Department for
Business & Trade

Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors

As regulated by Ofgem, Ofwat and Ofcom.

November 2023

Foreword

In January 2022, the government published the 'Economic Regulation Policy Paper' which signalled its intent to strengthen the existing framework for the economic regulators - Ofgem, Ofwat and Ofcom.

As set out in 'Smarter Regulation to Grow the Economy', the government's approach to regulation focuses on ensuring it provides the foundations for the economy to thrive. Part of that is about removing unnecessary regulatory burdens, helping increase capital investment whilst supporting consumers in a fair and balanced way to ensure our infrastructure is ready to face the UK's future challenges.

It is right that we look at all levers available to improve our focus on delivering strong economic growth, and those that already form part of our regulatory framework have an important role to play. To achieve this, the government is committed to working with regulators to drive growth and improve outcomes, as we seek to make the UK the world's best regulated economy. This will ensure that our regulators are focused on facilitating an environment that supports business growth, while at the same time protecting consumers and the environment. That is why this consultation seeks views on the government's intention to strengthen the existing frameworks and on the responsibilities of the three regulators. This consultation covers a broad range of topics, including how the UK can enhance growth and investment; how to improve the consumer experience and better support vulnerable consumers, considering whether the regulators' duties are streamlined and delivering what each sector needs; and finally, to evaluate each regulator's appeals regime, and whether these are fit for purpose in today's regulatory landscape.

This consultation forms part of the Smarter Regulation programme of regulatory reform and is published alongside the government's response to the consultation on applying the Growth Duty to these regulators.

I look forward to hearing from respondents on this important topic.

Minister Hollinrake - Minister for Enterprise, Markets & Small Business

General information

Why we are consulting

The energy, water and telecoms sectors provide vital services to the public and are therefore hugely important to the UK economy.

Given their importance, as well as the need for continued investment to support maintenance of essential services, this consultation focuses on a specific set of proposals that target issues raised across a broad range of areas: growth, competition, consumers, duties, and appeals. Across those five areas the government is seeking views on proposals that can improve the economic regulatory environment, increasing investment and growth, promoting competition, enhancing transparency, providing support to consumers and bolstering the appeals regime.

The feedback to this consultation will also inform the government's broader work on Smarter Regulation. This consultation is part of a package published alongside the Autumn Statement, including other publications relevant to economic regulation, such as the growth duty extension consultation response and the consultation on growth duty statutory guidance. The ongoing call for evidence on the regulatory landscape is also part of the government's work on Smarter Regulation.

Consultation details

Issued: 22 November 2023

Respond by: Midnight 17 January 2024

Enquiries to:

Email: economicregulation@businessandtrade.gov.uk

Economic Regulation
Department for Business and Trade
2nd Floor
Old Admiralty Building
London
SW1A 2AY

Consultation reference: Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors

Audiences:

Regulators, businesses, business groups or representatives, consumers, non-governmental organisations, all other interested parties.

Territorial extent:

United Kingdom

How to respond

Respond online at: [Qualtrics]

or

Email to: economicregulation@businessandtrade.gov.uk

Write to:

Economic Regulation
Department for Business and Trade
2^{nd} Floor
Old Admiralty Building
London
SW1A 2AY

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

To inform the next stages of the consultation proposals, consultation responses received will be shared with other government departments as required.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Executive Summary

Economic growth is a top priority for the government. In May, the government published 'Smarter Regulation to Grow the Economy'[1], in which it committed to the UK becoming the best regulated economy in the world and outlined the intention to consult on reforms to the economic regulation of energy, water and telecoms by Ofgem, Ofwat and Ofcom respectively.

According to the National Infrastructure Commission (NIC), in 2019, the energy, water and telecoms sectors alone accounted for around 4% of the UK's GDP, and over 13% of total UK private sector investment, having a huge impact on economic growth[2]. Therefore, it is important that the government continues to consider opportunities to improve the economic regulation of these sectors to increase growth and productivity.

The environment in which these regulators operate has changed since their creation. A growing population, climate change and resilience challenges mean increased investment into all these sectors is needed to maintain and improve services, for consumers today and in the future. Since their formation, each regulator has seen the landscape they operate in become more complex. The number of legal duties, as well as demands placed upon them has increased significantly. This can result in a lack of clarity and inconsistency for investors. Similarly, the evolution of different appeal regimes in each sector can appear inconsistent and may deter investment.

This consultation focuses on a specific set of proposals that target issues raised across five areas: growth, competition, consumers, duties, and appeals. These include:

- To support **investment**, a full and transparent assessment of the investment needed across these sectors (including what, when and where) will allow stakeholders and the public to understand the challenges and promote a debate about how to increase investment and ensure generational fairness, especially when this impacts consumer bills. This assessment should be referenced when these regulators report on funding decisions. On price reviews, the government proposes Ofgem and Ofwat take more projects out of the price review process and seek views on how to reduce their complexity. For water, the government proposes options to promote systems-based thinking.

- To help **vulnerable consumers**, the government is exploring a single, multi-sector Priority Services Register to enable data-sharing between service providers where a customer has already informed one of them of their need for additional support and is content for their information to be shared with their other providers.

- Looking at how regulators can introduce and maintain sufficient market **competition** in the sectors. For the water sector, there are proposals to: support strategic investment in major infrastructure projects through licensing and contracting models; support new entrants; and changes to the Wholesale Retail

[1] Department for Business and Trade, 'Smarter Regulation to Grow the Economy', 2023 (Accessed 16/10/23)
[2] National Infrastructure Commission. 'Strategic Investment and Public Confidence' , 2019, page 9 (Accessed 10/10/23)

Code for the non-household market. In the telecoms sector, Ofcom should review whether existing monitoring is sufficiently capturing competition issues. To promote competition on performance between companies, Ofgem and Ofwat should consider greater use of comparative metrics. Views are also sought for all sectors on whether existing concurrency powers effectively address anti-competitive behaviour.

- To ensure **regulator duties** remain fit for purpose, the consultation proposes relevant government departments undertake reviews of their respective regulators' duties. Views are sought on how this can be done to ensure a focus on key economic regulation duties to support consumers, promote economic growth, ensure effective competition, deliver Net Zero and protect the environment.

- To ensure **appeal regimes** continue to hold regulators to account, the consultation proposes making it easier for consumer interest to be considered for all three sectors. To support the Competition and Markets Authority's (CMA) role in energy and water appeals, the government proposes giving them powers to appoint more panel members and extend deadlines where necessary. For energy, the consultation proposes that the CMA apportion its costs more equitably. For water, it proposes to change Ofwat's price control appeal regime to align more closely with the energy sector appeal regime.

This consultation is part of a wider set of reforms seeking to improve economic regulation. It is complementary to the parallel consultations on:

- the revised statutory guidance to assist regulators in fulfilling their responsibilities under the growth duty; and

- the 'Smarter Regulation Call for Evidence on the regulatory landscape'[3]; where any responses relating to Ofgem, Ofwat and Ofcom will be considered alongside responses to this consultation.

A general overview of recent outcomes for consumers and the environment across these sectors is provided in Annex D. There is also an initial analytical view provided on the impacts of the policy proposals in line with Green Book guidance (in Annex E) and the government will use responses to this consultation and wider stakeholder engagement to help develop ongoing analysis and use as evidence to take forward proposals. The government therefore encourages respondents to provide evidence where possible in their response.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: enquiries@businessandtrade.gov.uk.

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[3] Department for Business and Trade, 'Smarter regulation and the regulatory landscape: call for evidence overview', 2023 (Accessed 17/10/23)

Introduction

This consultation covers the regulators Ofgem, Ofwat and Ofcom's economic functions (with the exception of duties, which covers economic functions within the wider landscape of what regulators do) and the energy, water, and fixed telecoms (specifically fixed broadband) sectors. It is important to note that Ofgem operates in Great Britain only, Ofwat in England and Wales only and Ofcom across the UK. Water policy is devolved in Scotland and Wales, with energy and water policy devolved in Northern Ireland[4].

These proposals will not apply to live price review processes such as the 2024 price review in water (PR24). This consultation is focused on proposals that can be delivered within the current system, so does not recommend the breaking up, merging or creation of new regulators, nor does it make proposals on areas where work is already progressing, such as:

- On innovation, where the government has responded to relevant proposals made in the 'Pro-innovation Regulation of Technologies Review: Cross-Cutting report', led by the Government Chief Scientific Adviser, Professor Dame Angela McLean.
- On the energy retail markets, due to work ongoing and recent consultations as part of 'Delivering a better energy retail market: a vision for the future and package of targeted reforms'[5].
- On electricity transmission infrastructure, the consultation avoids duplication with recommendations made in the independent report from the UK's Electricity Networks Commissioner, Nick Winser as the government is publishing at the same time as this consultation its response to those recommendations: the Transmission Acceleration Action Plan. Today the government and Ofgem are also jointly publishing a Connections Action Plan, on reforming the process for grid connections.
- The Government has been clear that the volume of pollution in our waters is unacceptable, and this is the first government to take comprehensive action to tackle it. Our Plan for Water is delivering more investment, stronger regulation, and tougher enforcement to ensure every overflow is monitored, all sources of pollution are reduced, and swifter fines and penalties are handed out where necessary. The Environment Agency leads on the regulation of water pollution which are out of scope of this consultation.

[4] The devolution of water policy in Wales is currently subject to very limited exceptions, such as the appointment and regulation of a water or sewerage undertaker operating in Wales whose area is wholly or mainly in England. Although the consultation proposals solely apply to water policy in England and the regulation of water or sewerage undertakers whose areas are wholly or mainly in England, Welsh Government will continue to be engaged on any proposals taken forward that relate to Ofwat.
[5] Department for Energy Security and Net Zero, 'Delivering a better energy retail market', 2023 (Accessed 17/10/2023)

Summary of proposals

The proposals for reform included in this consultation:

1. **Driving economic growth and investment**

Improved scoping of infrastructure needs

Investors, industry, and sector experts have told the government that a clearer plan for utilities investment for the energy and water sectors is needed. The government regards a robust assessment of infrastructure requirements as necessary for investor assurance and believes such an assessment would be useful to enhance regulatory accountability, as well as supporting decision-making. Existing work, such as the National Infrastructure Assessments[6] by the National Infrastructure Commission (NIC), still leaves evidence gaps that need to be addressed, including a need for greater understanding of the status of companies' assets. A wider needs assessment is required that facilitates more effective coordination across these utilities, for example where there is overlapping demand for land, inputs and supply chains, and where the water system will need to adapt to support the UK's energy plans and vice versa. This will reduce future bottlenecks and facilitate a much-needed debate on balancing the needs of consumers today against those of the future in a fair way.

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

Linking infrastructure needs more closely to regulator investment decisions on energy and water

Investors and sector experts in the energy and water sector shared the perception that pressures to deliver outcomes in the short term have led to insufficient focus from regulators and other decision-makers on steps required to fulfil the UK's long-term growth potential, for example allowing insufficient investment. Limited reference is provided in publications by the relevant regulators on how permitted funding levels through price reviews compare with funding requirements outlined by the NIC, Climate Change Committee (CCC) and other relevant public bodies.

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 RIIO3 approaches, respectively.

Ensuring continued consideration of strategic investments outside standard price review periods

[6] National Infrastructure Committee, 'National Infrastructure Assessment 2', 2023 (Accessed 19/10/2023)

In energy and water, strategic investment projects may not always be suited to five-to-eight-year price review periods due to insufficient certainty. This is because they often require several decades to recuperate their upfront expenditure.

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.

Delivery mechanisms for growth

In the energy sector, a range of work is taking place to enhance the effectiveness with which outcomes can be delivered, both in exploring and structurally delivering solutions, with significant work already underway on a Future System Operator (FSO). The broadband sector has drawn investment successfully since 2017. Effective monitoring and action to maintain sufficient broadband competition will be important in continuing to draw in investment, with further consideration in the competition chapter. This consultation does not consider alternative solutions for energy and telecoms.

Water transfers and infrastructure

The government has heard significant interest in the prospect of enhancing delivery and holistic thinking in the water sector. This could be done through existing bodies or through innovative solutions.

Areas where the government seeks views on scope for improvement are:

- The effective facilitation of water transfers.
- Whether infrastructure planning can be enhanced.
- Whether commercial procurement and cost-effective long-term management of long-term infrastructure can be delivered more effectively.
- Whether there is scope to enhance coordination across different water stakeholders to deliver more holistic outcomes, in areas such as funding.

2. Competition

Ofwat competition stocktake and New Appointments and Variations (NAVs)

Ofwat conducted a high level stocktake to identify both opportunities and barriers to unlocking more competition in strategic investment in England, which was published in July 2022. The government supports the recommendations and invites views. The government has heard that licensing barriers for NAVs may be unnecessarily burdensome. The government will work with Ofwat to implement its competition stocktake proposals and deliver necessary legislative amendments to remove the requirement to consult in certain circumstances. Proposals from the stocktake include:

- Enabling wider use of the Specified Infrastructure Project Regulations (SIPR)
- Enabling wider use of Direct Procurement for Customers (DPC)

- Streamlining the application process for Nationally Significant Infrastructure Projects (NSIPs)
- Streamlining the application process for New Appointments Variations (NAVs)

Proposal (4a): For Ofwat to work with the government to implement competition stocktake proposals. To deliver necessary legislative amendments to remove the requirement to consult in certain circumstances.

Proposal (4b): For Ofwat to explore ways to fast-track licensing for NAVs.

Proposal (4c): For Ofwat to work with the government to consider the viability of moving towards a national licensing regime for NAVs. To implement this will require legislative changes.

<u>Improvements to the functioning of the non-household retail market in water</u>

To improve the day-to-day efficient functioning of the market, it may be desirable to give Ofwat the ability to delegate approval of code changes to a different (formal) defined body. The government welcomes views on this and further ways market governance in the non-household retail market can be improved.

<u>Competition in the Fixed Telecoms Sector</u>

The government has heard from some companies and investors, who compete with BT, that the regulator has not sufficiently monitored and enforced competition (at a wholesale and retail market level) following the introduction of the Wholesale Fixed Telecoms Market Review (WFTMR) in 2021.

Proposal (5): For Ofcom to review whether existing monitoring is sufficiently capturing competition issues in the sector.

<u>Concurrency</u>

Economic regulators, including those in the energy, water and telecoms sectors have a range of regulatory tools and responsibilities which enable them to foster competition. In addition, Ofgem, Ofwat and Ofcom can exercise the competition powers they hold concurrently with the UK's principal competition authority: the Competition and Markets Authority (CMA). Concurrency presents a delicate balancing act of sharing certain powers and responsibilities between the CMA and sector regulators for the promotion of competition in their respective sectors, and ensuring this delivers an effective UK competition framework. The government is seeking views on the extent to which the concurrency powers and arrangements deter or, where required, effectively address anti-competitive behaviour in these sectors.

<u>Comparative performance targets in water and energy</u>

With different companies delivering comparable functions across the UK, in some instances greater indirect competition based on performance may be viable. Better value-for-money for consumers could be delivered through the introduction of more comparative performance targets. Comparative performance targets link company revenue more closely to how a company performs in comparison to other companies in the sector. For example, in the water sector the C-MeX comparative performance target rewards companies that provide a better standard of service than others, incentivising companies to continuously improve their services through competitive forces.

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

3. Consumers

The need for a multi-sector Priority Services Register (PSR)

Companies across the water and energy sectors own separate PSRs (with similar services in telecoms). They are duplicative for companies, carry risk of inconsistency across areas, and are burdensome for vulnerable consumers. The government is inviting views on a proposed single multi-sector PSR.

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.

Communication and promotion of affordability support

There is a range of household and business affordability support available; however, there are concerns about the low uptake of existing support and the transparency of different tariffs. The government is inviting views on better ways to communicate existing affordability support.

Proposal (8): For the UK Regulators Network (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.

Interim supply in water

Currently there is no mandatory requirement for any retailer to put themselves forward for allocation to customers in an unplanned retail exit in the non-household water market. This is a significant risk to the market as it means that customers could potentially go 'unserved' by a retailer (though they would still be connected to the water supply).

Proposal (9): The government will provide the power to Ofwat to allocate customers from an unplanned retailer exit to a new retailer/s on a mandatory basis.

4. Duties and Functions

Regulator duties are fundamental to the functions, operations and decisions of a regulator. These economic regulators have seen their duties increase over time and have gained non-economic functions. Where there are tensions between duties, how these are balanced in individual decision cases is fundamental to independent regulation. However, with more duties and responsibilities placed upon regulators, it can be harder for them to prioritise and trade-off amongst them, with the potential for inconsistency. Strategic Policy Statements can provide a helpful legislative steer but without it, regulators still independently determine how they balance and prioritise their duties.

To ensure regulator duties remain fit for purpose, the consultation proposes that the relevant government departments undertake reviews of their respective regulators' duties. Views are sought on how this can be done to ensure a focus on four key economic regulation duties: to support current and future consumers; promote economic growth; ensure effective competition; and deliver Net Zero and protect the environment. The government seeks views on this set of outcome-focused duties.

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.

5. Appeals

Appeals processes

For water (non-price control) and energy appeals, there is a requirement to appoint a group of exactly three members to determine an appeal. This contrasts with other sectors where the CMA can appoint larger groups where appropriate.

The powers on how to extend a deadline in appeals differ across the different appeal regimes. The CMA cannot in any of these sectors grant an extension directly. For telecoms appeals, the Competition Appeal Tribunal (CAT) follows separate procedures, and the government considers these to work well.

There is a lack of consumer voice in the appeals process and a barrier for consumer groups to appeal or intervene in an appeal is costs. Where appellants have lost an appeal, they are required to pay the CMA's costs.

After determining an appeal, the CMA's costs need to be recovered. In energy code modification appeals, the legislation states that where an appeal is allowed, the regulator must pay the CMA's costs and where an appeal is dismissed, the appellant must pay them. This can result in cases where an appeal is successful in part, but one party is still required to pay all the CMA's costs.

Proposal (11a): 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.

Proposal (11b): 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.

Proposal (11c): 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.

Energy sector appeals

For energy licence modification appeals determined by the CMA under a merits-based system, the CMA can recover its costs from the regulator and appellant(s) in proportions the CMA considers appropriate. In code modification appeals, this is not the case and the regulator must pay the CMA's costs and, where an appeal is dismissed, the appellant must pay them. This can result in cases where an appeal is only successful in part, but the regulator is still required to pay all the CMA's costs.

Proposal (12): The government will include the recovery of the CMA costs as part of wider reforms work to code modification appeals. Reforms would be to amend code modification appeals to align with energy licence modifications to give discretion for the CMA to apportion its costs as it considers appropriate.

<u>Water sector price control appeals</u>

The water sector for price control appeals currently follows a redetermination, where the CMA reviews the decision in the round and reaches its own view. The process is complicated and laborious.

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.

<u>Telecoms sector appeals</u>

The telecoms sector moved to an appeals standard of enhanced judicial review in 2017. Since this change is still relatively recent, the government will not be recommending changes to the appeals regime.

Proposal (14): For Ofcom to work with both the government and industry to develop more specific guidance on what to include in decision documents to improve transparency of decisions.

1. Driving economic growth and investment

The size of the energy, water and telecoms sectors, and the impact each has on other sectors, mean Ofgem, Ofwat and Ofcom have an important role in supporting economic growth through the companies they regulate. The largest drivers of growth, within the regulators' control, concern promoting investment, promoting productivity, and facilitating competition. Ofgem and Ofwat also support growth through environmental sustainability and, indirectly, supporting job creation and levelling up across the UK. Many of these drivers can be delivered through improved infrastructure.

This chapter outlines the regulators' ability to impact growth through the promotion of investment and delivery of competitive infrastructure. Competition is considered separately in **Chapter 3**. The proposals set out are not exhaustive; regulators can also promote growth through enhancing skills and promoting innovation, which are not in scope of this consultation. To deliver the infrastructure needed to fulfil the UK's growth potential and ensure resilience is in line with a growing population and commitments to net zero, further investment in energy, water and telecoms is essential. It is therefore important for the regulatory environment to support drawing in the necessary level of investment. In this section, the government outlines three components to help deliver improved infrastructure investment:

- Improved scoping of infrastructure needs is required in the energy and water sectors to provide more robust discussion on the scale of investment and type of infrastructure required.
- The price review cycles (where applicable) must consider national infrastructure needs and deliver funding in a manner conducive to the types of investment required. This may require delivering more large infrastructure projects outside of the relatively short-term price review cycles, as well as reducing price review complexity.
- Finally, strengthened delivery mechanisms should play a role in overcoming barriers to infrastructure investment.

How regulators can impact economy wide growth

Promoting investment and internationally competitive infrastructure

Investment is an important driver of economic growth, accounting for around 18.5% of the UK's GDP in 2022[7]. The three utilities (water, energy, telecoms) contribute significantly to this, delivering over £570 billion[8] of investment between 2000 and 2020. However, investment is not only critical for growth, but also for delivering on wider objectives

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[7] DBT Calculations based on ONS, 'Business investment in the UK: October to December 2022 provisional results', 2023, figure 2 (Accessed 17/10/2023). Data is quarterly so an average of the 4 quarters covering 2022 has been taken. Note: "Investment" is technically known as Gross Fixed Capital Formation (GFCF) and includes both business and public sector investment.

[8] Department for Business and Trade calculations based on Office for National Statistics (in 2019 prices), 'Annual gross fixed capital formation by industry and asset', 2021 (Accessed 23/10/2023): Chained Volume Measure figures across industries (SIC(07)) 35 (Energy), 36-39 (Water) and 61 (Telecoms)

including health, innovation, competitiveness, energy and water security, the environment and net zero.

The UK operates in a competitive global market and pre-consultation stakeholder engagement stressed that investors are attracted to markets where regulatory oversight is clear. As such, regulators play a core role in determining how much investment takes place and where it is allocated. For example, through price reviews where Ofwat and Ofgem approve and reject prospective investments, as well as setting the parameters through which investors can receive returns. In the water sector, outcomes and investment levels in England will also be heavily impacted by schemes or targets required by the Environment Agency and associated legislation, Ofwat must determine funding against these requirements. The role of the Environment Agency is outside the scope of this consultation.

Investment decisions are based on risk-adjusted returns, and thus the UK's FDI attractiveness will be affected by the UK's regulatory framework. In the energy and water sectors, the regulators play a significant role in setting returns. In these cases, increasing returns could improve FDI attractiveness, but at a cost to consumers or business users.

However, setting returns in energy and water need not be a zero-sum activity. A more certain and transparent decision-making process with associated improvements in investor understanding of the decision-making process, can improve the risk-reward ratio through reducing the risk component.

A wide range of evidence demonstrates that unprecedented levels of investment are required over the coming decades, with additional infrastructure needed to meet the government's goals: including flood and drought resilience and achieving net zero.

