

Draft recommendation under paragraphs 3.2 and 3.7 of the
Ofwat Code on the adoption of self-laid assets by Water
Companies in England

26 March 2019

Contents

1. Foreword	4
2. Introduction	6
2.1. Purpose of this document	6
2.2. Recommendation	6
3. Content Development & Consultation	6
3.1. Introduction	6
3.2. Public Consultation	7
3.3. Other engagement	8
4. Benefits of the new arrangements	9
4.1. Procedures, Local Practices, and Minimum Information	9
4.2. Levels of Service, Reporting and Redress	10
4.3. Design and Construction Standards	12
5. Ofwat's Principles	12
5.1. Customer focussed	12
5.2. Fair and proportionate	13
5.3. Clear, complete and current	13
5.4. Level playing field	14
5.5. Efficiency	14
5.6. Predictability and transparency	14
5.7. Encourage innovation	15
5.8. Resilience and sustainability	15
6. Consensus	15
6.1. Introduction	13
6.2. Procedures	13
6.3. Local Practices	13
6.4. Redress	14
6.5. Levels of Service ("LoS")	14
6.6. Minimum Information	14
6.7. The Panel	14
6.8. MSAA	14
7. Further development of the asset adoption arrangements	14
7.1. Before approval of the SG and MSAA	14
7.2. Matters for the Panel	15
Appendix A1 - Water Companies which have agreed to this recommendation	17

Appendix A2 – Working group members	18
Appendix B – Programme Timeline	19
Appendix C1 – Setting the Agenda	Provided as a separate pdf
Appendix C2 – First Substantive Consultation	Provided as a separate pdf
Appendix C3 – Second Substantive Consultation	Provided as a
separate pdf	

1. Foreword

This document has been prepared by Water UK on behalf of all the water and sewerage companies set out in Appendix A1-which we refer to in this document as “the Water Companies”.

This document contains the recommendation of the Water Companies in relation to the Sewerage Sector Guidance (SSG) and Model Sewerage Adoption Agreement (MSAA) required by Ofwat’s Code for Adoption Agreements.

While Water UK is responsible for this document, its preparation has been based on the substantial work carried out by a group of representatives of Water Companies and Developers, the names of whom are set out in Appendix A2. We are very grateful for the substantial contribution of those Developers who have worked with us and for the collaborative approach they have adopted.

We deal in more detail with the extent to which this recommendation meets the test of “consensus” but the working group members have been keen that this recommendation be presented as having the support of the entire working group.

The working group has been independently chaired by Martin Silcock and he will be making his own report to Ofwat on the results of this programme.

While there has been for many years a generally accepted set of standards for the construction of sewers, namely, Sewers for Adoption, as well as a widely used template agreement, the programme has taken the opportunity to review both of these documents and to implement a set of new documentation to comply with the requirements of the Code.

The most notable changes are as follows:

- Sewers for Adoption has been converted into the Design and Construction Guidance required by the Code. For the first time, it sets out standards relating to the adoption of sewers which are not piped but which nonetheless meet the legal definition of a sewer
- The MSAA has been modified with a view to encouraging the completion of the adoption process
- A comprehensive set of procedures relating to sewer adoption has been created
- The information required by the Water Companies to progress an adoption has been specified in detail

While the overall structure of sewer adoption arrangements has not been significantly altered as a result of this work, major changes have been made to the day to day operation of the adoption process.

Implementing the new arrangements will require the following:

- changes to internal procedures

- modification of IT systems to conform to the new arrangements
- substantial training for teams across the business to allow alternative types of sewer to be successfully adopted
- engagement with customers to ensure that they understand the requirements of the new regime and are in a position to submit compliant applications when the new arrangements come into effect

Given the undesirability of mid-year changes to adoption arrangements, we are proposing that the rest of financial year 2019/2020 following Ofwat approval be used by companies to prepare for the new arrangements with the new arrangements coming fully into effect at the start of AMP7.

Signed

David Strang

Water UK

26 March 2019

2. Introduction

2.1. Purpose of this document

This document constitutes the recommendation that Water Companies are required to present to Ofwat under the Code in relation to both the SSG and MSAA.

It addresses the requirements of the Code as regards:

- whether Customers have been consulted (with examples to evidence the extent of their involvement);
- whether the draft SSG and MSAA reflect broad consensus of opinion between Customers and Water Companies and why particular approaches have been adopted where there is no such consensus;
- confirming that the SSG and MSAA comply with the Code.

