

Consultation on proposed Sector Guidance in relation to the adoption of sewerage assets by Water and Sewerage Companies in England

14 December 2018

Water UK has published this consultation on behalf of an Independent Steering Group that is developing new guidance for the adoption of sewerage assets.

See <https://www.water.org.uk/developer-services/codes-adoption> for more detail regarding the Codes Programme

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Contents

1	Introduction	3
2	Consultation Questions.....	4
2.1	Procedures	4
2.2	Local Practices.....	6
2.3	Design Standards	6
2.4	Minimum information.....	7
2.5	Model Adoption Agreement	8
2.6	Redress.....	9
2.7	Levels of Service.....	10
2.8	Governance.....	15
3	Next Steps	16
	Annex 1	17

1 Introduction

This document is being published by Water UK following a programme of work involving water companies, developers and other stakeholders to develop draft sector guidance and a model adoption agreement in relation to sewerage infrastructure. This work is being carried out to allow the Water Companies to comply with Ofwat's Code for Adoption Agreements which came into effect on 13 November 2017.

The members of the steering group who have contributed to this document are listed in annex 1.

In this document, we are seeking responses to a series of questions about the approach we have taken in implementing the Ofwat code. Those responses will inform the final documentation which is to be submitted to Ofwat for approval on 31 March 2019. A further consultation will be held in February 2019 at which point, a full set of documentation will be available.

This document is being published on the Water UK website and is also being sent to the full range of stakeholders who have been involved in the development of these proposals to date.

This consultation is being issued at a time when various other elements of the regulatory regime are under review as we approach the next price review period. Adding to the existing voluntary service performance measures that are and will continue to be published, the new Developer Measure of Experience (D-MeX) will be a major change to the sector, rewarding companies that provide high levels of customer service to developers while also imposing penalties on companies that are considered to be under-performing by their customers.

The Water Companies view D-MeX as a very significant driver of better performance in the area of new connections and as in the parallel work on the water adoption programme, we have approached the Sector Guidance on the basis that it should complement the approach taken by D-MeX and not repeat it.

Section 2 contains a series of questions about the draft guidance and agreement which stakeholders are invited to respond to by no later than 2359 on 23 January 2019

. These questions are summarised in a separate spreadsheet and if you could complete the spreadsheet with your responses that would be very helpful. Please also provide your company name and let us know whether you are willing for your name to appear when your response is published.

Responses should be sent to the following address [<dstrang@water.org.uk>](mailto:dstrang@water.org.uk).

2 Consultation Questions

As indicated in the Introduction, we have prepared a series of questions on each of the areas to be covered by the Sector Guidance. Consultees are invited to respond to some or all of these questions.

2.1 Procedures

Introduction

The Sector Guidance is proposing a comprehensive approach to describing procedures in relation to sewer adoption, improving significantly on current published procedures. We are proposing that the procedures element of the guidance will incorporate:

- A revised process flow chart showing the responsibilities of the Developer and the Sewerage Undertaker
- Stages dealing with:
 - Pre-Planning Enquiry
 - Pre-Design Strategic Discussion/meeting
 - Early start
 - Variation – Minor and Major
- Service Level metrics for elements of the process
- The S106 connection element; once technical acceptance has been given this will also confirm approval for the connection.

Alongside the new procedures, we are also publishing a standardised checklist aimed at improving consistency of approach in inspection practices both within and between companies. There is scope for a more comprehensive set of checklists to be developed as part of the Sector Guidance and we invite respondees to consider this when providing their responses to question 5 below.

The new draft set of procedures is in Annex A1 and the checklist is in Annex A2.

It should be noted that the provision of checklists does not remove the responsibility of the Developer to design and build the assets to an adoptable standard.

What does this mean for you?

- The process to be followed to secure adoption of sewers and lateral drains will need to comply with and follow the process set out in the Sector Guidance.
- A full suite of relevant details must be provided when requesting the
 - Pre-Planning Enquiry
 - Pre-Design Strategic Discussion/Assessment
 - S104 Application
 - Re-submissions
 - S104 Agreement
 - Early start request
 - Variations to Agreement drawings
 - Pre-Maintenance Inspection

- Final Inspection
- A Sewerage Undertaker may reject an application or any of the requests listed above where these do not contain the minimum details/information to allow an assessment to be completed.
- The details and/or information requested must accord with the Sector Guidance.
- Significantly greater harmonisation of inspection standards is being proposed, reducing the scope for different companies to adopt different approaches to approving works.

