

Second consultation on proposed Sector Guidance and Model Adoption Agreement for the adoption of sewerage assets by Water and Sewerage Companies in England

15 February 2019

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1 Introduction

This document is the second substantive consultation 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 Appendix 1. We are very grateful to all members of the steering group for their substantial contributions to the work of the group.

We conducted an initial consultation on this topic in December 2018. That consultation and the responses to it can be found on our website <https://www.water.org.uk/technical-guidance/developers-services/codes-programme-sewerage-asset-adoption/>

The responses to that consultation have been considered by the steering group and they have agreed on a series of amendments to the initial draft documentation.

The revised documentation is now being consulted on. The proposed Sector Guidance (SG) and Model Adoption Agreement (MAA) are both published on the website referred to earlier.

We were unable to include a draft Model Adoption Agreement in the initial consultation. However, while it is the first time that consultees will have seen this draft, we hope that it will not prove to be controversial, given that it is substantially based on the model form used by many companies at present. There are however some important improvements which we have introduced and those are described further in section 2.4 below.

In each of other sections of this document, we explain the main changes that we have made to the documentation in response to comments received to the first consultation.

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

The SG and MAA are going to be submitted to Ofwat on 28 March 2019 with a recommendation from the water companies that they be accepted as complying with the requirements of the Adoption Code.

As this is a second consultation on topics which include many points of detail, we would ask consultees to respond to this consultation using the form which is being published with this consultation, giving exact wording which they wish to propose and explaining the basis for their proposed changes.

In a few areas, we are asking for specific comments on particular proposals and it would be helpful to have views from consultees on those topics.

Points previously made should not be repeated in response to this consultation as, to the extent that no changes have been made to the documentation in response to those points, the steering group has decided not to accept them.

We will publish all responses received and unless you indicate otherwise on your response, will put consultees' names against their comments.

All responses must be received no later than 2359 on 8 March 2019

Responses should be sent to the following addresses [<dstrang@water.org.uk>](mailto:dstrang@water.org.uk);
chantal.burgess@thameswater.co.uk

Trials

One respondent suggested that there would be value in having a trial of the new arrangements resulting from these proposals.

The question of a trial is for Ofwat to consider. The responsibility of the water companies is to deliver compliant documentation to Ofwat by the date they have set. The procedure after that point is for Ofwat to determine. We have however indicated to Ofwat that we consider that a trial would be valuable.

Use of code panel

Even if changes proposed by consultees have not been taken into account in the current version of the documentation, parties may subsequently propose them to the code panel that will be established as part of the arrangements for the governance of the sector guidance and model adoption agreement.

Implementation Date

A final question concerns the date on which the SG and MAA should be effective. Given the three-month review period required by Ofwat and a period for companies to amend their internal procedures to follow the SG and MAA, which would not be less than three months, on the current timetable, this would suggest implementation in September 2019.

Mid-year changes are undesirable for water companies because of the difficulties in accommodating changes to budgets and workplans. A mid-year change is also undesirable because of the yearly charging cycle which makes it difficult to accommodate any changes that the implementation of the code could give rise to.

An early implementation also jeopardises the ability of the companies fully to prepare for the adoption of new types of surface water drainage components. This is a major innovation in the new adoption arrangements and the sector is in the course of agreeing an extensive training programme for all aspects of their businesses so that they are able to deal with the many questions that adoption of these new components raise. It would be unfortunate if companies did not have adequate time to prepare for this change.

The SUs are therefore requesting that implementation of the final SG and MAA be delayed until 1 April 2020. This was supported by the steering group at its meeting on 13 February.

2 Consultation Topics

As indicated in the Introduction, in this consultation, we are providing a developed set of proposals for comment. In each area, we have summarised the changes that have been made to take account of comments received as part of the first consultation.

2.1 Procedures

Changes made following first consultation

The following list sets out the main changes that have been made to the procedures document as a result of comments on the first draft. The revised version is in Appendix B of the draft SG.