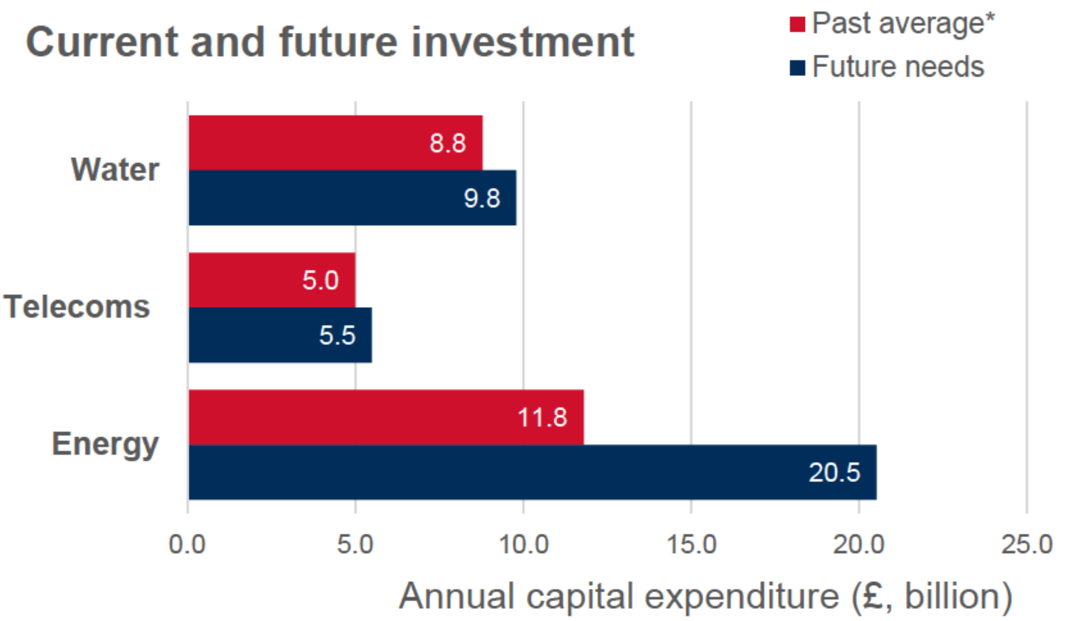
For example, Figure 1, below, illustrates the extent to which expected annual public and private investment must increase until 2033 in telecoms and until 2050 in water and energy. In 2023, in terms of private investment, the National Infrastructure Commission highlighted that: an extra £20-35 billion a year is needed to help achieve net zero by 2050; an extra £8-12 billion a year is needed to increase water supply, reduce demand, and tackle pollution by 2050; and £5 billion a year is needed over the next decade in deploying gigabit capable networks nationwide and deploying 5G mobile across the country[9]. In total, investment needed across the sectors is even larger. For example, at least £56 billion of investment is needed to address storm overflows by 2050[10]. Last year, the Department for Business, Energy and Industrial Strategy (BEIS) outlined that £270–350 billion (present value 2021-2050, 2020 prices) of investment in electricity networks would be needed until 2050, 15-31% of which is linked to further work needed to meet the net zero targets rather

[9] National Infrastructure Commission, 'Second National Infrastructure Assessment', 2023, Pages 133-134 (Accessed 18/10/2023).
The investment levels required for achieving nationwide gigabit connectivity was originally up until 2033, but the government's target is now to achieve this objective by 2030, as articulated in: Department for Levelling Up, Housing and Communities, 'Policy Paper: Levelling Up the United Kingdom', 2022 (Accessed 17/10/2023).
[10] Department for Environment, Food and Rural Affairs (DEFRA), 'Policy Paper: Storm Overflows Discharge Reduction Plan', 2022 (Accessed 16/10/2023).

than existing policy[11]. Some estimates are higher, such as estimates by Energy UK received in pre-consultation stakeholder engagement.

It is essential that there is strong engagement with consumers to bring them along in the process of understanding what the investment needs are, and the repercussions on bills.

Figure 1: Estimated investment needs by sector[12,13]



***Note:** past average investment for water and energy represents the period 2012-2020, but only represents 2019-2021 for telecoms[14].

High quality infrastructure is an important factor in attracting FDI into the UK. Now, more than ever, there is high global competition for capital. As a result of the UK's environmental and digital ambitions, the UK needs a step change in infrastructure investment that cannot

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[11] Department for Energy Security and Net Zero (DESNZ), Ofgem, and former Department for Business, Energy and Industrial Strategy (BEIS), '[Electricity Networks Strategic Framework: Enabling a secure, net zero energy system](#)', 2022 (Accessed 16/10/2023).

[12] An estimated following additional annual investment is required: £1.0 billion (Water), £0.5 billion (Telecoms), £8.7 billion (Energy), calculated as past average investment plus additional investment needed to meet the key goals in each sector: network reinforcement at levels needed for net zero, drought and flood resilience, and 5G and gigabit capable networks.
For additional investment, see National Infrastructure Commission, 'Second National Infrastructure Assessment', 2023, Pages 133-134 (Accessed 18/10/2023).
Past average investment is calculated from the following sources; Water and Energy: National Infrastructure Commission, 'The Second National Infrastructure Assessment: Charts from the Baseline Report', 2022, figures D1 (Water) and B1 (Energy), (Accessed 31/10/2023); Telecoms: Ofcom, 'Connected Nations 2022', 2022 (Accessed 10/11/2022).

[13] This does not consider supply chain issues, additional costs of transitioning to new technologies (such as decommissioning the gas grid), or community benefits. As such, Figure 1 represents a minimum assessment.

[14] Due to a lack of robust capital expenditure (capex) data in telecoms, it is only possible to calculate past average investment from 2019-2021 using: Ofcom, 'Connected Nations 2022', 2022 (Accessed 10/11/2022). It is assumed that this level of investment is what the industry will need in future too, with the addition of the annual subsidy the government provides.

be solely met by domestic capital. Improvements in regulatory policy that attract more FDI will also have positive spillover effects for foreign investors in other sectors that use the resulting infrastructure. Improvements in the UK's infrastructure quality can boost UK expected investment returns across the economy by reducing costs and risk to a project from infrastructure bottlenecks. Improved expected investment returns make the UK a more attractive place to invest, and so improvements in infrastructure can encourage FDI across the economy.

Examples of benefits to the wider economy include:

- The associated benefits of the UK meeting its net zero target, estimated to be £123 billion by 2050 from fuel savings and £40 billion by 2050 from air quality and natural capital benefits[15].
- In its most recent publication, ONS estimated the 2020 turnover in the UK low carbon and renewable energy economy at £41.2 billion and employment as 207,800 full-time equivalent employees[16]. Higher penetration of renewables within UK's energy generation will also put downward pressure on wholesale costs of electricity[17].
- Rollout of full fibre may deliver a potential productivity boost in excess of £72 billion by 2030[18], through faster and more reliable internet connections and enabling innovation.
- By 2100, £3.3 billion of avoided costs of reliance on emergency options to deal with drought[19].

The price reviews (discussed later in this chapter) also play an important role in determining where, and how much investment takes place.

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[15] According to the Net Zero Policy Paper, "the net present value of meeting the sixth carbon budget and net zero target, compared to no further action, was estimated as a net benefit of £266 billion": Department for Energy Security and Net Zero; and former Department for Business Energy and Industrial Strategy, 'Policy Paper: Net Zero Strategy: Building Back Greener', 2022, Page 329 (Accessed 18/10/2023).
[16] Turnover refers to the value of the goods or services sold during a particular time period. Office for National Statistics 'Low carbon and renewable energy economy, UK: 2020', (Accessed 20/10/2023)
[17] IMF analysis shows how this happened in Europe: "The empirical analysis shows that renewable-based energy lowers the average level of wholesale electricity prices. As expected, renewable energy technologies with zero marginal costs have a statistically significant dampening effect on wholesale electricity prices in Europe during the period 2014–2021": International Monetary Fund, 'Chasing the Sun and Catching the Wind: Energy Transition and Electricity Prices in Europe', 2022, Page 4 (Accessed 18/10/2023).
[18] 1) The Centre for Economics and Business Research estimates that the impact of Openreach Full-Fibre alone has the potential to boost UK productivity by £72 billion by 2030: Centre for Economics and Business Research on behalf of Openreach, 'Full Fibre Turbocharging the UK', 2023 (Accessed 18/10/2023)
2) Many other companies are also laying full-fibre networks, which mean this figure is likely to be significantly higher. The consultancy Hatch, for example estimate c.£22 billion of productivity benefits from CityFibre's full-fibre rollout: Hatch, on behalf of CityFibre, 'The Economic Impact of Full Fibre Infrastructure from CityFibre's Network', 2022, Page 10 (Accessed 18/10/2023).
[19] Department for Environment, Food & Rural Affairs, 'The Environment Act – Water Targets (Agriculture; Abandoned Metal Mines; Wastewater; Water Demand', 2022, Page 54 (Accessed 18/10/2023). In addition, the NIC has shown that demand management and new infrastructure is a substantially lower cost option than reliance on emergency options to deal with drought: National Infrastructure Commission, 'Preparing for a Drier Future – England's water infrastructure needs', 2018, Figure 2, Page 9 (Accessed 18/10/2023).

Improved scoping of infrastructure needs in energy and water

As outlined above, the energy and water sectors are large sectors, and significantly impact other sectors across the economy. Many investors, companies and sector experts have suggested the levels of investment that regulators allow do not align with the levels of investment others consider necessary. In PR19, for example, Ofwat rejected c. £6.7 billion of proposed spending from companies. Regulators stress that strong challenge to companies' investment proposals is necessary to deliver savings for customers and keep bills down and regard it as important to ensure customers bear only the efficient costs of delivery[20]. However, many in industry argue that this approach, amongst other factors, can result in underinvestment and poorer outcomes. This is especially the case where uncertainty, in the context of dynamic societal and technological change, limits the extent to which companies can provide robust data to regulators. In energy, for example, many companies and sector experts regard, alongside planning issues, underinvestment of network infrastructure as a major cause of delays in connecting new energy generation sources to the grid. For instance, RenewableUK cites that grid connection delays are holding back £15 billion of investment in offshore wind alone over the course of this decade[21], with other energy generation sources also facing significant delays. The government will furthermore speed up network connections through the Electricity Networks Connections Plan[22].

The government recognises the importance of regulatory independence in delivering investment. However, regulators being held sufficiently accountable and subject to effective scrutiny is also important. The government does not look to tell the regulators the specific levels at which they should set allowances for infrastructure investment. However, in the context of significant investor and industry concerns raised, the government regards a robust independent assessment of infrastructure needs as necessary for investor assurance. Such an assessment would also be useful to key decision-makers. Consumer bills will need to rise in the short-term to deliver key outcomes, including water bills in PR24. The media also reports that public trust of regulated companies and of the regulators is low[23]. In light of this, particularly in the context of the recent rise in cost-of-living, transparency and scrutiny where bills rise is essential for consumer trust in the system. Transparency about intergenerational fairness is also essential to ensure consumers have a clear understanding of where delaying costs now can impact costs to be paid in the future and the quality of service[24].

In this context, the government regards the National Infrastructure Commission (NIC) as an essential, independent source of scrutiny. The second National Infrastructure

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[20] In the past, companies have been able to make very high rates of return, on average, which has led to public criticism. Over prior iterations, regulators have delivered significant enhancements in efficiency and have enhanced the efficacy with which companies assess and provide data on investment opportunities.
[21] Renewable UK, 'National Grid Reforms will help to break the log jam of clean energy projects awaiting connections', 2023 (Accessed 18/10/2023).
[22] The plan has been published as part of the November 2023 Autumn Statement
[23] 1) A 2023 survey by Ofwat found that public trust in water companies was low: Ofwat, 'Trust in Water', 2023 (Accessed 18/10/2023);
2) A 2023 survey from Which? Found that public trust in energy companies is low: Which?, ' "Cold, hungry and miserable": Which? Finds consumer trust in the energy industry has plummeted during the cost of living crisis', 2022 (Accessed 18/10/2023).
[24] In pre-consultation engagement, sector experts noted that in many cases, where infrastructure is delayed it will cost more to deliver the future, placing a burden on future generations.

Assessment, which was published by the NIC in October 2023, provides an independent view on the levels of investment that are needed. The government has also published its Plan for Water[25] and is undertaking significant work to map out upcoming changes in energy infrastructure[26], with further planning also outlined by regulators, for example, through commissioning Water Resource Management Plans from companies and the Regulators' Alliance for Progressing Infrastructure Development (RAPID) Investment Pipeline. However, the government, regulators and the NIC recognise that some gaps still exist and need to be addressed. The government outlines some of these gaps below, which could inform a holistic infrastructure needs assessment for the utilities sectors. The government seeks views on how the gaps identified below could be delivered.

1. **Filling the information gaps on current asset status**

Views expressed in the pre-consultation stakeholder engagement, as well as ongoing work as part of Ofgem's RIIO-ED2 price review process, recognise that some assets in energy networks and the water sector are currently not monitored as effectively as they should be[27]. This creates significant resilience concerns. The model through which a portion of company revenue is determined, the weighted average cost of capital (WACC) model, also relies on estimates of companies' unrecovered capital investments. Where cost allowances or allowed returns are under or overestimated this can result in companies receiving too much, or too little, revenue from consumer bills.

Without a stronger understanding of the inventory and condition of current assets, particularly in the water sector, it is challenging to assess the scale of investment that will be required in the future. It also makes it harder for regulators to assess company bids for new infrastructure investment where understanding of existing assets is incomplete. Monitoring of these assets can lead to improved outcomes for consumers and the environment.

The government welcomes steps taken by Ofwat, including the recommendations to companies given in its 'Asset Management Maturity Assessment',[28] and welcomes Ofwat's strong focus on critical assets. The government also recognises that in many instances in water, asset age is not the most reliable or optimal indicator of asset health. The government also welcomes the iterative progress Ofgem have made on asset monitoring, including the creation of the Network Asset Risk Metric[29], which has increased the extent to which Ofgem can hold companies accountable on asset maintenance.

However, more can be done to address these information gaps. As part of its wider thinking on an infrastructure needs assessment, the government welcomes views on how such an exercise could be delivered, in terms of scope and how it would best be delivered.

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[25] Department for Environment, Food and Rural Affairs, 'Policy Paper: Plan for Water: Our Integrated plan for delivering clean and plentiful water', 2023 (Accessed 18/10/2023).

[26] Prime Minister's Office, 10 Downing Street, 'PM Recommits UK to Net Zero by 2050 and pledges a "fairer" path to achieving target to ease the financial burden on British families', 2023 (Accessed 18/10/2023).

[27] Letter to Ofwat: National Infrastructure Commission, 'Letter to Ofwat on water company asset management', 2023 (Accessed 18/10/2023).
Ofwat Response: Ofwat, 'Letter to National Infrastructure Commission re: Water Company Asset Management', 2023 (Accessed 18/10/2023).

[28] Ofwat, 'Asset Management Maturity Assessment', 2021 (Accessed 18/10/2023).

[29] Ofgem, 'Decision on RIIO-2 Regulatory Reporting Requirements Relating to Network Asset Risk Metric (NARM)', 2022 (Accessed 18/10/2023).

Furthermore, when more information on current asset status has been gathered, the government would like to commission an informed assessment on the implication for regulators, companies and consumers.

Separately, the government has heard that a challenge for many in the sector is that current asset mapping and evaluation can sometimes be done in silos. The National Underground Asset Register, launched by the government in 2022 and led by the Geospatial Commission, will play an important role in outlining the locations of underground pipes, cables, and other infrastructure. The government welcomes views on where further steps can be taken to support collaboration on current asset mapping and assessment.

2. Providing a cross-sectoral view

Stakeholders have raised concerns about the limited assessment, in existing publications, of the locations where infrastructure could be built. Available land for infrastructure development is scarce in some areas of the UK. The scale of transition will require significant land use. For example, there may be overlapping location-specific demand for land, for future from reservoirs and pylons, as well as less location-specific demand for future from forests. Effective coordination and communication between key stakeholders on where infrastructure is built is therefore essential to avoid future bottlenecks. This is important to provide assurance to investors, especially with regard to early investment in upcoming technologies, which will be key in the UK remaining one of the world's leading technology hubs.

Stakeholders have also raised concerns about limited assessment on the implications of plans in some sectors, on other sectors. For example, how development of green hydrogen and carbon capture are factored into planning on future water requirements, with both expected to use a significant amount of water. Stakeholders have suggested limited assessment in this space could risk underinvestment, as without a holistic approach, demand could be underestimated.

In September 2023, the Prime Minister announced work by the government to deliver the first ever spatial plan on energy infrastructure to address some of these concerns[30]. The spatial plan will give industry certainty over where infrastructure will be and will provide a stronger voice to communities. It is important that, in publications, regulators give greater regard to the impacts of changes in other sectors on their plans. This encompasses, for example, greater reference in water publications, such as the 'Water Resource Management Plan'[31] and the Environment Agency's National Framework. to the likely impacts of net zero technologies, including carbon capture and hydrogen. There may be scope for further work to ensure sufficient consideration of linkages across sectors.

[30] Prime Minister's Office, 10 Downing Street, 'PM Recommits UK to Net Zero by 2050 and pledges a "fairer" path to achieving target to ease the financial burden to British families', 2023 (Accessed 18/10/2023).
[31] Water companies in England and Wales are required to prepare a Water Resource Management Plan (WRMP) under the Water Industry Act 1991. This plan must outline how companies intend to achieve a secure supply of water for consumers and a protected and enhanced environment, looking at least 25 years ahead. These plans must be prepared every 5 years and reviewed annually.

3. Providing a more balanced focus to the benefits of energy and water infrastructure investment

Many investors, companies and sector experts have raised concerns that the case for investment is often insufficiently made to the UK public, with publications focusing more strongly on the costs of such work. Currently, for example, the NIC takes a systematic approach to outlining costs in its assessments, while only taking a selective approach to outlining the expected benefits from investment. This is recognised by the NIC and is a result of resource constraints.

The government strongly supports the NIC taking a more systematic approach to outlining benefits, alongside costs, including in its 2026 baseline report and Third National Infrastructure Assessment. This could include, for example, the benefits of maintaining clean bathing water on tourism rates along the UK's coastal towns and the impact of lower wholesale energy prices as a result of linking new, cheaper energy generation sources to the grid. A stronger emphasis on community benefits, such as the creation of jobs across the UK or direct community benefit schemes is also important[32]. Bringing these together will allow for a clearer communication to the public of the benefits, not just costs, of adequate infrastructure investment[33] and improve the quality of the public debate about infrastructure and investment. The government has heard that the tone of public debate is closely monitored by prospective investors and is a major factor when making investment decisions.

An infrastructure needs assessment for a world-leading utilities sector

Through scenarios outlined in the Second National Infrastructure Assessment, bolstered by additional analysis, the government will have an independent infrastructure needs assessment against which to scrutinise how regulators have set company spending allowances. This assessment can be further enhanced through a better understanding of asset status, consideration of links across sectors, of geographical factors, and an increase in the level of publicly available expert evidence on the benefits of infrastructure investment. The government recognises appetite from investors, industry and sector experts for an assessment that also considers the shared supply chain in these sectors, to avoid construction bottlenecks. This assessment will signal to investors at home and abroad that the UK has a clear vision for the future of the utilities sector. As a step change in investment is needed, regulators and companies will need to be more transparent about the challenges this brings, acknowledging increased costs for consumers. This assessment can help socialise and promote debate with the public on the fairness of who pays – consumers today or in the future. The government welcomes views on the proposals outlined in this section, as well as on any remaining gaps. It invites suggestions on how the assessment can be developed and delivered in a way that maximises the

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[32] A current DESNZ consultation is exploring a system which allows communities to benefit directly from new power lines in their areas: Department for Energy Security and Net Zero, 'Community benefits for electricity transmission network infrastructure', 2023 (Accessed 18/10/2023).
[33] As recommended by the recent Winser report, which noted the importance of "comprehensive and transparent" information to communities, aligned to strategic planning. This message has been strongly echoed in our pre-consultation stakeholder engagement: Department for Energy Security and Net Zero, 'Electricity Network Commissioner's principle areas of recommendation', 2023 (Accessed 18/10/2023).

confidence of investors, companies, non-government organisations and consumers in the UK's future plans for the energy networks and water sectors.

In the energy sector, the government expects the Future System Operator (FSO) to play a significant role in delivery of this assessment, especially where energy-specific considerations exist. There may be scope for greater interaction with other bodies where, for example, cross sectoral linkages exist. The government regards the role of the Future System Operator, if approved by Parliament, as essential and intends to minimise complexity and duplication in any scoping work.

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.

Consultation question:

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

Linking infrastructure needs more closely to regulator investment decisions in energy and water

Investors and sector experts shared the perception that pressures to deliver outcomes in the short term have led to insufficient focus from regulators and other decision-makers on steps required to fulfil the UK's long-term growth potential, for example, by allowing insufficient investment. Limited reference is provided in publications by the regulator on how funding permitted by the regulators through the price reviews compares with required funding estimates outlined by the NIC or other public bodies.

Steps have been taken to enhance long-term focus, including the proposed creation of the Future System Operator in the energy sector[34] (see competition chapter for more detail). However, more can be done to structurally ensure that decisions taken by regulators align with the advice provided by other sector experts. Where regulators report on funding decisions, the government encourages the regulators to provide comparisons to investment scenarios outlined in the Second National Infrastructure Assessment, as well as to scenarios outlined by other public bodies like the CCC, and any future work delivered as part of the infrastructure needs assessment. The government can reference the

[34] Further detail on the Future System Operator, referred to as the 'Independent System Operator and Planner' in the Energy Act 2023, can be seen here: Department for Energy Security and Net Zero, 'Energy Security Bill Factsheet: Future System Operator', 2023 (Accessed 18/10/2023).

infrastructure needs assessment in strategic policy statements, to which regulators have regard[35].

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 RIIO3 approaches, respectively.

Price Reviews

In the energy sector, competition has been introduced through the retail market and broad competition exists in energy generation. In energy transmission and distribution networks, most services are delivered by regional monopoly companies. In water, most services are delivered by regional monopoly companies.

To provide a substitute for effective competition, Ofwat and Ofgem run price reviews, which determine a significant proportion of the investment that is permitted. In the water sector, Ofwat is currently determining total investment and the prices companies can charge for the 2025-2030 period through PR24. In the energy sector, multiple price reviews exist; for example, with separate price reviews taking place for electricity distribution, electricity transmission and gas distribution.

Reducing price review complexity

The government has heard that many investors, companies, and sector experts regard the price reviews in water and energy as unnecessarily complex and have suggested this increased complexity is a deterrent to prospective investors. These stakeholders have suggested that the level of prescriptiveness included in various stages of the price reviews creates significant bureaucracy for regulators and industry and have suggested it may not be proportionate to the benefits delivered. Consumer bodies also warned that inefficiencies in the price review processes can lead to unnecessary costs being added on to company business plans and customer bills[36]. It is important that the outcome of the PR is delivered in an efficient manner.

There are risks associated with reducing regulatory complexity. Stakeholders note that, in water, the price reviews have become more complex to ensure compliance with new environmental targets set out in legislation and the government plans including the Environmental Improvement Plan, the Plan for Water and the Storm Overflows Discharge

[35] The government would not regard figures identified in an infrastructure needs assessment as binding targets, but rather as reference points for regulators to consider and refer to in reporting. The government recognises that regulators will have valid reasons for investment levels allowed to differ to the assessment, for example where timing differences exist, and technological changes may affect how companies can deliver against targets.

[36] Citizens Advice, for example, argues that energy price controls are too 'inefficient, time consuming and costly' and should be reformed to become more transparent and consistent. Citizens Advice, 'Future Network Regulation: Delivering a regulatory framework fit for the future', 2022 (Accessed 17/10/2023)

Reduction Plan. Regulators have also become more prescriptive in setting some targets to promote better value for money and stronger outcomes for consumers. Ofgem recognises that the existing system has become highly complex and has launched consultations to explore alternatives. Ofwat has worked to streamline the number of performance commitments in its PR24 approach, which will also reduce regulatory complexity, and the government encourages Ofwat to consider whether performance commitments can be further simplified in PR29.

The government recognises that a degree of complexity is necessary. The regulators are tasked with delivering savings to customers and strong oversight in processes, such as the price reviews, is an important tool to achieve this.

It is nonetheless important that the regulatory environment continues to incentivise the investment needed to deliver growth and, therefore, it is important that regulators minimise complexity where possible and practical. In addition, the government strongly encourages regulators to implement the UK Regulators' Network (UKRN) guidance on setting the weighted average cost of capital[37], to provide greater consistency across sectors and make cross-sectoral investment easier for investors.

Ensuring continued consideration of strategic investments outside standard price review periods

Industry stakeholders and sector experts have echoed NIC concerns[38] that five-to-eight-year price review periods may not always be the appropriate length of time to deliver sufficient long-term regulatory stability for strategic infrastructure projects[39]. Investments in strategic projects may take more than 20 years to recuperate in some instances. Setting returns over five-to-eight-year periods can therefore result in perceived uncertainty, and act as a deterrent to investment in specific cases[40]. In some instances, this higher perceived risk can increase the return that investors require to commit funding, leading to a rise in companies' costs and ultimately, consumer bills. This is why mechanisms, such as Direct Procurement for Customers (DPC) in the water sector, are important tools.

Industry and investors have suggested that five yearly investment cycles often incentivise peaks and troughs in investment at specific points in each five yearly period[41]. This can put significant strain on supply chains, for example, with demand for engineers often focused significantly on specific periods, rather than evenly spread across the investment cycle. This can increase costs and delay delivery where supply constraints exist.

