

Matters in practice

Rethinking Water Regulation in England: a critical examination of the Independent Water Commission's proposal for a unified water regulator (Part 1)

Nicholas Ostrowski

At a glance

- The Independent Water Commission has suggested that Ofwat should be abolished and water-related regulation from the Environment Agency should be removed and transferred to a new water industry specific regulator.
- This approach has been endorsed by the Secretary of State for the Environment, Food and Rural Affairs but this directly undermines the then Secretary of State's philosophy behind the creation of the Environment Agency itself only 30 years ago.
- Neither the Independent Water Commission nor the Secretary of State appear fully to consider the downsides of such a change to the regulatory framework and, in particular, the trade-off or interface issues which will arise when an environmental issue, policy, or event affects both water and land.

Introduction and summary

The Independent Water Commission (the 'IWC') has recommended the most extensive restructuring of the water regulatory landscape in England since the Environment Act 1995, proposing that Ofwat be abolished and its functions merged with the water regulatory functions of the Environment Agency and Natural England, as well as with the Drinking Water Inspectorate, to form an integrated water regulator. The UK Government has signalled strong support for this proposal.¹

The great irony of the IWC's proposal that the Environment Agency should be split up and its water environment regulation functions given to a water-specific regulator is that the very same issues and concerns raised 30 years ago which were said to favour the creation of the unified Environment Agency (namely that the environment was being inadequately regulated and that a variety of individual sectoral regulators within the environmental sphere would be less effective than a single unified environmental regulator regulating both the land and water environment) are now being deployed in favour of breaking the Environment Agency up.

This article suggests that the IWC's proposals risk overlooking the systemic value of the Environment Agency's integrated environmental mandate. A second article in this series will set out how, in the author's view, the IWC misdiagnoses the true sources of duplication within the current environmental regulatory framework and that the problem lies not in the separation of economic and environmental water regulation, but in the fact that Ofwat, rather than the Environment Agency, was given environment enforcement duties derived from the Urban Waste Water Treatment Regulations 1994. A more effective solution may be achievable by realigning enforcement functions rather than dismantling the unified environmental regulator.

What has the IWC recommended?

Recommendation 16 of the IWC report² in July 2025 (the Report) was that:

The UK government should establish a new integrated regulator in England. This should combine the functions of Ofwat, Drinking Water Inspectorate (DWI), and water functions from the Environment Agency and Natural England.

The Government's initial response to the Report a few days after it was published, enthusiastically agreed with this recommendation and the Secretary of State said³:

Having four separate regulators with overlapping and conflicting remits has created a merry-go-round that has failed customers and the environment.

Ofwat has failed to protect customers from water companies' mismanagement of their hard-earned money.

Today I can announce that the Government will abolish Ofwat.

In the biggest overhaul of water regulation in a generation we will bring water functions from four different regulators into one: A single powerful regulator responsible for the entire water sector'.

A White Paper covering the new regulator has been promised⁴ but, at the time of writing, has not been published.

The historical foundations of the current regulatory framework

Modern pollution control for water can be traced to the establishment of Her Majesty's Inspectorate of Pollution ('HMIP') in 1987. This brought together three existing inspectorates concerned with industrial air pollution, radioactive substances and hazardous wastes, and a newly created water pollution inspectorate.

The Water Act 1989 then created the National Rivers Authority (at the same time as dissolving the existing water authorities) as part of the privatisation of the water industry. The National Rivers Authority (the 'NRA') operated from 1989 to 1996. It was responsible for regulating water quality; managing water resources, including abstraction licensing, flood defence and land drainage; and managing pollution control and enforcement (including prosecuting polluters). In simple terms, the NRA regulated along the river to the discharge pipe while the HMIP regulated along the discharge pipe to the factory. HMIP took an integrated view of the industrial process, NRA took an integrated view of river basin management.

In 1995 with the passing of the Environment Act 1995, the Environment Agency was created and the HMIP and National Rivers Authority ceased to exist. The story behind the creation of the Environment Agency is set out further below.

By contrast to the unified environmental regulation model, the economic regulation of water services, however, has been structurally separated from environmental regulation since privatisation under the Water Act 1989 and the Water Industry Act 1991.

The issues that arise from the IWC's proposal to abolish Ofwat are considered further in a second article in this series. At this stage, it is sufficient to appreciate that Ofwat was formed through the Water Industry Act

1991. Ofwat is principally an economic regulator and the division between economic and environmental regulation can be traced to the original White Paper in February 1986, which advocated the creation of privatised water and sewerage undertakers⁵ and envisaged both a Director General of Water Services (now Ofwat) to regulate prices and, separately, a means of regulating the environmental impacts caused by undertakers (the Environment Agency).

