

Six Pump Court
Water Industry Group

Summary and Analysis of the Interim Report of the Independent Water Commission



Introduction

Context and aims of this legal analysis

- 1 Yes, it is only an interim report (whatever that means exactly)! But there is no doubt that the [Interim Report on the management and regulation of the water industry by the Independent Water Commission](#) chaired by Sir John Cunliffe is a very significant document in the water industry which will be closely studied by all those seeking to understand what is going to happen next in this fast-moving area of law, policy and regulation.
- 2 The Final Report is due to be published later this year. If the Final Report contains everything which is included in this Interim Report and the government then goes on to implement the changes which are proposed by making wholesale changes to water industry legislation, regulation and supervision then this will be the biggest change to the water industry since it was privatised in the early 1990s.
- 3 This summary and analysis of the Commission's Interim Report by the Six Pump Court Water Industry Group is intended to delve deeper into what the Report covers. It both summarises what the Interim Report says and tries to glean from the contents of the Report what changes are proposed and what those changes might mean, in practice, for both the regulated businesses involved in the water industry and the regulators.
- 4 Obviously this summary cannot hope to cover everything in the Interim Report and our analysis may, once the Final Report is drafted, turn out to be misplaced or wrong. However, given the very significant potential consequences of the Interim Report, we think it is sensible for all those involved in the water industry to seriously consider the document and give some thought to what it may mean. This is our attempt to do that.
- 5 Part 1 of this analysis (written by [Douglas Scott](#) and [Dr Michael Bowes](#)) covers section 1 of the report and strategic direction and planning).
- 6 Part 2 (by [Nicholas Ostrowski](#)) covers section 2 and the legislative framework
- 7 Part 3 (by [Jemima Lovatt](#)) covers section 3 and Regulatory Reform
- 8 Part 4 (by [Roisin Finnegan](#)) covers section 4 and Company Structures, Ownership, Governance and Management.
- 9 Part 5 (by [Mark Davies](#)) covers Infrastructure and Asset Health
- 10 If you would like to discuss this analysis with any of the water industry law group at Six Pump Court please do get in touch.

Section 1

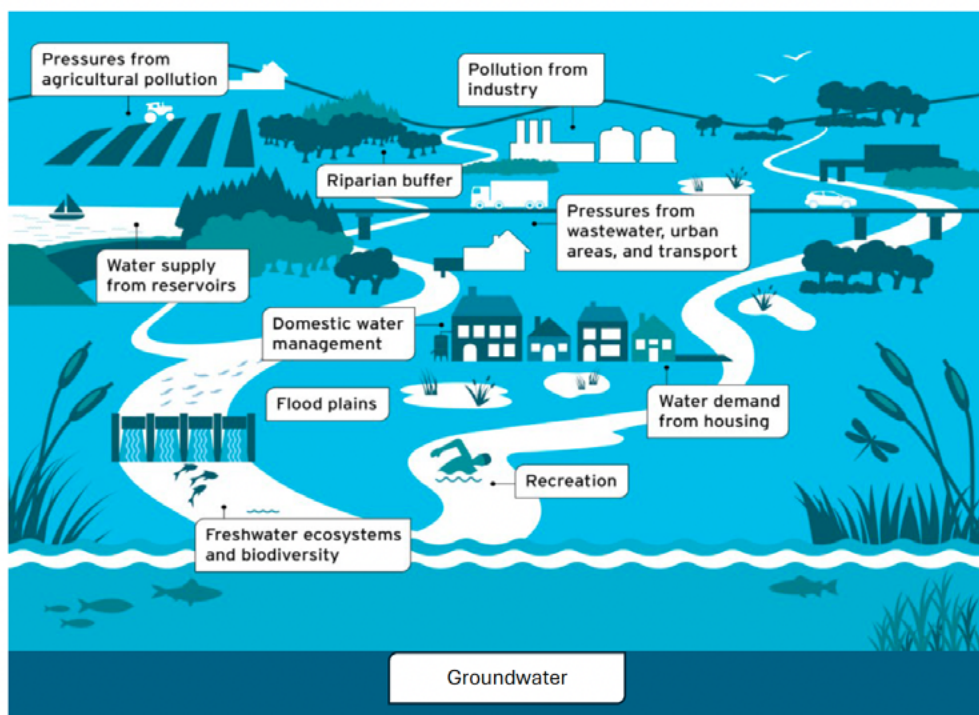
Strategic Direction & Planning

- 11 Section 1 is divided into two, quite separate, sub-sections. Section 1a of the Report (addressing strategic direction) can be summarised as recognising the necessity for new national water strategies to promote government-led, long-term and inter-sector collaboration to manage the water system. As suggested below, it is this final ambition – being truly inter-sectoral – that will make or break the success of such new strategies. Section 1b of the Report (considering Water Systems Planning) sets out wide-ranging and broad objectives and although at present there is a lack of detail there is not a lack of ambition.

1a: Strategic Direction

- 12 The Report observes that existing strategies in England for strategic water use are narrow minded and “contain little-to-no guidance on how regulators should strike a balance between potentially conflicting targets and outcomes”. Figure 1 of the Report provides a visual illustration of these many different pressures, sectors and features impacting on the water system.

Figure 1: Illustrative image showing various features, pressures, and sectors present within, and impacting on, the water system.



