (*Detail in Table One*)

Stakeholder	Number of Responses
Industry Representatives - <i>Energy Sector</i>	19
Industry Representatives - <i>Water Sector</i>	4
Industry Representatives - <i>Telecoms Sector</i>	6
Industry Representatives - <i>Postal Sector</i>	2
Industry Representatives - <i>Multi – Utility</i>	2
Investors	2
Private Business	5
Advocacy Organisations - <i>Environmental</i>	8
Advocacy Organisations - <i>Consumer</i>	1
Government Body	3
Legal Representative	1
Member of the public	5
Total Responses	58

Table One – Breakdown of Responses

Key Themes

16. The key themes emerging from the responses were:

- 16.1. The Environmental impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat. Concerns for environmental protections and the impact upon the environment were raised by both environmental organisations and other responders. Concerns that the extension of the Growth Duty would impact on the attainability of the Net Zero goals were also raised by Industry representatives and environmental organisations. Positive sentiments were raised by some within industry and investor responses who saw that the Growth Duty would support the delivery of Net Zero goals. This response outlines why the Government does not see environmental and economic goals as being in conflict.
- 16.2. The Consumer impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat. Stakeholders raised concerns that non-domestic (business) consumer protections and/or domestic consumer protections may be reduced by the extension of the Growth Duty to Ofcom, Ofgem and Ofwat. This was a theme common to the *Environmental* section as well, that the Growth Duty may encourage weaker protections. The Government has been clear this is not and will not be the case.
- 16.3. The Investment and Infrastructure impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat was considered as largely positive. The Growth Duty was seen to be demonstrating Government's commitment to delivering investment and the associated infrastructure needs.
- 16.4. The Reporting and Guidance impact of extending the Growth Duty was raised as an important consideration. Multiple respondents called for clarity over what 'growth' is, and how Ofcom, Ofgem and Ofwat can deliver it. Improved guidance and reporting were considered by multiple respondents to be important factors for ensuring regulatory transparency and accountability.
- 16.5. These key themes are addressed in the Section '*Review of Key Themes*'. They are not an exhaustive account of all responses relating to the themes, but instead an overview of the most frequently raised points across all of the consultation questions.

17. Methods of analysis

17.1. Written consultation responses were analysed using mixed methods. Closed components of questions were analysed with standard dichotomous and multiple-choice quantitative techniques. Open ended components of questions were analysed using qualitative techniques involving breaking the text down into thematic categories, coding responses, and taking into account positive or negative sentiments. Those thematic categories were then grouped and consolidated to draw out common perspectives among the respondents.

18. During the consultation period the Department for Business and Trade (DBT) also engaged with consultation stakeholders through virtual meetings, and email (these engagements are included in Table One as all those engaged submitted a response). The consultation period was initially set for a 4-week period but was extended by 1 week while the consultation was open. All respondents to the consultation were subsequently contacted by email when the consultation period was extended by one week and offered a meeting. This was to ensure that any and all further considerations would be captured.

Summary of Responses

19. In the following sections of this document, we set out the context, review of key themes received and the Government's response in respect of the Growth Duty measures together with the next steps to be taken.

20. Of the 58 responses received by this consultation, the majority supported the expansion of the Growth Duty (62%, n=36). Environmental organisations were in opposition (n=7), largely on grounds of the risk to the environment. Few utilities companies were in opposition (n=5), and those that were highlighted concerns with the interactions with existing duties, the balancing of duties, and the role of Strategic Policy Statements (SPS).

Response Sentiment Breakdown

<i>Support</i>	<i>Oppose</i>	<i>Neutral</i>
36	15	7

Table Two – Overall Responses

Context

21. Section 108 of the 2015 Act establishes that a person exercising a specified regulatory function must have regard to the desirability of promoting economic growth in carrying out that function, known as the 'Growth Duty'.

22. The 2017 Order specifies the regulators and regulatory functions that the Growth Duty applies to.³ This currently applies to more than 40 different regulators. The Growth Duty is supported by statutory guidance issued under s110(1) of the 2015 Act. All those within the scope of the 2017 Order must have regard to the guidance when exercising their regulatory functions⁴. The guidance assists regulators when they are giving consideration to allocating resources, setting enforcement policies, and making sanctioning decisions. A [consultation](#) on the Growth Duty statutory guidance is currently live and this includes questions on reporting.

