

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

27 August 2019

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1 Introduction

This document accompanies the second consultation being published by Water UK following a programme of work involving water companies, SLPs and developers to develop draft sector guidance and a model adoption agreement in relation to water 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.

We conducted an initial consultation on this topic in January 2019. That consultation can be found on our website <<https://www.water.org.uk/technical-guidance/developers-services/water-asset-adoption/>>

We received a number of responses to this consultation and Ofwat also has provided comments on the documentation.

Since January, we have held meetings with Fair Water Connections and with developers and SLPs in order to understand in more detail customers' expectations from the new regime.

As a result of comments we have received, substantial changes have been made to the documentation originally consulted on and we are now consulting on the revised suite of documents. We are continuing to work on ensuring that the documents use terms in a consistent way and also to ensure that all cross-references are correct. We would be happy to receive comments from consultees on these issues.

The proposed Water Sector Guidance (WSG), Model Water Adoption Agreement (MWAA) and ancillary documents are all available on the website referred to earlier.

In each section of this document, we explain the main changes that we have made to the documentation in response to comments we have received. In a number of places, we also pose specific questions which stakeholders may wish to consider.

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.

The complete suite of documentation is going to be submitted to Ofwat on **7 October 2019** with a recommendation from the water companies that they be accepted as complying with the requirements of the Adoption Code.

Given the extent of discussion on this revised documentation, we are at this stage only able to take account of comments that are made on the form which is being published with this consultation. This requires responding companies and individuals to propose new wording where they wish to suggest changes and to explain the basis for their proposed changes, based on the requirements of the Code.

On this form, we are also inviting commentators to state whether they are broadly content with the documentation that has been prepared. This will help Ofwat assess whether the "broad consensus" test of the Code has been met.

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

Responses should be sent to the following addresses [<dstrang@water.org.uk>](mailto:dstrang@water.org.uk); sgenower@water.org.uk and should have as their subject, "Response to second consultation on water adoption".

All responses must be received no later than 2359 on 18 September 2019.

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 Water Sector Guidance

Changes made following first consultation

The sector guidance has been updated to reflect changes in the underlying adoption documentation. We have also taken the opportunity both to simplify the document and to explain clearly how contestability of work is to be determined.

The WSG sets out the overall framework for the operation of the new adoption regime and is intended to pave the way for further developments of the code documentation as experience is gained of its application.

The WSG now contains a master set of definitions governing all the documentation that is needed to meet the code's requirements.

2.2 Design and Construction Specification

Changes made following first consultation

The DCS has been substantially strengthened since the first consultation and has changed from being a set of standards to a specification for the works, dealing with both design and construction aspects of the works. Part of that work has involved improving the consistency of terminology.

We have also added new sections to the text with a view to reducing, as far as possible at this stage, the extent of divergences between different companies' approaches.

New text has been added, for example, to deal with testing and commissioning and the point of connection and we have also increased the range of reference documentation, based on material from the Self-Lay Code of Practice.

The DCS now has a place for companies to insert their own version of the Annual Contestability Summary (ACS) so that as much information as possible relative to design and construction can be found in one place.

2.3 Model Water Adoption Agreement

Changes made following first consultation

- (1) The MWAA and the supporting documentation has been reviewed to provide for a contractually binding Delivery Date for a Source of Water for Testing.

This commitment is dependent on the SLP providing any agreed Land Rights and Statutory Consents and also on there being no Highways Authority restrictions affecting either the Water Company or SLP which cause delay.

A failure to engage with the Highways Authority in a timely manner will not be a defence to a Water Company for its failure to meet the contractual Delivery Date.

Adoption of the new asset takes place on the date of Final Connection and that date will be the date confirmed in the Declaration of Vesting certificate. Water Companies must email that Declaration to the SLP within 5 working days of Final Connection.

- (2) The MWAA reflects the principle that there is a presumption in favour of the SLP undertaking defect correction work (within the defined 12 or 24-month periods) at its cost. Only in limited circumstances, where the rectification work would interfere with or deviate the supply in the existing network would the Water Company step in to undertake the correction work.
- (3) The final area of significant change in the MWAA is inspection and audit. Whilst the WCs have a right to attend a Site at all reasonable times to inspect works and assure themselves of compliance with the Technical Specification (specifically the Design and Construction Specification), Water Companies cannot make an SLP stop work or alter its programme to accommodate the Water Company's inspection requests.

Providing the SLP keeps the water company informed of its site activities through its Weekly Whereabouts Report, then it is up to the Water Company to make itself available to inspect any such activity. If it wishes to inspect but is unable to do so within the SLP's schedule, it may not hold up the SLP. The SLP is only required to give the water company specific, advance notice of Testing activities. Again, it is the responsibility of the Water Company to make itself available to monitor any testing and not for the SLP to arrange itself around the availability of the Water Company.