Source: Defra Plan for Water diagram, amended by IWC²³

- 13 The Strategic Policy Statement (“SPS”) for Ofwat, which set out the Government’s strategic priorities and objectives for Ofwat’s regulation of the water sector, is highlighted as providing some strategic direction, noting in particular its impact on Ofwat’s five-yearly price reviews. Yet, the criticism remains that such a strategic mechanism is directed towards the water industry’s economic regulator rather all the other sectors that have an impact on the water system. The failure of strategic direction is epitomised by what is characterised as poor progress in relation to water quality targets.
- 14 So, what is the strategy for improving strategy? The Commission suggest that “*new government-led, long-term national water strategies*” are the way forward as only the government can truly balance demands and needs of the numerous different factors at play. The Commission consider that these need not be overly detailed or prescriptive but should set out strategic choices. The Commission consider that the strategies need to have a long-term focus to facilitate infrastructure delivery but also suggest implementing interim targets to promote accountability and short-term sector delivery goals.
- 15 One suggestion by the Report is for the government to set clear, 5-year strategic plans for all water regulators and not just Ofwat i.e. to include the Environment Agency (“EA”) and Drinking Water Inspectorate (“DWI”) too. The Report envisages that such strategic directions will create a clear decision-making framework to guide action within each review cycle to deliver against the long-term objectives set out in the national water strategies. However, one would be forgiven for thinking that this is hardly revolutionary and is more accurately described as a SPS+ model, with even the “+” not being particularly ambitious given that DEFRA already have memoranda of understanding regarding the water system with various bodies including the EA and Ofwat.
- 16 It is suggested that a sea-change (idiom not hydrological) will not happen through merely stating further long targets (we already have these through Water Framework Directive targets), or more medium-term strategies (again, SPS already provide this sort of function). The real goal for the new national water strategies should be for a comprehensive inter-sectoral approach. Providing a strategic framework for all the different pressures in Figure 1 is the only way that they can co-exist and provide greater clarity for the different actors when making their decisions. Bringing all the different strands together in a coherent, strategic and realistic way will be genuinely groundbreaking and provide an enduring basis for a sustainable water system. The Commission promise to look at solutions with more emphasis on inter-sector cooperation and it is hoped that the proposal is as wide-ranging as is required.

1b: Water Systems Planning

- 17 The Report identifies serious and structural deficiencies in the planning and governance of water systems across England and Wales. These systems, based on discrete river basins, aquifers, and coastal zones, lack any form of national water grid. Water remains fundamentally localised yet planning and delivery mechanisms have failed to align with this regional reality.
- 18 The Report highlights that planning currently lacks integration across sectors, with local voices routinely excluded from decision-making. River Basin Management Plans (the subject of the recent case of [R\(Pickering Fishery Association\) v Sec-](#)

[retary of State for the Environment, Food and Rural Affairs \[2025\] EWCA Civ 378](#)), while central to environmental planning, have proven ineffective in driving coordinated action beyond the water industry, particularly in the agricultural sector. This has been exacerbated by a governance gap commonly referred to as the “missing middle”, where the translation of national objectives into regional implementation is weak or absent.

- 19** The planning architecture is further complicated by its opacity and misalignment. Stakeholders report that existing mechanisms are overly complex, difficult to navigate, and lack sufficient transparency. Regulatory requirements, particularly from environmental agencies, are frequently set without adequate regard to the cost or affordability of delivery. Long-term infrastructure projects that extend beyond the standard five-year Asset Management Plan cycle often face funding uncertainty, introducing significant risk to their viability.
- 20** The Report also identifies significant missed opportunities for integration and efficiency. Plans such as Water Resource Management Plans and Drainage and Wastewater Management Plans operate on different timelines, use inconsistent methodologies, and often fail to coordinate where overlap exists. Regulatory capacity to manage complex, innovative or cross-sector schemes is limited, hampering the delivery of more sustainable or nature-based solutions.
- 21** In response, the Commission concludes that stronger and more formalised regional water system planning arrangements are needed. These arrangements should bring together all relevant sectors, including local authorities, and should operate at the scale of natural hydrological boundaries such as river basins. Such bodies should be vested with real authority to determine investment priorities and improvement actions across the full range of water-related stakeholders. They must be connected to catchment-based partnerships and accountable to local communities and democratic institutions. The details of this collaboration including membership and financing are not finalised, but the Commission’s views on this in their Final Report will be keenly studied.
- 22** In England, this will require new institutional structures at the regional level, potentially within existing regulatory bodies or as new, freestanding entities. National coordination will still be essential to ensure that regional plans align with statutory goals, particularly for water quality, drought resilience, and environmental protection. A central function within or led by Defra may provide escalation routes (yet to be defined but clearly envisaged as a way for bodies to escalate specific targets or goals which need to be prioritised), set methodological guidance and safeguard national priorities.
- 23** In Wales, the Report acknowledges that national-level planning has been more functional due to the country’s size and institutional coherence. However, the Commission recommends deeper involvement of local and catchment-based groups, particularly from the agricultural sector, to bridge the implementation gap and enhance democratic legitimacy. The Report points to the potential for Welsh systems planners to align water planning with spatial planning, rural grant mechanisms, and sustainable drainage schemes.