23. Section 16 of the Enterprise Act 2016 inserted a new section 110A into the 2015 Act and requires persons in scope of the Growth Duty to publish an annual performance report including the regulator's assessment of the views of business on the effect of the Growth Duty and the impact of the Growth Duty on them.

³ The Economic Growth (Regulatory Functions) Order 2017: <https://www.legislation.gov.uk/uksi/2017/267/made>

⁴ Section 110(3) of the 2017 Order

Section 110A has not yet been commenced. However, the Government is currently consulting on the updated Growth Duty statutory guidance that includes detail on potential reporting functions.

Review of Key Themes

24. **The Reporting and Guidance** impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat was a consistent theme across the consultation responses across all the questions asked.

24.1. 30% of respondents raised the requirement for further guidance to support effective implementation of the Growth Duty. It should be noted that this does not mean that 70% of respondents thought the existing guidance was suitable, merely that respondents returned a response that was not explicitly calling for guidance.

24.2. Multiple respondents called for clarity in a refreshed statutory guidance over what 'growth' is for the purposes of the Growth Duty. There was a clear request for any refreshed Growth Duty guidance to clearly specify the breadth of application, the ways in which growth and Net Zero could/should be delivered alongside each other, the interaction between existing duties and the Growth Duty, and provide examples of the application of the Growth Duty to regulatory decisions by those regulators to which it already applies.

24.3. Furthermore, there was a concern that without reporting there would be little benefit to the Growth Duty extension. A common request was that regulators use any reporting requirement of the Growth Duty to more fully explain how they have had regard to economic growth in each decision they make.

24.4. Improved reporting was also considered an important factor for ensuring regulatory transparency and accountability. Concerns were raised that reporting requirements may be duplicative of existing reports, may result in metrics that are incomparable across the range of regulators, and may require regulators to fund additional reporting and monitoring costs.

25. **The Consumer** impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat was a consistent theme across the consultation responses across all the questions asked.

- 25.1. 50% of respondents addressed the role of the consumer, or the interaction of the Growth Duty with consumer protections within their responses.
- 25.2. The most frequently addressed point was that any extension of the Growth Duty should not undermine or contradict existing consumer protections. Specifically, respondents sought clarity as to the scope of the Growth Duty, its impact upon other duties, and called for a clear commitment that the Growth Duty would not compromise consumer protections.
- 25.3. Multiple respondents also focused on the potential for the Growth Duty to lead to the pursuit of growth at the expense of consumers. There were concerns that regulatory decision making would be at the expense of consumers were the Growth Duty to be implemented.
- 25.4. However, a number of responses also suggested that the Growth Duty would be in favour of consumers, as they saw that's its implementation would lead to a renewed focus on growth, and therefore longer-term investment decisions that ultimately benefit consumers.

26. **The Investment and Infrastructure** impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat was a consistent theme across the consultation responses across all the questions asked.

- 26.1. 56% of respondents raised the interaction between the Growth Duty, and investment and infrastructure within their responses. The Growth Duty was frequently seen to be demonstrating government's commitment to delivering investment and the associated infrastructure needs.
- 26.2. The most common theme was the view that extending the Growth Duty to Ofcom, Ofgem and Ofwat would assist in supporting inward investment and enable investors to plan with greater certainty. Multiple respondents saw that extension of the Growth Duty would enable regulators to reassess their approach to facilitating investment in infrastructure. There

was a common position that the Growth Duty would support a balance between the need of attracting long-term investment and managing short-term impacts on bills.

- 26.3. A further consideration raised was that the Growth Duty would improve the investment conditions for Net Zero by ensuring that regulators continue to meet their environmental and consumer protection requirement, without unduly inhibiting investment. Many respondents saw the Growth Duty would mark a shift from the “current approach focused on ‘lowest cost’ with focus on short term impacts, to an approach focused on ‘best value’ considering the impact of decisions on long term investment and overall costs and benefits.”
- 26.4. However, other respondents took an opposing view stating that “an additional duty, combined with the absence of guidance from Government on prioritisation, risks creating uncertainty around future direction and thereby potentially acting as a barrier to long-term investment.”