Other proposals we considered and discounted or which are under consideration

- We considered using the procedures set out in SFA 6 but concluded that these were neither comprehensive nor compatible with the approach taken under the Sector Guidance for wasteasset adoption. We have therefore mirrored the approach from the water adoption work.
- We have been considering a sunset clause in the adoption agreement, under which adoption would be certain, once the agreement had been entered into. We are consulting on that option as part of this exercise but have not so far reflected this in the procedures.

Our questions for you

Q1 Do you feel that the process shown covers your needs to ensure that the adoption of sewers on your development site(s) will progress adequately?

Please provide any details of anything that you feel should or should not be incorporated, as well as any additional items that should also be in the process.

Q2 The new process incorporates the ‘Early start inspection’ request that can be carried out before the Agreement is signed and after technical/design acceptance.

Please explain why you feel that this should or should not be incorporated, as well as any additional items that should also be in this part of the process.

Q3 Have we adequately covered the areas where service levels need to be incorporated properly and that we have realistically defined the time needed for each service?

Please provide details of anything that you feel should or should not be incorporated, as well as any additional service levels that should also be in the process.

Q4 Should the Sewerage Undertaker have the capability to step in to progress the works, at the cost of the Developer if the prospectively adoptable system has been constructed but not vested within 12 months of the final plot sale?

Please provide any details of how the progression of a development site to vesting can be influenced to give confidence that the system does not stay private for an unreasonable length of time.

Q5 Do you agree with the introduction of standardised checklists and if so:

- is the sample provided adequate or should other checklists be developed-if so, what areas should be covered
- are there improvements you would like to propose?

2.2 Local Practices

The steering group has developed draft proposals for permitted Local Practices. These are dealt with under Section 2.3 and consultees are invited to respond to the question on Local Practices in that section.

2.3 Design Standards

Under the new Sector Guidance, it's being proposed that:

- The document known as Sewers for Adoption 8th Edition (SfA8) will be the design and construction guidance required to be published under the Code (the "Guidance").
- The Guidance will include the design for foul sewers, surface water sewers, civil engineering specifications and pumping stations. It also refers to The SuDS Manual (C753) (CIRIA, 2015).
- Local practices will be required for elements not covered by the Guidance.

So far we have not modified SfA 8 for it to become the Guidance but we are not envisaging any substantive changes to the requirements of that document-which is available [here](#).

What does this mean for you?

- All sewers proposed for adoption must comply with the details and specifications outlined within the Guidance.
- A water company will be expected to accept a design which technically complies with the Guidance.
- A water company may reject a design that does not technically comply with the Guidance.
- A water company will have to consult with you before publishing their own local practices on the following items (not covered in the Guidance):
 - Requirements for easements for surface water discharges to watercourse, bodies of water, sewers within 3rd party land and sewers which may form part of another feature.
 - Design approval for deep (depth to invert of pipe over 6m) or bespoke manholes, inspection chambers or ancillaries (such as flow control manholes).
 - Wastewater treatment works
 - Pumping station requirements beyond those in the Guidance.
 - Large diameter attenuation pipes or tank systems, i.e, over 750mm where flexible structural walled pipe materials are involved
 - Requirements for pre-cast concrete manholes located within the highway.
 - Location of sewers for access and maintenance

Other proposals we considered and discounted

- We considered whether it would be sensible to develop new guidance on design and construction of sewers but the consensus within the project teams, comprising water companies and customers, was that we should use the work done for SfA 8, given the extensive consultation that the document had been subject to prior to its publication.

- Water companies currently have local requirements for the electrical and mechanical specifications of pumping stations. Water companies also have their own standards for waste water treatment works, based on a specification developed by UKWIR. The disparities that exist between different companies' requirements in these areas have not attracted any attention during the process of developing the draft Sector Guidance. We therefore propose that if necessary, these topics are addressed by the permanent Code Panel.

Our questions for you

Q1 Are there areas which the design and construction guidance should cover beyond those set out in SfA 8?

Q2 Do you agree with the proposals we have made for permitted local practices?

2.4 Minimum information

Introduction

At present, companies are free to define for themselves the information they need at the different stage of the adoption process.

This has led to differences in companies' requirements for information.

We are consulting on a proposal to implement a comprehensive and common set of requirements, from application through to adoption.

There will however remain areas where individual companies will be free to ask for further information, namely, where companies have under the Sector Guidance, retained local practices.

The minimum information proposals are set out in Annex C.

What are the main proposals?