1. Stage 1b – Has a new detail, defining when strategic assessments could be requested but noting also that early engagement is preferred. The notes also provide more detail on complex and large sites.
2. S104 Applications can be received at the earliest opportunity.
3. Starting on site without an agreement in place has been accepted but given the new status of the Model Adoption Agreement as a single standard, S104 Agreements can be created either by the Developer or the Water Company.
4. Stage 2 – The information requirements for Technical Acceptance have been changed in the minimum information details and this now refers to Table 2.2.
5. Pre-agreement conditional Acceptance is now available for some elements of a system where other elements are awaiting further information.
6. Stage 2 – Some diversions can now be incorporated within the S104 Agreement but works must not commence on site until the agreement is signed by all parties.
7. Stage 5 – The remedial works that need to be carried out before issue of a Provisional Certificate now have a timeframe within which they need to be completed by the Developer. If not carried out within that period, the SU will complete the works at the expense of the Developer.
8. Details have been added regarding the recording of feedback from Inspections. This will need to be dealt with by the Developer and the SU on site.
9. A note has been added that fees for any element of the process must be derived from the SU's charging arrangements.
10. Stage 2 – The information requirements for a connection have been removed from the procedure details.

2.2 Design Standards and Local Practices

Changes made following first consultation

The previous consultation included a number of local practices. Following feedback from the consultation, these have been rationalised. The revised proposals include local practices for the following:

- Pumping station requirements beyond those in the guidance.

A number of water companies currently publish addendum documents for the design and construction of pumping stations which may differ from the requirements of the Design and Construction Guidance (DCG). These addenda were published to allow SUs to adopt pumping stations that would be technically compliant with their own wider operational, technological and safety requirements. The steering group believe that due to the varied and technically complex nature of these addenda, the proposed version of the DCG could not be updated within the required time scales.

It may be that one of the SUs or another party will wish to propose harmonisation through the Panel arrangements which are being established.

- 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.

SuDS which are to be adopted as sewers may be located within or discharge to land that will ultimately be owned and maintained by another party. Therefore, water companies will require the opportunity to develop the appropriate deeds of grant of easement to facilitate adoption, establish clear responsibilities and secure the appropriate discharge rights.

The proposed version of the DCG includes the majority of sewage related components. However, there are components not covered by the DCG that may require a specific design and review resulting in potentially greater input from the water company (see paragraph 4.1 [f] of the Code). It is proposed that the sector guidance provides examples of these types of components as follows:

- Wastewater treatment works
- Access to sewers at a greater depth than 6m
- Design of special manholes or other structures
- Design and location of flow control devices
- Design, configuration and access to multi leg and proprietary tank systems
- Design of large diameter flexible pipes
- Inverted syphons
- Innovative systems or products

SUs will publish on their website; any technical standard details or designs that they refer to which are not currently included in the DCG.

2.3 Minimum information

Background

2.3.1 The minimum information requirements can be found in Appendix D of the draft SG. The requirements have been drafted in order to put the SU in a position to meet the Developer's requirements at each step of the process.

The consultations we have carried out and the views of Developers working on the draft SG have shown that Developers seek the greatest certainty possible. The minimum information requirements have therefore been drafted to facilitate a response from the SU that gives such certainty.

2.3.2 SUs accept that in some circumstances pre-planning applications are made in connection with prospective developments without the intention of seeking the adoption of new sewers. SUs are keen to ensure that such informal discussions continue and the minimum information requirements in the SG will not be applied in circumstances where they are clearly not relevant to the Developer's request.

Changes made following first consultation

2.3.3 Responses to the previous consultation noted that there were several points during the pre-planning stage where the role of the Lead Local Flood Authority and the Local Planning Authority needs to be acknowledged. Comments were also made regarding the need to observe the rules governing the right of connection to public sewers which were established through the new connections services charging arrangements introduced in April 2018. These points are now recognised in the draft Sector Guidance with any relevant information the developer wishes to submit in support of the proposals.

2.3.4 Information published by the British Geological Society will be accepted at the pre-planning stage until site investigation data becomes available for stage 2.

2.3.5 Criteria for large or complex sites are now set out in order to ensure that a strategic assessment can be undertaken to establish a robust framework for the delivery of sewerage services.

2.3.6 Questions have been raised about dealing with cases where design information becomes available later. This is particularly relevant to pumping stations before the appointment of a specialist contractor. We have introduced the option to consider a two-stage process with conditional acceptance for agreed elements. Full details can be submitted within a period of 6 months following conditional acceptance. Table 2.2 in Appendix D to the SG reflects these changes.

2.3.7 The SG now accommodates minor changes to the works through "as built" drawings with any significant changes requiring a formal re-submission (as described in Stage 7) before construction commences.

2.3.8 Minor changes to minimum information requirements have been made to address and clarify a range of specific points made regarding charges, although, ultimately, the decision to charge in the case of repeated resubmissions remains at the discretion of the undertaker.

2.3.9 Where possible we have omitted items that can be provided at a later stage.

2.3.10 Additional requirements to record inspections requested and site attendance are now included in Stage 4. We have also introduced Table 5.1, inserted for guidance as requested.