27. The Environmental and Net Zero impact of extending the Growth Duty to Ofcom, Ofgem and Ofwat was a consistent theme across the consultation responses across all the questions asked.

- 27.1. Most respondents (72%) addressed the environment and/or Net Zero within their responses.
- 27.2. A consistent factor raised within the Environmental and Net Zero theme was concerns about any reduction in environmental protections brought about by a Growth Duty. This was raised most frequently by Environmental groups, but also by a large proportion of Industry Representatives, Government Bodies and Private Businesses. Respondents raised concerns that the expansion of the Growth Duty may lead to Ofcom, Ofgem and Ofwat purely considering economic growth, and with no concern given to the environment. The Government has been consistently clear since the Growth Duty was first applied in 2017, that the Growth Duty does not, has not, and will not legitimise non-compliance with existing protections including environmental, Net Zero, and consumer protections.

- 27.3. There was wide focus on the potential impact that actions of Ofwat and Ofgem can have on the environment. As part of this, the balancing of the Growth Duty with existing or future Environmental and Net Zero duties was a concern of respondents. A common response received was: “By dictating that the Companies must ‘have regard to the desirability of promoting economic growth’ [this] may undermine [existing environmental protections].”
- 27.4. Respondents were also concerned that the extension of the Growth Duty to Ofcom, Ofgem and Ofwat may lead to a reduced focus on infrastructure that was compatible with Net Zero with a pursuit of short-term growth by the cheapest means possible. Alongside this, there were calls for ‘the right kind of growth’ with many specifying a desire to see sustainable longer-term growth codified in the statutory guidance. The Government is clear that a Growth Duty will have beneficial effects in the environmental and Net Zero space. Many campaigners have emphasised the positive impacts upon the economy and employment that the pursuit of green technologies will deliver. The Government anticipates that the Growth Duty will lead regulators to make evidence-based decisions in the pursuit of growth that may lead to the increased prevalence of modern, green options that deliver economic growth.
- 27.5. However, many respondents raised the potential for positive environmental and Net Zero impacts. With one stating: “On the road to Net Zero, a key aspect of economic growth is having long-term, cost-effective reliable sources of clean energy and private investment has an instrumental role to play in delivering this. We [are] therefore [supportive of] the adoption of measures [the Growth Duty] that would facilitate private investment.” Similar sentiments were raised across responses, with many respondents raising the role for private investment in decarbonizing infrastructure.
- 27.6. Furthermore, other respondents suggested that the alignment of duties across [these] sectors would improve and increase the ability of regulators to collaborate effectively on shared long-term goals, such as reaching the 2050 Net Zero target.
- 27.7. There were also frequent requests for updated guidance relating to the Environment and Net Zero. Multiple respondents viewed Net Zero and Growth as inextricably linked and sought an updated statutory guidance

that provided clarity on how the Growth Duty would interact with other duties, the ways in which growth and Environmental protections / Net Zero should be delivered alongside each other, and examples of how regulators should consider the Growth Duty.

28. The following specific concerns were also raised within the consultation relating to Ofcom, Ofgem and Ofwat:

- 28.1. 1). Relating to the concurrent enforcement powers shared by Ofcom, Ofgem and Ofwat with the CMA. Respondents raised concerns of a disjointed application of the Growth Duty, were the Growth Duty to be extended to include the CMA functions of Ofcom, Ofgem and Ofwat. This is due to the fact the CMA functions of the other economic regulators ORR, and CAA are currently not within scope of the Growth Duty. The extension of the Growth Duty to Ofcom, Ofgem and Ofwat will **not** extend the Growth Duty to include the concurrent CMA powers held by Ofcom, Ofgem and Ofwat to ensure consistency.
- 28.2. 2). Relating to the application of the Growth Duty to Government schemes implemented by Ofcom, Ofgem and Ofwat. Concerns were raised that in some cases, such as Government social schemes, growth may not be the primary aim. The Government does not think that any specific legislative exclusions are required for these cases but will provide clarity in the statutory guidance ([consultation now live](#)) about the circumstances where growth may not be considered a relevant consideration for the exercise of a function.