Conclusion

- 24** Parts 1a and 1b of the Report collectively call for a fundamental overhaul of stra-

tegic direction and planning in the water sector across England and Wales. The Commission advocates for the introduction of government-led national water strategies with clear, long-term goals and interim delivery targets to guide all water regulators, not only Ofwat which are intended to address the current fragmentation, short-termism and lack of cross-sector alignment. Concurrently, it recommends the establishment of stronger, regionally based water systems planning frameworks that reflect natural hydrological boundaries, incorporate local voices, and possess real authority over investment priorities. These reforms aim to replace the existing opaque and disjointed processes with a coherent, accountable and regionally grounded system that ensures effective delivery, environmental protection and resilience over time. These are bold and generalised proposals which highlight the need for drastic change in a variety of different ways. Hopefully the detail of how these objectives shall be achieved will follow in the final version.

Section 2

Legislative Framework

25 Section 2 of the interim report deals with the legislative framework and our view is that within some carefully demarcated categories, the Commission comes up with some surprisingly granular and tangible suggested changes to that framework.

2b: The Commission's criticisms of the current legislative framework

26 The Commission begins by summarising the current legislative framework. As anyone with even the slightest knowledge of water law will agree, it's very complicated as Figure 6 of the Report makes graphically clear:

Figure 6: Key elements of the legislative framework over time

	1989 - 1998	1999-2008	2009-2016	2017 - present
England & Wales	<div>Water Act 1989</div> <div>Water Industry Act 1991</div> <div>Water Resources Act 1991</div> <div>Bathing Waters (Classification) Regulations 1991</div> <div>Urban Waste Water Treatment (England and Wales) Regulations 1994</div> <div>Environment Act 1995</div>	<div>Water Industry Act 1999</div> <div>Water Act 2003</div> <div>Government of Wales Act 2006</div>	<div>Flood and Water Management Act 2010</div> <div>Bathing Water Regulations 2013</div> <div>Water Act 2014</div> <div>Environmental Permitting Regulations 2016</div>	<div>Water Environment (Water Framework Directive) (England and Wales) Regulations 2017</div> <div>Network and Information Systems Regulations 2018</div> <div>Environment Act 2021</div> <div>Water (Special Measures) Act 2025</div>
England only			<div>Water Supply (Water Quality) Regulations 2016</div>	<div>Environmental Targets (Water) (England) Regulations 2023</div>
Wales only			<div>Well-being of Future Generations (Wales) Act 2015</div> <div>Environment (Wales) Act 2016</div>	<div>Water Supply (Water Quality) Regulations 2018</div>

27 There is then something of a tension in the rest of this section. On the one hand, the Commission make clear that they are aware of specific issues with individual pieces of legislation and how they interact (such as what they describe as the misalignment of regulatory requirements in respect of combined sewage overflows sets out in the Urban Waste Water Treatment Regulations 1994 and the Water Industry Act 1991 with the new, and stricter, requirements in the Storm Overflows Reduction Plan embodied in the Environment Act 2021). On the other hand, the Commission is obviously wary of getting too ‘in the weeds’ at this interim stage and of proposing detailed changes to the legislation on the basis that *‘Review and rationalisation of the extensive legislative framework would be a major exercise requiring public consultation and considerable scientific and technical expertise. It is not a task for this Commission.’*

28 That tension is resolved by the Commission identifying the general changes which it considers should be made to the regulatory and legislative framework before zeroing in on two specific things which we consider worthy of note.

2b: The Commission’s criticisms of the current legislative framework

29 The first specific change which the Report identifies is that ‘changes to the WFD (Water Framework Directive) will be necessary’. The WFD, as readers may be aware, essentially requires that the Secretary of State sets out how it will improve the ecological and chemical status of watercourses in River Basin Management Plans (the subject of the recent Court of Appeal case in [R \(Pickering\) v Secretary of State for the Environment, Food and Rural Affairs \[2025\] EWCA Civ 571](#)). The Commission says that these changes ‘will’ be necessary *‘given there is no statutory deadline for environmental improvements relating to good ecological or good chemical status after 2027.’*

30 That is a surprising assertion to make and, in our view, it is wrong. While the WFD requires River Basin Management Plans every six years and requires that all member states achieve ‘Good Ecological Status’ and ‘Good Chemical Status’ by 2027 with no further mandatory plans imposed by the legislation thereafter, it does not follow that member states are not required to make any further improvements relating to good ecological and good chemical status after 2027. As the OEP stated in its review of implementation of the Water Framework Directive at §2.2.10:

In conducting this project, we have heard a misconception from some stakeholders that the WFD Regulations only apply up to 2027, with no provision for plans or objectives thereafter. However, this is not the case. The WFD Regulations will have ongoing application unless and until they are changed. They will require updated RBMPs every six years,⁹² with continuing obligations to prevent deterioration, review exemptions and update measures to achieve objectives.

31 Notwithstanding this arguably incorrect premise, the Commission strongly hints that they will, in their Final Report, recommend that the Objectives set out in the WFD should be amended to include not just Chemical and Ecological Status but also Public Health benefits given that the report notes that people increasingly suggest that making waterbodies safe for swimming is important. In our view this is significant. Swimming in lakes, rivers and the sea is an increasingly popular pastime, but

the law has not kept pace with this¹. This proposed change (the inclusion of public health factors when categorising waters in the WFD and the UWWTR 1994) will surely be welcomed by the public. What may be less welcomed by those concerned with water quality would be if the Commission adopts the position, espoused for many years by the Environment Agency² and hinted at by the Commission at para 120 of its report, that the 'one out all out' principle to assessments³ for Good Status should be removed.