2.2. Recommendation

The Water Companies listed in Appendix A to this document are recommending that Ofwat accept the draft SSG and draft MSAA which are being provided with this recommendation.

This recommendation has the approval of the Water UK Infrastructure Policy Group which, for these purposes, has been given delegated authority by the Water UK Council, representing all those companies listed in Appendix A1.

3. Content Development & Consultation

3.1. Introduction

While individuals from Water Companies have led the work on the development of the SSG and MSAA, the documentation has benefited from substantial input from members of the working group. This group has approved the approach taken at each stage of the work. The overall programme for their involvement is set out in Appendix B.

3.1.1. Development of the SSG and MSAA

Three consultations have been held-the first being to establish the priorities of the programme and the second and third seeking detailed comments on draft documentation. The one exception to this was the draft MSAA, a version of which was not consulted on until the third consultation. However, as the bulk of the MSAA is identical to the document used by many companies at present, this is not considered to have been a major omission.

3.1.2. Meetings of the ISGS and PSTs

The timeline in Appendix B refers to meetings of the ISGS and PSTs. The Independent Steering Group and Process and Standards Team originally held separate meetings but mid-way through the programme, started meeting as a single working group.

3.2. Public Consultation

3.2.1. Introduction

Public consultation was a key part of the collaborative work and focused on the technical arrangements for which Customer practitioner comment was seen as being particularly helpful.

Water UK carried out consultations on behalf of the Water Companies in a number of ways-through consultations hosted on the Water UK website

< <https://www.water.org.uk/technical-guidance/developers-services/codes-programme-sewerage-asset-adoption/>>, through a mailing to over 30 Developers operating in different parts of the UK and operating at different scales and at the Water UK Developer Day in November 2018. Further details are provided below.

3.2.2. Phase 1: Setting the agenda

Date opened	17 th August 2018
Date closed	30 th August 2018
Number of responses	30
Findings	A table summarising the responses is available in Appendix C1

3.2.3. Phase 2: First Substantive consultation

Date opened	14 th December 2018
Date closed	23 rd January 2019
Number of question responses	12
Findings	A table summarising the responses is available in Appendix C2

3.2.4. Phase 3: Second Substantive consultation

	Consultation on Sector Guidance
Date opened	15 th February 2019
Date closed	08 th March 2019
Number of responses	10
Findings	The responses were reviewed by the joint ISGS/PSTs group. The final consultation and a table summarising the responses are available in Appendix C3

3.2.5. Water UK Developer Day consultation

An opportunity for comment also arose at the Water UK Developer Day, held in Birmingham on November 15, 2018, when a detailed report on the progress of the programme was given by representatives of the working group. Approximately thirty Water Company representatives and a similar number of Customer representatives attended

3.3. Other engagement.

3.3.1. Water Company engagement

Water Companies were heavily involved in the programme and senior technical experts from among Water Companies, including Heads of Developer Services and senior lawyers participated in the work of the steering group. Many Water Companies gave detailed responses to the consultations.

The IPG was kept informed of the work of the programme through its regular meetings and formally approved the documentation that is now being submitted to Ofwat.

3.3.2. Engagement with Water Companies' Customers

A number of Water Companies also carried out their own direct engagement. By way of example, SWW has highlighted the consultation on its website and has done a mail shot to its customers on the topic and Thames has given extensive information to customers about the programme, both through face to face meetings and through email. The following have also been provided as examples:

UU have sent two separate emails to its stakeholder list (of approximately 600 individual email addresses including developers and consultant engineers).

The first was a specific request for feedback form the initial consultation (22nd August) and the second was a general update (20th December) which included a link to the first consultation.

On 18 December 2019, SWW forwarded the first substantive consultation to 59 of its customers to ask them to review and comment on it.

Thames Water have engaged with their Developer customers through various channels for example through their Customer Relationship Managers, newsletters, Scrutiny Panel and their own Developer Day.

4. Benefits of the new arrangements

Throughout the programme, the members of the different working groups have focused on meeting the requirements of the Code and on providing tangible benefits to Customers. The following tables are provided as examples of the main benefits of the work.