Summary of Question Responses

Q1. Do you agree that Ofcom, Ofgem and Ofwat should be included in the scope of the Growth Duty specified in the Deregulation Act 2015?

29. The majority (62%) of respondents were in favour of the Government's plan for the extension of the Growth Duty to Ofcom, Ofgem and Ofwat, 25% of respondents were in opposition, and the remaining 13% of respondents were neutral.
30. Opinions were mixed with the majority of positive respondents of the view that the Growth Duty would "empower the regulators to take a comprehensive and holistic approach", which would increase transparency and formalise existing activities and processes. The extension of the Growth Duty was also supported as a means to encourage regulators to report on their [growth] undertakings, setting out how growth has been considered for within regulatory decisions, and focusing on showing how their metrics align with the metrics of the growth strategy of the UK.
31. There were a significant proportion of positive respondents who also viewed the expansion of the Growth Duty as key to strategic decision making. Specific reference was often made to Net Zero goals, and that achieving Net Zero would require significant investment, which underlined the importance of retaining a regulatory focus on growth.
32. Many of those who were in support of the Growth Duty expansion also emphasised that the expansion should not detract from the regulators' core purpose or undermine existing statutory obligations. Multiple respondents were clear that any application of the Growth Duty must enable investment without taking away from existing (environmental and consumer) protections.
33. Those who opposed the expansion of the Growth Duty mostly saw that the Growth Duty would have minimal impact upon decision making or the regulatory process as it was a factor already considered within many regulatory processes.
34. There were also concerns that the Growth Duty was deregulatory in nature and that it was not clear what decisions or actions the Government saw that Ofcom, Ofgem and Ofwat should have taken differently that may have promoted economic growth more effectively. In conjunction with this position, some regulators raised concerns that in making their regulatory decisions, they must

carefully balance relevant duties. Some respondents stated that if regulators were perceived to not do this, there was a risk that decisions may face legal challenge which can lead to delays to the implementation of important regulatory decisions.

35. Many who opposed the Growth Duty, also did so on an environmental & Net Zero basis as detailed in the 'Key Themes' section. Respondents who returned a neutral position were often seeking further information. These respondents sought the provision of further guidance relating to the application before a position could be taken on the benefits.

Government Response to Question 1.

36. The Government is committed to driving economic growth and efficiency in the sectors regulated by Ofcom, Ofgem and Ofwat. The Government agrees with the majority of respondents that the extension of the Growth Duty to Ofcom, Ofgem and Ofwat, will help create an efficient system delivered through good growth-focused regulation.

37. The Government, having considered the responses to this consultation, will proceed with the legislative program to deliver the extension of the Growth Duty to Ofcom, Ofgem and Ofwat for the commencement of the 2024/25 financial year. This will ensure that the Growth Duty expansion is accompanied by updated statutory guidance to enable a smooth transition.

38. The Government has considered the significant proportion of respondents who have raised concerns about the impact of this decision to extend the Growth Duty upon the environment and Net Zero. The purpose of the Growth Duty is not to achieve or pursue economic growth at the expense of necessary protections. The Government wants to be clear that the Growth Duty does not, has not, and will not legitimise non-compliance with existing protections including environmental, Net Zero, and consumer protections (including the forthcoming Online Safety regime).

39. The Government will accept **recommendation 2B** from Professor Dame Angela McLean's Pro-innovation of Technologies Review, which addressed the Growth Duty, and will clarify within the statutory guidance that "sustainable economic

growth is wholly consistent with the UK's Net Zero mission and the UK's commitments to safeguard natural capital.”⁵

40. Regulators should be supporting innovation and growth, which are key to benefitting businesses and consumers. Good regulatory practice is key to delivering growth, speed, agility, proportionality, reducing burdens and with regulation as a last resort. The Government is clear that it wants all regulators to be transparent and accountable on how they are delivering against the Growth Duty as well as their other existing responsibilities. The reporting of pro-growth, and pro-Growth Duty activities provides regulators with an opportunity to showcase and evidence their consideration of the Growth Duty and their pro-growth activity. Having considered the responses from the Growth Duty consultation and stakeholder engagement, the Government is intending to request regulators report against their Growth Duty activities in the statutory guidance [[subject to consultation](#)].