- Based on the procedures that we are proposing to implement and which are described in more detail in section 2.1 of this consultation, we have prepared a proposed approach to requiring a minimum level of information for the process of adopting sewerage assets.
- The revised approach is set out in Annex C
- This follows the approach taken to minimum information requirements in the Sector Guidance in relation to the adoption of water assets.
- As this proposal is still at the concept stage, we have not aligned it with all of the other proposals in this consultation. If we proceed with this proposal, changes will be made subsequently to ensure that the different elements of the SG are compatible.

Our questions for you

Q1 Is our proposed approach a worthwhile innovation?

Q2 Is the information provided at the right level of detail?

Q3 What changes would you suggest if in principle this is accepted? Do you consider this to be detailed or not detailed enough?

2.5 Model Adoption Agreement

Introduction

We are not in a position to provide a Model Adoption Agreement at this stage but we are proposing to use as our starting point the model S104 Agreement contained within Sewers for Adoption 6th Edition. Water and sewerage companies in Wales use a different form of agreement following the introduction of a mandatory S104 process.

The independent steering group considered that this was a reasonable starting point and that they were not aware of significant problems arising from the use of the current model agreement.

What are the main proposals?

Compared to the SFA 6 model agreement, we are proposing several new features. These are the result of the Code's requirements and/or feedback received from developers. The main changes proposed are in relation to the following areas:

- 1 Surety or Cash Deposit. Under the previous model form a cash deposit was not allowed except for diversions but developers have found it helpful particularly for small developments (eg requiring a Surety of the minimum level of £5000) if Sewerage Undertakers will accept a cash deposit.
- 3 Phased Vesting subject to suitable Design Layout. Alternatively, a series of separate S104 Agreements may be preferred. The idea behind this is to enable part of a large development to be "signed off" before the whole development is built out and/or occupied. Phased development can only be allowed if the design makes an area separate; in other words, the sewers are connected to a sufficient number of occupied dwellings for the sewers to be properly tested. Without this a series of agreements would be required
- 4 Automatic vesting. Mandatory adoption occurs in Wales but in England adoption is discretionary as is entering into a S104 Agreement. In Wales, entering into a S104 agreement before any works are carried out is mandatory. While this cannot be implemented in England in the absence of legislation, we are suggesting that if (and only if) a Developer enters into a S104 Agreement before the commencement of building sewers then the Sewerage Undertaker *must* adopt the sewers. At present if sewers are sub-standard there is no such obligation. Effectively as in Wales, therefore, the Provisional sign off would become the Vesting Date with the Maintenance Period becoming a Defects Liability Period. Responsibility for repair or the cost of repair would remain with the Developer until the conclusion of the Defects Liability Period
- 5 In the previous model agreement there was provision for Arbitration in the case of a dispute. We are proposing to amend this to include a two-stage dispute resolution mechanism, the first involving internal company responses and the second through mediation.
- 6 The Code requires the model agreement to contain provisions for termination. At present there are no such provisions. Practical suggestions as to what form termination could take are invited if the Code's reference to termination means something different from termination by the issue or refusal of the Vesting Certificate.

Our questions for you

Q1 Which offers more flexibility? Incorporating phased vesting and therefore phased bonding reduction in a single document or continuing the existing practice of entering a series of agreements?

Q2 Would developers like the S104 process to become automatic upon entering a S104 Agreement, with the consequence that the Sewerage Undertaker must vest the Sewers upon completion. It could therefore call upon the bond to rectify any remaining defects. (Terms of Bond may need renegotiation)

Q3 Is it preferable that the terms of the S104 sewerage adoption agreement be incorporated by reference into a short form of signature copy together with variables eg property details plans etc or should the full terms be reproduced in full in each agreement as per existing practice?

Q4 What size plans are required and by whom? Is it feasible for plans scaled and marked at eg A0 or A1 to be printed and signed on A3 for incorporation into the Agreement or should full size A0 or A1 be folded in and signed?

Q5 Is a cash deposit preferred or a surety bond for inclusion in the Agreement or if the answer is a combination of the two what cash limits should apply before a surety bond is required?

2.6 Redress

Introduction

Under the new Sector Guidance, it's being proposed that:

- A consistent approach to redress for service failures is adopted across all companies
- The focus is on fixing problems rather than on paying fines for late delivery
- Developers will also have contractual remedies and will be able to use companies' existing complaints procedures where no specific redress measure is proposed
- Ofwat will retain its enforcement powers.

Consultees should note that while the formal form of the new Developer Measure of Experience (D-MeX) has not been settled, Ofwat's methodology for the price review envisages significant (£million) consequences for Sewerage Undertakers if customers rate them poorly for their services in connection with sewerage adoption.

The proposed approach is set out in Annex D.

What are the main proposals?