4.1. Procedures, Local Practices, and Minimum Information

Improvements made	Benefit to asset adoption
A new set of procedural charts have been developed to explain in visual form the steps that need to be carried out in the typical sewerage adoption transaction	Deploying the more detailed procedures will have a positive effect on national consistency and facilitate a smoother adoption journey. As a corollary, Customers will benefit from an improved ability to measure LoS consistently as part of D-MeX
Local practices have been kept to a minimum and required only in relation to surface water discharges and easements and in respect of requirements for pumping stations.	Nationally aligns the vast majority of asset adoption requirements, removing company specific arrangements for sewers.
To support the procedures, a corresponding series of Minimum Information checklists have been introduced	The checklists identify the information that is required at key stages by each party in order to proceed with the adoption process. This will reduce delays seeking appropriate information and focus resources upon relevant matters.

4.2. Levels of Service, Reporting and Redress

Improvements made	Benefit to asset adoption
Increased the number of measurable actions and steps from two to ten (10)	Current Water UK metrics only cover initial application period and do not consider life cycle and full build-out programme
New LoS measures in response to customer feedback	Greater rigour in measuring performance will minimise delays to the start and completion of construction
Important new stages for speed of getting WaSC inspectors to site and issuing their findings/reports	Ensures all parties from groundworkers and inspectors remain focused along with back office staff
The documents to be published routinely as part of the SSG are defined in one place.	Customers will know when to expect publication, and where to find key information, such as Design & Construction Guidance, Local Practices and Minimum Information
New redress procedures have been introduced aimed at encouraging a “right first time” approach.	New procedures require swift company intervention to remedy service failures helping to avoid delays in the adoption process

4.3. Model Adoption Agreement

Improvements made	Benefits to asset adoption
There has always been a “Model Adoption Agreement” running in parallel with sewer build standards. Previously its use has been discretionary which has led to inconsistency. This new Model Adoption Agreement will now be standard across England. While much of the document remains familiar it has been updated to reflect the aspirations of the Code to improve the adoption process.	Using a standardised Adoption Agreement should help to avoid delays in the asset adoption process. Using a form of agreement that is well known by market participants avoids the adding to any disruption which may be caused by the new SSG

<p>The process for vesting sewers has been clarified and expanded. The changes promote certainty for the Developer where sewers are constructed on time and with no defects.</p> <p>Following the issue of the Provisional Certificate, there is a new mechanism to give the Developer the opportunity to remedy any defects that have been identified with the Water Company having a right to step in to carry out the works at the cost of the Developer where the Developer does not do so.</p> <p>Whether or not defects are identified, it is provided that subject to all pre-conditions being satisfied, the Final Certificate will follow after twelve months. There was previously no such timescale.</p>	<p>While sewer adoption is not mandatory in England, the changes to the agreement help to ensure that where an agreement is entered into it is more likely to lead to adoption.</p> <p>This is desirable from the homeowner's point of view, allowing sewers to be maintained by the party best placed to do that task, the Water Company.</p> <p>It remains the case that the Developer has no obligation to offer his sewers for adoption.</p> <p>The process is now more definite process than the one that has existed to date and is intended to focus all parties on finalising the S104 works to a good standard and in a timely fashion,</p> <p>The introduction of a twelve-month period will also help to increase the rate of adoption of sewerage assets as there will be an obligation to proceed to adoption if all the conditions for adoption are fulfilled.</p>
<p>A two-tier disputes resolution procedure starting internally before moving to external resolution</p>	<p>This is designed to deliver a much swifter, less expensive way to resolve differences of opinion between developer and undertaker. An external ADR process is still there if the internal process proves inconclusive.</p>

4.4. Design and Construction Standards

Improvements made	Benefit to asset adoption
<p>Provides a timely review and consolidation of two live versions of design guidance (Sewers for Adoption 6th & 7th Edition).</p> <p>For the first time, the inclusion of sustainable drainage systems that can be regarded as sewers capable of being adopted.</p>	<p>Nationally aligns the vast majority of asset adoption requirements, removing company specific arrangements for sewers whilst maintaining flexibility for innovation.</p> <p>For the first time this will allow developers to propose some SuDS components for adoption (as sewers) and comply with development planning conditions to guarantee the long term maintenance of these features as well as provide a more sustainable approach to surface water management.</p>

5. Ofwat's Principles

In developing the SSG and MSAA, we have been guided by the principles in the Code and this section demonstrates how they have been taken into account. We do not consider that it would be helpful to give an exhaustive breakdown of how each element of the SSG and MSAA complies with the principles and our approach in this section has been to provide examples of how the documentation we have drafted complies with the Code's principles.