Q2. What additional guidance would be beneficial to support effective implementation of the growth duty?

41. The overarching responses relating to guidance are detailed in the relevant *Key Themes* section. Guidance was seen to be central to a successful application of the Growth Duty to Ofcom, Ofgem and Ofwat. Many respondents raised concern with the existing statutory guidance for the Growth Duty. Common criticisms of the existing guidance were, ambiguity around the meaning of growth, lack of clarity setting out interaction with existing duties, how growth is measured, the hierarchy of duties and where the Growth Duty should be positioned, and the relationship between the Growth Duty and Environmental / Net Zero obligations.

42. Considering these criticisms respondents were mostly aligned in their demands for additional guidance that would set out:

42.1. How regulators should interpret this objective in day-to-day decision making,

42.2. How regulators should analyse costs and benefits,

⁵ [HM Government Response to Professor Dame Angela McLean's Pro-Innovation Regulation of Technologies Review - Cross Cutting](#)

- 42.3. How growth should be determined and measured,
 - 42.4. The breadth of the 'growth' consideration – should regulators be considering growth in their sector, or the wider UK economy,
 - 42.5. A hierarchy of duties that determines what priority the Growth Duty takes against existing duties, and,
 - 42.6. How regulators should report against the Growth Duty.
43. Those who opposed the Growth Duty extension mostly utilised this question to set out their concerns about the impact of the Growth Duty on the environment (as summarised in the *Key Themes* section). However, some who disagreed with the proposal to extend the Growth Duty raised questions about how growth and efficiency would be measured under the Growth Duty and called for an updated guidance to consider environmental and Net Zero concerns and set out how 'Green Growth' could be pursued. Similarly, there were calls for guidance to set out how consumer protections would be prioritised.
44. Of those who were content with the existing guidance, most sought an increased use of Strategic Policy Statements from government to set out how the Growth Duty should align with existing regulatory roles and responsibilities and how regulators should prioritise duties.

Government Response to Question 2.

45. The Government has considered the responses to this consultation and agree with the respondents that there would be significant benefit to updating guidance alongside the extension of the Growth Duty. The Government has worked to incorporate the recommendations provided by the respondents into an updated statutory guidance that will accompany the extension of the Growth Duty.
46. The Government has reflected the specific concerns addressed in the summary of responses to Question 2 and has drafted an [updated Statutory Guidance](#) that addresses the key issues raised. This includes: providing further clarity on the meaning of growth; further detail on the interaction of the Growth Duty with existing duties; increased clarity on how growth should be measured; the consideration of the functionality of a hierarchy of duties and the Growth Duty

positioning within said hierarchy; and, the relationship between the Growth Duty and Environmental / Net Zero obligations.

47. As mentioned in the Government response to Question 1 the consideration of the interaction with existing environmental and Net Zero obligations and duties will also be clearly considered within the updated statutory guidance.

Q3. How would you envisage a regulator's actions changing as a result of a growth duty? Please outline any benefits you can foresee.

48. Responses to this question most frequently addressed the complexities of the regulatory landscape. Many respondents advised that duties were increasingly complex, and that balancing of duties would become more difficult with the addition of the Growth Duty as it may conflict with other duties that regulators have. There were concerns that the addition of the Growth Duty would increase the complexity of regulatory roles and may limit the effectiveness of existing duties as it could become harder to make strategic decisions with regards to multiple duties.

49. However, there were also respondents who were of the view that the Growth Duty would improve regulatory decision processes, and thought the Growth Duty would encourage speedy, flexible, strategic decision making within regulatory decision processes. Further some viewed that the Growth Duty would lead to a reform of regulatory decision making, whereby regulators would focus on a 'long term' or 'best value' decision process, rather than a shorter term, 'lowest cost' process.

50. Those who opposed the extension on an environmental basis saw regulators actions as changing negatively. Many who opposed viewed the Growth Duty as a measure that would result in the pursuit of economic growth at the expense of the environment and Net Zero. Some raised concerns that the Growth Duty may legitimise the ignoring of environmental protections.

Government Response to Question 3.