If the Water Company has genuine grounds to request the SLP to stop work and open up the works for inspection, this is at the Water Company's risk if no defect or non-compliance is found. The SLP is entitled to invoice the WC for its reasonable costs which the WC must pay within 28 calendar days.

Outstanding questions

Comments are invited on the balance of obligations in the MWAA between the SLP and Water Company. The Code specifies that without compromising End-User Customer's safety, arrangements drafted by Water Companies pursuant to the Code must be proportionate in relation to the costs and risks faced by the Water 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.

Please suggest amendments to allow these aims to be achieved if you do not consider that the MWAA complies with the Code.

Please specify any changes that you wish to propose to the redress arrangements under the WSG and the MWAA dealing with disputes (see clause 22 and Schedule 5) to ensure that these are a) clear and b) reasonable.

2.4 Minimum information requirements

Changes made following first consultation

While the substance of this document has not changed, a large number of amendments have been made both to clarify and simplify the minimum information requirements. This work has also helped to ensure that there is greater compatibility between this document and the other documents which have been drafted.

The provisions of the document relating to the final mains connection and to service connections are relatively undeveloped. We would expect these to be the subject of an early Change Request to the Code panel.

2.5 Procedures

Changes made following first consultation

The substance of the Procedures has not changed significantly from the first consultation. We have however improved the extent to which the Procedures are harmonised with the other Code documentation and have removed redundant references to asset payments (which will not exist after April 2020 when we expect the new arrangements to come into force).

We view the Procedures as providing a guide to the adoption process which all parties can follow to facilitate the adoption process. It is effectively a “process map”.

As part of the Code documentation, the Procedures will be binding on companies but we recognise that further work is needed to ensure complete alignment between the Procedures document and the other documentation, in particular, the MWAA. When that work has been completed (through the new Code panel), we will be able to make compliance with the Procedures mandatory for the purposes of the MWAA.

2.6 Redress

Changes made following first consultation

The redress procedures are largely unchanged from the original consultation. The focus continues to be on ensuring that in the event of a company’s failure to comply with its obligations, there is an appropriate escalation of the problem within the company to ensure that the problem is resolved as quickly as possible.

2.7 Levels of Service

Changes made following first consultation

There have not been any major changes of principle to the Levels of Services and most measures have remained the same.

The biggest change has been to the “Delivery Date” measure in order to ensure that it is compatible with the requirements of the MWA.

The primary focus is on delivery of a Source of Water for testing. This is a “right-day” metric that needs to be agreed between all parties in Stage 3 of the Procedures. Water Companies are then measured against their ability to deliver that Source of Water.

An additional metric has been added to deal with the permanent Final Connection - “Connect Self-Laid Main (Water Company) S5/1a”. This is a 14 calendar-day metric from the date that bacteriological sampling and pressure tests are passed. It is equivalent to the existing Water UK metric “Permanent mains connection”.

In addition, technical design acceptance is now a “stop the clock” measure to ensure a discussion between the Water Company and the SLP and to allow the Water Company to be in possession of the design for a total of 14 calendar days.

Finally, we have clarified that some of the metrics that can run concurrently when all information is provided. This would apply, for example, to the reviewing of applications and the preparation of a Water Adoption Agreement alongside the technical design acceptance activity.

2.8 Governance

Changes made following first consultation

The substance of the governance procedures has not changed and the proposal remains to have a panel of ten members (five water companies, three SLPs and two developers) with an independent chair. In fact a shadow panel is already in existence and the documentation provides that those already selected for the panel will be its first members once the new regime comes into effect.

We have however taken the opportunity to deal with some of the administrative detail relevant to the panel in an annex to the panel’s terms of reference as this was felt to be more practical than having to go through the full change control process for each change of procedure.

We have also simplified the process for nominating SLP and Developer members of the panel as the process originally proposed was administratively burdensome for no obvious benefit. The existence of the independent chair is considered important in allowing a simpler procedure while ensuring a fair and open nomination process.

2.9 Next Steps

The water companies consider that the changes they have made ensure that the documentation that has been drafted meets the requirements laid down by Ofwat, both in the Code and in response to the first set of consultation documents.

Once we receive comments on the documentation, we will consider which proposed changes will help secure compliance with the requirements of the Code.

As we will be publishing responses, it will be clear whether there remain any objections to the Water Companies' approach to complying with the Code. It is a matter for Ofwat to determine how to resolve any such outstanding objections. Any unfulfilled requests for change can also form the subject of change requests to the panel.

Water UK

27 August 2019