This model was consciously designed to keep environmental obligations insulated from economic considerations—ensuring that statutory environmental standards could not be weakened by financial pressures.

The Environment Agency and the indivisibility of environmental regulation

Thirty years after publication, the government documents charting the passing of the Environment Act 1995 are revealing.

The starting point is the 1990 Environment White Paper, 'This Common Inheritance'⁶ which stated that pollution control was 'fragmented' and needed 'a more coherent institutional framework', and argued for greater integration to reduce 'overlaps and gaps' between different regulators to strengthen pollution control by coordinating air, land and water policies.

Firm Government plans to establish an Environment Agency were announced by the Prime Minister in July 1991⁷ in terms that put front and centre the importance of an integrated and indivisible environmental regulator:

I can announce today that we plan to set up an Environment Agency. This will bring together HMIP, and related functions of the NRA, to create a new agency for environmental protection and enhancement ... It is right the integrity and indivisibility of the environment should be reflected in a unified agency.

In October 1991, Defra issued a consultation paper entitled, 'Improving Environmental Quality: The Government's Proposals for a new, independent Environment Agency'⁸. This emphasised the importance of cohesion and consistency across the entirety of the environmental regulatory sphere:

18. The Agency would be able to develop a consistent and cohesive approach to environmental protection and pollution control. It should have greater expertise and authority than the current arrangements allow. It could help further the process of attracting and encouraging the training of high calibre staff capable of seeing environmental problems in the round. It could address the problems of overlaps, conflicts and gaps described earlier and give the necessary strategic direction to handling them. And with its enhanced status and broader responsibilities, it could be a powerful voice in influencing the adoption of better environmental standards and practices.

There was a determined rearguard action by the NRA to retain operational and institutional independence from the Environment Agency on the basis that it had developed detailed and technical experience in the area of water pollution.⁹ However, by the time the Environment Bill was in the Houses of Parliament, that battle was well and truly lost. In April 1995, the then secretary of state (Mr John Gummer) introduced the Second Reading of the Environment Act 1995¹⁰ with the following words:

The new environment agency will give us opportunities to proceed much faster and in a more holistic way than we have so far been able to do. The whole idea is that we look at the environment much more in the round. We must recognise that we cannot deal only with water, as air and land pollution must be seen together with water pollution. The work of Her Majesty's inspectorate of pollution and that of the local authorities in their waste management role needs to be brought together with what the National Rivers Authority has so excellently done in the past few years.

The Minister went on to say:

The core of the Bill will be the establishment of the environment agency and the Scottish environment protection agency, SEPA.

I do not see how one can ensure that sustainable development lies at the heart of our decision making unless pollution can be controlled. A single agency can make that possible. We cannot ensure such sustainable development unless it is possible to deal with the way in which pollution affects all the elements and not just water. For that reason, the agencies will be more than the sum of their parts.

Are the IWC's criticisms of the current regulatory system for water fair?

The three main criticisms of the current structure and remit of the water sector regulators in England are summarised by the IWC at §313 and the IWC then set out examples of their criticisms in some detail across the rest of Chapter 4 of the Report. The criticisms are as follows:

- There is significant duplication in regulatory oversight.
- There are significant gaps in regulatory oversight which has led to questions about the accountability of regulators.
- There are challenges in managing trade-offs within the regulatory system.

Those criticisms will be considered in more detail in the second article in this series but what is striking is that while the report considers 'cons' of the existing regime, it does not attempt to set out in detail any 'pros' of the system and why and how it emerged.

There is no reason to think that the 'pros' of the current structure as laid out by the Minister thirty years ago do not, at least in principle, still apply:

- There is one, powerful, environmental regulator. This was a decision arrived at after extensive consultation and Parliamentary scrutiny in the 1990s and in the teeth of determined resistance from the then water regulator (the NRA) who argued, essentially, along the same lines as that put forward by the IWC: that there should be a single, water-focussed regulator.
- Data relevant to both land and water is centrally stored and accessible with the Environment Agency but would inevitably be fragmented if there are two parallel regulators.
- A large organisation (the Environment Agency's current annual budget is over £2bn)¹¹ has sufficient resources to take action where it considers it appropriate to do so even if it faces a potentially substantial adverse costs risk if a court later finds that it acted unlawfully. A large organisation is simply more able to stand up to deep-pocketed vested interests.
- The Environment Agency is of sufficient breadth and depth to encourage a wide range of high-quality candidates for employment, can give those officers sufficient scope to work on a wide variety of cases in a wide variety of industries and policy areas and enables them to learn lessons from all those different areas and sectors.