51. The Government agrees that the regulatory landscape is complex and many regulators already balance multiple different duties. As noted in the Government's Economic Regulation Policy Paper, the current framework of duties poses three challenges to regulators; existing duties have become increasingly complex; the transparency and predictability of the current framework could be improved to provide greater certainty to regulators and stakeholders; and the divergence in duties across the utilities sectors has reduced the ability of regulators to collaborate effectively on shared long-term goals.
52. The Government has been considering the framework of duties that these three regulators operate under. The Government notes and agrees with the conclusion of the National Infrastructure Commission that the duties of the regulators need to be coherent "to ensure stable and predictable regulation over the long term".⁶ We are also conscious of the risks of layering additional duties upon one another, which is why the Government uses other tools to support regulators and provide direction in their core functions.
53. The Government is therefore reviewing Ofcom, Ofgem and Ofwat regulators' duties in our consultation strengthening the economic regulation of these sectors. Government believes that, in the long-term, regulators' duties should be reviewed and if necessary, rationalised to ensure activities are focused on core economic functions. The strengthening of economic regulation consultation has identified the following categories of economic duties:
- 53.1. **Fostering economic growth** – promoting growth through competition, investment and upgrading infrastructure; encouraging innovation and new technologies (including the growth duty).
 - 53.2. **Protecting consumers** – balancing costs and intergenerational fairness. Ensuring affordable reliable service.
 - 53.3. **Ensuring effective competition** – promoting competition between companies to drive best value for consumers.
 - 53.4. **Supporting the government to deliver net zero and protecting the environment** – that regulators, where necessary, make decisions to help the UK reach this target by 2050
54. The intent of a new set of outcome-focused duties is to simplify the regulatory framework and ensure that the focus on economic regulation is maintained, with

the boardrooms of regulators maintaining sufficient attention on delivering these outcomes. Regulators will still have sector specific and non-economic duties in addition to these.

55. The Government also agrees that it must also respond to emerging opportunities and challenges while making sure regulators are equipped to do the same. This is why the Government is, through the Energy Act, introducing a Net Zero duty for Ofgem, clearly demonstrating the government's commitment to Net Zero, and expectation that this be factored into decision-making.

56. Regulator duties are fundamental to the daily functions, operations, and decisions of a regulator. In the UK and globally, we are experiencing volatility due to macro-trends such as transitioning to Net Zero, technology advancements (e.g. artificial intelligence), geopolitical volatility and increased competition, the cost of living increasing, fragile supply chains and Covid-19 and future pandemics. Regulators manage their sectors and help them respond to shocks, and in some cases have taken on more responsibility in the face of these major challenges. In turn, the number of duties has increased.

57. As addressed in the Government responses to Question 1 & 2, we are also [consulting](#) on updating the statutory guidance that sits alongside the Growth Duty.

Q4. How do you foresee the Growth Duty interacting with existing statutory duties? Please provide examples.

58. There were a range of responses relating to interaction of duties. Almost all responses called for improved guidance around the Growth Duty to support in the balancing of a Growth Duty with existing duties.

59. Many respondents referenced an increasingly complex range of duties across the regulatory landscape. Concern was raised that "increasing complexity of existing duties risks both stifling regulatory decision making and limiting the effectiveness of new duties where they are introduced". Further raised was how the Growth Duty would be applied in legislation, with a potential for unintended consequences in the hierarchy of duties.

60. There was some agreement that it would be appropriate that the Growth Duty would not take precedent over other duties but that regulators would need to be mindful of the possible impact on economic growth in exercising other duties. In these cases, this position was often conditional on the provision of specific guidance for how the Growth Duty should be applied to ensure minimal negative interaction with existing duties.

Government Response to Question 4.

61. As outlined in the response to Question 2, the Government agrees with the call from respondents for updated guidance to sit alongside the Growth Duty and support the balancing of duties. In response to this the Government is consulting on an updated Statutory Guidance. We also agree with the respondents that the Growth Duty should not take precedence to all other duties. Within this guidance we therefore propose to set out examples of how regulators might choose to balance their duties. Whilst we recognise that it can appear that growth is in tension with other duties, for example relating to environmental or consumer protection, given the appropriate wide definition of ‘growth’ as sustainable economic growth, in many cases protecting the environment or consumers in itself does support growth. Furthermore, the Government and the new guidance recognises that in some cases other duties or objectives may take precedence to growth. We understand that regulators are well experienced at balancing decisions where there is imbalance. We also understand that regulators are independent, and as such are well-experienced and best placed to balance their own decision-making on duties.