Refunds of standard fees will be made where there is late delivery of some services as a result of a service failure on the part of the Sewerage Undertaker

In other key stages of the process, an internal review will be triggered where a deadline is missed with a view to remedying the problem as soon as possible

Overall, there should be no extra administration for Developers as the onus will be on the Sewerage Undertaker to sort out the problem

Other proposals we considered and discounted

We looked at imposing fines for late performance but did not take this forward because of the risk that they would just be seen as a cost of doing business rather than as a driver of better performance

We had considered relying on the proposed escalation alone but decided to also propose fee refunds as an equitable remedy for failures in some paid-for services

Our questions for you

Q1 Are the remedies we are proposing being applied to the right LoS metrics and if not, please suggest which metrics should be targeted?

Q2 If you believe that a financial remedy needs to be applied to each metric, please explain how this will incentivise better performance, given the existence in parallel of the D-MeX penalty/reward system?

2.7 Levels of Service

In line with Ofwat's requirements for the Sector Guidance, we have developed draft proposals for the Levels of Service (LoS) and Reporting Requirements:

- The draft LoS measures (below) have been developed in conjunction with latest version of the Adoption Procedures and should be read alongside these.
- The draft reporting requirements (also below), set out the proposed requirements for publishing the information required under the new Sector Guidance (such as redress arrangements).
- The reference to Category 1 and Category 2 relates to the Redress proposals in Annex D-the former allowing fee refunds and the latter triggering internal actions to overcome the initial performance failure.

Levels of Service Measures

Level of Service Measure	Proposed SLA & criteria	Notes	Redress Category 1 or 2
Pre-planning application (Stage 1a) – Water Company – SLPM – 1/1 – Acknowledgement of receipt	2 days from next working day of receipt.		Category 1
Triage review of application (Stage 1a) – Water Company – SLPM – 1/2 - Application completeness	5 days to review application submission to ensure all relevant details are included or request any specific items that are needed (to run concurrently with the above)	To ensure Developer is made aware that any bespoke or special designs require further details to allow full consideration	Category 1

Pre-Design Application (Stage 1b) – Water Company – SLMP – 1/3 – Review Application	14 days to review application and respond	Response to be sent no later than 5 Days after discussion or meeting	
Section 104 application (Stage 2) – Water Company – SLPM – 2/1 – Acknowledgement of receipt	2 days from next working day of receipt.		Category 1
Triage review of application (Stage 2) – Water Company – SLPM – 2/2 - Application completeness	5 days to review application submission to ensure all relevant details are included or request any specific items that are needed (to run concurrently with the above)	To ensure Developer is made aware that any bespoke or special designs require further details to allow full consideration	Category 1
Full Design review and response (Stage 2) – Water Company – SLPM – 2/3 – Review Design Step 1	Review application and respond with formal design response (may be acceptable or may be refused) or advice re any required design alterations. 28 days from receipt (this includes the 7 days to acknowledge and review the application for completeness)	The SLA may stop/start if the above triage has requested more information.	Category 1
Amendments and Design Acceptance (Stage 2) – Water Company – SLPM – 2/4 – Review Design Step 2	Issue formal technical acceptance of proposed network design, including calculations and summary of required inspection fees and Bonding levels – a further 14 days from receipt of additional information or design alterations	May be included as part of the above response at Step 1 if no additional info or alterations are requested	Category 1
Execute Adoption Agreement (Stage 3) – Water Company – SLPM – 3/1 – Update draft Agreement	Issue draft Agreement to Developer for signing. 14 days after receipt of inspection fees, coloured plans and all required legal & land matter details	Discussions to be held about whether WaSCs issue a draft or engrossed Agreements	Category 1
Developer notifies of construction start and requests (Stage 4) – Water Company – SLPM – 4/1 Inspections & construction period	Plan start up meeting and inspection regime. 1 st site attendance within 5 days of request	Developer to give as much notice as possible	Category 1

