



Casework - Adoption Codes Discussion  
Retail Market Opening Programme  
Ofwat  
Centre City Tower  
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**Strategy & Regulation**

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Dear Sir or Madam

**Response to adoption codes discussion paper**

Thank you for the opportunity to respond to your discussion paper on the infrastructure adoption codes that Ofwat is required to issue under the Water Industry Act 1991 ("WIA91") section 51 (water mains and service pipes) and section 104 (sewers, drains or sewage disposal works) as amended by the Water Act 2014 ("WA14"). As requested, I can confirm that our response covers adoption agreements for both water and wastewater infrastructure (including sewage treatment works).

We welcome Ofwat starting this discussion prior to the formal consultation process as this provides a good opportunity to clarify stakeholders' expectations and inform our ongoing engagement with our developer services customers.

We agree with the paper's intention to develop the codes by building on the collaborative work already undertaken in this field.

Our response considers water and wastewater infrastructure adoption separately due to the differences in the processes and agreements for these adoptions. We feel that it is important that these differences are taken into account in developing the codes.

- Water infrastructure is designed up front; is installed by an accredited self-lay operator ("SLO") and is chlorinated, inspected and adopted as soon as connection is made.
- In contrast, self-laid wastewater infrastructure generally does not require detailed design; there is no equivalent SLO accreditation body and the infrastructure is adopted after a maintenance or defect period.

On this basis, we suggest that two codes should be drafted – one for water infrastructure adoptions and one for wastewater infrastructure adoptions.

From our experience, the current processes and agreements in place for future infrastructure adoptions do not generate many issues. Delays can occur in the process if, for example, the

developer is unable to provide all the necessary information and/or as a result of late responses provided during the legal process for wastewater adoptions.

We note that the codes are intended to cover a wide range of scenarios – different sizes and complexity of developments and different types of assets e.g. sewage treatment works vs drains. The benefits of standardising certain aspects of the agreements to streamline the adoption process will need to be balanced against the need for flexibility to cover these different conditions. To do this, there could be a twin track approach to the adoption process as follows:

- standard procedures and agreements could be applied to cases where no legal input is required;<sup>1</sup> and
- the existing bespoke procedures could be applied to complex cases requiring legal input.

We have set out our responses to the ten questions set in the discussion paper in the appendix below.

Yours faithfully



**Samuel Larsen**  
**Regulatory Compliance Manager**

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<sup>1</sup> For wastewater adoptions, such cases could be defined by the criteria given in the in the document 'Sewers for Adoption – A Design and Construction Guide for Developers – Small Developments Version – September 2013' published by WRc.

## Appendix : Detailed response

**Q1) Which parts of the procedures for making an adoption agreement under section 51A or section 104 WIA91 should be included in the code(s)? These might include or differ from those set out in the discussion paper. For each, please explain why and what benefit its inclusion in the code(s) could deliver.**

Section 104 WIA91 (Wastewater infrastructure adoptions). The codes should refer to the procedures set out in the 6<sup>th</sup> edition of the Sewers for Adoption (“SfA6”) or where varied in edition 8 when published. The procedures were dropped in edition 7. While not currently mandatory, these SfA6 procedures cover all the procedures listed in the discussion paper, were developed collaboratively by the water industry and are still generally followed. Similarly, the code(s) should refer to the standards and process given in the Wastewater Treatment Works for Adoption report published by UK Water Industry Research (“UKWIR”).

Section 51A WIA91 (Water infrastructure adoptions). The codes should refer to the Code of Practice for Self-Laying of Water Mains and Services - England and Wales published by the Water Research Council (“WRc CoP”), which defines the stages of the self-lay process from application by the developer/SLO through to adoption by the water company. The WRc CoP is being further developed by WRc and key stakeholders including Thames Water and will cover all the procedures listed in the discussion paper. The revised document is due to be published early next year and may remove the requirement for any company specific addendum, thus making the processes generic across all companies.

**Q2) Which parts of the procedures for making an adoption agreement under section 51A or section 104 WIA91 should not be or are unnecessary to be included in the code(s) and why?**

Section 104 WIA91 (Wastewater infrastructure adoptions). We suggest that the code(s) should not include any procedures not covered in SfA6 or the UKWIR report mentioned in our response to Q1.

Section 51A WIA91 (Water infrastructure adoptions). Section 3.2 page 15 of the discussion paper lists some possible procedures that Ofwat may include in the code(s). The following proposed procedures would not be relevant to water adoptions:

- *“The technical and supporting information the person constructing the new water or sewerage connections must provide with their application.”* It would be impractical for the code(s) to cover information requirements for all types of applications. Some applications require a lot of information to be provided while others do not.
- *“the means by which the parties negotiate the terms and conditions of the agreement , including any terms relating to charges or any security and/or bond requirements”.* This should only apply to wastewater adoptions.