62. As part of the statutory guidance, and as part of the acceptance of the Pro-innovation Regulation of Technologies Review recommendation 2B the updated statutory guidance sets out a specific sub-set of drivers of sustainable growth, including Investment and Infrastructure, Innovation, Competition, Environmental Sustainability, Skills, and Productivity, to help ensure that regulators can clearly assess the impacts of their work on growth.

Q5. Is there any evidence that this will add significant costs to regulators or business? If so, why, and what would those costs be?

63. Some respondents considered that the expansion of the Growth Duty would lead to significantly increased costs. However, many were of the view that regulators

are used to operating in a framework of statutory duties and the administrative processes to undertake assessments and consider developments already exist.

64. There was concern raised by respondents that resourcing any requirement to deliver a standalone Growth Duty report, may present as a new burden (fiscally and in time cost) upon regulators who have not previously reported against the Growth Duty. Of those who considered that there may be increased reporting and monitoring costs associated within the Growth Duty expansion, some urged that the Government meet these additional costs. Continuing this concern was a further dimension that suggested regulators may have to dedicate resources to develop new capabilities to assess growth were the Growth Duty expanded.

Government Response to Question 5.

65. This Government is committed to focusing on how we can improve regulation across the board to reduce burdens, push down the cost of living, reduce regulatory burdens, and drive economic growth. Section 110A of the 2015 Act (as inserted by section 16 of the Enterprise Act 2016) requires persons in scope of the Growth Duty to publish a statutory annual performance report including the regulator's assessment of the views of business on the effect of the Growth Duty and the impact of the Growth Duty on them. Section 110A has not yet been commenced. The Government does intend to ask regulators to report against the Growth Duty, whether that is via the statutory option, or via a non-statutory approach as outlined in the [consultation](#) on the revised statutory guidance. The Government is consulting on both these options.

66. The Government agrees that regulators are used to operating in a framework of statutory duties and that the administrative processes to undertake assessments and consider developments already exist. Therefore, the Government is keen to ensure that clear and regular metrics are reported to measure performance against the Growth Duty. Reporting is an important part of the transparency that is crucial for effective scrutiny and accountability.

67. As part of the [consultation on the Growth Duty Statutory Guidance](#), we are asking respondents to help determine what additional metrics it is most appropriate for the regulators to publish. This is in order to ensure that reporting on the Growth Duty is sufficient to support scrutiny of the regulators' work in embedding and advancing their growth objective. The current draft of the

Statutory Guidance has considered the work of the Pro-innovation Regulation of Technologies Review and suggested metrics which provide evidence on the speed of decision making, and evidence of the consideration of the Growth Duty.

68. We are keen to hear from regulators and businesses on the impact of the introduction of reporting on the Growth Duty in response to our ongoing [consultation](#) on the statutory guidance.

Q6. Are there alternative or additional means by which we could improve growth outcomes in these regulated sectors?

69. Respondents either left this section blank, or mostly provided highly specific means that would identify respondents. However, there are some general themes that emerged within this question.

- 69.1. Growth outcomes could be improved by providing support through funding mechanisms for the development of supply chain capacities and skills and capability requirements,
- 69.2. A call for a focus on removing barriers to investment, alongside implementation of the Growth Duty,
- 69.3. An increased focus on digitalisation and innovation to unlock growth,
- 69.4. Require regulators to report annually on the Growth Duty,
- 69.5. Ensuring growth is pursued only in a sustainable manner in line with Net Zero and Environmental requirements, and,
- 69.6. Improved transparency, accountability, streamlining, and authorisation response times from regulators.

Government Response to Question 6.

70. The Government welcomes these suggestions from respondents and has worked to include their underlying principles within the updated statutory guidance for the Growth Duty. In reflection of these comments from respondents, the [updated](#)

[Growth Duty Statutory Guidance](#) sets out the drivers of growth of Innovation Infrastructure and Investment, Competition, Skills, Efficiency and Productivity, Trade, and Environmental Sustainability. It further establishes how these drivers can be considered by regulators within their application of the Growth Duty.