The water sector

In the water sector, the government has heard significant praise from investors for the regulatory capital value (RCV) model, which provides funding over the life of assets,

[37] UK Regulators' Network, 'UKRN Guidance for regulators on the methodology for setting the cost of capital – consultation', 2022 (Accessed 18/10/2023).
[38] National Infrastructure Commission, 'Strategic Investment and Public Confidence', 2019, Page 40 (Accessed 18/10/2023).
[39] Many major investments in water, telecoms and energy have 20-30 year timeframes. Price reviews currently run for 5-8 year periods.
[40] The process of recuperating major investments will often span multiple price reviews.
[41] Regulators have taken some steps to mitigate this, for example bringing funding for some schemes forward.

although it was caveated that this relies on trust that the RCV will continue to be maintained and respected by the government and regulators for the duration of asset lives. The government supports continued use of the RCV model in many instances but believes there are opportunities for greater long-term certainty of revenue.

The government also supports the use of competitive arrangements for delivery of large infrastructure projects. Ofwat's DPC contracting model, and its special infrastructure projects regime (SIPR) licensing model have provided a longer-term framework that more closely reflects the investment timeframes[42]. The government welcomes further use of these competitive models, which can also enhance value for money, and invites feedback on legislative proposals to support this in **Chapter 3**.

However, there may also be circumstances where large infrastructure projects may be best suited for delivery by the incumbent water companies. In such circumstances, the government would encourage regulators to consider the arrangements necessary to provide investors with the certainty required about the funding arrangements. Investors and industry experts have praised Ofwat's approach to the Havant Thicket reservoir, where it allowed a 10-year price review to fund the project. In some instances, it may remain better value for money, nonetheless, to avoid 'carve-outs'.

The energy sector

Ofgem plays a key role in delivering anticipatory investment in energy, given its role in providing approval of business cases and driving industry reform of the networks connection queue. The government has heard that the need for more anticipatory investment in energy networks is one of the key issues for stakeholders[43]. Delays in network connections stall investment, generate investor uncertainty and risk the UK's ability to realise the benefits of decarbonisation estimated at the beginning of this chapter. In energy, it is recommended that the scope of the Accelerated Strategic Transmission Investment (ASTI) framework is expanded in line with the proposals made in the recent Winser report[44]. This allows strategic infrastructure projects to be approved as a priority, accelerating their approvals as compared to the typical RIIO price review processes.

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[42] In Ofwat's Competition Stocktake, Ofwat outlined a series of opportunities to enhance the use of the DPC and SIPR. This consultation outlines the importance of legislating quickly to enable wider use of these models in chapter 3: Ofwat, 'Competition in Strategic Investment: a high-level stocktake', 2022 (Accessed 18/10/2023).

[43] 1) Stakeholder engagement suggested that there might be very few 'high regrets' options for anticipatory investment, given the high required pace for future connections. As of January 2023, 320GW of projects were in the queue, a 73% increase in applications from the past financial year: National Grid ESO, 'Connecting to the transmission system: why we're working with the industry to drive reforms', 2022 (Accessed 18/10/2023).
2) National Grid analysis of network connection delays reveals that up to £2.5 billion per year could be lost via the so-called constraint costs, which are the costs from paying generators to reduce their electricity generation in parts of the network where new renewable generation is online before sufficient network capacity: National Grid ESO, 'Modelled Constraint Costs', Figure 1, Page Source: National Grid ESO, 2022, Modelled constraint costs, Figure 1, Page 3 (Accessed 18/10/2023) https://www.nationalgrideso.com/document/266576/download.

[44] Department for Energy Security and Net Zero, 'Accelerating electricity transmission network deployment: Electricity Network Commissioner's recommendations', 2023 (Accessed 18/10/2023).

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.

Consultation questions:

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

3. 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?

Investment shortfalls due to company decisions

Underinvestment in infrastructure can also be a result of company behaviour. Ofwat highlighted in 2022[45] that some companies invested less than half of their allowances to improve the water network. Between 2020 and 2023 (the first three years of PR19), 13 companies underspent[46] their budget on improving their water network and eight companies underspent their budget for improving their wastewater network (see Figure 2). On average, companies only spent 73% of their enhancement cost allowances[47]. However, some of this period aligns with the Covid-19 pandemic, where there will have been challenges in meeting spend commitments.

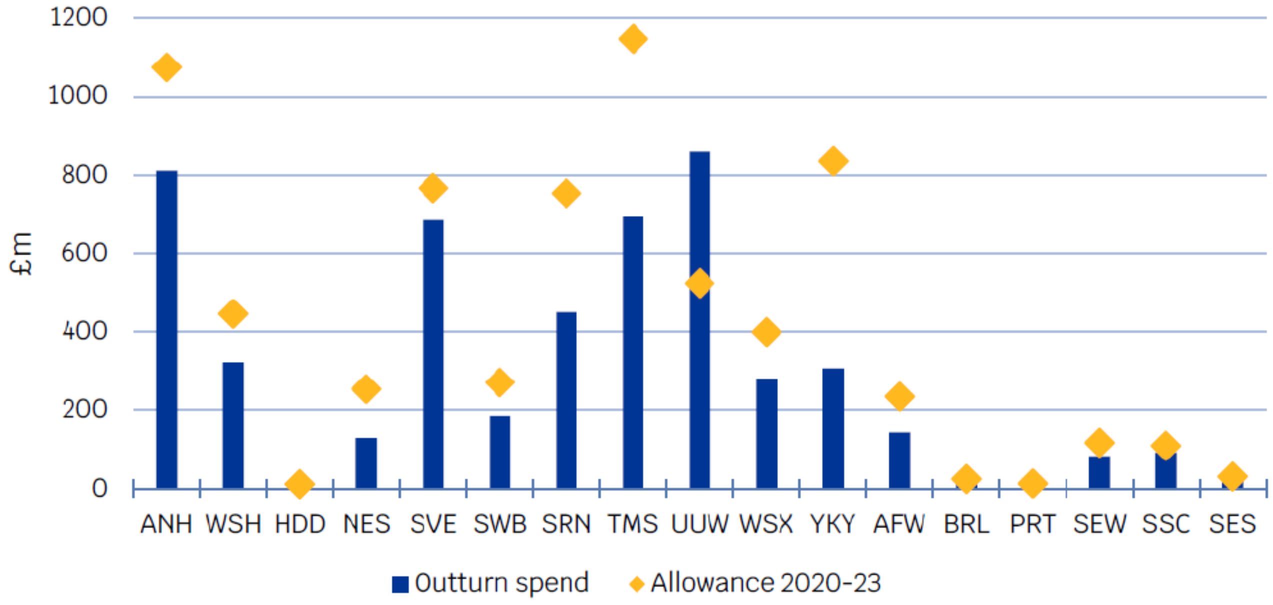
Figure 2: Cumulative enhancement expenditure - wholesale water and wastewater (2020-23 period[48])

[45] Ofwat, 'PM 38/22 Some water companies investing less than half of their allowances to improve water network', 2022 (Accessed 18/10/2023).

[46] Companies cited several factors causing delays in their programme delivery, including direct Covid-19 impacts, such as restricted access to customer premises and slower stakeholder engagement. Companies suggested that they will step up investment in the remainder of the price control period and that their enhancement programme is on track for completion by the end of this period.

[47] Ofwat, 'Water Company Performance Report 2022-23', 2023, Page 32 (Accessed 18/10/2023).

[48] Ofwat, 'Water Company Performance Report 2022-23', 2023, Page 32 (Accessed 18/10/2023) graph above shows the level of investment (outturn) made by companies relative to the level of investment allowed by the regulator.



The government supports continued scrutiny from Ofwat on underspends and has backed new plans for Ofwat to take action against water companies that pay out dividends to their shareholders despite failing to meet the required performance standards[49]. This is a significant step in rebuilding public confidence in company returns, provided powers are used appropriately. The government welcomes steps taken by Ofwat to improve company performance, including requirements for companies with lagging performance to develop service commitment plans[50].

The government also commends Ofwat for publishing its annual Monitoring Financial Resilience Report[51] setting out the financial resilience of water companies, and Ofwat's plans to regulate companies to strengthen their resilience.

Ofwat should continue to monitor whether further steps are needed where poor performance occurs as a result of underinvestment, or a lack of timely delivery of investment, as agreed in business plans. In such instances, the regulator should have regard to whether underinvestment and timely delivery was in the company's control or a result of unforeseen events. In the energy sector, energy network operators have various license conditions that Ofgem monitors to ensure they are financially resilient. For example, network companies must make "reasonable endeavours" or take "appropriate steps" to ensure that they retain an investment grade credit rating at all times. Ofwat has put in place similar protections in water companies' licenses. The government welcomes the regulators continued focus on this area. The government also welcomes work to learn from the regulators' experience in the retail supply market, as well as other regulators' actions in other comparable regulated industries.

Ofgem monitors company underspends using the Totex Incentive Mechanism (TIM) - otherwise known as the 'sharing factor', to determine network companies' exposure to

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49 Department for Environment, Food and Rural Affairs; and Rebecca Pow MP, 'Government supports new Ofwat powers to tackle water company dividends', 2023 (Accessed 18/10/2023).
50 Ofwat, 'Water Company Performance Report 2022-23', 2023, Page 33 (Accessed 18/10/2023).
51 Ofwat, 'Monitoring Financial Resilience Report 2021-22', 2022 (Accessed 18/10/2023).

under or overspends. The TIM is designed to encourage network companies to improve efficiency in delivery and ensures that the benefits of these efficiencies are shared with consumers. It also provides some protection to companies from overspends, as the costs of overspends are also shared with consumers.

Delivery mechanisms for growth

With regulators and the government facing heavy pressures to focus on the shorter-term and consumer bills, there is a perception that they have shied away from taking tough investment decisions for the long term. Therefore, it is important that mechanisms also exist that ensure that adequate attention is given to the longer-term.

This section outlines where good practice has unlocked significant investment, where upcoming changes will play a role in removing barriers to investment, and where there might be further opportunities to structurally ensure focus on removing barriers to growth in the medium to long term.

The energy sector

In the energy sector, a range of work is taking place to enhance the effectiveness with which outcomes can be delivered, both in exploring and structurally delivering solutions. Several reviews have taken place with numerous outputs, including a recent report on accelerating electricity transmission network deployment[52] by Nick Winser. The report states that if its recommendations are implemented, the time it takes for power lines to be built across the UK will be halved.

The Energy Act 2023[53] will enable the setup and scale up of the CO2 and hydrogen transport and storage networks, provide a legislative basis for greater competition in electricity networks and establish a Future System Operator (FSO)[54]. The FSO will be an independent body with responsibilities in both the electricity and gas systems, ensuring efficient energy planning, enhancing energy security, minimising cost to consumers and promoting innovation.

The telecoms sector

The government regards the scale of investment drawn into the broadband sector since 2017 as a significant success. As outlined in the competition chapter, increased competition has played an important role in delivering this and healthy competition must remain in the sector.

Water transfers and infrastructure

In recent years there has been significant interest in the prospect of improving outcomes in the water sector through improved mechanisms that take a more holistic view. The government believes that this approach could be used to solve a number of challenges facing the sector. Options exist to deliver this through expanding the remit of existing bodies or through innovative solutions. This consultation is not exploring the abolition of any regulators, or the systemic removal of incumbent monopolies from the regions they

[52] Department for Energy Security and Net Zero, 'Accelerating electricity transmission network deployment: Electricity Network Commissioner's recommendations', 2023 (Accessed 18/10/2023).
[53] UK Parliament, 'Energy Act', 2023 (Accessed 18/10/2023).
[54] Referred to as the Independent System Operator and Planner (ISOP) in the Energy Act 2023.

serve, or their assets. The government recognises that options outlined above on opportunities to promote systems-based thinking are not exhaustive and welcomes alternative proposals.

In broad terms, water transfers involve the movement of water from one location to another, primarily to ensure security of supply. Some water companies have suggested that the existing regime does not do enough to facilitate water transfers (despite the formation of RAPID – see below) and that more could be done to resolve issues between donor and recipient companies where disputes exist on the appropriate allocation of resources. RAPID expects to consult on a framework to address this in the coming months. The government notes Ofwat currently offers water trading incentives for companies to engage in such transfers. However, some have also suggested greater support may be necessary for the facilitation of small water transfers.

RAPID

The Regulators' Alliance for Progressing Infrastructure Development (RAPID) was formed to facilitate collaboration and accelerate on the development of strategic water supply infrastructure projects. RAPID was established in 2019 and is formed of Ofwat, the Environment Agency and the Drinking Water Inspectorate.

RAPID provides oversight of strategic supply solutions through the gated process. The gated process was established to review and challenge the development and delivery of the strategic water resource solutions funded as part of the 2019 price review. The current process involves four 'gates'. At each gate, companies are required to submit their work on a water resource solution, which is then assessed by RAPID to ensure companies are making progress and Ofwat also assesses if companies should continue to be allowed funding to develop their solution to the next stage. RAPID currently has 18 strategic supply solutions across England and Wales within their programme.

RAPID also collaborates with the five regional water resources planning groups, the government, and regulators to enable effective implementation of the Water Resources National Framework in England. It also works with partner regulators and water companies to develop the regulatory and commercial framework to support the delivery of water resource infrastructure.

Some companies and investors have suggested that there is a need for a more strategic, national level approach to infrastructure that allows for strategic planning for national water resources projects, specifically focusing on bigger issues, such as larger reservoirs, desalination, and significant water transfers. RAPID[55] is used currently to progress strategic infrastructure projects and has made large steps towards the coordination of infrastructure development in the sector.

Since being established in 2019, the work of RAPID has been praised by the sector. However, expanding its remit to be more strategic and systems-based such as funding coordination, could benefit the sector.

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[55] Ofwat, 'The RAPID gated process and the proposed water resource solutions', 2023 (Accessed 18/10/2023).

Consultation questions:

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

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

Commercial procurement and cost-effective long-term management of water infrastructure:

It is important that, where projects are contracted out, they are thought through in a holistic way. The interests of the contractor and the incumbent water company may not always be fully aligned. The introduction of competitive tendering through contracting models, such as DPC, has been well received in the sector, but some companies have suggested the mechanism could be strengthened further.

Consultation question:

6. What kind of role could regulators play to enhance the effectiveness of competition in large procurements and/or long-term design-build-operate contracts?

Regional funding coordination:

Some have suggested that there is greater scope for coordination from the government and regulators on issues such as water abstraction, pollution and flooding. Many water and wastewater issues span multiple industries and therefore sit across various regulators and institutions. While water companies can play a significant role in tackling these issues, many other stakeholders have significant scope to shape outcomes in the sector. For example, agriculture currently accounts for 40% of cases where waterbodies fail to reach Good Ecological Status (GES), with urban and transport pollution accounting for a further 18%. Some water companies and sector experts have suggested that there may be further opportunity to deliver more holistic water management in a region and deliver enhanced environmental improvement. The government's Plan for Water aims to deliver significant improvement on this.

In delivery against areas outlined above, there is a range of (non-exhaustive) options, which respondents to the consultation may wish to consider:

- **Encouraging water companies to take on a greater systems-based role**, some water companies highlighted concerns that water companies have limited control over many things that occur in their catchments. Water companies' functions could be amended to give them greater ability to collaborate on surface water management, as well as to collaborate with agricultural and industrial stakeholders to manage pollution, building on existing work on catchment partnerships[56]. In the

[56] Department for Environment, Food and Rural Affairs, 'Policy Paper: Plan for Water: Our Integrated plan for delivering clean and plentiful water', 2023 (Accessed 18/10/2023).

energy sector, the equivalent regional monopolies, distribution network operators, are being encouraged to take on distribution system operator functions.[57]

- **Strengthening the powers of regional water resource planning groups**. There are five regional water groups in England, made up of the 17 English water companies, key water users and other stakeholders. Under the National Framework for Water Resources, regional groups have produced Regional Water Resources Plans. These plans enable the development of strategic solutions to water resource management and are implemented through the Water Resource Management Plans developed by companies. Regional water groups are funded by water companies, which limits their ability to drive change in regions as they mainly focus on water company actions. These groups are relatively new but have provided useful steers for better coordination of resources.

Consultation question:

7. Do further opportunities exist to promote coordination and holistic approaches to issues in the water sector? If yes, please elaborate.

[57] Ofgem, 'Call for Input: Future of local energy institutions and governance', 2022 (Accessed 19/10/2023).

2. Competition

Competition is a major driver of growth and must remain a focus for regulators in the water, energy, and telecoms sectors. Competition can deliver better outcomes for consumers by incentivising industry to provide better services at the lowest costs to attract customers and foster greater technological advancement and innovation.

The nature of competition in some economically regulated sectors limits the extent to which competition can be introduced *in* the market. However, opportunities exist to enhance competition *for* the market, for example through facilitating greater competition for the delivery of significant infrastructure projects. Where there is scope for competition *in* the market, through this consultation, reducing barriers to market are considered. Where direct competition is less viable, there is also scope for more indirect competition through greater use of comparative metrics.

In the water sector, Ofwat's competition stocktake and reforms to new appointments and variations (NAVs) present opportunities for more competition both in and for the market. The government supports ongoing efforts to promote competition in the water sector and seeks views on further areas where greater competition could be introduced.

While energy networks and much of the water sector are operated primarily by natural monopolies, the fixed broadband sector has seen increased competition in recent years. This has brought clear benefits, such as a strong correlation between the level of competition and increased investment in infrastructure networks, as well as improved quality of customer outputs. With a significant number of competitors already present in the telecoms sector, the consultation looks at some stakeholder concerns regarding whether Ofcom's current regulatory approach to market competition will maintain sufficient market competition in the long-term, as well as the short term.

This chapter also explores competition law and opportunities to introduce more indirect competition in monopoly areas, through greater use of comparative performance targets.

Competition in the water sector

Ofwat competition stocktake

In January 2022, the government asked Ofwat to conduct a high level stocktake to identify both opportunities and barriers to unlocking more competition in strategic investment in England[58]. In July 2022, Ofwat published the outcome of this stocktake[59]. Subject to feedback received in the consultation, the government plans to implement the recommendations in the stocktake, this includes a proposal for the Drinking Water Inspectorate (DWI). While the DWI is not in scope, the government regards it as more coherent to consult on all stocktake measures in the same consultation.

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[58] Former Department for Business, Energy and Industrial Strategy, 'Strategic priorities and cross-sectoral opportunities for the utilities sectors: open letter to regulators', 2022 (Accessed 19/10/2023)
[59] Ofwat, 'Competition in strategic investment: a high-level stocktake', 2022 (Accessed 19/10/2023)

The stocktake mainly focuses on competition in strategic investment for major infrastructure projects, such as new reservoirs. Ofwat currently uses two competitive delivery models for these projects. It uses a licensed model under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SIPR) and the DPC contracting model. Both models are expected to save customers money[60]. There are 18 large scale infrastructure projects planned in the water sector over the next decade which could benefit from these delivery models[61].

As mentioned in **Chapter 2**, the government notes that the contracting model has not been in use for a significant period of time and only one project has been specified under SIPR. It is therefore important that Ofwat continues to monitor the effectiveness of these models as the evidence-base builds. While the government has heard positive feedback from many companies, some have expressed scepticism about the scale of benefits the stocktake can deliver, for example, suggesting increases in the cost of debt would make funding competitive delivery models more expensive.

Proposals are outlined at a high level below, with further detail provided in the stocktake:

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

Current legislation limits use of SIPR to where:

(a) the infrastructure project is of a size or complexity that threatens the water company's ability to provide services for its customers;

(b) specifying the infrastructure project is likely to result in better value for money than would be the case if the infrastructure project were not specified.

Ofwat states that these parameters have limited the use of SIPR for delivering major projects and has suggested that more flexible parameters be introduced. For example, on the Haweswater Aqueduct Resilience Programme, United Utilities concluded it did not meet the current SIPR requirements in legislation, so had to follow the alternative DPC route instead.

Consultation question:

8. 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.

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[60] Ofwat, 'Competition in strategic investment: a high-level stocktake', 2022 (Accessed 19/10/2023)
In the stocktake, Ofwat outlines that greater use of DPC "could save customers between 6-40%...which equates to a saving of between £300m and £2 billion on a hypothetical infrastructure investment of £5 billion." (Page 13). The SIPR model, which was used for the Thames Tideway Tunnel, is estimated to reduce consumer bills by c.£50 a year, relative to the cost if the incumbent had delivered the project (Page 6). Facilitating greater use of both competitive delivery models could therefore lead to substantive savings. Thames Tideway savings figure was originally sourced from: Department for Environment, Food and Rural Affairs, 'Creating a River Thames fit for our future – An updated strategic and economic case for the Thames Tideway Tunnel', 2015, Page 14 (Accessed 19/10/2023)
[61] The RAPID Investor and Supply Chain Pack outlines planned infrastructure spending in the water sector: Ofwat, 'RAPID investor pack – Building a resilient future – a guide for investors and supply chain', 2022 (Accessed 19/10/2023)

Enabling wider use of Direct Procurement for Customers (DPC)

The Drinking Water Inspectorate (DWI) regulates drinking water quality and has an important monitoring, investigation, and enforcement role in relation to water treatment works. In general, its investigation and enforcement powers are exercisable in relation to water companies. The DWI cannot take enforcement action directly against third party infrastructure providers that build and then operate a water treatment works. To address this, Ofwat proposes amending the DWI's investigation and enforcement powers so that it can take action directly against an infrastructure provider where appropriate (whether appointed under SIPR or DPC).

Provisions of the Water Industry Act 1991, enabling a water company to agree a bulk supply of water from a non-regulated entity have not yet been brought into effect. Ofwat considers that bringing these provisions into effect could enable it to regulate a wider range of projects.

Consultation questions:

9. Should the government amend the Water Industry Act 1991 and related regulations to extend the role of the DWI to also include regulated and non-regulated third-party providers?

10. Should the government commence Chapter 2B of Part III of the Water Industry Act 1991 and make regulations under those provisions? This would enable the regulation of certain water supplies from third parties to water companies.

Streamlining the application process for Nationally Significant Infrastructure Projects (NSIPs)

The scale and complexity of significant infrastructure projects often needs consent (e.g., licences) from multiple public bodies. The 2008 Planning Act streamlines the consent process for nationally significant infrastructure projects (NSIPs) through the introduction of the Development Consent Order (DCO). Developers of NSIPs go through the DCO process, speeding up the delivery of major infrastructure projects and leading to reduced costs and better consumer outcomes.

Ofwat estimate that 7 to10 major upcoming strategic water resource projects may be ineligible for the DCO process, due to not meeting the type of project defined as NSIPs in the Planning Act 2008 (as amended by the Infrastructure Planning (Water Resources) (England) Order 2019). This is a particular issue for projects which use new and emerging technologies, and risks slowing down the delivery of these projects.

Consultation question:

11. Should the Planning Act 2008 definition of water NSIPs be updated? If your response is yes, what should the new definition be/include?

Streamlining the application process for New Appointments Variations (NAVs)

Ofwat highlights that, under existing legislation, it must currently comply with a 28-day statutory consultation timescale when proposing to grant any new appointment or variation to an existing appointment for a water company (i.e., granting a licence to operate in a particular area). This can arguably be disproportionate in cases where the impact of the individual application is very modest. The existing consultation process required by legislation can sometimes slow down progress for developers and can be disproportionate to the risks and issues raised.

Consultation questions:

12. Should the government amend Section 8 of the Water Industry Act, that currently requires Ofwat to undertake a full statutory consultation on all licensing applications, irrespective of the scale or nature of the new site being applied for by new appointees, to consider the scale or nature of applications being made?

13. What consultation timelines would be appropriate for smaller scale applications?

New Appointments and Variations

Ofwat has introduced greater competition to regional monopolies in water and wastewater through the introduction of the NAV framework. The NAV framework enables new entrants to replace the incumbent as the provider of water and/or sewage services in a specific geographic area.

While incumbent water monopolies are based in specific geographical areas, NAVs can compete across England and Wales. Once granted an appointment by Ofwat, the new appointee becomes the monopoly provider of water and/or wastewater services for residential and business customers for that area. New appointees have the same statutory obligations as the large regional incumbents they replace. In order to enter a new geographical area companies must meet a range of criteria, including the provision that the customer will be 'no worse off'[62].