5.1. Customer focussed

"Arrangements under the Code must balance the interests of Water and Sewerage Companies, Customers and End-user Customers, and set out how the Water or Sewerage Company will: seek to deliver the services Customers need, in the timescales they require; be Customer focussed and promote the participation of Customers in the development and maintenance of those arrangements; recognise the different types of Customer Water and Sewerage companies may need to engage with under these arrangements; and be flexible to opportunities to innovate or provide better service." **Source**; Ofwat, Code for adoption agreements

Procedures - The procedures are focused on ensuring that the services Customers require from Water Companies are clearly defined and are provided within

acceptable timescales. This has been a major improvement in the Customer journey as previously, the procedures were not documented, so Customers were unaware of the journey. The introduction of the Procedures enables consistency across the Industry.

MCAA – The new form of agreement encourages greater levels of adoption. This will benefit the End User Customer by ensuring that over the long term, the sewers are maintained to the right standard, helping to avoid problems such as sewer flooding. This has also been supported by the developers on the working group as it allows them to meet their commitments to the house purchaser.

Minimum Information – For the first time, a comprehensive list of information to be provided by Customers has been developed. The new procedures also set out information to be provided by the Water Company during the process. This clarity should avoid unnecessary communications between the parties seeking information.

5.2. Fair and proportionate

“Without compromising End-User Customer’s safety, arrangements under the Code must be proportionate in relation to the costs and risks faced by the Water or Sewerage Company on the one hand and the Customer on the other. The arrangements should also be fair and reasonable in terms of who holds the balance of risk.

*Additionally, the arrangements under the Code must: be fit for purpose (and provide for regular review so they remain fit for purpose); not be unnecessarily complex; and not unfairly discriminate between Customers.” **Source**; Ofwat, Code for adoption agreements*

The Procedures have been developed to promote increased rates of adoption while not imposing unnecessary obligations on Developers. The use of new Minimum Information checklists provides clarity and simplicity on Water Companies’ requirements for adoptable assets.

The new processes have been discussed with the NHBC and they did not indicate any particular concerns about the proposals. Had they considered that there had been a significant change in the overall balance of obligations on water companies and developers, a different approach might have been expected.

5.3. Clear, complete and current

*“Arrangements under the Code must comply with Ofwat’s Information Principles: <https://www.ofwat.gov.uk/regulated-companies/company-obligations/engaging-with-customers/>” **Source**; Ofwat, Code for adoption agreements*

The new procedural charts and Minimum Information checklists provide a clear statement of Water Companies’ requirements.

The DCG brings the previous guidance (Sewers for Adoption) up to date and deals with the adoption of SuDS elements, something that certain Water Companies have been seeking for some time.

The documents that we have prepared represent the current legal and regulatory position and will be kept up to date through the Panel's work after the SSG has been implemented.

5.4. Level playing field

“Arrangements under the Code must: provide a framework that will enable effective competition where parties can compete with the Water or Sewerage Company to provide new connections services; minimise as far as practicable the number and type of services and activities that fall within the scope of Non-contestable services; Require that the Water or Sewerage Company provides Non-contestable services to all relevant parties on an equivalent basis as it provides the same services for its own business; and make clear Customers’ options so they 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.” **Source;** Ofwat, Code for adoption agreements

We do not consider that level playing field concerns are relevant for sewerage infrastructure as almost all such infrastructure is provided by Developers.

5.5. Efficiency

“Arrangements under the Code must promote efficient and effective processes for entering into adoption agreements and to achieve adoption” **Source;** Ofwat, Code for adoption agreements

In the context of the Code, we have interpreted the term efficient as being equivalent to a requirement for smooth delivery processes. This has been encouraged by a number of innovations in the SSG, including a clear presentation of the steps that need to be carried out and of their sequence. All of these changes allow Water Companies to deliver a risk-based approach and reduce the overall cost of compliance with their requirements.

5.6. Predictability and transparency

“Arrangements under the Code must be predictable and transparent and provide Customers with sufficient certainty as to what they can expect at each step in the process of entering into adoption agreements, for example, through standardisation of approach across the sector. Any changes to the arrangements under the Code

*(including company specific practices) should be adequately signposted to Customers in advance of the change” **Source**; Ofwat, Code for adoption agreements*

In addition to the benefits provided by the new Procedures and Minimum Information checklists, the additional levels of services should help increase the predictability of the adoption process.