32 We consider that the Commission may give to environmentalists with one hand (by including public health categories within the WFD assessment framework) but will take away with the other hand (by removing the 'one out all out' principle).

33 The second major legislative change which the Commission talks about in detail is in relation to the introduction of 'constrained discretion' for regulators.

34 So what is 'constrained discretion'. The concept is first articulated in the Corry Review published in April this year (p21):

Constrained discretion would involve allowing regulators greater autonomy to be flexible when determining how best to deliver the outcomes most needed in a local place. The current regulations provide only a limited basis for constrained discretion, but additional backing from Ministers and future legislative changes could facilitate this approach. Boards could and should have a role in holding their regulators to account in making outcome-based approaches by developing outcome focused strategies. Developing performance indicators that are focused on delivering outcomes will enable this. This may require re-evaluating Board composition to ensure outcomes are at the centre of regulatory decisions.

35 This seems to mean that the regulator will be relieved of duties and, instead, be permitted to exercise discretion and take such action as it considers appropriate if, in its judgment, adhering to a particular environmental duty would not be 'worth it'.

36 That discretion will, though, be 'constrained' as the Corry Review sets out:
However, this sort of approach comes with risk. There are species and features of the natural environment that need protecting or improving, and we need to be confident that allowing regulators more discretion will still deliver benefits for the environment, which is why any discretion must be constrained and monitored transparently. This section contains some thoughts on why a move to outcome-based regulation is needed and how this might be done while protecting and restoring the environment.

37 We are still unsure about what this might look like in practice. As readers will know, regulators, as with all public authorities, have duties and they have discretionary powers. The concept of 'constrained discretion' appears to envisage giving regulators the power to pick and choose for itself what obligations (which it had hitherto been required to ensure were implemented) it will choose to enforce. It remains unclear to us what duties the Commission contends should be converted into dis-

1 The leading authority on sea 'bathing' (itself an anachronistic term) remains the 1821 case of *Blundell v Catterall* 5 B & Ald 268 where the court held that there was no 'common-law right for all the King's subjects to bathe in the sea, and to pass over the seashore for that purpose.' The main regulatory safeguard for river swimming is to be found in the Bathing Water Directive which, in order to be engaged, requires the bathing water area to be 'designated' by a laborious process of proving that the particular stretch of water is heavily used for swimming during the bathing season

2 See, for instance, 'In praise of red tape: getting regulation right' by Sir James Bevan (accessed at <https://www.gov.uk/government/speeches/in-praise-of-red-tape-getting-regulation-right>)

3 The 'one out all out' principle is that if a river fails to meet the required status for any part of any category which is tested, then the entire river fails even if, for instance, only one chemical parameter is being breached.

cretionary powers and the example given in the Corry Review of 'constrained discretion' in action relates to the grant of planning permission in and around the Thames Basin Heaths Special Protection Area. It is simply unclear whether this is, in reality, 'constrained discretion' in action rather than simply the ordinary exercise of powers by the regulators in question and, in any event, how this would be translated to the water industry is a live question.

Conclusion

- 38** In summary, we consider that the Commission have telegraphed quite clearly the direction which it wants to take in terms of the legislative framework but there is still a lot to be considered which may become clearer at the Final Report stage. Both of the suggestions which the Commission identify with conspicuous clarity (changes to the WFD and permitting the regulators to exercise 'constrained discretion') amount to particularly significant potential changes to the legislative framework.



Section 3

Regulatory Reform

39 Section 3 of the Commission's Interim Report focuses on the urgent need for regulatory reform within the water sector in England and Wales. The Commission concludes that the current framework is overly complex, inefficient, and has failed to command public confidence, necessitating a fundamental reset to ensure the effective regulation of an essential public service delivered by private, regional monopoly providers.

Complexity and Fragmentation of the Legislative and Regulatory Framework

40 The report identifies that the legislative basis for regulation has evolved in an uncoordinated, piecemeal fashion over several decades. This has resulted in a dense and fragmented framework marked by overlapping responsibilities and gaps between different regulators. For example, the Environment Act 2021 introduced new responsibilities for the Environment Agency to publish annual summaries and the Water Services Management Act 2025 also introduced new enforcement levers. However, both of these were introduced without considering how these integrate with existing laws and regulation. These layers have created ambiguity in purpose, blurred lines of responsibility, and a lack of clarity in regulators' roles. The Commission proposes rationalising and streamlining this framework to clarify the scope, objectives, and duties of each regulator, allowing for better coordination and more focused enforcement.