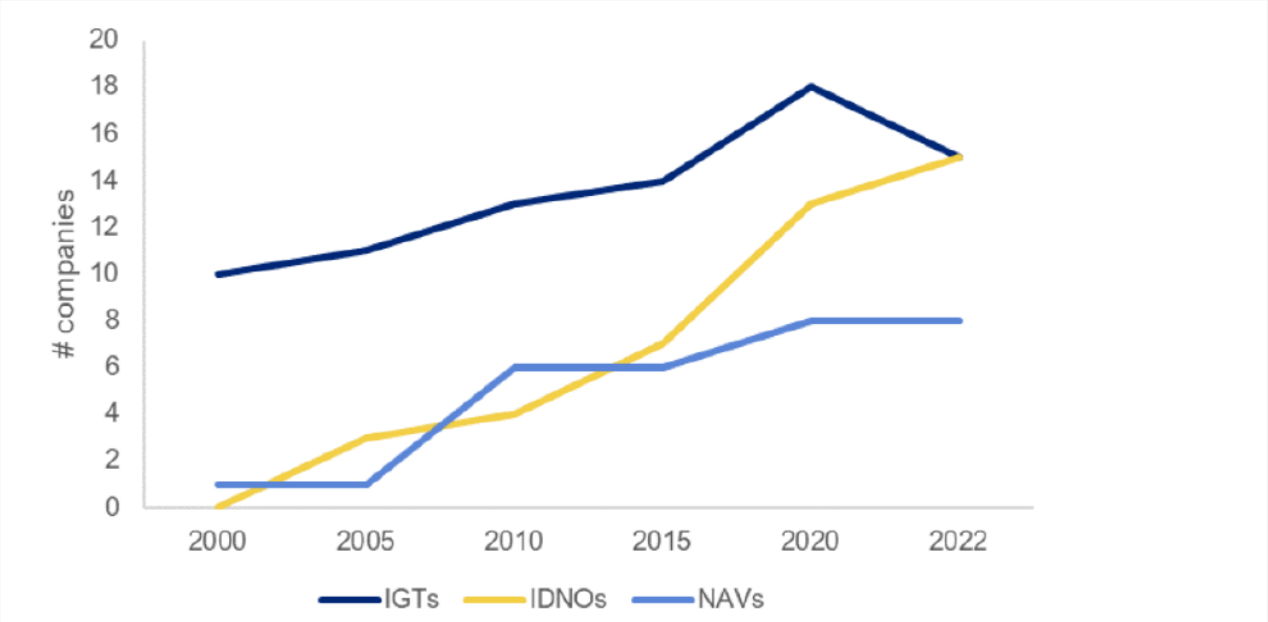
As outlined by Ofwat in its competition stocktake (discussed above), NAVs can bring many benefits. For example; i) NAVs can take advantage of the benefits of economies of scale where they operate nationally; ii) their presence as competitors to existing incumbents can exert natural pressures on the market to ensure efficient and higher quality services; and iii) in some instances, NAVs can fill gaps in infrastructure requirements through new infrastructure development. In pre-consultation engagement, stakeholders also outlined that NAVs can reduce red tape and costs for developers in some cases, with some

[62] Ofwat, 'Getting a new appointment', 2023 (Accessed 19/10/2023)

providers simultaneously providing a one-stop shop for energy, water and telecoms infrastructure.

The scale of the NAV market has grown in recent years (see Figure 3). Ofwat estimates that, in 2017, new appointees were the appointed water and/or sewerage company for around 2% of all new premises. In 2021 this had increased to around 20%[63]. Though this reflects a tenfold increase, this is substantially lower than in the energy sector where independent network companies (the energy equivalent to NAVs) have around 80% of the share of new connections in gas and electricity.

Figure 31: Evolution of independent network companies - Independent Gas Transporter Networks (IGTs), Independent Distribution Network Operators (IDNOs) and New Appointments and Variations (NAVs)[64]



In pre-consultation engagement, new entrant companies operating across water/wastewater and energy highlighted that licensing arrangements can act as barrier to entry in water, in comparison to energy[65]. Currently, Independent Distribution Network Operators (the energy equivalent of an NAV) can apply for a national licence that enables them to compete in any geographical areas in the England, Scotland, and Wales. In water, England and Wales have no equivalent process[66].

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[63] Ofwat, 'Competition in strategic investment: a high-level stocktake', 2022, Page 22 (Accessed 19/10/2023)
[64] Cambridge Economic Policy Associates (CEPA), on behalf of Independent Networks Association, 'Benefits of independent network competition in the water and wastewater sector', 2023, Page 13 (Accessed 19/10/2023). This document cites the following in the creation of the graph:
For gas and power series, (1) London School of Economics and Political Science, 'Building back faster: Utility connection competition and UK policy priorities for the 2020s', 2020, Page 10 (Accessed 19/10/2023) (2) Ofgem, LSE (October 2020), Building Back Faster, p. 10 and (2) Ofgem, 'List of all electricity licensees including suppliers', 2022 (Dataset has since been updated). For water, CEPA analysis of Ofwat, 'Register of new appointments and variations granted to date', 2022 (Dataset has since been updated).
[65] Cambridge Economic Policy Associates (CEPA), on behalf of Independent Networks Association, 'Benefits of independent network competition in the water and wastewater sector', 2023, (Accessed 19/10/2023)
[66] In Wales, policy on NAVs is devolved to the Welsh Government.

When a NAV is looking to serve its first site, it applies for a licence from Ofwat to be appointed. A NAV can then look to serve further sites by applying for 'variations' to its licence for each new site it wishes to serve. Through this application process, Ofwat considers the impact of the application on customers and whether the applicant will be able to finance and fulfil its functions on the site. Legislation currently requires that Ofwat undertake a 28-day statutory consultation on its proposal to appoint or vary a NAV licence. The government has heard that requests for licensing variations can take several months, with significant associated administrative costs. This can be a significant barrier to entry for NAVs seeking to enter new areas. However, the market continues to demonstrate unprecedented growth since 2017. The processing of administering the associated exponential increase in applications for all sites also increases Ofwat's administrative burden.

Consultation proposals (4):

(a) For Ofwat to work with the government to implement competition stocktake proposals. To deliver necessary legislative amendments to remove the requirement to consult in certain circumstances.

(b) For Ofwat to explore ways to fast-track licensing for NAVs.

(c) For Ofwat to work with the government to consider the viability of moving towards a national licensing regime for NAVs. To implement this will require legislative changes.

Consultation questions:

14. Do you agree that the government and Ofwat should look at ways of streamlining the NAV application process for variations of licences, including by removing the need to consult in certain circumstances?

15. Do you agree that the government should consider moving towards a national licensing regime for NAVs?

16. Do any other barriers exist to market entry in the water sector that the regulator or the government should explore removing?

Improvements to the functioning of the non-household retail market in water

Delegation of Code changes from Ofwat

Opening the expanded business retail market required new systems, licences, rules and processes to enable eligible businesses and other non-household customers to engage with the market and for new retailers to enter. These licences, rules and processes are contained in various Market Codes, which have been developed as part of the legal and regulatory framework and help to govern the business retail market. The Wholesale Retail Code (WRC) is a statutory code that sets out the relationship between Wholesalers and

Retailers, and how the market will operate. Currently, Ofwat has a process for deciding whether or not to approve code changes to the non-household retail market, which is prescribed in the Water Industry Act. Changes to the Wholesale Retail Code must always be made by Ofwat and, apart from some exceptions, are subject to lengthy consultation requirements regardless of the size, contentiousness, or importance of the change. To improve efficiency, it may be desirable to give Ofwat the ability to delegate approval of code changes to a different defined body, where such changes are considered uncontentious and non-substantive.

Consultation questions:

17. Do you agree that the ability to change the Wholesale Retail Code for uncontentious and non-substantive changes should be delegated from Ofwat?

18. Should the government amend or remove the consultation requirements in the Water Industry Act for Wholesale Retail Code changes?

19. Do you see any further ways market governance in the non-household retail market could be improved?

Other opportunities for competition in energy

Energy transmission and distribution networks are run by regional monopolies. Recent steps, including the 2021 consultation on competition in onshore electricity networks[67] and the Energy Act aim to introduce greater competition in energy networks[68].

Subject to parliamentary approval, the Energy Act 2023 will enable competitions to be run for the build, ownership, and operation of onshore electricity networks solutions in Great Britain, building on the existing competition regime which exists in offshore transmission assets. It will grant powers to enable the Secretary of State to appoint a body to run tenders and to set criteria to determine a network project's eligibility to compete. It will also extend Ofgem's power to make regulations which will set out the process by which tenders will be run.

The Future System Operator (FSO) could play the role of the tender body for onshore network competition, subject to the Secretary of State's discretion. This will be supported by the FSO's statutory duty to have regard to the need to facilitate competition and should be delivered at scale and pace to meet decarbonisation targets in the most cost-effective way. The FSO will also have a statutory duty to have regard to the desirability to facilitate innovation within itself and in the wider sector, where it should be seeking to drive effective

[67] Former Department for Business, Energy and Industrial Strategy, 'Consultation outcome: competition in onshore electricity networks', 2022 (Accessed 19/10/2023)
This section draws largely from: Department for Energy Security and Net Zero, 'Energy Security Bill Factsheet: Competition in onshore electricity networks', 2023 (Accessed 19/10/2023). This outlines ambitious consultations to deliver greater competition in onshore energy networks.

change across the energy system. In addition to onshore network competition due to be introduced by the Energy Act 2023.

Consultation questions:

20. Do further opportunities exist to introduce greater competition for strategic investment into the water and energy sectors?

21. What alternative funding/competition delivery models could be considered?

Delivering effective competition in the fixed telecoms sector

The UK fixed broadband market differs from the UK water and energy networks. Instead of regional monopolies providing most services in each area, in much of the UK there is competition between privately owned and funded communications providers. There are now over 100 different providers rolling out gigabit-capable broadband in the UK. Furthermore, as a result of wholesale access regulation, customers in most of the UK can choose between multiple broadband retailers. This provides benefits to consumers in terms of price, choice and innovation.

Gigabit-capable broadband delivers significant benefits to customers relative to its predecessors. It provides substantially faster and more reliable connections, particularly when delivered using Fibre-to-the Premises (FTTP) technology. The Centre for Economics and Business research (CEBR) were commissioned by Openreach to analyse the impact of FTTP roll out, estimating that the full rollout of FTTP broadband by 2030 could add £72 billion to the UK economy.[69] While the UK's gigabit-capable broadband rollout has historically lagged behind international peers[70], there has been rapid growth in broadband infrastructure investment across the UK over recent years. Companies are collectively investing over £35 billion and gigabit-capable broadband coverage has risen from 6% in 2019 to around 77% today[71]. The increased investment and associated improvements in network coverage are closely linked to steps Ofcom and the government has taken to encourage greater competition in the market at the wholesale level, which has led to a wider and faster infrastructure rollout both from BT Group and its competitors.

In broadband infrastructure, network competition has increased in recent years, with Openreach (part of BT Group[72]) and Virgin Media O2 (VMO2) facing increased competition from companies such as CityFibre, Hyperoptic and other alternative networks (altnets). The broadband retail market has high market concentration and is dominated by the 'big five' Internet Service Providers (ISPs): BT companies, including BT Retail and

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[69] Centre for Economics and Business Research, on behalf of Openreach, 'CEBR 2023 report summary: The gigabit economy – a national success', 2023, Page 2 (Accessed 19/10/2023)
[70] Ofcom, 'International Broadband Scorecard 2022: interactive data', 2022 (Accessed 19/10/2023)
[71] Department for Science, Innovation and Technology, 'Policy Paper: Project Gigabit progress update September 2023', 2023 (Accessed 19/10/2023)
[72] While BT group own Openreach and multiple companies in broadband, these have been legally separate within BT group since 2018, with Openreach instructed by BT, in response to pressure from Ofcom, to operate independently from BT group more widely.

Plusnet); Sky; VMO2; Vodafone; and TalkTalk. Over 100 companies, however, currently compete in the sector.

It is important that efficient and sustainable competition is present in the market in the long-term and that the broadband market continues to be seen as an attractive area in which to invest. The government continues to believe that network competition at all levels of the market leads to faster network rollout and better outcomes for consumers.

The government has heard from some altnets and some investors who consider the regulator has not sufficiently monitored and enforced competition at the infrastructure (wholesale) level following the introduction of the Wholesale Fixed Telecoms Market Review (WFTMR) in 2021. For example, while BT Group has committed to operate its retail-facing and wholesale branches separately and independently to assuage concerns that they acted anti-competitively, a perception exists from some of its competitors that the separation is inadequate. In areas where there are fewer customers to serve, companies must be able to compete for a material proportion of the market to make reasonable returns on investments. Given BT's significant market share in the retail market, some stakeholders argue that, in areas with fewer customers, the fact that BT's retail brands exclusively use Openreach for wholesale services makes it harder for alternative infrastructure providers to compete. The government has also heard concerns from some companies in the fixed broadband retail market. While Ofcom has established processes and mechanisms to protect competition, such as the establishment of the Openreach Monitoring Unit, some stakeholders in the wholesale and retail markets do not regard these to be fully effective, citing gaps in monitoring and perceived gaps in enforcement.

The government has also heard frustration from some companies regarding the delay of 'one touch switching', which would make it easier for customers to switch broadband providers. Ofcom has issued a formal enforcement programme to providers to investigate why industry has missed the deadline for implementation[73]. Ofcom should continue to progress this as a matter of priority.

While the government notes significant successes by Ofcom in fostering a competitive environment, the government acknowledges the concerns raised by some companies regarding the future of competition in the face of changing market conditions. The government recommends Ofcom considers these issues in the next Wholesale Fixed Telecoms Market Review. The government remains committed to ensuring that healthy, effective and sustainable competition is sustained in the broadband market in the long-term.

Consultation proposal (5):

For Ofcom to review whether existing monitoring is sufficiently capturing competition issues in the sector.

[73] Ofcom, 'Enforcement Programme: Industry's failure to implement One Touch Switch by deadline of 3 April 2023', 2023 (Accessed 19/10/2023)

Competition powers and performance targets

Concurrency

Economic regulators, including those in the energy, water and telecoms sectors have a range of regulatory tools and responsibilities that enable them to foster competition. In addition, Ofgem, Ofwat and Ofcom can exercise the competition powers they hold concurrently with the UK's principal competition authority, the Competition and Markets Authority (CMA). The economic regulators have powers to take enforcement action against illegal anti-competitive agreements and the abuse of a dominant position[74]. There are several procedural arrangements to support the effective operation of these concurrently held powers[75].

The Digital Markets, Competition and Consumers Bill, currently before Parliament, is designed to reinforce and bolster our successful competition law system[76]. For example, it provides for stronger powers to investigate illegal anti-competitive conduct and to sanction companies that refuse to comply with investigations and remedies to competition problems. These upgrades are intended to apply both to the CMA and to the economic regulators where they hold competition powers concurrently with the CMA.

2024 marks ten years since the Enterprise and Regulatory Reform Act 2013 introduced a range of reforms to enhance the concurrency arrangements. The CMA is therefore carrying out an in-depth review, which will consider the overall operation and effectiveness of competition concurrency in the ten years since these reforms. The CMA has published a call for inputs to assist with its review and intends to report on its conclusions in Spring 2024[77].

Given the role concurrency has in promoting competition in the regulated sectors, the government intends to consider concurrency as part of its wider review. It will therefore give careful consideration to the CMA's report and the views received by the CMA. The

[74] These include Chapter 1 and Chapter II prohibitions on illegal anti-competitive agreements and the abuse of a dominant position set out in the Competition Act 1998. They can also undertake market studies and make market investigation references under the Enterprise Act 2002 to the CMA.
[75] These procedural arrangements are set out legislation, including the Enterprise and Regulatory Reform Act 2013 and the Competition Act 1998 (Concurrency) Regulations 2014, via bilateral memorandums of understanding between the CMA and concurrent regulators, and via published guidance on the operation of concurrency (the Concurrent application of competition law to regulated industries: CMA10). The arrangements include various procedures for cooperation on case work (including the allocation of cases), a requirement on the CMA to publish an annual report on the operation of concurrency, and the establishment of the UK Competition Network as a forum for multilateral engagement between concurrent regulators.
[76] Department for Science, Innovation and Technology, 'Digital Markets, Competition and Consumers Bill: supporting documentation', 2023 (Accessed 19/10/2023)
[77] Competition and Markets Authority, 'Open Consultation: Review of the competition concurrency arrangements', 2023 (Accessed 19/10/2023)

government also invites stakeholders to submit their views on concurrency as part of their response to this consultation.

Consultation question:

22. Do the existing concurrency powers and arrangements deter or address anti-competitive behaviour in the regulated sectors? Please explain the reasons underpinning your response.

Comparative performance targets in water and energy

As outlined earlier in the chapter, direct competition will not always be viable. However, with different companies delivering comparable functions across the UK, in some instances greater indirect competition based on performance may be viable.

Consumer bodies have suggested that better value-for-money for consumers could be delivered through the introduction of more comparative performance targets, to promote indirect competition between companies in price reviews. Incentive payments and penalties exist, where companies can charge customers more if they provide a better service and less for poor service. This can financially incentivise companies to meet objectives, such as reducing pollution and delivering better customer service.

Most incentive payments companies receive in current price reviews are linked to companies achieving absolute targets[78]. Regulators have faced public criticism for setting targets too low (for example, where regulated utilities companies with lower risk than FTSE companies have been able to receive returns several percentage points higher than the average FTSE company[79]), or too high in some instances.

An alternative approach could be to link incentive payments more closely to companies' performance relative to other companies in the sector. This would redistribute how incentive payments are paid to companies, rather than reducing or increasing incentives funding. Ofwat has already introduced this form of indirect competition for consumer outcomes, through C-MeX[80]. If performance of other companies improves, companies must either improve or risk not receiving as much money from customers. In such a system, market forces are simulated so that a company that innovates is more likely to outperform its competitors and earn better profits. The market can set dynamic targets that are harder for companies to game and may simplify the price controls. Comparative performance metrics are particularly suited to outcomes that can be more dynamic, due to

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[78] An example of an absolute target would be reducing a type of water pollution by a particular percentage, which would result in an incentive payment. If all companies achieved this target all companies would achieve the payment.
[79] In the NAO's 2020 report on Electricity Networks, it highlights that, based on available data, energy network companies forecast 9.2% returns on average, in comparison with average FTSE returns of 5.25-5.75%. National Audit Office, 'Electricity Networks', 2020, Page 3 (Accessed 19/10/2023)
[80] Ofwat, 'Customer and Developer services experience', 2023 (Accessed 19/10/2023)

the greater ease at which companies can adjust their performance relative to other companies[81].

The C-MeX comparative performance metric

In the water sector, the Customer Measure of Experience (C-Mex) performance incentive is used to improve customer service. Customer surveys assess customer satisfaction across all companies subject to the price review. Each company receives outperformance payments or incurs financial penalties based on how it scores compared to other companies.

Companies that deliver better customer satisfaction receive incentive payments and those who have provided a poorer customer service get a financial penalty.

Some companies argue broadening this approach could lead to adverse outcomes. For example, making companies compete could reduce collaboration between monopolies on key areas such as innovation. Companies that expect to be bottom or top can also have limited incentive to improve further. Limited comparability across different geographical areas, and different levels of funding and consumer expectations, on many performance aspects could also risk leading to unfair and unpredictable returns for companies. This is particularly pertinent in the water sector, where differing topographies in each area have a significant impact on company cost bases. Incentive payments based on company performance must therefore consider equality across the sector before introduction.

Others highlight another risk with a comparative approach. If all or most companies in a sector score poorly on a particular metric, some companies in the sector could still receive an outperformance payment, despite failing to deliver adequate service levels. To avoid this, eligibility for incentive payments could also be tied to satisfying a minimum performance standard or a minimum required improvement. Ofwat's C-MeX already includes absolute components alongside relative measures, and Ofwat has recently consulted on increasing the absolute component, proposing greater use of benchmarks from other sectors[82].

Consultation proposal (6):

In energy and water, regulators should consider introducing greater use of comparative metrics to promote greater competition on performance between companies.

[81] Government strongly welcomes recent steps taken by Ofwat in PR24 to enhance the use of comparative metrics, such as through the introduction of BR-MeX which will introduce the use of comparative incentive payments for business retail customers: Ofwat, ‘BR-MeX: Business customer and retailer measure of experience’, 2023 (Accessed 19/10/2023)

[82] Ofwat, ‘Consultation on the measures of experience performance commitments at PR24’, 2023 (Accessed 19/10/2023)

3. Supporting consumers

Ofgem, Ofwat and Ofcom play an essential role in protecting and delivering positive outcomes for consumers. They are responsible for addressing bad practice and ensuring fair treatment for all consumers, especially those that are vulnerable.

Consumers across the UK are facing many challenges. Whilst high inflation is coming down, many are still struggling with high costs of energy and essential services[83]. Prices can be vulnerable to external challenges, such as Russia's invasion of Ukraine and the COVID-19 pandemic[84].

Alongside these challenges, rising energy costs and environmental issues in water have damaged consumer trust and satisfaction in these sectors[85].

As highlighted in the 'Driving economic growth and investment' chapter, substantial investment in infrastructure is needed, particularly in the water and energy sectors. Whilst this will bring many benefits for consumers, including lower prices for renewable energy and improved river water quality, it will likely lead to an initial increase in overall bills. For this to happen, consumers need to trust these sectors and it is essential that support mechanisms (such as priority services or reduced bills) are there for those that need them most.

The government welcomes and supports the multitude of ongoing work to support consumers by regulators and notes the future opportunities that initiatives, such as Smart Data, provide[86]. However, given the range of challenges consumers are facing, there are opportunities for improvement across all three sectors. This consultation focuses on cross-sector proposals with the biggest potential benefits for consumers.

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[83] According to Citizens Advice over 1 in 4 people (27%) are behind on at least one household bill. Citizen's Advice, 'Closing the gap: How to improve customer support in essential services', 2023, Page 3 (Accessed 19/10/2023)

[84] 1) The Financial Conduct Authority (FCA)'s Financial Lives coronavirus panel survey demonstrated that more consumers found themselves in vulnerable circumstances due to the pandemic, with 53% of adults displaying a characteristic of vulnerability: Financial Conduct Authority, 'The Financial Lives 2022 survey: insights on vulnerability and financial resilience relevant to the rising cost of living', 2023 (Accessed 19/10/2023)
2) In addition, the Money and Mental Health Policy Institute's paper, The State We're In, revealed that, during the COVID-19 crisis, people with mental health problems faced a much higher risk of financial hardship compared to the wider population: Money and Mental Health Policy Institute, 'The State We're In', 2021, Page 5 (Accessed 19/10/2023)

[85] 1) The Which? report on consumer trust in November 2022 showed a dramatic drop in trust in the energy sector in August 2022. Which?, 'Consumer Trust in November 2022', 2023 (Accessed 20/10/2023)
2) CCW's report on "Perceptions and Trust in Water Companies" noted that, where there was a change in trust over the past year, it tended to be for the worse. Trust was lowest in the South East of England, an area that recently had hosepipe bans and publicity about water leaks. Consumer Council for Water, 'Perceptions and Trust in Water Companies', 2023, Page 20 (Accessed 20/10/2023)

[86] Smart Data enables individual consumers and businesses to access and share their data simply and securely with authorised third parties, enabling innovative services. There is ongoing work to explore data sharing schemes in each sector and government welcomes the progress being made. Government expects regulators to support this work to achieve better consumer outcomes.

Protecting vulnerable customers

Vulnerability is an umbrella term that regulators define in different ways (Annex A). It is encouraging to see regulators' increasing focus on vulnerability, for example Ofwat's consultation to update its vulnerability guidance[87]. The government strongly commends the sectors' collaborative efforts to support the most vulnerable consumers, particularly the ongoing working group, led by Ofgem, that focuses on driving better data sharing including that held on Priority Services Registers (PSRs) in the energy and water sectors. It is encouraging to see inclusive and innovative approaches to tackling the problem. However, there are opportunities for regulators to go further.

The PSR is a service provided by individual energy (supply and network companies for both gas and electricity) and water and sewerage companies to ensure that extra help is available to consumers as and when they need it. Originally set up to provide priority support in instances of supply disruption, the PSR has expanded to include other services[88].

Telecoms companies also provide priority support to their customers in instances of service disruption through each company's priority fault repair service (for landline and fixed broadband[89]). This is available for end users who depend on these services because of a disability and have an urgent need for a repair.

However, engagement with industry, consumer bodies, and regulators has emphasised how the PSRs, and equivalent telecoms services, are disjointed, resource intensive, duplicative for companies, carry risks of inconsistency across areas, and can be burdensome for consumers. There is significant opportunity to improve the efficiencies and delivery of these services to provide extra help to consumers who need it most.