The IWC's criticisms of the challenges in managing trade-offs is particularly ironic. As will be set out in the second article in this series, the IWC's criticism of the current approach to trade-offs (which is, essentially, that currently Ofwat cannot use its expertise in water regulation to assist the Environment Agency in determining whether the costs of proposed environmental projects are worth it) may be misplaced. But, even taking the IWC's criticism at its highest, removing the water regulatory function from the Environment Agency will simply mean that other trade-offs will have to occur between different environmental regulators at other points. For instance, there are numerous incidents or issues which affect both water and land, such as the regulation of the deposition of

organic fertiliser on farmland which has the potential to leach into rivers. Currently, the Environment Agency can take an integrated approach to this issue covering both its deposition on land (and the regulation and consequences of such regulation) and the impact on waterbodies into which fertiliser may leach. If two separate bodies cover the regulation of land and water there will, inevitably, be a trade-off or jurisdictional dispute between those two regulators as to who has responsibility and primacy for such issues. It was precisely to avoid such concerns that Defra in its October 1991 consultation paper recommended an integrated and indivisible environmental regulator:

15. Another concern is the need to ensure that decisions about pollution control take full account of the need to select the best practicable environmental option. As things stand, tradeoffs between the different objectives of the regulatory bodies may not always be established at the right point. For example, the disposal of waste has the potential for polluting air, land and water, depending on the method of disposal chosen, and it is important that their environmental consequences are considered in relation to each other.

Conclusion

The IWC's recommendations represent a profound departure from the intellectual foundations of the Environment Act 1995 and the principle of the indivisibility of environmental regulation and the creation of a singular water regulator may sacrifice regulatory coherence. As will be set out in the second article in this series, a more nuanced rebalancing of responsibilities—particularly the consolidation of environmental enforcement within the Environment Agency—may offer a more effective and proportionate path forward.

Nicholas Ostrowski is a barrister at Six Pump Court chambers and is a co-convenor of the UKELA Water Group. He welcomes any comments on this article on nicholas.ostrowski@6pumpcourt.co.uk



Endnotes

- 1 The position in relation to water regulation in Wales is not considered due to the particular framework in place there.
- 2 The full report is available here, Independent Water Commission, 'Review of the Water Sector' (3 June 2025), available at <<https://www.gov.uk/government/publications/independent-water-commission-review-of-the-water-sector>>. For a comprehensive summary and analysis of the entirety of the IWC's report see, 'The Water Industry Group Summary and Analysis of the Report of the Independent Water Commission' (Six Pump Court, 20 August 2025), available at <<https://6pumpcourt.co.uk/the-water-industry-group-summary-and-analysis-of-the-report-of-the-independent-water-commission/>>. Professor Sir Dieter Helm has considered various other elements of the IWC's proposals on his blog see 'Water after the Cunliffe Commission', available at <https://dieterhelm.co.uk/publications/water-after-the-cunliffe-commission/>.
- 3 See 'Government initial response to Independent Water Commission's final report' (21 July 2025) available at <<https://www.gov.uk/government/speeches/government-initial-response-to-independent-water-commissions-final-report>>.
- 4 See Daniel Ware, 'Government ministers quizzed on water regulation with water sector reform White Paper publication just weeks away' (*Water Magazine*, 26 November 2025), available at <<https://www.watermagazine.co.uk/2025/11/26/government-ministers-quizzed-on-water-regulation-with-water-sector-reform-white-paper-publication-just-weeks-away>>.
- 5 Command Paper 9734, '*Privatisation of the Water Authorities in England & Wales*'.
- 6 Command Paper 1200, '*This common inheritance: Britain's environmental strategy*'.
- 7 Text of a speech made by the Prime Minister the Rt Hon John Major on the global environment on 8 July 1991. This went on to be a manifesto commitment in the 1992 Conservative Party manifesto. See Neil Carter and Philip Lowe 'The Establishment of a Cross-Sector Environment Agency' in Tim S Gray (ed.), *UK Environmental Policy in the 1990s* (Palgrave MacMillan London, 1995).
- 8 '*Improving Environmental Quality The Government's Proposals for a new, independent Environment Agency*' DoE, MAFF, Welsh Office October 1991 and DoE News Release 589, 3 October 1991.
- 9 See Patsy Huges and Jeff Vernon, '*The Environment Bill: HL Bill 85 1994/95*' (House of Common Library, Research Paper 95/50, 12 April 1995), available at <<http://researchbriefings.files.parliament.uk/documents/RP95-50/RP95-50.pdf>>.
- 10 HC Debate 18 April 1995, vol 258, col 35-36, available at <<https://hansard.parliament.uk/commons/1995-04-18/debates/d4eed8e3-0d5d-4c50-824a-ba23ed0b89d0/EnvironmentBillLords>>.
- 11 See 'Environment Agency business plan 2024 to 2025' (updated 30 April 2025), available at <<https://www.gov.uk/government/publications/environment-agency-business-plans/environment-agency-business-plan-2024-to-2025>>