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The Case for a Supervisory Model of Regulation

- 42** One of the Commission's principal recommendations is to replace the prevailing "rules-based" and adversarial regulatory approach with a "supervisory" model. The current system is heavily reliant on industry-wide benchmarking and econometric modelling to set price and performance expectations. The current rules-based approach, while designed to curb monopoly power, is viewed as overly rigid and insufficiently sensitive to the differing geographic, demographic, and historical contexts in which water companies operate.
- 43** Supervisory regulation was a creation of government in response to the 2008 financial crisis. Following 2008, there was a desire for greater government involvement in how banks manage money to reflect the trust that customers put in their bank, the risks that arise when a bank fails and the public investment made to bail the banks out of the crisis. Supervisory regulation was achieved through the establishment of the Prudential Regulation Authority ('PRA') in 2013 and, from its inception, the same Sir Jon Cunliffe as chairs the Commission, sat on the PRA Board.
- 44** For the financial market, a supervisory regulation model has involved the PRA taking a comprehensive view of whether individual firms are being run safely in order to reduce the chance of a business facing difficulties. The PRA creates policies and watches over aspects of the business to monitor delivery. It has a clear mandate, institutional independence from the Bank of England whilst being integrated through an overlap in Board members and takes a focused risk-based approach. This has created a credible and robust regulator. However, the PRA has been criticised for being overly burdensome for small firms, too conservative thus undermining the UK's global competitiveness and too slow to address fully emerging risks from climate, fintech and cyber resilience.
- 45** Applying a supervisory model to the water industry would involve close, ongoing engagement with individual water companies at a senior level. The regulator would be required to build an in-depth understanding of each company's specific risks, opportunities, challenges, and operational context. Such engagement would allow earlier identification of emerging risks and proactive intervention to prevent service or financial failures, avoiding crises such as operational breakdowns or financial

collapses.

- 46** The supervisory regulator would also need expertise not only in economic and legal matters but also in engineering and “financial engineering” to understand complex company structures and funding arrangements. The goal is to rebalance regulation, moving from reactive and punitive actions to early support and guidance when companies are in difficulty, as well as prompt, decisive intervention when they are acting against the public interest.
- 47** Such intimate involvement with the ten water and sewerage and six water-only companies created following privatisation of the sector in 1989, is in itself a complex ambition. This may not be realistic. Even if it is possible, it will be expensive, requiring dialogue, monitoring and judgment-led oversight rather than a strict rules-based system. In the water sector, where public health, environment and service quality are competing interests, this soft supervisory model may struggle to guarantee hard measurable outcomes. Where firms are accused of causing serious environmental harm through a lack of investment, this forward-looking and preventative model may not build public trust as it could feel insufficient as compared to enforcement action through fines and prosecutions.
- 48** Furthermore, the water industry operates as a natural monopoly. The supervisory model was designed for a competitive financial market where consumer choice is a key discipline upon firms. In the water industry, the only control over a firm is its regulator. The supervisory model stresses a cooperative relationship between regulator and firm but this can make the regulator overly trusting or too cautious. In addition, the regulator will often rely on company-supplied information and firms’ good faith to disclose, for example, details of pipe conditions and sewage outflow monitoring. Companies may be reluctant to provide these specifics which are so essential to forming a full view of performance.
- 49** Finally, the supervisory model works to achieve gradual, managed improvement. However, our water companies need urgent intervention. The regulator should be given strong intervention powers to bring about the change needed and to allow for effective crisis management if firms face financial or operational collapse.

Restoring Public Confidence and Investor Attractiveness

- 50** A recurring theme is the erosion of public trust in water companies and their regulators. Consumers perceive the current system as failing to protect the public interest, citing pollution incidents, high levels of debt, excessive dividends, and weak enforcement as evidence of regulatory failure. Investors, meanwhile, are deterred by what they see as an unpredictable and overly hostile regulatory environment.
- 51** The Commission argues that rebuilding confidence in regulation is key to attracting stable, long-term investors willing to fund the significant infrastructure renewal the sector requires. A supervisory model would provide predictability and clarity to investors about regulatory expectations and company obligations, thereby reducing perceived risk and improving market stability. However, the Interim Report lacks any suggestion about how companies may be made to pay for the necessary improvements to the water systems which all involved accept have to be made. In this context the Commission may be said to be limited by its terms of reference which directed it to consider reforms of ownership models and did not include re-nation-

alisation.

- 52** Some may criticise the terms of reference for not including re-nationalisation but the reality is that the state cannot afford to renationalise the water companies when such significant infrastructure is required. The eventual costs required would have to be met by the taxpayer. By keeping the water companies in the domain of private ownership, the problem has to be solved by the private sector being motivated to increase the value of their investment. Therefore, any new regulation must empower shareholders to increase companies' investment into their water infrastructure to reduce leaks, overflows and sewerage discharge, thus increasing the companies' value and restoring public and investor confidence.

Balancing Monopoly Power and Regional Differences

- 53** While monopoly water companies necessitate protective regulation to prevent abuse of market power, the Commission warns against excessive reliance on comparative benchmarking. Water companies operate under widely varying regional conditions—differences in hydrology, geography, population density, and historic infrastructure—which undermine the fairness and effectiveness of one-size-fits-all economic models.
- 54** The Commission suggests that comparative frameworks remain essential to protect customers but must be applied with nuance, allowing for justified deviations based on individual company circumstances. A sophisticated supervisory model would help regulators determine when and why certain companies deviate from industry norms and whether such deviations are justified or problematic.
- 55** The potential downside of this approach is that the price review process may well become more complex and expensive as, for instance, a cost-benefit analysis would have to be conducted for each undertaker as part of its Final Report. However, when one considers that the regulator is dealing with just 16 firms undertaking such a vital provision, the additional cost of a more bespoke system may be appropriate. If the additional cost produces a more bespoke result, suited to each region of the country that improves the quality of water provision then the additional cost is likely to be justifiable.