71. The updated guidance also sets out further considerations for smarter regulation that include balancing of duties, proportionality of decisions, transparency and accountability, consistency and predictability, and consumers. We are currently consulting on this updated guidance and welcome all responses.

Overall Conclusion

72. As announced by the Chancellor at the Autumn Budget on the 22nd of November, the Government will be taking forward the plan to extend the Growth Duty to Ofcom, Ofgem and Ofwat, with effect from 6th April 2024, subject to Parliamentary approval of the necessary secondary legislation. We also have launched a [consultation](#) on the refreshed Growth Duty Statutory Guidance to ensure an effective expansion of the Growth Duty. The Department for Business and Trade will work with the Department for Science, Innovation and Technology to ensure that the extension of the Growth Duty to Ofcom does not delay implementation of Ofcom's Online Safety functions set out in the Online Safety Act 2023.

73. The UK is home to world class regulators who protect consumers, protect competition and help drive forward progress in their sectors. The Growth Duty provides clarification for non-economic regulators that they need to consider growth alongside their other duties. Ofcom, Ofgem and Ofwat already have a number of duties, and we believe that extending the Growth Duty to them will make it clear that growth is a consideration alongside other duties. The energy, water and communications sectors account for around four per cent of the UK's GDP, and over thirteen per cent of total UK private sector investment. Extending the Growth Duty to Ofcom, Ofgem and Ofwat will ensure that growth is considered throughout the regulatory process of this critical component of the UK economy.

By Theme

74. Environmental concerns were central to respondents to this consultation. The Government has reflected the respondents' concerns within the updated draft Statutory Guidance. Growth is set out in line with the McLean review recommendations of sustainable growth and details the aim for medium to long term growth over unsustainable short-term growth. The Government also reiterates that the Growth Duty does not legitimise non-compliance with existing protections.

75. Consumer concerns were also central to the consultation. The Government has reflected these concerns within the updated Statutory Guidance by detailing how the Growth Duty should interact with consumers and consumer protections.

76. Infrastructure and investment were a key component of the consultation responses. The Government agrees with respondents that infrastructure and investment are essential to growth and has reflected this through the inclusion of infrastructure and investment as a core driver of growth within the statutory guidance that regulators should consider within their application of the Growth Duty.
77. Reporting and Guidance was often raised throughout the consultation. The Government fully agrees with respondents that clarity around the application of the Growth Duty to Ofcom, Ofgem and Ofwat, and beyond is essential for effective consideration of the Growth Duty. The Government has accepted the call for a refreshed statutory guidance for the Growth Duty and has published a consultation on this refreshed guidance alongside this government response. The Government also agrees that reporting is essential to ensure transparency and accountability for the Growth Duty, therefore we have set out in the draft statutory guidance how we propose for reporting to proceed following the extension of the Growth Duty.
78. We encourage and welcome responses to the [consultation on the Growth Duty Statutory Guidance](#) that is currently live.

Next Steps

1. The Government would like to thank all of the respondents who took the time to share their views and advice on the issues raised in this consultation.
2. The Government intends to lay the relevant statutory instruments to bring the regulators Ofgem, Ofwat and Ofcom and their regulatory functions into scope of the Growth Duty measure in early 2024.
3. Subject to Parliamentary approval, we intend to commence the provisions at the earliest available opportunity.
4. Alongside the Government's response to the consultation on extending the Growth Duty to Ofcom, Ofgem and Ofwat, the Government has reviewed the statutory guidance for the Growth Duty which is currently out for consultation. The themes and topics raised within this consultation have been used to inform the updating of the Statutory Guidance to ensure that it addresses any potential concerns.
5. The Government has published a revised draft of the statutory guidance for further consultation, together with consideration of whether we should commence reporting.⁶ This [consultation](#) runs from 22 November 2023 to 17 January 2024.
6. Following Government's response to the consultation on the revised statutory guidance for the Growth Duty, we intend to lay the statutory guidance before Parliament so that it is available in parallel with the measures of the extended Growth Duty coming into force.

⁶ <https://www.gov.uk/government/consultations/smarter-regulation-regulating-for-growth>

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