**Q3) Should the code(s) set out a common procedure applicable to all water and sewerage companies, or should it set out key principles that companies' own processes and procedures should comply with? Why?**

Wastewater infrastructure adoptions. We consider that the code(s) should be principles based; referring to existing published procedures given in SfA edition 6 for the reasons given in the response to Q1.

Water infrastructure adoptions. We consider that the code(s) should be principles based; referring to existing published procedures given in the WRc Code of Practice for the reasons given in the response to Q1.

**Q4) If the code(s) were to include details of the procedures to be followed by Ofwat in issuing an order for a water or sewerage company to enter, vary or terminate an adoption agreement, what in particular would it be useful for the code to include?**

Wastewater infrastructure adoptions. It would be useful if the code(s) could cover Ofwat's procedures when, for example, a developer does not complete the adoption process by not making good any defects before the end of the maintenance or defects period. Other developers are not able to connect until the adoption is completed. We currently have to offer the developer the opportunity to remedy the defects but that can cause delays for the other customer.

Water infrastructure adoptions. It would be useful if the code(s) could cover Ofwat's procedures under the scenario of a new appointment and variation ("NAV") agreement breaking down resulting in the incumbent company adopting the infrastructure at a late stage of the process. When this occurs, some of the steps required to safeguard the end user customers may not have been completed prior to the pipes being laid and covered. We have had such a case where we had to adopt the water infrastructure. In this case, rather than request that the pipes be re-laid, we requested trial pits to be dug to allow us to inspect the pipework which minimised any delay to the process and any risk to the customers.

**Q5) To what extent would it be helpful for the code(s) to set out details of what type of works it is or is not appropriate to be done by a person other than the water or sewerage company? Are there particular types of work where such clarification would be beneficial?**

Wastewater infrastructure adoptions. We would welcome clarification on what works are contestable following the 'right to connect' provision under s106 WIA91 as some can be considered non-contestable on operational grounds, for example, connection to a 17m deep manhole.

Water infrastructure adoptions. We consider that clarification would be useful to confirm which work is contestable for suitably accredited parties in relation to carrying out the following activities:

- the connection of a new main to an existing main (spur connection);

- off-site network reinforcement;
- the connection of individual service pipes around the periphery of the new development to a nearby existing main. Currently the two options are for the water company to carry out these connections to the existing main or for the service pipes to be self-laid and connected to a new main within the development boundary.

**Q6) Are there certain terms or conditions that should be mandatory for all water and/or sewerage adoption agreements? Please outline which and why.**

Wastewater infrastructure adoptions. The agreement must include deeds of discharge to private water course as we would not adopt a surface water sewer without provision of an agreement with the riparian owner.

There should be a 'step-in' mechanism in place for an appointed company to intervene to remedy defects where a developer chooses not to complete the adoption process once the maintenance period has finished. Other developers are not able to connect until the adoption is completed. We currently have to offer the developer the opportunity to remedy the defects but that can cause delays for the other customer.

Water infrastructure adoptions. As explained in our response to Q5, where new premises are sited around the periphery of a new development, they may be best served by individual service connections to an existing main. In these cases, the scope of the adoption could be extended to the service connections, if considered contestable. If so, the agreement would need to make provision for any street works and accreditations needed to carry out the works. Similarly terms would be needed for any connection to an existing main.

Regarding the duration of the adoption agreement, terms providing for the commencement and completion of the works and mechanisms for extensions of time would be needed

**Q7) Are there particular areas in which it would be unnecessary or unhelpful for the codes to set out mandatory terms and conditions? Please outline which and why.**

Water and wastewater infrastructure adoptions. We should not have mandatory Service Level Agreements ("SLAs") imposed on all types of agreements as imposing deadlines might interfere with the right to obtain legal advice and for parties to negotiate freely. However, we recognise that there should be a twin track approach which streamlines some adoptions for applications which do not require legal input.

**Q8) Are there certain areas where it would be useful to have standard terms and conditions for adoption agreements, even if they were not mandatory? Please outline which and why.**

Wastewater infrastructure adoptions – For simple cases where legal input is not required for land or property matters, we support having standard agreements with SLAs as given in SfA6 and the UKWIR report on sewage treatment works adoption. There should be the flexibility to step outside these standard agreements where necessary, for example, complex cases requiring legal input.

Water infrastructure adoptions – we support having standard agreements as given in the WRc CoP.

**Q9) Are there particular areas in which it would be unnecessary or unhelpful for the codes to set out standard terms and conditions? Please outline which and why.**

Water and wastewater infrastructure adoptions – as mentioned in our response to Q8, it would be difficult to set standard terms and conditions for complex cases.

**Q10) Are there circumstances in which the code(s) should make different provision for different persons? If so, please outline in what circumstances and why.**

Water and wastewater infrastructure adoptions – we propose that there should be separate codes for water and wastewater adoptions and that a “twin track” approach should be used with separate tracks for simple and complex cases.