Organisational Reform and Regulator Cooperation

- 56** The regulatory landscape is overcrowded and disjointed, with multiple bodies pursuing overlapping or inconsistent objectives. Ofwat's economic regulation, the EA's environmental oversight, the DWI's water quality control, and NRW's multi-purpose role in Wales sometimes clash or leave gaps. For example, environmental and economic goals are often not reconciled, leading to confusion over priorities such as affordability versus environmental performance.
- 57** The Commission proposes rethinking how these functions are structured—either through clearer demarcation of duties or even consolidation of regulatory bodies. Any reforms must streamline decision-making, reduce administrative burden, and improve transparency. The Commission has not reached final conclusions on structural reform but clearly there will be a significant role for the supervisory regulator. We await, with bated breath, the details of whether that is done through a reformed Ofwat or a new supervisory body, and the nature and extent of their supervisory, enforcement and interventionist powers.

Key Challenges and Future Directions

58 The Commission identifies several systemic weaknesses that must be addressed to ensure reform success:

Capacity constraints caused by regulatory underfunding.

Excessive complexity in the price review process, which burdens both regulators and companies without delivering proportionate benefit.

Ineffectiveness of existing affordability protections for the poorest customers.

Weak enforcement powers and inadequate penalties for poor corporate behaviour.

A culture of risk aversion in environmental regulation, stifling innovation.

Moving forward, the Commission envisages a supervisory model that better balances economic, environmental, and public service objectives while building regulatory agility to deal with emerging challenges such as climate change and asset resilience.

Conclusion

59 In summary, the Commission clearly sees an important role for a new type of regulation in the water industry, building on the perceived success of supervisory regulation in the financial sector. Re-nationalisation would be very expensive because of the immediate need to invest and so an enhanced regulation that improves the private sector's management of water seems sensible. However, there will be challenges in ensuring the water companies, who operate in a monopoly, respond with sufficient speed and seriousness to the new regulation so that the sector can attract much-needed investment and public confidence can be improved.



Section Four

Company Structures, Ownership, Governance and Management

60 The Interim Report acknowledges that strong and appropriate regulation is at the core of ensuring that private companies deliver public goods and act in accordance with the public interest alongside the private interest. However, the Interim Report also explores how ‘internal’ factors within a private company can drive performance and actions, including company ownership structures, governance, management and culture. Our view is that while it is perhaps understandable that the Commission is reluctant to propose changes that have been encapsulated by the Water (Special Measures) Act 2025 (*WSMA 2025*), the Interim Report misses opportunities to consider other methods of improving public confidence and increasing corporate accountability.

Background

61 The Commission begins this section of its Interim Report by contextualising the changes that have occurred since privatisation in 1989 when all water and sewerage companies (*WASCs*) were publicly listed. Since 1995, there has been a substantial and frequent turnover in the ownership of WASCs. These changes coincided with an overhaul of the investor base as different types of investors have entered and exited the sector and invested through a wider range of vehicles, ranging from private equity funds to direct ownership by institutional investors. Now, 70% of WASCs and 80% of water only companies (*WOCs*) are privately held, thereby removing them from the scope of the transparency requirements that public companies are subject to.

62 The powers and policies exercised by Ofwat and their influence on the risks and returns available to investors in water companies and consequently, investor appetite, are acknowledged by the Commission.

63 The Commission also outlines the changes in corporate governance and accountability that have been occurring in the industry including, significantly, the introduction of WSMA 2025. WSMA 2025 has introduced wide-ranging changes, including enabling Ofwat to: issue new rules requiring companies to have arrangements for involving consumers in certain decisions that materially affect their interests; introduce a “fit and proper person” test for water company executives; and ban bonuses for water company executives if companies fail to meet required standards relating to consumer matters, the environment, financial resilience or criminal liability. The

fact that all but one WASC has updated their Articles of Association to make the interests of the environment and customers a primary objective is also noted by the Commission.

What the Commission has recommended (and omitted)

Company ownership and performance

- 64** The Commission's preliminary analysis is that there is no clear causal link between ownership models and water company performance. However, considering that the Commission's terms of reference were limited to considering "*reforms that improve the privatised regulated model*", some stakeholders may question how comprehensive the Commission's assessment of other ownership models was, and accordingly, the legitimacy of this conclusion.
- 65** Nonetheless, in considering the privatised model, the Interim Report details that stakeholders have been conflicted regarding whether there should be a move towards publicly listing water companies.
- 66** The Commission considers that the most important determinant of success is the investment model of the underlying investors, for example, the risks that they are willing to take, and their timescales for return. Its current view is that publicly listed models may score more highly on public trust, perhaps due to greater transparency, however it will return to this question in its Final Report.
- 67** One omission from the Interim Report is any consideration by the Commission of different types of risks faced by WASCS. For example, in light of the Commission's terms of reference and objectives to invest for future changes including climate change, and to consider alignment with net zero objectives, one may have anticipated that the Commission would consider the extent to which WASCS are vulnerable to the potential impact of significant swings to the [value of fossil fuels](#) which society may have to address in the coming decades and the potentially growing demand from the public that companies whose services they require are committed to tackling the climate crisis.

Investor appetite

- 68** Investor appetite is a major issue facing the industry as long-term institutional investors, for example, pension and sovereign wealth funds, are prioritising stable returns which, in recent times, they say they cannot achieve when investing in the water industry. The Commission reports that volatility in the water sector and lack of a clear long-term strategy and guidance on trade-offs from government is making infrastructure investment unattractive despite there being capacity in both public and private markets.
- 69** The Commission's view is that the water industry will be best served by investors that take a long-term, low-return low-risk investment approach. However, this is not the reality at present. This is reflected in [Moody's](#) downgrading of the stability and predictability of the regulatory regime for water from Aaa to Aa in 2018, and to A in 2024.