Specific eligibility criteria and available support through a PSR is determined at the company level in both energy (albeit with codes and criteria set out in company licences) and water. This can result in variable support depending on an individual's service provider[90]. Each company must invest time and finances to engage with consumers, assess their support needs, and create and maintain their own data systems. However, industry codes ('needs' codes[91]) used by companies to record and share data have recently been aligned across energy and water.

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[87] Ofwat, 'Service for all – Ofwat's draft vulnerability guidance for water companies supporting customers who need extra help', 2023 (Accessed 20/10/2023)

[88] Some companies also include identification and password schemes, bill nominee schemes, regular meter reading services, and accessible information, for example, account information and bills in large print or braille.

[89] Ofcom, 'Broadband and landline faults and problems' (Accessed 20/10/2023)

[90] 1) In 2016, Ofgem broadened their eligibility criteria to consider individuals based on their circumstances, in addition to a set of characteristics on age, health and disability. Ofgem, 'More customers in vulnerable situations to receive help under the Priority Services Register', 2016 (Accessed 20/10/2023)
2) Current Ofwat guidance only focuses on consumer characteristics, around age, health and disability. Ofwat, 'Priority Services' (Accessed 20/10/2023)
3) U-Switch's overview of PSR support available from some of the biggest energy suppliers shows substantial variation in the type of support provided. U-Switch, 'Priority Services Register for vulnerable energy customers', 2023 (Accessed 20/10/2023)

[91] These are codes used to transfer data about vulnerable customers between companies. Water and energy companies have begun sharing needs code data with each other and government commends this work.

Although some research suggests there is growing consumer appetite for greater sharing of personal data, data portability is currently limited[92]. Having multiple PSRs and equivalent systems increases the risk of customers being registered with one provider, but not others and having different and potentially incomplete data recorded on separate systems[93]. Consumers can find the process of disclosing their support needs to multiple providers time-consuming and stressful[94]. Consumer awareness and registration to PSRs is consequently low[95].

The need for a multi-sector Priority Services Register[96]

A single multi-sector PSR service would ensure that consumers only need to disclose their vulnerability once, regardless of where they live[97]. This service could reduce harm and improve wellbeing during incidents, increase the number of households receiving tailored services, save administrative costs overall in the long term and improve support services for vulnerable consumers.

A data hub, portal or sign-up service, hosted in the private or public sector, could exist on a 'Tell Us Once' basis, similar to the Department for Work and Pensions (DWP) service where individuals inform central and local government services of a death once (Annex B). The service should also easily enable amendments to an individual's situation, given that vulnerable circumstances might change. The expectation is that service providers (both bodies involved in incident response and companies servicing vulnerable households in regulated sectors) would be given appropriate and controlled access to this information

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[92] 1) The 2022 report, Global Data Privacy: what the consumer really thinks, showed that consumers are increasingly comfortable with data sharing, especially if there is a clear benefit of doing so. Data and Marketing Association, 'Global Data Privacy: what the consumer really thinks', 2022 (Accessed 20/10/2023).
2) The 2019 Citizens Advice report, Clear and in control, found that most people agree that smart technology is the future, with a strong appetite for smart meters and devices in energy. Citizen's Advice, 'Clear and in Control: Energy consumers' views on data sharing and smart devices', 2019, Page 8 (Accessed 20/10/2023)
3) However, some research does highlight outstanding concerns that customers may have about sharing vulnerability data (for example: Ofwat, 'Data Sharing: research Findings', 2022, accessed 20/10/2023)
[93] The Citizens Advice report, Closing the gap: How to improve customer support in essential services, also highlights that the complexity of this customer journey means that people are missing out on the support they are entitled to. Citizen's Advice, 'Closing the gap: How to improve customer support in essential services', 2023, (accessed 20/10/2023).
[94] As found by Citizens Advice, 'Closing the gap: How to improve customer support in essential services', 2023, (accessed 20/10/2023).
[95] 1) CCW review highlights low customers awareness of priority services across all water companies. CCW, Water company performance (accessed 23/10/2023)
2) Ofgem's consumer research shows that only one in three consumers are aware of the Priority Services Register. Jonathan Brearley's speech to Ofgem's Vulnerability Summit (accessed 23/10/2023)
3) Across energy networks the number of people registered on the PSR can vary substantially, depending on geographical area (Citizens Advice, 'Closing the gap: How to improve customer support in essential services', 2023 accessed 20/10/2023).
[96] This working definition of what a universal PSR could look like has been pulled together in conjunction with the Ofgem-led working group.
[97]A UK register would prevent consumers from dropping off the register if they moved between nations. A multi-sector PSR could look to incorporate the current work updating Customer Care Registers for domestic gas, electricity and water consumers in Northern Ireland (where the Utility Regulator in Northern Ireland's long term goal is to reduce nine registers to one register, with three registers, one per sector, in the short to medium term) and the JIGSO project in Wales (Annex B), as well as incorporating devolved bodies such as Social Security Scotland and Scottish Water. Consumers will need to have the option of registering both digitally (where advisers will play a key role) and non-digitally (potentially through a telephone service).

and use it to support vulnerable consumers. A single service should have universally clear language, shared data removal and retention policies and centrally managed data validations. It should look to avoid complexity that would result in lengthy or stressful sign-up processes.

A universal PSR would primarily cover support in emergency situations, including planning and preparation, but could also include regular support, such as communication requirements. Our engagement to date suggests that financial vulnerability may be a further area for the PSR to explore.

Initially, the PSR could build on recent cross-sectoral progress made between energy and water sectors at the local level and in cooperation with public sector organisations. Access to online and digital services is important and the PSR should work to explore including telecoms.

The Ofgem-led working group should expand its membership to include all relevant government departments including the Cabinet Office, who will help coordinate government input into the multi-sector PSR proposal.

For the PSR, the starting principle is that consumers' data should be portable in cases of substantial public interest so that, if a consumer moves address or switches, their new providers can automatically access the relevant information. Data portability would reduce the risk of consumers 'dropping off' the service. It is also important consumers retain control over how their data is used. Under the PSR proposal, data would be stored, managed and shared safely and securely, in line with the General Data Protection Regulation (GDPR), to ensure sensitive and personal data has the strongest protections. One way to protect confidentiality may be for property references, such as Unique Property Reference Numbers (UPRN), to be used rather than individual customer information, although some properties have more than one associated telecom service.

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.

Consultation questions:

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

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

25. What vulnerabilities and services should the PSR cater for?

Communication and promotion of affordability support

An increase in crucial infrastructure investment in water and energy is expected, alongside recent increases in investment in telecoms. Given the likely impact on consumer bills and the rise in cost of living, available affordability support should be communicated and promoted effectively so that those who need it most can access it.

There is a range of domestic and non-domestic affordability support offered across the energy, telecoms, and water sectors, as communicated and signposted by the government via the Help for Households campaign[98]. Consumer organisations such as Citizens Advice and the Consumer Council for Water (CCW) also perform crucial roles in raising awareness of this support. The government welcomes the recent announcement from the regulators, including the Competition and Markets Authority (CMA) and Financial Conduct Authority (FCA), on expectations of firms during the rising cost of living, and encourages regulators to continue working together on these issues[99].

However, the government has heard concerns from industry, regulators and consumer bodies, about the low uptake of existing support, linked to low customer awareness, inconsistent messaging and signposting across sectors, and confusion around eligibility and the level of support available.

For example, in telecoms in April 2023, around 5% (220,000) of households on Universal Credit were on social tariffs offered by broadband and mobile providers, with just over half of eligible households unaware of the support available[100]. Similarly, in water, only 3 in 10 customers are aware of any financial support available from their water company[101]. More than 700,000 households in Great Britain reportedly missed out on £300 million worth of support for energy bills[102]. Business customers are also struggling – in October 2022, 22% of businesses said that energy prices were their main concern[103].

The varied language used to describe support available is a particular challenge for customers, with different terms such as 'payment break' and 'payment holiday', 'Priority Services Register' and 'Extra Care Register' often causing confusion.

Given the current rise in cost of living, and potential future increases to consumer bills, regulators and the government must work together to ensure consumers are aware of future price increases, so they can plan accordingly[104]. It is also important that the government and regulators ensure they have strong plans in place to support consumers who are struggling to pay their bills and who may be considered vulnerable. The UK

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98 Help for Households on gov.uk (Accessed 20/10/2023)
99 Chancellor agrees action plan with regulators to support consumers (accessed 20/10/2023)
100 More analysis can be found on the Ofcom website from the Ofcom affordability tracker (accessed 20/10/2023).
101 Ofwat, 'Only 3 in 10 customers aware of financial support available from their water company', 2023 (accessed 20/10/2023).
102 BBC analysis of government figures: BBC, 'Energy bill support: More than 700,000 households miss out', 2023, accessed 20/10/2023).
103 Office for National Statistics (ONS), 'Rising business insolvencies and high energy prices', 2023 (accessed 20/10/2023).
104 It is worth noting that, in February 2023, Ofcom launched a review into inflation-linked, price rise clauses (accessed 20/10/2023) and whether they are sufficiently transparent and clear for customers. The work is expected to conclude this year and government will review Ofcom's findings.

Regulators Network (UKRN) could play a convening role in working with regulators and companies to make these support schemes more visible and accessible, issuing guidance or expectations where necessary, and ensuring the consistency of language is improved across and within sectors.

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.

Consultation question:

26. How can existing affordability support be better communicated to increase customer awareness?

Interim supply in the non-household water market

In 2017, the government opened the non-household retail market for water, allowing all businesses to buy water and wastewater services through a water retailer. Water retailers act as intermediaries between business customers and water companies, providing billing and customer services. All water and wastewater services are provided by the incumbent water company.

There have been concerns about what might happen with an unplanned retail exit in the non-household water market. Currently, there is no mandatory requirement for any retailer to put themselves forward for allocation to customers in an interim supply event and Ofwat currently has no legal means to direct retailers to supply these customers. This is a significant risk to the market as it means that customers could potentially go 'unserved' by a retailer, though they would continue to receive water and sewerage services.

Strengthening the protections for customers in the event of a retailer exit has therefore been identified as a priority for the government and Ofwat[105]. One possible solution is to change legislation to provide a power to Ofwat to allocate customers from an unplanned retailer exit to a new retailer/s on a mandatory basis. This would provide similar powers as exist in the Scottish Water market.

Consultation proposal (9):

The government will provide the power to Ofwat to allocate customers from an unplanned retailer exit to a new retailer/s on a mandatory basis.

[105] Department for Environment, Food & Rural Affairs, 'Government's strategic priorities for Ofwat', 2022 (accessed 20/10/2023)

Consultation question:

27. What are the benefits and risks of giving Ofwat the power to allocate a water retailer if the incumbent retailer becomes insolvent?

4. Duties and functions

Economic regulation is necessary to ensure positive outcomes for businesses and society. Post-privatisation, one of the key responsibilities of these regulators is ensuring that natural monopolies and dominant post-privatisation firms are unable to exploit their market power. Key foundations of this are the duties and strategic statements to which the regulator must adhere to. These are used by the government to focus priorities and set the strategic direction of the regulators.

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 technological advancements (e.g., artificial intelligence), geopolitical instability, increased competition, the cost of living increasing, fragile supply chains and Covid-19. The regulators manage their sectors, help businesses respond to shocks and, in some cases, have taken on more responsibilities in the face of these major challenges. In turn, the number of regulator duties has increased. The government acknowledges that, as a result, the decisions that balance duties are becoming more demanding, which can affect regulator agility.

Understanding the problem: growing remits and increased challenges

Ofgem, Ofwat and Ofcom's duties have expanded since their creation when there was a narrower focus on competition. The current economic climate is markedly different since privatisation in the 1980s and consequently, duties have expanded to include other aspects such as environmental protection, sustainability, and vulnerable customers.

Ofgem, Ofwat and Ofcom all have non-economic functions, such as delivering grant funding programmes; for example, in Ofgem, a significant number of staff are involved in administering environmental schemes. Whilst there is no suggestion that these other important duties or functions should cease, the government must ensure that regulators are not overloaded and their boards remain focused on delivering key economic regulation outcomes, such as ensuring adequate competition and value for money for consumers. The government would like economic regulation to be a higher priority so that economic functions are more regularly discussed by the regulator boards.

It is right, therefore, to review and consider exactly what outcomes the government wants to see from economic regulation. While the government recognises that the telecoms, water, and energy sectors are each unique, there are commonalities in the approaches to economic regulation.

The table below sets out the regulator duties that were in place when the regulators were first privatised/established, compared to today.

Ofgem	
Duties when regulator was first privatised/ established	Ofgem had six statutory duties in 1986.

Duties added since privatisation /established	Ofgem's principal duty is to protect consumers. Key additional duties were added over the period 2000-2013, incl. a duty towards consumers of other utilities, added in 2000, and duties towards sustainable development and good regulatory practice, added in 2004[106]. Ofgem now has nine duties in 2023 including the Net Zero Duty that was recently granted Royal Assent and the Act will soon come into effect[107].

Ofwat	
Duties when regulator was first privatised/ established	In 1989, Ofwat had two core duties: to ensure water companies' functions were properly carried out and that these companies were able to finance the proper application of those functions. Subject to those two core duties, Ofwat had a further five duties.
Duties added since privatisation/ established	Ofwat's primary duties have evolved to include: protecting the interests of consumers; ensuring business retailers properly carry out their licenced activities and functions, added by the Water Act 2003; and a resilience duty introduced by the Water Act 2014. As well as these, Ofwat has a further six duties[108] it must consider when carrying out relevant functions.

Ofcom	
Duties when regulator was first privatised/ established	Ofcom was created in 2003 by merging five regulators (the Broadcasting Standards Commission, the Independent Television Commission, the Office of Telecommunications (Oftel), the Radio Authority and the Radiocommunications

106 Ofgem, 'Our powers and duties', 2013 (Accessed 20/10/2023)
107 Smarter Regulation: Consultation on extending the Growth Duty to the economic regulators Ofgem, Ofwat and Ofcom (2023)
108 Ofwat's duties are to: (1) further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition; (2) ensure the functions of water companies are properly carried out; (3) ensure that water companies are able to finance the proper application of those functions; (4) ensure that retailers in the business retail market properly carry out their licensed activities and statutory functions; and (5) further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems; and to ensure that they take steps to enable them, in the long term, to meet the need for water supplies and wastewater services. Subject to those five core duties, Ofwat is also required to carry out most of its functions in the manner it considers is best suited to, (1) promote economy and efficiency; (2) secure that no undue preference or undue discrimination is shown by water companies in the fixing of charges; (3) ensure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or by retailers in the business retail market; (4) ensure that consumers are protected where water companies sell interests in land; (5) ensure that consumers are protected in relation to any unregulated activities of water companies; and (6) contribute to the achievement of sustainable development.

	Agency) and inherited many of their respective duties, which became part of the Communications Act 2003.
Duties added since privatisation/ established	Ofcom's core duty is to further the interests of citizens and consumers, where appropriate by promoting competition. Ofcom's duties expanded when the Postal Services Commission was merged into Ofcom in 2011. It then became the regulator of the BBC in 2016, the regulator of video-sharing platforms in 2020 and gained an enhanced role in network security in 2021. Ofcom's responsibilities are continuing to grow with the Online Safety Bill that, subject to the will of Parliament, will make Ofcom the online safety regulator as well.

Where there are tensions between duties, how these are balanced in individual decision cases is fundamental to independent regulation. This protects decisions from political intervention, protecting the markets and helping ensure stability. This is valued by businesses, consumers, and investors. Duties in tension with one another should not be seen in a binary manner, as regulators are used to this and operate to achieve a balance[109]. However, with more duties and responsibilities placed upon regulators, it can be harder for them to prioritise and trade-off amongst them, with the potential for inconsistency. For example, protecting consumers against rising bills can undermine environment protection through reduced investment in innovation[110,111].

Stakeholder engagement has found that investors can find the UK's regulatory framework inconsistent across sectors and that having a common framework and language, where appropriate, can support new investors to enter other sectors[112,113]. The NIC also recommended that the duties of the regulators need to be coherent "to ensure stable and predictable regulation over the long term[114]." More consistent duties and appeals regimes across regulators would help to tackle cross-sectoral challenges and ensure regulators are held to account to the same standard[115,116].

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[109] UK Parliament, 'Appendix 3: The Government's Response [to] Select Committee on Constitution Twelfth Report' (Accessed 20/10/2023)
[110] Fingleton, 'Resisting marshmallows: the BEIS strategy for economic regulation', 2022 (Accessed 20/10/2023)
[111] Institute for government, Energy regulation requires trade-offs the regulator cannot make alone, (2023)
[112] NIC (2019) Strategic Investment and Public Confidence
[113] Fingleton, 'Resisting marshmallows: the BEIS strategy for economic regulation', 2022 (Accessed 20/10/2023)
[114] National Infrastructure Commission, 'Strategic investment and public confidence', 2019 (Accessed 20/10/2023)
[115] Fingleton, 'Resisting marshmallows: the BEIS strategy for economic regulation', 2022 (Accessed 20/10/2023)
[116] Global Infrastructure Investment Association, 'The Future of Regulation', 2020 (Accessed 20/10/2023)

The government has heard from stakeholders that the layering of duties has become a challenge for regulators[117]. Fingleton[118] argues: "most effective organisations typically have a single or very few duties, but considerable leeway on how they deliver them[119]."The government would like to seek views on a new set of core, outcome-focused duties for regulators' economic functions. The government defines economic duties to include the delivery of an economic function, delivery of economic regulation, bringing in investment (including infrastructure, innovation, and meeting net zero), growth, competition and protecting consumers. The government is seeking to better organise regulator duties, including whether they can be rationalised (e.g. where multiple environmental and sustainability duties exist), refocus them back on delivering economic outcomes and make the regulatory framework easier to navigate: a review into this would therefore also consider how economic and non-economic duties interact. The government reviewed the range of responsibilities that regulators are balancing, and the following key economic duties have been identified:

- **Fostering economic growth** – promoting growth through competition, investment and upgrading infrastructure; encouraging innovation and new technologies.
- **Protecting current and future consumers** – balancing costs and intergenerational fairness. Ensuring an affordable and reliable service.
- **Ensuring effective competition** – promoting competition between companies to drive best value for consumers.
- **Supporting the government to deliver net zero and protecting the environment** – including reducing pollution and making, where necessary, decisions to help the UK reach this target by 2050.

The government needs to conduct further research to identify the specific challenges relating to duties and assess options to improve them, with the view for this to have a positive effect on improving outcomes for businesses and consumers. The government recognises there may be downsides or unintended consequences associated with changing regulators' duties and will only pursue this where it would be appropriate and useful.

The intent of a new set of outcome-focused duties would be to simplify the regulatory framework whilst maintaining the focus on economic regulation. It would also help ensure regulators' interventions focus on these core duties and that sufficient attention is given to delivering these outcomes at regulator board level. In the absence of a legislative steer such as Strategic Policy Statements (discussed below), regulators must continue to be able to independently determine how they balance and prioritise their duties. There will also be sector specific nuances within these duties and additional sector-specific duties on top of these, for example those that relate to non-economic functions, specific financing

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[117] Institute for government, Energy regulation requires trade-offs the regulator cannot make alone, (2023)
[118] John Fingleton is an economist who runs his own business, Fingleton, advising businesses on competition and regulation matters.
[119] Fingleton, 'Resisting marshmallows: the BEIS strategy for economic regulation', 2022 (Accessed 20/10/2023)

duties[120] or international obligations. In this consultation, the government would like to test the hypothesis that an aligned and simplified regulatory framework leads to stable markets and increased investment.

In parallel to this consultation, the government is announcing its intention to apply a growth duty to Ofgem, Ofwat and Ofcom. This is a measure that can be taken in the short term to improve these regulators' focus on growth, whilst the government undertakes a holistic review of duties.

This is an early step in collecting views and government departments with responsibility for the respective regulators will continue to work with regulators and the sector beyond this consultation to further refine and clarify details of a new duties framework.

Reviewing duties

A transparent regulatory regime provides a more stable environment for domestic and international business investment. This is shown in a number of ways such as transparency in policymaking, the use of regulatory impact assessments, stakeholder involvement in policy development through consultation, and post-implementation reviews of legislation. Post implementation reviews are how the government confirms that legislation meets the original intended objectives; that there are no unintended consequences. Post implementation reviews are also important for demonstrating transparency to international partners in terms of good regulatory practice. In line with this principle, the government would like to gather further evidence on whether the current duties are delivering the intended outcomes in the water, energy and fixed telecoms sectors.

Regulators have informed us that, given the reliance on duties to perform their daily functions, any changes, including whether they can be rationalised (e.g., where multiple environmental and sustainability duties exist), should be subject to further consultation to ensure that operational and regulatory delivery is not impacted by sudden changes and unintended consequences. Primary legislation would be required to change duties in many cases. If the review concludes that required international or non-economic functions are to be reallocated, alternate bodies that can deliver the function to the required standard must also be identified.

[120] Ofwat has specific duties to carry out its relevant functions in the manner which it considers is best calculated to, among other things, secure that the functions of water companies are properly carried out and that water companies are able to finance the proper carrying out of those 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:

1. Which duties are still essential in today's economic landscape and whether they are fit for purpose.

2. If there are unnecessary regulatory burdens, the government should consider how best these could be streamlined or reassigned to another organisation.

3. Existing duties should be reviewed to ensure they are outcome focused and delivering their intended outcomes.

4. 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.

Consultation questions:

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

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

30. The government's provisional view is that regulators' economic core duties are: Fostering economic growth; Ensuring effective competition; Delivering Net Zero and protecting the environment; 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?

31. What are key benefits of this approach? What might any risks or unintended consequences be?

Wider direction setting

Giving regulators additional duties does not necessarily follow that they will focus on that specific duty. Rather than adding more duties, guidance or direction from sponsor departments or Secretaries of State can be more effective, as they can be more flexible, agile and specific.

The Strategic Policy Statements (SPS) for Ofwat (from the UK and Welsh Government) Statement of Strategic Priorities (SSP) for Ofcom and the first Strategy and Policy Statement (SPS) for energy, due to be published soon, are key documents for communicating government priorities and retaining independent economic regulation. The 2019 Department for Culture, Media & Sport (DCMS) SSP for Ofcom has been highlighted as a good example of the government setting clear prioritisation of growth and investment[121]. However, in the energy sector, the legal framework underpinning the strategic statement means it can only be descriptive not directive, and therefore cannot set a prioritisation of duties for Ofgem[122].

The statutory duties of regulators are important, and the government needs to ensure they are designed carefully; however, duties are not the only determinant of effective regulation. The government can use guidance, letters, and strategic statements to share its expectations and priorities to deliver effective regulation. In addition, many stakeholders have said that ongoing dialogue and collaboration between regulators, the government and industry on challenges facing the sectors is important, as long as regulator independence is maintained.

Regulator delivery and reporting against their SPSs, including in their annual statements, demonstrates accountability to Secretaries of State and Parliament. The government should consider further how regulators have fulfilled commitments in previous SPSs before considering what it wants regulators to achieve with the next SPS.

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[121] Department for Culture, Media and Sport, 'Policy Paper: statement of Strategic Priorities', 2019 (Accessed 20/10/2023)

[122] Department for Energy Security and Net Zero, 'Closed Consultation: Strategy and Policy Statement for energy policy in Great Britain', 2023 (Accessed (20/10/2023)

5. Appeals

Appeals are an essential part of the UK's regulatory system and ensure regulator accountability and transparency of decision making, giving stakeholders, especially investors and consumers, confidence in regulatory decisions. The UK's regulatory approach enables various parties to appeal decisions made by a regulator. The appeal is then determined by the High Court or an independent and expert body: the Competition and Markets Authority (CMA), or the Competition Appeal Tribunal (CAT). There is a balance to strike to ensure that the appeals process operates in a fair, accessible, and transparent way. On the one hand, it should hold the regulator to account for its decisions effectively. On the other hand, it should avoid unduly delaying decisions on infrastructure projects or tying up regulator resources disproportionately.

From an investor perspective, the UK has different appeals regimes in each sector which can appear unnecessarily inconsistent (see Annex C) and may deter investment. The government has heard from industry and investors that consistency across the sectors in appeals is valuable; however, consistency over time is equally, if not more important.

The presence of appeals does not necessarily mean the regulator is getting things wrong. Though a very high number of appeals against a regulator may be indicative of an issue with the way a certain sector is being regulated. Similarly, the absence of appeals altogether is likely not indicative of perfect regulation, but instead could indicate other problems in the interaction between regulator and regulated companies.