2.4 Model Adoption Agreement

Background

2.4.1 The MAA that is included as Appendix E to the SG is based largely on the agreement that has been in use for some time and which was published as part of Sewers for Adoption 6. The Steering Group did not view the document as having any significant failings but a number of changes have been made in response to comments made in the first consultation.

2.4.2 Further work will be carried out to ensure that the agreement that is implemented is compatible with the procedures implemented pursuant to the SG. The main changes to the SFA 6 draft and which consultees may wish to concentrate on are as follows:

- Inclusion of references to the DCG rather than to SFA (subject to Local Practices and individual undertakers' further technical requirements)
- Definition of day for the purpose of notices
- Ability of any party to provide copy of the S104 document to interested parties such as future purchasers
- New dispute resolution procedure to comply with the Code.

The following section gives further information about some of the more significant changes.

Changes made following first consultation

2.4.3 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. The agreement now allows for this.

2.4.4 The steering group's preference was to have one agreement for each phase of the development, rather than proposing a series of phases under a single agreement. In part the group considered that with a standard from Model Adoption Agreement, there were no significant practical objections to the use of separate agreements for each phase of work. It was also thought to be difficult to anticipate in an initial agreement all the changes that might be required during the life of that agreement. Finally, it was considered that having in one place all the terms applicable to each phase of a development was preferable to having to piece together the full contractual position from a series of documents.

However, individual companies have committed themselves to offering agreements allowing for phased developments, should this be requested by customers. At this stage, no Model Adoption Agreement for such circumstances has been prepared.

2.4.5 Automatic vesting. We have considered carefully the idea of automatic vesting following a defined period; an idea raised in the initial consultation. While the proposal has attractions, in the absence of a legal obligation to enter into a S104 agreement (as exists in Wales), it was considered

that such a change would not be helpful. The proposal risked reducing the incentive on Developers to design and build sewers of an adoptable standard and did nothing to cure what the steering group consider to be the principal problem, ie, failing to enter into S104 agreements at all.

2.4.6 We have however amended the existing SfA 6 document in particular in order to allow the SU to require the Developer to pay for remedial works where the Developer has been informed of the need for such works but has not carried them out within a period of six months from the date on which the need for such works was communicated to the Developer.

2.5 Redress

Changes made following first consultation

Some consultees were keen to see a system of fines/payment reimbursement for late performance of services but we received no evidence as to how such a system would better incentivise on-time performance as compared to the remedy we proposed, focussing on remedying the initial default.

The steering group was conscious of the differences between water and sewerage in this respect. A failure by a water company to meet a Level of Service (LoS) could materially affect the ability of SLPs to perform whereas in relation to sewerage infrastructure, the developer is less dependent on the SU to fulfil its role.

There were also practical barriers to the introduction of a system of fines/reimbursement.

We are therefore proposing that for a limited number of services, late performance by the Sewerage Undertaker will, at the Developer's request, trigger an investigation by the company into the causes of the failure with a view to ensuring prompt remediation of the problem.

One other suggestion we considered was providing guidance on possible levels of ex-gratia payments. The difficulty with this proposal is that such payments are intended to compensate for financial loss and by definition, that will not be a standard amount. It may be that the permanent code panel will wish to consider this further once the system is in operation.

Revised wording is in the draft SG.

2.6 Levels of Service and Reporting

Changes made following first consultation

Responses to the initial consultation centred on two issues; first, was there confusion between working and calendar day reporting and secondly, whether there were too many LoS metrics for meaningful reporting?

We have therefore clarified that all metrics are stated in calendar days

We have also reduced the total number of metrics by removing some minor and less critical measures and by combining others where in reality, the actions are undertaken as one key milestone step.

We have also removed the metrics relating to variations. The steering group did not consider this necessary as these are very rarely relevant.

Minor changes have also been made to the reporting requirements.

All these changes can be found in Appendix F of the SG.

2.7 Governance

Changes made following first consultation

Little feedback was received on the proposed documentation relating to the establishment of the panel to deal with changes to the Sector Guidance and Model Adoption Agreement.

One respondent noted a number of inconsistencies in terminology and questioned whether the proposals for panel quorums and voting were compatible. Changes have been made to deal with these helpful remarks and Appendix G of the SG contains the revised proposal.

3 Next Steps

Following receipt of responses, the steering group will consider whether further changes are required before preparing the final set of documents for submission to Ofwat on 28 March 2019.

Annex 1

Individuals who have been consulted or who have contributed to the preparation of this document

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- Kenny Mawson (Gleeson)