- 70** The Commission believes that the introduction of long-term strategic direction

issued by government, with clear guidance to regulators on priorities and trade-offs should help to address concerns around long-term stability. The Commission is also examining how regulation could be used to inhibit varying returns on investment; this would in turn reduce both upside and downside risks to investors. However, Ofwat already has a duty under section 2(2A)(c) WIA 1991 to secure that companies holding appointments as undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions. It therefore remains to be seen how the Commission will make a difference in this respect.

- 71** In this vein, the strength of the media's influence on public perception and consequently, investor appetite, should not be underestimated, and interestingly, the Commission is alive to this. The Commission agrees with stakeholders that current perceptions of the industry have been damaged by the media and recognises the importance of moving to a more positive and balanced presentation of the industry given the challenges it faces, including the increase in standards, climate change and population growth. In our view, if this essential sector is to be rebuilt, investors and the public must believe it is possible, contrary to what one may believe from following the current doom cycle of news of the industry in recent history.
- 72** However, ultimately the Commission rightly concludes that the current perceptions are also due to a general failure of the industry to meet the public's expectations and that crucially, performance must improve in order to rebuild public confidence.
- 73** Relatedly, WASCs are increasingly coming under threat of litigation which likely impacts investor appetite, but which also acts as another tool to force water companies to do better. This is particularly so in the wake of the Supreme Court [decision](#) in *The Manchester Ship Canal Company Ltd v United Utilities Water Ltd No 2 [2024] UKSC 22* where it was held that sewerage undertakers who discharge untreated sewerage into private waterways may be liable in nuisance or trespass absent any negligence or deliberate misconduct. See also for example, a [case](#) being brought (and now strengthened by the Manchester Ship Canal decision) where it is alleged that the claimant's right to swim in the sea is being impacted by a WASC's discharge of untreated sewerage. Action on the part of poorly-performing WASCs to improve the present state of affairs is therefore urgently needed.

Corporate governance and accountability

- 74** The Commission is reticent to introduce further changes to corporate governance and accountability in light of changes introduced by WSMA 2025 that are awaiting implementation, and existing duties of corporate boards. This is for fear of deterring the most talented senior management. The Commission is cautiously examining whether a 'Senior Managers Regime', similar to Ofgem's powers to hold company executives to account would be appropriate, however the Report again stresses the importance of the ability of companies to attract high quality individuals and therefore this decision must be carefully made.
- 75** This approach is perhaps understandable in light of the far-reaching changes introduced by WSMA 2025 and the uphill battle the industry faces to deliver the reset required. That said, there must be a danger that the meaningful change that is so urgently needed will not materialise, nor will public confidence improve, if the Commission continue to adopt a "wait and see" approach.

76 Some stakeholders in the environmental sphere may suggest that the Commission has missed an opportunity for WASCs to improve public confidence in corporate governance and accountability in other ways by, for example, emphasising water companies' obligations in respect of climate change, and affirming their commitment to the UN Guiding Principles on Business and Human Rights ('*UNGP*'). Although not (yet) at the forefront of many UK environmental lawyers' minds, the UNGP have in fact been repeatedly applied by courts in several contexts, including in the context of climate change in *Milieudefensie v Royal Dutch Shell* [2021] [C/09/571932](#) where they were considered an "*authoritative and internationally endorsed 'soft law' instrument*". UNGP Pillar II is directly addressed to business enterprises and considers that there is a corporate responsibility to protect human rights, requiring them to "*avoid causing or contributing to adverse human rights impacts through their own activities, and to address such impacts when they occur*". The Final Report may take the opportunity to set out models of how WASCs can incorporate these 'soft law' duties into their business models.

Conclusion

77 Although some may be disappointed that the Report does not take a stronger stance on some issues, or propose a single company structure to drive improvement, the complexity of the problems facing the industry are recognised. Ensuring that water companies deliver public goods and act in the public interest depends on a myriad of factors and several different actors. Government, regulators, and in particular, investors, play key roles. One should not overlook the media's influence on public perception of the industry and investor confidence.

78 The Commission is reluctant to introduce any major changes to company ownership structures or accountability in light of changes that are underway in the sector, such as through WSMA 2025, and instead are keen to see how these evolve. They are clearly cautious of any intervention that would risk deterring the highest calibre of talent for senior roles. Nonetheless some may take issue with the fact that the Commission did not take the opportunity to provide guidance on how investor models and corporate accountability could be improved in light of the Commission's objectives, particularly in respect of climate change and net zero targets.

Section 5

Summary of Section 5: Infrastructure and Asset Health

79 To paraphrase Leonard Cohen: *'Everybody knows that the pipes are broken.'*⁴

80 Whilst that may be the case in respect of parts (and perhaps large parts)⁵ of the water industry's infrastructure, that is not the focus of section 5 of the Interim Report, which instead focuses on the lack of knowledge of the condition, and therefore unknown requirements as to maintenance, of the asset base.