Appeals processes

Appeals processes themselves must be open, fair, transparent, accessible, and efficient. Annex C sets out details of the relevant appeal bodies.

Appeals panels

For water (non-price control) and energy appeals there is a requirement to appoint a group of exactly three members to determine an appeal. This contrasts with many other sectors where the CMA can appoint larger groups when appropriate. In water (price control redeterminations), the CMA can appoint a panel of at least three members to determine the appeal and is able to appoint a panel that is reflective of the skills of members and the work involved. For example, in the recent PR19 water redetermination, the CMA appointed a group of five to reflect the scale of work involved. A larger appeals panel could increase investor confidence as it would deliver a more robust process. It is possible that this may increase the cost of the appeal, but such an increase is unlikely to be material or significant compared with the overall CMA costs of the appeal.

Deadline extensions

The time taken to consider an appeal and speed of decision making are important to all stakeholders involved and can have financial implications. However, in certain circumstances, due to the complexity of cases, a deadline extension is needed. The powers on how to extend a deadline in appeals differ across the different appeal regimes:

- In water, Ofwat specifies a period no longer than six months for price control references. If the CMA needs an extension, it is required to make representations to Ofwat, and Ofwat can grant one extension of up to an additional six months.
- In some energy appeals, a party to the appeal must request the extension for the CMA to grant.
- In telecoms, the CAT (in referring a price control matter to the CMA) sets the initial deadline and it is the CAT that grants any extensions.

To simplify this, in energy and water the CMA could be given powers to, when appropriate, grant an extension itself. For telecoms appeals, the CAT follows separate procedures, and the government considers these to work well in general. However, the government encourages greater collaboration where possible to enhance efficiencies between the CMA and the CAT. Note this will not extend deadlines beyond current legislated limits.

Consumers

Consumer bodies often do not appeal regulators' decisions because they are concerned about the cost implications of losing, which could reach millions of pounds. Where appellants have lost the appeal, they may be required to pay the CMA's costs accrued from reviewing the original regulator's decision and may also have to pay the costs of the regulator in defending its decision against the appeal. This is a risk for any organisation to consider, but it is often unaffordable for consumer groups to submit their own appeal and so they sometimes intervene on open cases instead.

An intervener providing evidence representing the consumer perspective is often less well-resourced and, therefore, their evidence to argue the case might not be as strong. Regulators have duties and objectives to protect consumers and the CMA must have regard to the same duties and objectives during appeals. However, there remains a gap of evidence coming directly from the consumer's perspective. To improve this, the government would like to explore amending the statutory basis for the CMA's cost recovery, to give the CMA power to recover reasonable costs incurred by interveners acting on a 'consumer interest' basis. The CMA could recover intervener costs alongside the CMA's own costs from the losing party. The government notes that it may incentivise more interveners leading to an increased volume of detailed evidence parties need to review, meaning it may take longer to process the appeal, with more resources required. However, greater consumer evidence would also improve regulatory accountability and transparency to consumers.

In relation to appeals before the CAT (largely in the telecoms sector), the government would like to explore whether some similar arrangement would be feasible, taking into account the CAT's overall policy on awarding costs and other relevant considerations. For both the CMA and the CAT, the intent is not for consumer groups to be able recover costs as an appellant, but as an intervener. The government would need to consider carefully what guidance to provide the appeals bodies including if the intervention representing the consumer perspective has been useful, relevant and different to other evidence provided.

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.

Consultation questions:

32. 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?

33. 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?

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

35. Are there any concerns or opportunities you foresee in allowing interveners, who have acted on behalf of consumers interest, to recover reasonable costs incurred alongside the body hearing the appeals costs? How may this impact cases and legal practice in this sector? What would be useful to include in the guidance for the appeals body to deliver this mechanism?

Energy sector appeals

Energy appeals are largely determined by the CMA or High Court, depending on the regulator's decision and the appeal standard (see Annex C). In the energy sector, the CMA is required to consider the merits of the decision under appeal by reference to the specific grounds of appeal laid down in the statute. The CMA conducts a merits-based assessment, focused on specific aspects, as opposed to reviewing the whole determination in the round. In these appeals, the appellant isolates the part of the decision that it considers the regulator got wrong and the CMA determines whether the regulator erred based on the pleadings of the appellants. The appellant may also appeal on multiple grounds to try and have part of a decision overturned.

An appeal involving a merits-based assessment is highly valued by both industry and investors, as it is determining whether the decision of the regulator was 'not wrong' or 'wrong'. The Global Infrastructure Investor Association states that it provides a means of redress in the event of regulatory error whilst ensuring that regulators take decisions that they believe will withstand robust and rigorous scrutiny.

After determining an appeal, the CMA's costs need to be recovered. Where an appeal has been partially successful for licence modifications, the CMA recovers its costs from the regulator and appellant(s) in proportions the CMA considers appropriate. However, in code modification appeals, the legislation states that, where an appeal is allowed, the regulator must pay the CMA's costs and, where an appeal is dismissed, the appellant must pay them. Unlike other regulatory statutes, the relevant Energy Act provisions do not state that the CMA may recover costs from more than one side where a code modification appeal succeeds in some parts but not others. Therefore, government would like to align the relevant energy code modification appeals legislation with energy licence modification appeals legislation.

The government recognises some believe that a behaviour known as 'cherry picking' can occur during the appeals process. This is a by-product of the regulator making its decisions in the round, but appellants seeking to appeal aspects of the decision in isolation. This links into another issue identified that companies may submit an appeal because it is a 'bet to nothing', leading to an increased number of appeals. Companies may believe they have a good chance of overturning a decision as they can isolate certain aspects that appear incorrect with significant financial benefits if appeals are allowed, which often outweigh the associated time and legal costs investment. If these are then overturned, it may be to the disadvantage of consumers. If there is a lot of appeals submitted, this causes delays to investment. This was seen during the RIIO-II process where all nine distribution, gas and electricity transmission networks submitted appeals.

The government considers this appeals regime to remain the most appropriate for the energy sector. An alternative might be to move to an enhanced judicial review approach;

Fingleton[123] said moving away from a merits-based review process could leave companies unable to seek a review of whether the level of allowed return or expenditure allowances had been set at the right level, by their regulator, to underpin financeability. The government believes the current system is a good medium between the laborious scrutiny of a redetermination and the judicial review approach.

Consultation proposal (12):

The government will include the recovery of the CMA costs as part of wider reforms work to code modification appeals. Reforms would be to amend code modification appeals to align with energy licence modifications. To give discretion for the CMA to apportion its costs as it considers appropriate.

Consultation questions:

36. What unintended consequences or risks should the government be aware of when considering making this amendment to code modification appeals?

Water sector price control appeals

Price control appeals for the water sector are currently a redetermination, where the CMA reaches its own independent judgements as to the right outcome based on the facts and evidence before it. Ofwat's determinations are made following a process that takes place over several years and the publication of a significant number of documents. The CMA is then expected to make a redetermination within six months (extendible for up to a further six months). As the CMA is conducting a redetermination and can obtain additional facts and evidence where appropriate, the range of possible outcomes is wide and uncertain.

The government has heard from industry and investors that the redetermination process is a 'gold standard' but may be more intensive than necessary. The process is complicated, laborious and it is unclear why the CMA is better placed than Ofwat to decide on some water-specific issues (for example disputes around enhancement projects, such as the capacity required for a new pipeline). It may be unreasonable to continue to require the CMA to deliver this 'gold standard'.

Due to the different appeal frameworks used for water and energy, the CMA has raised concerns that the reasoning behind differences may not always be clear to consumers, businesses, and investors. Greater consistency in the methodology used, where appropriate, will encourage greater confidence in the price control process across sectors and, in turn, help to encourage sustainable investment. The government strongly

[123] Fingleton, 'Resisting marshmallows: the BEIS strategy for economic regulation', 2022 (Accessed 20/10/2023)

encourages regulators to implement UKRN guidance on setting the weighted average cost of capital[124].

The price control process is now much more complicated than when the water redetermination appeal regime was introduced in 1989[125]. Telecoms and energy sectors have previously moved away from this regime. The government is consulting on the continuing appropriateness of redeterminations, or whether something similar to the energy regime, under which the CMA decides whether the appealed decision was wrong on one or more specified grounds, may be more suitable.

The government has heard from industry that the energy appeals regime has a ‘cherry picking’ problem, but still considers that this may be a more appropriate model for water in relation to future price reviews (changes will not impact PR24). The government believes this would not deter investment as it is still a merits-based decision.

The government will use the feedback from this consultation to inform whether to proceed with this change. Subject to views from this consultation, there will need to be a further consultation setting out further detail of the proposal.

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.

Consultation questions:

37. 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?

38. What risks of making this change should the government be aware of?

Telecoms sector appeals

Appeals against Ofcom are submitted to the CAT under the Communications Act 2003 and were switched from a ‘full merits’ assessment to an ‘enhanced judicial review’[126] standard

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[124] UK Regulators’ Network, ‘UKRN guidance for regulators on the methodology for setting the cost of capital – consultation’, 2022 (Accessed 20/10/2023)
[125] In 1991 the relevant provisions were consolidated into the Water Industry Act 1991
[126] It is not fully understood by the sector and by some lawyers what the ‘enhanced’ part of the enhanced judicial review means. One view is that an appeal is either on the merits of a decision, or it is not; another view is that due account can indeed be taken of the merits in a judicial review context if the law requires it.

in 2017 (see Annex C). A judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. It does not examine whether the decision was 'correct' (except for where is it evidently irrational), but rather looks at the process of the decision making and considers whether the decision was made in a fair, reasonable and lawful way.

The telecoms sector is historically litigious. Between 2010-2017, there were 42 appeals submitted, which caused uncertainty and slowed the market's development. The 'full merits' standard was considered by ministers at the time to be 'gold plating' the EU Directive[127]. Therefore, the objectives of the 2017 change to an enhanced judicial review standard was to decrease the number of appeals, speed up decision making, reduce costs and avoid 'gold plating' the EU Directive, in order to provide certainty to industry and decrease roadblocks to infrastructure. There have been 7 appeals submitted since the move in 2017. As such, the amendment has met its intended objectives and has seen investment increase.

As already noted, the absence of appeals does not necessarily indicate that all is well. Some fixed telecom companies have told the government that, in some cases where they have not appealed a decision made by Ofcom, it has not necessarily meant that they agreed with the outcome. Instead, they have deemed that, on balance, the risks and costs of appealing are too high. The government has also heard from some parts of industry that they would like more detailed analysis to enable them to understand how decisions have been reached. However, as the enhanced judicial review standard does not need to have regard to technical details on how Ofcom reached a decision to agree or reject an appeal, some industry members have told the government they believe that this has led to Ofcom operating at a standard that is acceptable to pass a CAT ruling, but that may lack the requisite detail the industry needs to understand decisions. Some of these stakeholders have told the government that they do not want to appeal against Ofcom, but that they need to understand how decisions have been reached and would welcome any guidance documents so that businesses can engage with Ofcom and operate productively in the market.

The move to enhanced judicial review has been in place since 2017, which is not long enough to fully assess how successful it has been, but so far, the government believes it is achieving its objectives. Therefore, the government has no plans to change the appeals regime at this time. However, due to concerns raised, the government recommends exploring how to improve the transparency of decision making.

[127] Telecoms Appeals Impact Assessment, May 2016 (Accessed 20/10/2023)

Consultation proposal (14):

For Ofcom to work with both the government and industry to develop more specific guidance on what to include in decision documents to improve transparency of decisions.

Consultation question:

39. What information do you consider necessary for Ofcom to include in its decision documents?

Consultation questions

Please note that not all these questions are relevant for all three sectors (energy, telecoms and water).

CHAPTER 1: DRIVING ECONOMIC GROWTH

Page 23

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

Page 27

2. To what extent, in the standardisation of processes and procedures, is there greater scope for regulators to learn from each other?
3. 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?

Page 31

4. What challenges are faced at present when attempting to transfer water and how could these be mitigated?
5. Does RAPID currently have the right scope? Should it be expanded? If so, please elaborate.
6. What kind of role could regulators play to enhance the effectiveness of competition in large procurements and/or long-term design-build-operate contracts?

Page 32

7. Do further opportunities exist to promote coordination and holistic approaches to issues in the water sector? If yes, please elaborate.

CHAPTER 2: COMPETITION

Page 34

8. 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.

Page 35

9. Should the government amend the Water Industry Act 1991 and related regulations to extend the role of the DWI to also include regulated and non-regulated third-party providers?
10. Should the government commence Chapter 2B of Part III of the Water Industry Act 1991 and make regulations under those provisions? This would enable the regulation of certain water supplies from third parties to water companies.

11. Should the Planning Act 2008 definition of water NSIPs be updated? If your response is yes, what should the new definition be/include?

Page 36

12. Should the government amend Section 8 of the Water Industry Act, that currently requires Ofwat to undertake a full statutory consultation on all licensing applications, irrespective of the scale or nature of the new site being applied for by new appointees, to consider the scale or nature of applications being made?
13. What consultation timelines would be appropriate for smaller scale applications?

Page 38

14. Do you agree that the government and Ofwat should look at ways of streamlining the NAV application process for variations of licences, including by removing the need to consult in certain circumstances?
15. Do you agree that the government should consider moving towards a national licencing regime for NAVs?
16. Do any other barriers exist to market entry in the water sector that the regulator or the government should explore removing?

Page 39

17. Do you agree that the ability to change the Wholesale Retail Code for uncontentious and non-substantive changes should be delegated from Ofwat?
18. Should the government amend or remove the consultation requirements in the Water Industry Act for Wholesale Retail Code changes?
19. Do you see any further ways market governance in the non-household retail market could be improved?

Page 40

20. Do further opportunities exist to introduce greater competition for strategic investment into the water and energy sectors?
21. What alternative funding/competition delivery models could be considered?

Page 43

22. Do the existing concurrency powers and arrangements deter or address anti-competitive behaviour in the regulated sectors? Please explain the reasons underpinning your response.

CHAPTER 3: SUPPORTING CONSUMERS

Page 48

23. What are your views on the creation of a single, multi-sector Priority Services Register?
24. What are the best data sources of vulnerability that the PSR should use? Who should be able to input data?

25. What vulnerabilities and services should the PSR cater for?

Page 50

26. How can existing affordability support be better communicated to increase customer awareness?

Page 51

27. What are the benefits and risks of giving Ofwat the power to allocate a water retailer if the incumbent retailer becomes insolvent?

CHAPTER 4: DUTIES AND FUNCTIONS

Page 57

28. What would be a suitable timeframe in which to conduct a review of these regulators' duties?
29. What is an effective remit for economic regulators? How can regulators improve delivery of both economic and non-economic functions?
30. The government's provisional view is that regulators' economic core duties are: Fostering economic growth; Ensuring effective competition; Delivering Net Zero and protecting the environment; 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?
31. What are key benefits of this approach? What might any risks or unintended consequences be?

CHAPTER 5: APPEALS

Page 61

32. 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?
33. 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?
34. In what other ways can the consumer voice be represented during energy, water and telecoms appeals?
35. Are there any concerns or opportunities you foresee in allowing interveners, who have acted on behalf of consumers interest, to recover reasonable costs incurred alongside the body hearing the appeals costs? How may impact cases and legal practice in this sector? What would be useful to include in the guidance for the appeals body to deliver this mechanism?

Page 63

36. What unintended consequences or risks should the government be aware of when considering making this amendment to code modification appeals?

Page 64

37. 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?
38. What risks of making this change should the government be aware of?

Page 66

39. What information do you consider necessary for Ofcom to include in its decision documents?

Next steps

This consultation will close eight weeks after launch. The responses to this consultation, feedback from engagement with stakeholders as well as relevant responses on economic regulation to the published 'Smarter Regulation and the Regulatory Landscape: Call for evidence', will be used to help the government decide whether to take forward the proposals within this consultation.

To ensure efficiency, we intend to share responses and feedback received with other government departments, as appropriate.

Annex A – Regulators' vulnerability definitions and guidance

Ofgem	When a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is: Significantly less able than a typical domestic consumer to protect or represent his or her interests; and/or Significantly more likely than a typical domestic consumer to suffer detriment or that detriment is likely to be more substantial.	Vulnerability Strategy 2025
Ofwat	A customer who, due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing, or finances.	Vulnerability Focus Report 2016
Ofcom	Anybody can face circumstances that lead to them becoming vulnerable – temporarily or permanently. This might include physical or mental health problems, specific characteristics such as age or literacy skills, or changes in personal circumstances such as bereavement, job loss or changes in household income.	Treating vulnerable customers fairly guide 2022

Annex B – Examples of cross-data sharing initiatives

Project / organisation	Description
Support for All	Funded through Ofwat's innovation hub, Northumbrian Water are leading Accenture, Microsoft, Ordnance Survey, Thames Water, Northern Gas Networks, Northern Power Grid, Cadent Gas and UK Power Networks to deliver the 'Support for All' Project. With design input from over 30 energy and water companies, the project is building, refining and demonstrating a cross-sector Priority Services Register (PSR) platform, capable of securely hosting and sharing sensitive data on customers in vulnerable circumstances. The project has developed a pilot of a scalable cloud-based working model, and is implementing this at a regional level in the North East and South East of England. Capable of cleansing current data whilst updating as information is received, the model will enable customers to 'tell us once', informing all relevant utility companies of the support they need and benefit from support without any additional customer effort.
DWP's API	The Digital Economy Act 2017 gives the government powers to share personal information across organisational boundaries to improve public services. Through powers taken in the Digital Economy Act 2017, the government has enabled the matching of benefit recipients with energy and water customers to identify eligibility for social tariffs and other support. This is now being rolled out in telecoms.
Regional PSR data sharing schemes	Through the Ofgem-led working group, some needs codes data in water and energy have been shared to ensure more joined up services are provided in both utilities.
Utility Regulator for Northern Ireland code of practice	The Utility Regulator for Northern Ireland published a consultation in June 2023 proposing a new code of practice for consumers in vulnerable circumstances. This is to establish best practice principles and measures which gas, electricity and water suppliers and network companies must implement to better identify, support and protect consumers in vulnerable circumstances. There are currently nine customer care registers in the NI Utility Sector across gas, electricity and water – the consultation indicated that the Utility Regulator intends to reduce this to three registers, with the long-term goal to amalgamate the

	three registers so that there is a single NI Utility customer care register.
Welsh Government JIGSO project	JIGSO is a Welsh Government digital project that provides near real time access to 'at risk' properties. This enables emergency services to prioritise the response to properties with vulnerable inhabitants during a major incident or preparation for known disruption or bad weather. Using API technology, it integrates over 2,500 datasets varying from key infrastructure such as schools, care homes and hospitals through to mine shaft entrances, spoil tip locations and historical wildfire locations. It also integrates other services such as 'What3Words', Met Office weather alerts and Natural Resources Wales flood warnings.
The Vulnerability Registration Service	The Vulnerability Registration Service (VRS) was established in 2016 with the objective of collating a database of individuals to highlight where they were experiencing vulnerable circumstances. Originally targeting the financial services, the scope of VRS has broadened out and now extends beyond finance, to insurance, energy, telcos, housing, local and central government, and online gambling. VRS's intention is to provide a single and simple route for consumers to communicate their situation for service providers to take into consideration and adapt their treatment and level of support accordingly. The VRS remains the only central database in the UK to collect this information and to make that available to service providers, irrespective of sector. VRS is financed by its directors and is supplemented by a flexible pay-per search basis for service users.
Australia's One Stop One Story (OSOS) Hub	Australia's one stop one story (OSOS) hub is a world-first cross-sector digital platform that enables frontline workers in corporate and community organisations to connect and refer consumers to a range of supports through a single access point. Launched in October 2021, OSOS is a digital platform that aims to ease the burden for people experiencing vulnerability by helping them to connect and access the wide range of support services and programs available. OSOS is a sector funded initiative, with seed funding received to develop and pilot the hub from utility companies (energy, water, telecoms), the national bank and toll-road operator.
Proactive childcare – Estonia	When a child is born in Estonia, a population entry activates all of the following services, and the family gets all the benefits they are entitled to automatically. This means that the parents of a newborn no longer need to apply for benefits.

Annex C – Appeals processes

Below are tables setting out at a high-level what decisions are appealable and the system it follows. The government has looked at the overall appeals system that exists in each sector and not just the most prominent decisions, which often centre on price controls.

Decisions taken by public bodies may be challenged in the High Court through a process known as a “judicial review”. However, for certain decisions, Parliament created separate appeals processes which generally have a higher standard of review and are appealable to either the Competition & Markets Authority (CMA) or the Competition Appeal Tribunal (CAT).

Ofgem

Regulator decision	Appeals standard	Appeals body	Appealing body	Frequency as of April 2023
Electricity licence modifications (including price controls)	Full merits based appeal	CMA	Any affected body	5 appeals: 1 in 2023, 3 in 2020, 1 in 2015
Gas licence modifications (including price controls)	Full merits based appeal	CMA	Any affected body	6 appeals: 5 in 2020, 1 in 2015
Energy code modifications	Merits based appeal[128]	CMA or High Court	Any affected body or representative body	4 appeals: 1 in 2021, 1 in 2018, 1 in 2007 1 in 2006
Price cap review	Judicial review	High Court	Any affected body	1 appeal: 1 in 2019
Gas non-licensable activities	Redetermination	CMA	Any affected body	None to date

[128] Code modification appeals go to the CMA where Ofgem’s decision is not supported by the majority recommendation of the industry members engaged in developing and assessing the merits of the proposal (e.g. the Code Panel members). In all other circumstances, (i.e. where Ofgem’s decision is supported by the majority recommendation), there is no right of appeal but an aggrieved party can seek judicial review from the Administrative Court.

Electricity non-licensable activities	Redetermination	CMA	Any affected body	None to date

Ofwat

Regulator decision	**Appeals standard**	**Appeals body**	**Appealing body**	**Frequency as of April 2023**
Price control final determinations	Redetermination	CMA	Regulated water companies	11 appeals: 4 in 2020, 1 in 2015, 1 in 2010, 1 in 2009, 2 in 2000, 2 in 1994
Licence modifications[129]	Whether the decision was "wrong" on the basis of any statutory grounds in s.12F WIA 91	CMA	Regulated water companies; retailers; a representative body of regulated water companies or retailers; CCW	None to date
Infringement and other appealable decisions under the	Appeal on the merits	CAT	Any person in respect of whose conduct; or any party to an agreement in respect of	6 appeals: 1 in 2006, 1 in 2005, 3 in 2004 (counting 3 separate

[129] Note that there has only been a formal CMA appeal process since 24/01/22. It covers licence modifications made under s.12A WIA 91 for English water companies. For Welsh water companies (and all water companies prior to 24/01/22) Ofwat can only make modifications with company consent under s.13 WIA 91 or if Ofwat (not the water company) makes a reference to the CMA on public interest grounds under s.14 WIA 91. To date only two such reference have been made under s.14 (both in 2000 combined with price control references for the same companies). Ofwat can also make a reference to the CMA on public interest grounds under s.17K as to whether the conditions of any retailers' licences or the project licence of a licensed infrastructure provider should be modified. No such references have been made to date.

