

Information notice

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Amendment of guidance relating to Ofwat's power to specify an infrastructure project

This information notice confirms the changes we have made to our guidance on specification of infrastructure projects.

Background

The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (the Regulations) came into force on 28 June 2013. The Regulations give the Secretary of State or Ofwat the power, in certain circumstances, to specify an infrastructure project in the water or sewerage sectors.

Once specified, the incumbent water or sewerage undertaker is required to put the infrastructure project out to competitive tender, rather than undertaking the infrastructure project itself in the course of its statutory duties. Such specification is by notice in writing (a specification notice).

The Regulations require us to publish guidance we will follow in determining whether or not to exercise our power to specify an infrastructure project; or in determining whether to revoke or vary such a specification notice.

Following consultation, we published guidance in July 2014 to meet this requirement of the Regulations. We will follow this guidance in determining whether to select an infrastructure project as a specified infrastructure project which is required to be put out to competitive tender under the Regulations and whether to revoke or vary a specification notice.

Consultation on proposal to amend guidance

On 26 January 2015 we [consulted](#) for 28 days on our proposal to amend the above guidance to:

- clarify that if the Secretary of State specifies a project as an infrastructure project, we expect that the Secretary of State rather than Ofwat will vary or revoke the specification notice, if required. Similarly, we expect that if Ofwat issues a specification notice, the Secretary of State will leave the decision to vary or revoke that notice to Ofwat (paragraph 3 of the guidance); and
- add an additional section that sets out how we intend to exercise our power to designate a company as an infrastructure

provider or to vary or revoke a designation notice (paragraph 5 of the guidance). This is not statutory guidance – we are not required to publish it. Instead we have chosen to publish this guidance as part of our commitment to good governance. The main issue in deciding to designate will be whether we consider that the entity delivering a specified project should be regulated or unregulated. We are likely to take this decision before the tender process for an infrastructure provider starts.

We received one [response](#) to this consultation.

Action taken

We considered the response received to this consultation. It emphasised the need for specification to be based on a value for money case for customers and asked that it be made clear that we would consult before specifying a project.

The statutory regime requires that the Secretary of State or Ofwat consults before specifying a project. One of the statutory

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water sector in England and Wales.

considerations in deciding whether to specify a project is whether specification will result in better value for money than would otherwise have been the case. So we consider that the statutory regime and the guidance already adequately address the issues raised by the respondent and that no further revisions to the guidance are required as a result of the response received.

We have now finalised the [revised guidance](#) in the same form as it was consulted on.

Next steps

We will follow this revised guidance in future when we need to determine whether to:

- exercise our power to specify an infrastructure project; or
- revoke or vary such a specification notice.

Enquiries

If you have any questions about this information notice, please send them to mailbox@ofwat.gsi.gov.uk.

More information

[Proposal by the Water Services Regulation Authority \(Ofwat\) to amend the Specification Guidance issued by it in July 2014, January 2015](#)

The [response](#) we received to our specification guidance consultation

[The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#)

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Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a leading economic regulator, trusted and respected, challenging ourselves and others to build trust and confidence in water.