5.7. Encourage innovation

*“Arrangements under this Code should encourage innovation and not unduly prevent opportunities for innovation that could deliver a better service for Customers, mindful of the associated costs.” **Source**; Ofwat, Code for adoption agreements*

Innovation is encouraged through permitted deviations from the procedures which may include pilot studies. Panel procedures will also allow innovations to be trialled on a permanent or limited time basis.

5.8. Resilience and sustainability

*“Arrangements under the Code must have regard to the efficient use of resources and the long-term resilience of Water Companies’ supply systems and Sewerage Companies’ sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour.” **Source**; Ofwat, Code for adoption agreements*

In accordance with Defra policy and with the benefit of support from the Secretary of State, the new DCG lays down standards for the first time relating to the adoption as sewers of certain SuDS elements. This has been widely welcomed in the wider drainage community, e.g., by the Association of SuDS Authorities.

6. Consensus

The Code requires that this recommendation set out whether the draft SSG and MSAA reflect broad consensus of opinion amongst Water Companies and Customers. Where this is not the case, the recommendation must set out the reasons for following one view over an alternative view.

The comments received from our consultations indicate that while stakeholders had a number of comments on issues of detail, there was no fundamental objection to the general approach being taken by the Water Companies in this work. This has been confirmed in the joint working groups that have been considering the proposals. These groups have been keen to present the proposals as having support from all those involved in their development.

We note that as we went through the three stages of consultation, the volume of responses reduced each time. Had there been any significant objections to the proposals, this would not have been the case.

On one aspect of the SSG however, there is a lack of consensus among the Water Companies. Thames Water has for some time indicated that it does not agree that SuDS elements can be classified as sewers. While as a company it is in favour of SuDS adoption, it considers that this should be achieved through legislative change.

Thames considers that interpreting “sewer” to include certain SuDS elements is inconsistent with other legislation and is not in accordance with case law.

Before revising what was SfA and is now the Design and Construction Guidance, Water UK obtained detailed legal advice from David Hart QC on this topic. His analysis of the case law demonstrated that the statutory definition of “sewer” was not limited to piped assets and could encompass certain forms of SuDS which fulfil the function of a sewer, as defined under the Water Industry Act. While other statutes may have assumed that only piped assets could qualify as sewers, that could not, in Mr Hart’s view, affect the WIA 1991 definition.

The Water Companies subject to the Code (other than Thames Water) accepted Mr Hart’s advice.

Appendix A1 - Water Companies which have agreed to this recommendation

Albion Water

Anglian Water

Icosa Water

Independent Water Networks

Leep Water

Northumbrian Water

Severn Trent Water

South West Water

Southern Water

Thames Water

United Utilities

Veolia Water

Wessex Water

Yorkshire Water

Appendix A2 – Working group members

Martin Silcock-Independent Chair

Jonathan Curry-Thames

John Gibson-SSE

Justin Gaggini-Kier

Dave Ogborne-Wessex

Tim Peacock Bjürstrom-Southern

Karl Walker-Seddon Homes

Paul Voden-HBA

Nick Ayling-Thames

Jenny Henman-Yorkshire

Marcus Maughan-Redrow

Mike Gale-Wessex

Steve Baker-Taylor Wimpey

Jane Pritchard-Southern

Julian Hill-DCWW

Graham Morley-United Utilities

Phillip Powell-Story Homes

Kenny Mawson-Persimmon

Tony Brunwin-Berkeley

Robin Bishop-TDS

Appendix B – Programme Timeline

1- Aug	2nd ISGS meeting
9- Aug	First PSTs meeting
20- Aug	Send out initial consultation questions
29- Aug	ISGS update call
10- Sep	PSTs meeting to consider consultation results and direction of drafts
18- Oct	1st consultation
15- Nov	Public meeting to present consultation proposals (part of developer day, B'ham)
20- Nov	PSTs meeting
5- Dec	PSTs/ISGS meeting
14- Dec	2nd consultation
23- Jan	Close of 2nd consultation
31- Jan	PSTs/ISGS meeting to consider consultation results and possible changes
6- Feb	ISGS/PSTs update call
13- Feb	ISGS/PSTs meeting to release content for final consultation
15- Feb	3rd consultation starts

8- Mar	Close of 3rd consultation
11- Mar	PSTs/ISGS meeting to consider consultation results and possible changes
12- Mar	Send IPG latest documents and comments of PSTs/ISGS for approval
15- Mar	ISGS/PSTs final review call
19- Mar	Final document review meeting
20- Mar	Issue documents to IPG for sign-off
26- Mar	Submit to Ofwat