Competition Act 1998			which, Ofwat has made a decision; a person who has sufficient interest in the decision or represents persons who have such an interest	appeals in relation to the same matter as 1 appeal), 1 in 2003
Validity of enforcement orders made under s.18 WIA 91	Statutory appeal on the grounds set out in s.21(2) WIA 91[130]	High Court	Regulated water company, retailer or licensed infrastructure provider to whom an enforcement order relates	None to date
Imposition, amount or payment date for financial penalties imposed under s.22A WIA 91	Statutory appeal on the grounds set out in s.22E(4) WIA 91[131]	High Court	Regulated water company, retailer or licensed infrastructure provider on whom the financial penalty is imposed	None to date

[130] On the following grounds: that the making or confirmation of the order was not within the powers of s.18; or that the interests of the appellant have been substantially prejudiced by a failure to comply with the requirements of s.20.
[131] On the following grounds:
(a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A;
(b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the appellant have been substantially prejudiced by the non-compliance; or
(c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

Ofwat implementation of changes to designated codes	Whether the decision was "wrong" on the basis of any of the grounds set out in regulation 18 of the Water Industry Designated Codes (Appeals to the CMA) Regulations 2017 (SI 2017/447)	CMA	Regulated water companies or retailers	None to date
Ofwat refusal of licence or other code changes	Judicial review	High Court	Any interested party with a standing to bring a JR claim	None to date
Other decisions or challenges to appealable decisions by other parties	Judicial review	High Court	Any interested party with standing to bring a JR claim	Permission for judicial review only granted in 4 cases to date: 1 in 2012, 1 in 2010, 1 in 2009, 1 in 1996

Ofcom[132]

Regulator decision	Appeals standard	Appeals body	Appealing body	Frequency as of April 2023
Significant market power decisions	Enhanced judicial review (regard to	CAT	Persons affected by the decision	4 appeals:

[132] Note that some appeals were against multiple decisions, such as the TalkTalk Telecom Group plc and Vodafone Limited v Ofcom (BCMR 2019) appeal which covered a significant market power decision and a price control decision. All the appeals listed are against Ofcom and only go back as far as 2010.

	the merits of the case)[133]			1 in 2019, 1 in 2018, 2 in 2016
Decisions to set, modify or withdraw regulatory conditions (SMP)	Enhanced judicial review	CAT	Persons affected by the decision	14 appeals: 2 in 2016, 1 in 2015, 2 in 2013, 1 in 2011, 8 in 2010
Investigation and penalty	Enhanced judicial review	CAT	Persons affected by the decision	2 appeals: 1 in 2022, 1 in 2019
Enforcement of telecoms security requirements	Enhanced judicial review	CAT	Persons affected by the decision	None to date
Setting premium rate services conditions	Enhanced judicial review	CAT	Persons affected by the decision	None to date
Regulatory dispute provisions	Enhanced judicial review	CAT	Persons affected by the decision	14 appeals: 1 in 2021, 1 in 2017, 1 in 2014, 3 in 2013, 1 in 2012, 1 in 2011, 6 in 2010
Decisions under the Communications Act 2003 as applied by the Trade (Mobile Roaming) Regulations 2023 (coming into force April 2023)	Enhanced judicial review	CAT	A person affected by the decision.	None to date

[133] It's unclear to lawyers, CAT and industry what having regard to the merits actually means. An appeal is either assessed on the merits or it's not.

"Relevant security decisions"	Judicial review	CAT	Persons affected by the decision	None to date
Determination of disputes under the Communications (Access to Infrastructure) Regulations 2016	Judicial review	CAT	"A party to the dispute about which Ofcom made the determination" – i.e. a "network provider", an "infrastructure operator" or a "rights holder".	None to date
Decisions relating to market investigation references under Part 4 of the Enterprise Act 2002	Judicial review	CAT	"Any person aggrieved" by the decision.	1 appeal: 1 in 2018
Decisions listed in Schedule 8 to the Communications Act 2003	Judicial review	High Court	Persons with "a sufficient interest in the matter to which the application relates"	None to date
Price control decisions	Merits based appeal	CMA, referred by the CAT	Persons affected by the decision	14 appeals: 1 in 2019, 1 in 2016, 1 in 2015, 3 in 2013, 2 in 2012, 6 in 2011
Competition Act decisions	Appeal on the merits	CAT	Addressees of the relevant decision. Other parties with "sufficient interest".	1 appeal: 1 in 2018

Annex D – Trends in key outcomes

The UK model of privatisation and independent regulation has been replicated across the globe. A key feature of this is the stability that is brought by having politically independent regulators with deep sectoral expertise. However, recent variable outcomes for consumers and the environment have been the subject of media attention, impacting consumer confidence in some sectors. This annex provides an overview of these outcomes in each sector as well as additional visualisations and sources.

An overview of performance of each sector:

Energy: The UK's investment intensity – a measure of investment relative to the size of the sector, meaning it can be compared internationally between different sized economies – in energy is low compared with other countries: at 37% in 2018 compared with an average within the EU of 49%. This means that, for every £1 of output from the UK energy sector, 37p is invested back into the sector; compared with an average of 49p within the EU[134]. This low intensity is mirrored by the UK's investment intensity generally across the whole economy – UK investment is low relative to the size of the UK economy. However, within this there are still areas of high investor activity, one of which is green technologies, with the UK recording the second highest level of low-carbon investment in Europe in the last 5 years[135].

Despite the generally low investment intensity, consumers in Great Britain experience a reliable network, with the average customer experiencing less than 50 minutes of unplanned long interruptions in 2018. This put the UK in the top third of performers in Europe[136]. More recent data from Ofgem show that, in 2021/22, the total number of interruptions (both planned and unplanned) across Distribution Network Operators (DNOs) averaged 39 across the year – a 23% decrease on 2014/15 – whilst duration has also fallen to an average of 32 minutes – an 18% fall since 2014/15[137]. Whilst UK gas prices are internationally competitive, the UK's electricity prices are high relative to other European countries. The government will set out plans during 2023-2024 to rebalance gas and electricity costs in household bills with the aim of making electricity bills cheaper for households and businesses[138].

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[134] Department for Business and Trade calculations based on LUISS University, on behalf of European Commission, 'EU KLEMS Database', 2023 (Accessed 10/09/23); Grossed Fixed Capital Formation as a share of Gross Value Added in SIC Sector D covering electricity, gas, steam and air conditioning supply. 2018 is the latest internationally comparable data point.
[135] Department for Energy Security and Net Zero, 'Powering Up Britain', 2023, Page 9 (Accessed 10/10/2023)
[136] Centre for European Energy Regulators, and Energy Community Regulatory Board, '7th CEER-ECRB Benchmarking Report on the Quality of Electricity and Gas Supply', 2022, Figures 2-9 and 2-10, Page 56 (Accessed 10/10/2023)
[137] Ofgem, 'RIIO-1 Electricity Distribution Annual Report 2021-22', 2022, Page 5 (Accessed 10/10/2023). Percentage changes appear on page 5, but for absolute figures please see the supplementary data file available through the same link.
[138] Department for Energy Security and Net Zero, 'Independent Review of Net Zero: government response', 2023 (Accessed 10/10/2023)

Telecoms: The telecoms sector is comprised of fixed and mobile markets. This consultation focuses on the fixed broadband market, where there is a thriving market of more than 100 providers who have started actioning plans to collectively invest over £40 billion to roll out gigabit-capable broadband all over the UK[139]. However, Ofcom has found that Openreach (and KCOM in Hull) have significant market power[140] in the fixed telecoms market. As a result, they are subject to several additional regulatory demands, which are designed to enable alternative networks (altnets) to compete with the incumbent providers. The fixed telecoms market continues to benefit from increasing investment since 2019[141] largely provided by the private sector. This has coincided with a significant increase in connectivity[142]. Full fibre coverage continues to improve, with over half (52%) of UK homes now having access to full-fibre services – between May 2022 and May 2023, full fibre connectivity increased year-on-year by 15% points[143].

Water: Poor outcomes on wastewater issues are frequently prominent in the news, causing reputational damage for regulators and companies where public expectations are not being met. Investment in water supply and sewerage is needed to limit pollution, improve resilience of supplies and adapt to the impact of climate change[144]. In 2022, the dry summer resulted in a few suppliers resorting to distributing bottled water, due to their inability to treat and distribute water to their customers[145]. There are concerns over high rates of leakage, although the sector has made some progress with a 7% reduction in leakage since 2020. This is in response to an Ofwat challenge to reduce leakage by 16% by 2025. On a number of quality metrics, water suppliers are performing well, but there are still signs further investment is needed. Drinking water quality is a particular area of success, with a compliance rate of 99.97%, but to maintain this success the Drinking Water Inspectorate stress the need for further investment[146]. In bathing water quality, the number of sites rated "excellent" has increased over time; however, the proportion rated "poor" has proved stubbornly consistent, fluctuating around 1-3% of sites, with the most the most recent figure being 2.9% in 2022[147].

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139 Department for Science, Innovation and Technology analysis, based on DSIT market tracking, 2023

140 "An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers." Ofcom, 'Oftel's market review guidelines: criteria for the assessment of significant market power' 2016, Page 5 (Accessed 19/10/2023)

141 Ofcom, 'Connected Nations 2022, UK Report', 2022, Figure 2.9, Page 18 (Accessed 16/10/2023)

142 Ofcom, 'Connected Nations – Summer Update 2023', 2023, Page 8 (Accessed 10/10/2023)

143 Ofcom, 'Connected Nations – Summer Update 2023', 2023, Page 8 (Accessed 10/10/2023)

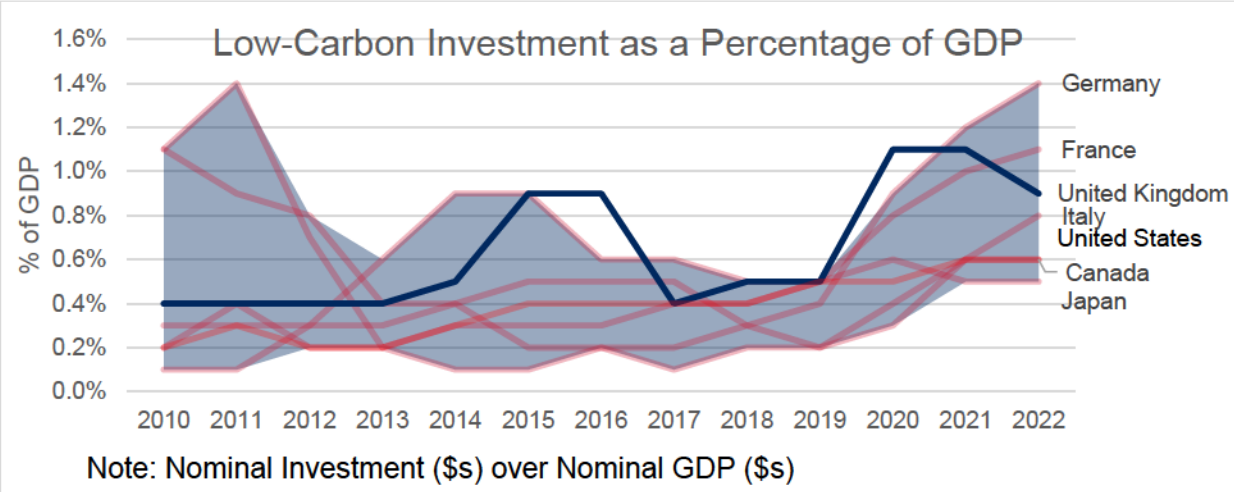
144 National Audit Office, 'Water Supply and Demand Management', 2020 (Accessed 11/10/23)

145 Environment Agency, 'A summary of England's draft regional and water resources management plans', 2023 (Accessed 11/10/23)

146 Drinking Water Inspectorate, 'Drinking Water 2022 – Summary of the Chief Inspector's report for drinking water in England', 2022, Figure 1, page 7 (Accessed 11/10/23)

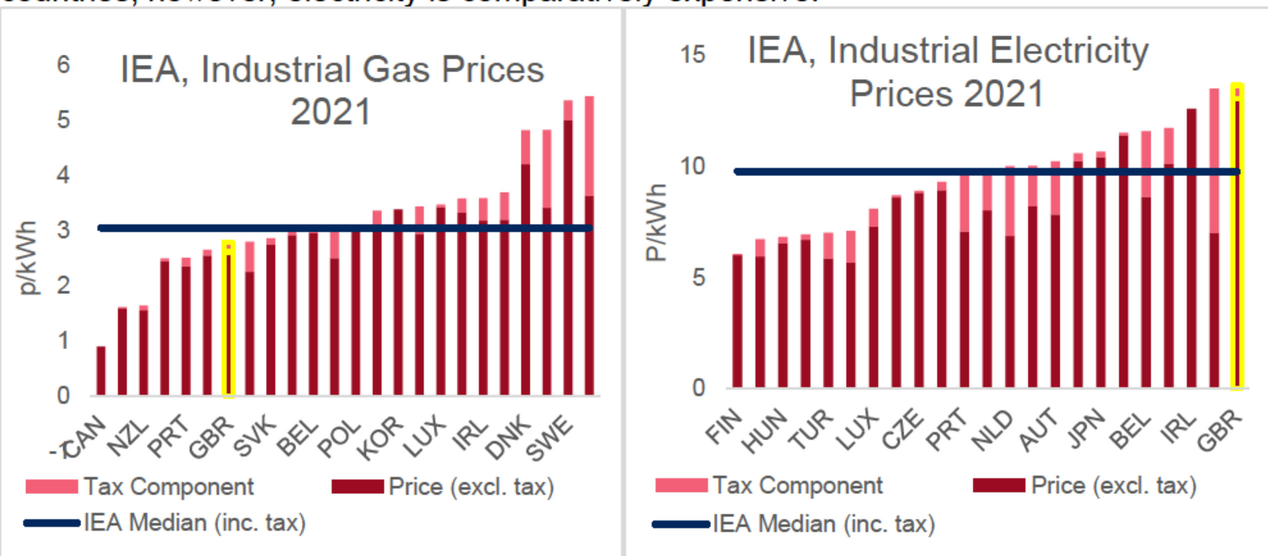
147 Environment Agency, '2022 Statistics on English coastal and inland bathing waters: A summary of compliance with the 2013 bathing water regulations', 2022 (Accessed 11/10/23)

Figure 5: The UK performs well in terms of its level of low carbon investment.



Source: DESNZ[148]

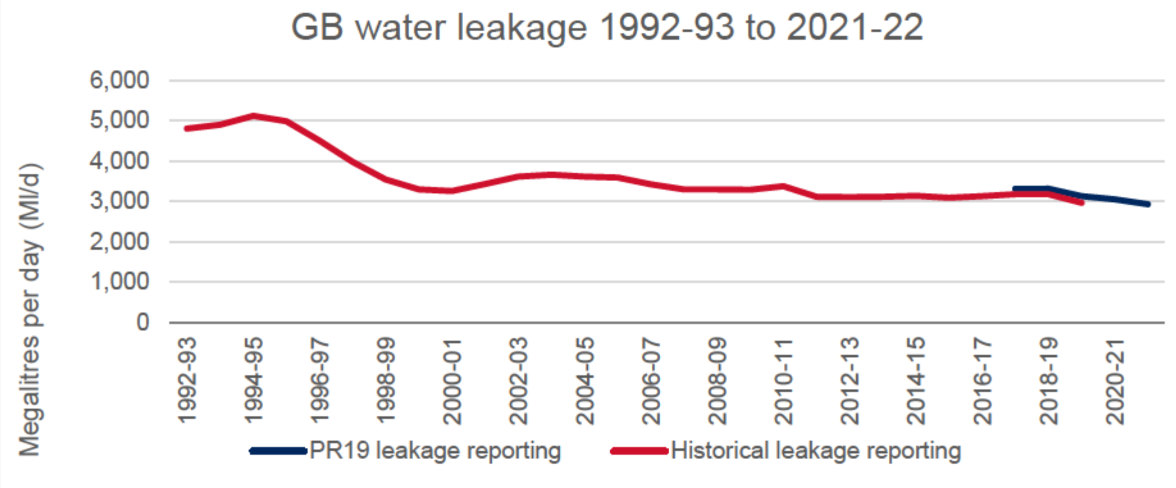
Figure 6: The UK has relatively lower domestic gas prices compared to other IEA countries; however, electricity is comparatively expensive.



Source: BEIS[149]

[148] Department for Energy Security and Net Zero, 'Powering Up Britain – The Net Zero Growth Plan', 2023, Figure 2, Page 9, (Accessed 10/10/2023)
[149] Department for Business Energy and Industrial Strategy (now Department for Business and Trade), 'Energy Prices International Comparisons, Industrial electricity and gas prices, 2022 (Accessed 10/10/2023)

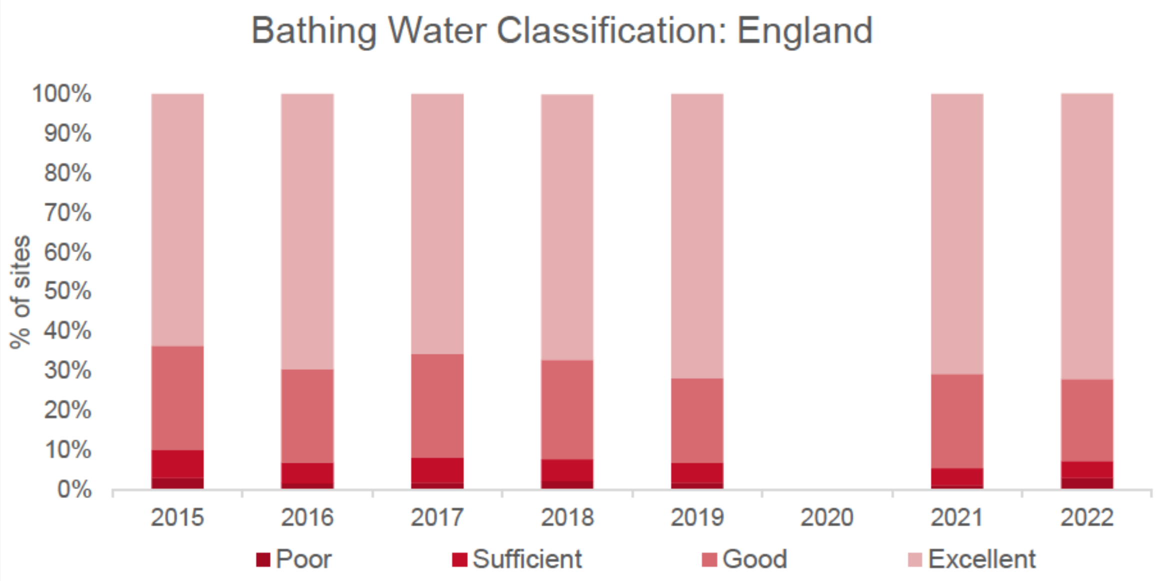
Figure 7: Leakage from the UK water network fell in the decade following privatisation, but progress has since stalled



Note: PR19 reporting standards are now the norm, though there was an overlap of 2 years, 2016-17 and 2018-19 when both new and old standards were in use.

Source: OFWAT[150]

Figure 8: Bathing water in England is generally good quality, but the number of poor sites remains stubborn.



Source: Environment Agency[151]

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[150] Ofwat, Leakage Dataset, 2023 (Accessed 12/10/23) Ofwat leakage dataset March 2023
[151] Environment Agency, '2022 Statistics on English coastal and inland bathing waters: A summary of compliance with the 2013 bathing water regulations', 2022 (Accessed 11/10/23)

Annex E – Multi-criteria analysis assessment of impact of policy proposals

This section outlines the high-level assessment of impacts of shortlisted policy proposals using the multi-criteria analysis methodology, in line with Green Book guidance presented in Annex 1: 9.5. The assessed policy proposals have been developed and refined through extensive government engagement with stakeholders and industry experts.

This method is appropriate based on the nature of the included policy proposals, which span a wide range of areas, many not requiring an amendment or implementation of legislation. In the medium to long term, if pursued, any legislative proposals included here will require the government to consult in more detail and provide a fuller (and possibly quantified) assessment of impacts, based on a more detailed policy option proposal.

For each of the policy proposals included in this Consultation Document, we assess its likely magnitude using four criteria listed below. The purpose of this assessment is to help present an initial view of the government's proposals, and to invite stakeholders to provide their thoughts on the described impacts and whether these represent an accurate overview of the expected impacts on businesses, sectors, people and places of each recommendation. The criteria used are based on the HMT Green Book Critical Success Factors (CSF) and include:

- **Strategic fit:** how well does the option meet government and business objectives and provides synergy with other strategies, programmes, and projects?
- **Supplier capacity and capability:** who might be best suited to deliver on this option and how does it match the ability of potential suppliers to deliver the required services?
- **Potential achievability:** how likely is the option to be delivered? Are there challenges and to what extent do they affect the likelihood of delivery?
- **Potential value for money:**
    - **Costs:** how high are the costs of this option borne by businesses, consumers, or the government?
    - **Benefits:** how well does the option deliver social value (social, economic or environmental)?

At this stage, we have made the decision to not assess the policy proposals against the 'Potential affordability' CSF, which captures how well the option can be financed from available funds and how well it aligns with sourcing constraints. This is because the scope of these policy proposals is not yet finalised, and so the funding required to implement them is highly uncertain. The funding for the implementation of a policy proposal in this case would likely be achieved through public expenditure, for which a more detailed assessment of impacts and benefits will be needed before an allocation decision. The below consideration of these policy proposals against the remaining CSFs, will help to provide an initial view on the expected impacts subject to further policy scoping, consultation and analysis (including the responses to this consultation document).

Table 1 below shows a summary of the multi-criteria analysis. For all criteria other than costs, “high” indicates a favourable rating, and “low” indicates a poor rating. For costs this is reversed.

Our assessment of the low, medium and high ratings against the CSFs is based on the various forms of extensive engagement completed during the shortlisting process of the policy proposals. This involved engagement with industry, consumer bodies, the government, and regulators, provided a wide range of evidence to help inform each rating. However, as noted above, our ratings on some policies are more uncertain given the relatively less finalised scope of these policy proposals. We have indicated this where relevant within the multi-criteria analysis and we will continue to build our evidence base going forward, and welcome stakeholder input and feedback.

A more complete view of the analysis, including rationale and, where possible, evidence behind the ratings, is given in Table 2.