Construction complete (Stage 5) - Water Company – SLPM – 5/1 request for pre maintenance inspections	Undertaken within 14 days from receipt of request	Developer to provide as built for inspection purposes	Category 2?
Issue pre maintenance certificate (Stage 5) - Water Company – SLPM – 5/2 – Construction is substantially complete	7 days from confirmation that all construction works are satisfactory (or remedial works complete) and receipt of as built and CCTV survey	Standard maintenance period to be 12 months	N/A
Request final inspection post maintenance period	7 days from receipt of request and provision of any updated as built plans		Category 2
Issue post maintenance certificate and Vesting Certificate (Stage 6) – Water Company – SLPM – 6/1 – Vest Sewers	7 days from confirmation that all construction works are satisfactory (or remedial works complete) and all legal & land matters are complete		Category 2
Section 104 Variation application (Stage 7) – Water Company – SLPM – 7/1 – Acknowledgement of receipt	2 days from next working day of receipt.		Category 1
Triage review of application (Stage 7) – Water Company – SLPM – 7/2 - Application completeness	7 days to review application submission to ensure all relevant details are included or request any specific items that are needed (to run concurrently with the above)		
Variation Assessment (Stage 7) – Water Company – SLPM – 7/3 – Complete a Variation Assessment	14 days to complete a variation assessment		
Variation Acceptance (Stage 7) – Water Company – SLPM – 7/4 – Provide variation acceptance	7 days after completion of the assessment, Water Company to confirm whether the variation has been accepted		

Reporting Requirements

Process/Document Name	Description	Location of Publication	Frequency of Publication
Contestability tables	Document outlining services and/or works that can be provided either by the relevant Water or Sewerage Company or by an alternative provider.	Water Company website and Water UK website	Minimum annually
Levels of Service	A set of metrics produced to measure Water Company and Customer service levels.	Water UK/central website	Minimum quarterly
Local Practices	Where there is a deviation from the national standards, the Water Company will publish their local practice/s and an annual report setting out any agreed deviations from the Sectoral Guidance or the Model Adoption Agreements, for the preceding twelve-month period (from 1 April – 31 March). The annual report must, as a minimum, include details of the number of deviation agreements entered into under paragraphs 5.1.2 and 5.2.2 of this Code; the nature and categories of deviations agreed; and any other detail as may be specified by Ofwat from time to time.	Water Company website	Minimum annually
Connections Options	Water Company to publish their connection options process so the Customer can make an informed choice about who they could get to provide the new connections services they require, for example where they need to use the local Water Company or Sewerage Company and where they can use an alternative provider.	Water Company website	Minimum annually
Procedures	Process flowcharts (Stages 1 – 7) for mains and services	Water Company website	Minimum annually

Minimum Information Form (model form)	The minimum information requirements of each party at each stage of each procedure, and which may include template forms if necessary.	Water Company website	Minimum annually
Local design standards	Document that lists equipment requirement, construction and asset standards.	Water Company website	Minimum annually

Our questions for you

Q1 Do you believe that the proposed measures and the SLAs against the measures are appropriate? Please provide alternative proposals if you believe these aren't appropriate.

Q2 Do you agree with the reporting proposals and where we are suggesting options, can you please indicate your preference?

2.8 Governance

Introduction

The Code's requirements for the permanent governance of the Sector Guidance and Model Adoption Agreement are relatively broad.

We have therefore expanded on the requirements of the Code to produce a relatively full set of rules governing the operation of the permanent Code Panel.

The proposed approach is set out in Annex E.

The key feature remains that the Panel is balanced in its composition between Water Companies and Customers.

In producing this document, we have referred to the approaches in other sectors but have, for example, avoided the highly prescriptive approach of the MOSL governance arrangements.

Our questions for you

- Q1** Do you think that we have struck the right balance in the overall structure of the proposal?
- Q2** Do you see the proposal as a fair and efficient way of considering Change Proposals?
- Q3** Is anything missing in the overall governance arrangements we are proposing?

3 Next Steps

All responses will be shared with the members of the groups that have been working on the programme. If you would prefer that your response remains anonymous, please indicate this in your response. If no such indication is received, we will publish your response and attribute it to you.

Using the responses we receive, we will be preparing further versions of this documentation for consultation in February 2019.

In order to simplify processes, we will assume that unless you indicate otherwise in your response, you are content for Water UK to retain your contact details on file so that we may give you further information about this programme or other work relating to new development that we are involved with.

Annex 1

Individuals who have contributed to the preparation of this document

- Martin Silcock-independent chair
- David Strang (Water UK)
- Jonathan Curry (Thames Water)
- John Gibson (SSE)
- Justin Gaggini (Kier)
- Dave Ogborne (Wessex Water)
- Tim Peacock Björstrom (Southern Water)
- Karl Walker (Seddon Homes)
- Paul Voden (HBA)
- Nick Ayling (Thames Water)
- Jenny Henman (Yorkshire Water)
- Marcus Maughan (Redrow)
- Mike Gale (Wessex Water)
- Steve Baker (Taylor Wimpey)
- Jane Pritchard (Southern Water)
- Julian Hill (DCWW)
- Graham Morley (United Utilities)
- Chantal Burgess (Thames Water)
- Sarah Howell (Croudace)
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- Kenny Mawson (Gleeson)