Current approach to asset health and infrastructure resilience in England and Wales

81 The Interim Report provides an overview of the legislative framework, including the all-important duty under section 94 of the Water Industry Act 1991 (*"the WIA 1991"*) to, *"provide and maintain water and sewerage systems,"* as well as the 'duty to map' sewers found in section 199. Reference is also made, perhaps unsurprisingly, to the carve out to the duty to map in section 199(7)-(8) as regards sewers that were laid before 1 September 1989 (i.e., before the vesting date following privatisation).

82 The Interim Report goes on to set out further background as to the requirement for Water Resource Management Plans and Drainage and Sewerage Management Plans (children of the Water Act 2003 and the Environment Act 2021 respectively) before explaining the role of Ofwat, which measures asset health through a series of performance metrics on a 'backward looking' basis⁶, and of the Environment Agency and Natural Resources Wales (in their role regulating permitted assets).

83 Finally in respect of the current approach, the Interim Report identifies that all water undertakers have in place an asset management framework that some, but not all, have chosen to align to ISO 55001 (an asset management certification developed by the International Organisation for Standardisation⁷).

How requirements are evolving over time

84 Under this heading the Interim Report explains that Ofwat has, in recent years, taken steps to improve understanding of asset health and expectations in respect of infrastructure resilience. Reference is made to the 2021 Asset Management Maturity Assessment, which itself contained recommendations aligned with the principles in ISO 55001, and the plan published as part of the Final Determinations for Price Review 2024, which included a plan for Ofwat to work with industry to improve understanding of asset health and develop a better monitoring framework.

⁴ *'Everybody Knows'*; Leonard Cohen, 1988, Columbia.

⁵ See, for example, the National Audit Office's 25 April 2025 report, *'Regulating for investment and outcomes in the water sector'*.

⁶ Including sewer collapses, mains' repairs and unplanned outages, for example.

⁷ ISO 55001:2024, *'Asset Management – Asset management system – Requirements'*

Infrastructure resilience – other UK and international approaches to asset maintenance

- 85** Helpfully, what the Commission has also done is to compare the approach in England and Wales to other examples, both elsewhere in the UK and abroad.
- 86** Reference is made to the approach of the Water Industry Commission for Scotland (“WICS”), which previously operated on the same ‘backward looking’ basis as Ofwat but has since moved to setting whole-life cost of asset maintenance and replacement so as to, it is hoped, fund a sustainable and long-term level of replacement and investment. Such an approach has enabled WICS to identify that the current rate of asset replacement is apparently well below what will be needed.
- 87** The Commission has also referenced initiatives in the Netherlands (where one company has integrated ‘Life Cycle Cost Analysis’ to optimise investment decisions and secure long-term resilience) and Germany (where renewal rates have been increased by requiring the replacement of all lead pipes and parts and a National Water Strategy was published in 2023).

Issues

- 88** The Interim Report makes the point, by reference to a report by Water UK, that the current asset replacement rate for water mains is around 0.1% annually, which is apparently ten times lower than the European average, with the average replacement rate for wastewater assets three times lower.
- 89** The Commission goes on to identify the following issues:
- a** a lack of condition data for water company assets, with undertakers taking different approaches to the mapping duty;
 - b** an understanding of asset health only based on failure rates, rather than any prognostic assessment, with no robust data on critical civil structures such as service reservoirs or treatment works;
 - c** problems with Ofwat’s funding methodology, which is based on the failure rate model and does not look forward at longer term maintenance requirements;
 - d** a lack of consistent, industry-wide standards against which assets can be assessed; and
 - e** limited understanding of supply chain constraints, which leads to delays in delivery, and whether the supply chains firms and their workforces will be able to meet increased demands as investment rises from £5.7bn (the 2019 Price Review figure) to £23.9bn (the 2024 Price Review Figure).

The Interim Report’s Preliminary Conclusions

- 90** The Interim Report records that the current framework has not led to a sufficient or forward-looking understanding of the health of water industry infrastructure, albeit it stops short of coming to a conclusion about just how parlous a state it is in. Part of the Commission’s reason for this is the lack of requirement to map assets, with Ofwat’s backwards-looking methodology and a lack of consistent standards also highlighted.
- 91** The Commission therefore highlights a strong case for a single, comprehensive infrastructure resilience framework for all water companies in England and Wales,

including resilience standards, a requirement to gather and report asset data, and a more supervisory role for the regulator. In our view, this seems quite ambitious given the massive increase in customer charges in PR24 which, according to the Commission, still won't really get to grips with this problem. Does this mean another massive increase in customers' bills in PR29 are on the cards to deal with this problem? Many in the industry will point to the real difficulties in securing contractors for this type of work in the UK and will refer to the sclerotic approach to infrastructure planning.

- 92** The Commission is also considering whether there should be a new requirement for water undertakers to gather and assess asset condition, reporting on them at set intervals to the regulator. Such a requirement would be intended to address the inconsistencies that the industry has taken to the mapping duty (the requirement to map anything before 1 September 1989 being subject to a 'reasonably practicable' standard, which has resulted in debatable outcomes).

Conclusion

- 93** Ultimately the Commission will return to all of these issues in its Final Report in due course; one further issue it may wish to consider is that the duty to map is not enforced by Ofwat, as appears to be assumed in the Interim Report, but rather breaches of it are enforced by Defra. If the Commission is to recommend that the section 199 duty is reformed, it might be well advised to ensure that this quirk of regulation is addressed.