Table 1: Multi-criteria analysis

	Policy	Strategic Fit	Supplier Capacity and Capability	Potential Achievability	Costs	Benefits	Overall
1	The government encourages Ofwat to take more innovative approaches to project funding.	Medium	High	High	Low	Medium-High	High
2	The government will explore the creation of a Multi-Sector Priority Services Register.	High	High	Medium	Medium	High	High
3	Ensure greater consistency in affordability support by the UKRN convening work with regulators, industry and the government.	High	High	Medium	Low	Low-High	High
4	The government will provide the power to Ofwat to allocate customers from an unplanned retailer exit to a new retailer/s on a mandatory basis.	High	High	High	Medium	Low-High	High
5	When reporting on funding decisions, Ofwat and Ofgem should include comparisons to figures outlined by other public bodies.	High	High	Medium	Low	Low-High	High
6	The government should provide the CMA with the necessary powers to directly extend a deadline in water and energy appeals.	Medium	High	High	Low	Low-Medium	High
7	The government will include the recovery of CMA costs as part of wider reforms to code modification appeals.	Medium	High	High	Low	Low-Medium	High
8	The government strongly encourages regulators to implement UKRN guidance on WACC.	Medium	High	Medium	Low	Medium	Medium

9	Ofwat to work with the government to implement competition stocktake proposals.	Medium	High	Medium	Medium	Medium	Medium
10	The government should provide the CMA with the necessary powers to appoint more than three members to hear appeals.	Medium	High	High	TBD - dependent on scope of final policy	Medium	Medium
11	The government will explore whether to give the CMA and CAT powers to be able to recover reasonable costs from the losing party.	Medium	High	High	TBD - dependent on scope of final policy	Medium	Medium
12	In energy and water, regulators should consider introducing greater use of comparative metrics to promote greater competition on performance.	Medium	High	TBD - dependent on scope of final policy	Low-Medium	Medium	Medium
13	Holistic assessment of infrastructure investment needs in energy networks and the water sector.	High	Low	Medium	TBD - Dependent on scope of final policy	High	Medium
14	The government will work with regulators to conduct a thorough review of duties.	High	High	High	TBD - dependent on scope of final policy	TBD - dependent on scope of final policy	Medium
15	The government will seek to change Ofwat's appeals regime to an energy style appeal regime.	Medium	Medium	TBD - dependent on scope of final policy	Low	Medium	Medium
16	The government to work with Ofcom and industry to improve transparency of decisions.	Medium	High	High	N/A	Low	Medium
17	Ofcom to review whether existing monitoring is sufficiently capturing competition issues by working with both the government and industry.	Medium	N/A	N/A	N/A	N/A	Low

Table 2: Full multi-criteria analysis

Policy Proposal	Strategic fit	Supplier capacity and capability	Potential achievability	Costs	Benefits
A holistic assessment of infrastructure investment needs in energy networks and the water sector should be delivered. This should enhance regulatory accountability, as well as supporting decision-making approaches, respectively.	High: DBT is the department for economic growth, supporting businesses to invest, grow and export, creating jobs and opportunities across the country. Establishing where additional investment would be of benefit to the UK economy and support the government's commitment in its 'Smarter regulation to grow the economy' principles exploring opportunities to help the regulators in better supporting economic growth. This would also provide greater alignment with key government objectives by	Low: Pre-consultation engagement did not uncover a clear candidate to complete this work.	Medium: significant work is planned and ongoing in order to help fill some gaps. Information on current assets and investment needed for future resilience could be challenging. Input into the assessment will be required from regulators, companies, the government and other stakeholders. A body with sufficient resources to bring together this assessment is lacking. Bodies such as the NIC have completed similar projects in the past, for example the National Infrastructure Assessments.	Magnitude will depend on final scope. No specific quote has yet been reached for this piece of work, noting that no clear candidate to deliver it has been uncovered.	High: The assessment should provide a clear infrastructure needs assessment for investors and industry, providing greater certainty on the government's goals in future in terms of what infrastructure is required to meet key government objectives. This assessment will help increase transparency in regulatory decision making and help government departments, Parliament, the National Audit Office, and other bodies understand how regulators are balancing consumer bills with the need for long term investment. In the long term, we can expect this to lead to higher levels of investment and associated benefits.

	establishing a more transparent picture to the public about the scale of investment required and where it must take place. There is already work ongoing to help achieve this, but gaps will persist without this recommendation.				
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 RIIO3	High: DBT is the department for economic growth, supporting businesses to invest, grow and export, creating jobs and opportunities across the country. Establishing where additional investment would be of benefit to the UK economy and support the government's commitment in its 'Smarter regulation to grow the economy' principles, exploring opportunities to help the regulators in better supporting economic growth. This would also	High: Ofwat and Ofgem should be well resourced to provide these comparisons.	Medium: A high level comparison should be achievable with adequate analytical and communication resourcing.	Low: This does not ask for significant further work from the regulators.	Low-High: This will help increase transparency and clarity in regulatory decision making. However, NIA publications analysis is relatively high level and as such these comparisons might not provide a high level of additional understanding. The impact will depend on the subsequent debate and the level of public interest.

approaches, respectively.	provide greater alignment with key government objectives by establishing a more transparent picture to the public about the scale of investment required.				
The government strongly encourages regulators to implement UKRN guidance on setting the weighted average cost of capital (WACC), to provide greater consistency across sectors and make the cross-sectoral investment easier for investors.	Medium: It is important that the regulatory environment continues to incentivise the investment needed to deliver growth, so regulators should minimise complexity where possible, to provide greater consistency across sectors and make cross-sectoral investment easier for investors.	High: There are already approaches for setting the WACC, so this would be an alteration in the existing approach by regulators and businesses, who already possess the knowledge and expertise.	Medium: The current process completed by regulators is significantly large and complex, involving many people and consideration of a multitude of factors. Implementing the UKRN guidance should be easier for regulators and therefore should be achievable.	Low: This is primarily a transition cost of familiarising with the guidance and implementing the new methodologies. Overall, we expect there would be a small additional cost to business. However, the intention of this proposal is to help simplify the existing process. There would likely be a one-off familiarisation cost for regulators and businesses to understand how the UKRN guidance differs to the existing WACC approach. We would then expect a small transition cost to regulators of implementing the guidance. We will use responses to this consultation to help inform which changes may be required compared to the business-as-usual process.	Medium: Whilst optional, it would be of benefit to regulators to implement the UKRN guidance to help standardise processes and for regulators to have reference to make these decisions. In addition, this should help business and investors by reducing the burden of understanding different price controls, particularly as investors often operate across sectors.

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	Medium: Appropriate economic regulation is a critical enabler of infrastructure investment. Continued investment is critical not only for growth but also for the UK's international competitiveness. Competition helps to provide incentives to invest and improve efficiency and quality.	High: Ofwat are already well placed to deliver this, having undertaken similar approaches previously.	High: As mentioned, Ofwat have already achieved this with some projects e.g., Thames Tideway, Havant-Thicket.	Low: We assume this would be undertaken where Ofwat see the net benefit in doing so. Ofwat are already taking some innovative approaches but are encouraged to take more.	Medium-High: Faster and more efficient investment project allocation and running. This should help projects to be delivered in a timelier manner, meaning the benefits could be realised earlier. One such example is the Thames Tideway tunnel, which is estimated to bring up to £13 billion worth of benefits to the capital's natural environment. It will prevent millions of tonnes of sewage flowing into the river every year, improving water quality to better protect the Thames' precious marine wildlife.[152] Meanwhile, the funding scheme allows for Thames Water customers to see an annual bill increase of only £25.[153]

[152] Department for Environment Food and Rural Affairs, 'Thames Tideway Tunnel to bring benefits worth up to almost £13 billion', 2015 (Accessed 12/10/23)
[153] Tideway, 'About Us' (Accessed 12/10/23)

where appropriate.					
Proposal (4a): For Ofwat to work with the government to implement competition stocktake proposals. To deliver necessary legislative amendments to remove the requirement to consult in certain circumstances. Proposal (4b): For Ofwat to explore ways to fast-track licensing for NAVs.	Medium: As outlined in the government's 'Smarter regulation to grow the economy', regulation can unnecessarily burden business, impede competition or act as a block on innovation, and hamper our national growth prospects.	High: The New Appointments and Variations Market (NAV) has been in operation for years under Ofwat. This would only require a change in the way that the licenses work in the NAV market.	Medium: The NAV market has already been delivered. A change to licensing is achievable, as it would only involve a change to the existing licensing variation process. However, this may require primary legislation.	Medium: This is not yet formal policy of any kind, so the logistics are unknown. We could expect that for where site specific licensing is maintained, the regulator should provide a clear, evidence-based rationale to prospective applicants on request. Changes to licensing would require a consultation in which the government would set out potential impacts in more detail. We note that if implemented, regulators would have to process less licenses, so in the longer term return any cost incurred by the regulator would be offset by these savings. However, this may require primary legislation.	Medium: The government has heard that requests for licensing variations can take several months, with significant associated administrative costs[154]. This proposal aims to reduce these costs for both Ofwat and businesses, and the barrier to entry for NAVs seeking to enter new areas. This should also help to increase and improve competition, which can help to encourage enterprise and efficiency, create a wider choice for consumers and help reduce prices and improve quality. General evidence of the benefits of competition are shown in the CMA's recent impact assessment, which found consumer savings from CMA's competition enforcement actions of around £132m per year since from 2020/21-2022/23[155]. Looking at the effects of facilitating competition in other sectors, in telecoms, Ofcom has required broadband and mobile phone providers to tell their customers about their best deals when their contracts are ending. These actions have already delivered large benefits for consumers: broadband customers

[154] Independent Network Associations, ' Benefits of Competition in the Water and Wastewater Sector', 2023, Page 7 (Accessed 12/10/23)
[155] Competition and Markets Authority, 'CMA Impact Assessment 2022 to 2023', 2023, Table 1, Page 5 (Accessed 12/10/23)

Proposal (4c): For Ofwat to work with the government to consider the viability of moving towards a national licensing regime for NAVs. To implement this will require legislative changes.					are more engaged since Ofcom's interventions came into effect. Specifically, the number of broadband customers who were out-of-contract in 2020 fell by around 1.3 million from the previous year[156]. Ofcom found that the commitments secured from broadband providers were having a positive impact for many vulnerable customers[157]. Specifically, their research found a reduction in the monthly broadband price differential paid by vulnerable customers from £4.40 to £2.30. The aggregate overpayments by bundled out-of-contract mobile phone customers, relative to comparable SIM-only prices, have reduced from £182m to £83m since the commitments secured by Ofcom came into effect. Another example is in energy, where a similar switch away from site specific licensing has coincided with an increase in the number of new build Independent Distribution Network Operators (IDNOs).
For Ofcom to review whether existing monitoring is sufficiently capturing competition issues in the sector.	Medium: As outlined in the government's 'Smarter regulation to grow the economy', regulation can unnecessarily impede competition and hamper our	N/A: This is ongoing.	N/A: This is ongoing.	N/A: We expect no additional cost, as this is a continuation of existing work.	N/A: We expect the benefit would be to Ofcom, linked to identifying any areas where monitoring is not capturing competition issues.

156 Ofcom, 'Helping Customers get better deals', 2021, Page 5, Ofcom (2021)
157 Ofcom, 'Helping Customers get better deals', 2021, Page 3, Ofcom (2021)

	national growth prospects.				
In energy and water, regulators should consider introducing greater use of comparative metrics to promote greater competition on performance between companies.	Medium: As set out in 'Smarter regulation to grow the economy', encouraging competition is key in order to deliver these services to consumers, provide incentives to invest and improve efficiency and service quality. This also helps to provide transparency and accountability, providing a more complete picture of how companies are performing in the energy sector, and water and wastewater sector.	High: Companies already provide large amounts of data and some metrics. They provide these through their public annual reports and additionally through internal submissions to the regulators. The regulator is best placed to facilitate any additional data gathering by companies to help inform any new metrics, given their existing working relationship with utility companies.	Magnitude will depend on final scope. The potential achievement of the policy will depend on a range of factors, but more specifically whether companies will be required to collect additional data to inform new metrics. The addition of new metrics or new monitoring is not novel to the energy or water sector either. For example in water, Ofwat has already introduced this form of indirect competition for consumer outcomes (see Benefits column) and in energy, RIIO-2 price control	Low/Medium: We assume the level of cost incurred will depend on the metrics chosen, the subsequent resource required to provide such data, and if there are incentive payments and penalties included. It will be likely that regulators and businesses already hold the data, given they already collect a wide variety of performance metrics. We expect where a cost is incurred, this would likely be a familiarisation cost to business of understanding how figures were calculated, in order to understand what meaningful comparisons can be made between metrics. There may also be an administrative cost to business of then creating new metrics for comparison. Where a business is successful in	Medium: Allowing more comparisons between businesses in each sector will increase transparency and accountability between competitors and may help incentivise greater performance, resulting in greater service quality for consumers. Ofwat has already introduced this form of indirect competition for consumer outcomes, through C-MeX,[158] where companies that deliver better customer satisfaction receive more incentive payments than those who have provided a poorer customer service.[159] In the first year of its full operation (2020-2021[160]), the C-MeX score of all water companies increased compared with the shadow year (2019-2020[161]) when scores were recorded but incentives not applied. Despite a general decrease in scores in 2021-2022[162], all water companies still achieved higher C-MeX scores compared with the shadow year.

[158] Ofwat, ''Customer and Developer Services Experience', 2023 (Accessed 12/10/23)
[159] Ofwat, 'BR-MEX: Business customer and retailer measure of experience'
, 2023 (Accessed 12/10/23)
[160] Ofwat, 'C-MeX and D-MeX – 2020-21 results', 2021, (Accessed 12/10/23)
[161] Ofwat, 'C-MeX and D-MeX – 2019 – 20 results', 2020 (Accessed 12/10/23)
[162] Ofwat, 'C-MeX and D-MeX – 2021-22 results', 2022 (Accessed 12/10/23)

			for the ESO consists of a pass-through funding approach, performance-based financial incentives to deliver value for consumers.	achieving a target metric, the cost may be recouped if an incentive payment is included. In contrast, if a business fails to achieve a metric, the cost of this proposal may increase, though this would ultimately be a cost borne by the business and its actions.	
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.	High: Whilst it is important that regulators promote economic growth, it is essential to also ensure they prioritise delivery of their core functions, including protecting consumers especially vulnerable people, by ensuring they are treated fairly. A single multi-sector PSR should also help to provide more transparency	High: The UK government is best placed to take forward the reforms of the PSR as the owner of the service and facilitator between different sectors and will do so by heading up a taskforce that includes key stakeholders, formed primarily from the current Ofgem-led working group. This should	Medium: This involves a merging of existing resource. Whilst there may be challenge initially, given the increased remit of the PSR, we expect this to be achievable, particularly based on the government hearing from industry and the regulators that this is desired.	Medium: The logistics of the final PSR are yet to be decided but we expect costs might be incurred. The logistics will be known ahead of any final proposal, so the impacts will be considered in more detail by the government in an updated assessment. Ofgem currently leads a working group involving many of the key bodies that drives changes in the current system and is working to establish what a universal PSR can look like. There is also already	High: Estimates suggest there might potentially be millions of customers in vulnerable circumstances missing out on support and who could therefore benefit. According to the Consumer Council for Water, Consumer awareness of additional water services available is low[164], whilst according to Ofgem, only 1 in 3 consumers are aware of the PSR[165]. In 2019, there were approximately 6.7 million electricity and gas consumers, and 5.6 million gas consumers (24% of consumers for both) on a PSR[166]; in 2023, water companies had 2.3 million consumers (representing 8% of consumers[167]) on their PSR. This refers to households, rather than individuals, and Ofwat have set a minimum target (some companies' targets may be higher) of 7% of households by 2024/25[168]. Compared to the number of

164 Consumer Council for Water, 'Water Company Performance', 2022 (Accessed 13/10/23)
165 Citizens Advice, 'Closing the gap', 2023, Page 5 (Accessed 13/10/23)
166 Ofgem, 'Vulnerable Consumers in the Energy Market: 2019', 2019, Page 8 (Accessed 13/10/23)
167 Ofwat, 'Water Company Performance Report 2022-23', 2022, Page 11 (Accessed 13/10/23)
168 Ofwat, 'PR19 final determinations', 2019, Page 2 (Accessed 13/10/23) PSR enrolment figures represent the number of households, rather than individuals. Ofwat has set a target for water companies that at least 7% of their customers, around 2 million households in total, should be registered on the PSR by 2024/25. Across energy networks the number of people registered on the PSR can vary substantially, depending on geographical area (Citizens Advice report).

	for consumers on the supportive resources available to them.	improve the capability and performance of the PSR by utilising the best resources from each sector, given currently the PSR is a service provided by individual energy (supply and network companies for both gas and electricity) and water and sewerage companies.		an expectation from industry[163] that universal PSR will be established, and significant changes are not expected at this stage given the level of work already completed on the proposal.	registered energy consumers, and assuming that the majority of vulnerable consumers have similar needs across both sectors, there are millions of water consumers in vulnerable. Across energy networks, PSR engagement can vary significantly, with between 30% and 70% of those eligible registered[169]. circumstances who are still missing out on support. A cross-sector PSR may help to reduce this number and also reduce communication burdens on vulnerable customers. It can be noted that the government, regulators and firms already work collaboratively in certain areas. For instance, in the creation of Water Resource Management Plans and more acute drought response.
For the UK Regulators Network (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,	High: Whilst it is important that regulators promote economic growth, it is essential to also ensure they prioritise delivery of their core functions, including protecting consumers, especially vulnerable people by ensuring they are treated fairly.	High: This is within the regulators' remit, and they are best placed to coordinate this collaboration, given the extent to which they already work with the relevant companies.	Medium: Collaboration already occurs between regulators, industry and the government. This would form an additional part of this collaboration, and so we expect that it is likely to be achieved, given the increasing need in the cost-of-living crisis.	Low: Because this is optional, we assume this would be undertaken where business see the net benefit in doing so. Where any actions are taken to fulfil this recommendation, we expect regulators and businesses would incur a cost, for example, adhering to UKRN guidance once it has been provided.	Low-High: The level of benefit will depend on the additional collaboration. This aims to help build trust in water and energy sectors - making support available well known will help benefit those who need it. These regulated businesses are also more unstable if people cannot pay bills, so greater support may help to manage this and provide greater assurance to both business and investors in terms of their expected returns.

[163] Ofgem, 'Jonathon Brearley's Speech to Ofgem's Vulnerability Summit', 2023 (Accessed 13/10/23)
[169] Citizens Advice, 'Closing the gap', 2023, Page 5 (Accessed 13/10/23)

looking at both household and business customers.					
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.	High: The introduction of a growth duty aligns with the government's view to return the focus of the regulators to supporting the agenda of promoting growth. This, combined with the rationalisation exercise, brings the overall amount of duties down and brings stronger focus on what the country needs from its regulators.	High: The government sets policy direction through these regulator duties in primary and secondary legislation, which regulators must fulfil in carrying out their core functions. The review and rationalisation exercise will take into account the capacity and capability of the regulators in order to ensure deliverability is achievable.	High: The government sets out plans[170] to consult on refreshed guidance on how regulators deliver their growth duties, following the outcome of the review by Professor Dame Angela McLean[171], as well as the best routes to drive growth through the activities of key economic regulators. There have been previous cases where adding new duties on regulators has been a positive way to set new direction, for example the recent Net Zero Duty on Ofgem[172] have been warmly	Magnitude depends on final scope: This is an initial proposal where if pursed, the government will consult. An assessment of impacts of any changes to existing regulator duties will be considered as part of this.	Magnitude depends on final scope: This is an initial proposal where if pursed, the government will consult. An assessment of impacts of any changes to existing regulator duties will be considered as part of this.

[170] Department for Business and Trade, 'Smarter Regulation to Grow the Economy', 2023 (Accessed 13/10/23)
[171] HM Treasury, 'Pro-Innovation Regulation of Technologies Review', 2023 (Accessed 13/10/23)
[172] National Infrastructure Commission, 'Commission welcomes net zero duty for Ofgem', 2023 (Accessed 13/10/23)

			received by the regulator, investors, and industry.		
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.	Medium: As outlined in the government's 'Smarter regulation to grow the economy', this would help support the government's commitment to the CMA to continue to support investment, innovation and growth, whilst retaining the operational independence of the CMA to promote open, innovative and fair markets.	High: Part of CMA's purpose is to help complete appeal processes, so a step change would not be needed. The purpose of increasing panel members is to improve the capability and capacity for such cases.	High: The CMA already helps to complete appeals processes, so this does not affect achievability and rather improves the capability and capacity for appeal cases.	Magnitude depends on each appeal: Appeals vary greatly in their content, so the 'typical cost' of an appeal cannot be provided as the average cost would be misleading. There is much complexity between appeals and redeterminations, which makes direct comparisons unachievable. Evidence provided by the CMA supports this point, with the total cost of an appeal ranging from around £200,000 to £3 million[173].	Medium: A larger appeals panel could increase investor confidence as it would provide more resilience to the process.
The government should provide the CMA with the necessary powers to directly extend, when considered appropriate, a deadline in	Medium: As outlined in the government's 'Smarter regulation to grow the economy', this would help support the government's commitment to the CMA to continue to	High: Part of CMA's purpose is to help complete appeal processes. This would allow the CMA to simplify the appeals process and potentially also reach decisions more quickly.	High: The CMA already helps to complete appeal processes, so this does not affect achievability but rather improves the capability and capacity of the	Low: There is little to no cost associated with this proposal. Anecdotal evidence from the CMA is that it is generally obvious, from an early stage, when an appeals case will need an extension.	Low/Medium: This should help to simplify the appeals process for the party(s) involved, helping to streamline appeal cases in future that may have otherwise been prolonged without the use of the power. There is no monetisable benefit to this proposal. The nature of the benefit is more in reduction of administrative costs. Anecdotal evidence from the CMA is that the requirement for a deadline extension is generally obvious

[173] Internal figures provided by the CMA covering regulator appeals and the CMA costs over the period 2015-2023, in which there were thirteen appeals completed.

water and energy appeals, rather than needing to request an external party for the extension.	support investment, innovation and growth, whilst retaining the operational independence of the CMA to promote open, innovative and fair markets.		CMA for appeal cases.		early on in a case, and so the ability for the CMA to request the extension at this point would simplify the process and allow a clearer understanding of timelines for the appeal. In terms of scale, of the 6 cases that have been heard so far this decade, 4 have extended their deadlines[174].
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.	Medium: As outlined in the government's 'Smarter regulation to grow the economy', this would help support the government's commitment to the CMA to continue to support investment, innovation and growth. This will also help support regulators in their duty to protect consumers	High: Part of CMA's purpose is to help complete appeal processes. This would allow the CMA to simplify the appeals process and potentially also reach decisions more quickly.	High: The CMA already helps to complete appeal processes, so this does not affect achievability but rather improves the capability and capacity of the CMA for appeal cases.	Magnitude depends on each appeal: Appeals vary greatly in their content, so the actual typical cost of an appeal is not something that exists. There is much complexity between appeals and redeterminations, which makes direct comparisons unachievable. Evidence provided by the CMA supports this, with the total cost of an appeal ranging from around £200,000 to £3 million[175].	Medium: This may help to increase confidence in appealing regulators' decisions if the cost decisions are able to be compensated (if successful in appealing). This may also help an intervener spend more time and resource if they have greater reassurance that they may be able to recover the cost of their efforts, which would improve the evidence representing the consumer perspective. This would also help improve regulatory accountability and transparency to consumers.
The government will include the	Medium: This will help support the	High: Part of CMA's purpose is to help	High: The CMA already helps to	Low: Every case already involves some work by the	Low/Medium: Costs to appellants for code modification appeals may be more accurately

[174] Internal figures provided by the CMA.
[175] Internal figures provided by the CMA covering regulator appeals and the CMA costs over the period 2015-2023, in which there were thirteen appeals completed.

recovery of the CMA costs as part of wider reforms work to code modification appeals. Reforms would be to amend code modification appeals to align with energy licence modifications to give discretion for the CMA to apportion its costs as it considers appropriate.	government's commitment to the CMA to continue to support investment, innovation and growth, whilst ensuring that regulators take decisions that they believe will withstand robust and rigorous scrutiny.	complete appeal processes. This would allow the CMA to simplify the appeals process and potentially also reach decisions more quickly.	complete appeal processes, so this does not affect achievability but rather improves the capability and capacity of the CMA for appeal cases.	CMA at the end to apportion cost. This is on a case-by-case basis. If there is a clear unsuccessful appellant, CMA costs are recovered from them. If there is a partial decision, then there is some negotiation and apportionment on cost. There is also a small legal cost if these cost apportionments get challenged. As such, this proposal would only involve the expansion of this work to code modification appeals.	reflected if the CMA become able to apportion some of the cost back to them.
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.	Medium: This will help to reduce burdens on businesses and regulators, who we want to help spend more time and resource on driving growth and creating a more competitive and productive economy.	Medium: Ofwat already deliver their determinations in several thousand-page documents produced over several years. Because of their expertise, Ofwat are arguably better placed to decide on some water-specific issues (for example disputes around enhancement projects or the width of a new pipeline). This would be a new	The government will use the feedback from this consultation to inform a further consultation launched by the government into a proposal to streamline the process for price control appeals to make it similar to the energy sector appeals regime.	Low: We expect that streamlining the process will help to reduce costs to business and the regulators, particularly by reducing the scale of appeals that will happen. We are using this consultation to gather evidence to help inform this assumption further.	Medium: Reduce legal costs - this is about shortening the 'legal pack'. This significantly reduces the scales of appeals that will happen. There might also be scope for further synergies as water and wastewater sector would be moving towards the same process for energy sector, so there might be benefits from economies of scale.

		process though which may present challenges to Ofwat. For example, the government has heard from industry the energy appeals regime has the 'cherry picking' problem, but still considered that this may be a more appropriate model for water today.			
For Ofcom to work with both the government and industry to develop more specific guidance on what to include in decision documents to improve transparency of decisions.	Medium: As outlined in the government's 'Smarter regulation to grow the economy', the government wants regulators to be transparent and accountable on how they are supporting growth as well as their other crucial responsibilities.	High: The government, Ofcom and industry already work closely together, given the nature of how Ofcom operates as regulator.	High: The government, Ofcom and industry already work closely together, given the nature of how Ofcom operates as regulator.	N/A: This may form part of existing processes for engagement for each party involved. The details of this proposal are not yet finalised and response to this consultation will be used to help inform any cost estimates.	Low: Whilst not monetisable, this will help increase transparency in regulatory decision making and help government departments, Parliament, the National Audit Office and other bodies understand how regulators are balancing decisions.
The government will provide the power to Ofwat to allocate customers from an unplanned retailer exit to a new retailer/s on	High: It is essential that regulators ensure no customer is left without service provision. One of Ofwat's main duties is to protect the interests of consumers – this	High: This is within the regulators' remit, who have confirmed there is benefit to have this power in order to protect customers.	High: this is a measure that is widely agreed is needed to protect customers (by the government, regulator and	Medium: while the measures may (hopefully) not need to be used, it could cause a retailer in the market to have to take on business that is difficult/loss-making. This	Low-High: level of benefit will depend on whether the power is ever used. In itself it provides assurance to the market that there is a safety net. If not used, then the benefit would be lower. If needed, benefit to the customers affected would be high.

a mandatory basis.	measure closes a 'loophole' where customers could potentially go 'unserved' by a retailer.		market participants).	cost would be reflected in regulatory decisions.	

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