

November 2017

Trust in water

# **Code for Adoption Agreements – summary of consultation responses and decision**

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The logo for Ofwat, consisting of the letters 'O', 'f', 'w', 'a', and 't' in a bold, sans-serif font. The letter 'w' is enclosed within a dark blue circle.

## About this document

This document summarises the responses we received to our statutory consultation on the Code for Adoption Agreements which we published on 29 June 2017. It also sets out our consideration of those responses, our final decisions with regards the Code and our next steps.

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## 1. Introduction and executive summary of conclusions

Ofwat is the economic regulator for the water sector in England and Wales. Our shared vision for the water sector is one where customers and wider society have trust and confidence in vital public water and wastewater services.

Providing new water and sewerage infrastructure is one of the areas of the sector where customers in England and Wales can choose their service provider or provide the service themselves rather than having to buy the service from their local appointed water or sewerage company. It is important that developers and self-lay providers (**SLPs**) of infrastructure can have trust and confidence that they can receive the services they want from water and sewerage companies, when they need them and on fair terms. It is also essential that end-user customers served by that infrastructure have trust and confidence that water and sewerage companies will only adopt quality, resilient infrastructure.

In the Water Act 2014 (**WA14**), the UK Government introduced new tools for Ofwat to use to facilitate the provision of new infrastructure connections in the water and sewerage sector and ultimately support house building. In particular, the WA14 placed a new duty on Ofwat to issue statutory codes with respect to adoption agreements. Under sections 51CA and 105ZC of the Water Industry Act 1991 (**WIA91**), Ofwat must issue codes with respect to section 51A agreements (for the adoption of water infrastructure) and section 104 agreements (for the adoption of sewerage infrastructure).

We have considered various options for developing these codes for adoption agreements and their potential impact on different stakeholders. On the one hand, we could issue very detailed and prescriptive codes. On the other, we could issue codes consisting of high level principles, within which the sector itself must develop the detail for delivery. Our final approach strives to strike a balance between these two options.

Our final Code for Adoption Agreements includes:

- a set of over-arching principles which companies must reflect in the development, maintenance and application of the arrangements under the Code;
- minimum information and publication requirements;
- obligations on water and sewerage companies to develop and maintain Sewerage Sector Guidance and Water Sector Guidance (**Sector Guidance**), which set out guidance for the design and construction of water pipes and sewers that will subsequently be adopted by undertakers, and a Model Water Adoption

Agreement and Model Sewerage Adoption Agreement (**Model Adoption Agreements**) in line with the Code principles and a minimum set of requirements;

- obligations on water and sewerage companies to comply with the Sector Guidance and Model Adoption Agreements, only deviating from them when permitted by our Code; and
- governance requirements for the future management of the Sector Guidance and Model Adoption Agreements, including requiring water and sewerage companies to set up panels with equal representation of water and sewerage company representatives and developer service customers.

Before issuing our Code we are required to undertake a statutory consultation. We published our [consultation](#) on the Code for Adoption Agreements on 29 June 2017 and the consultation period ended on 10 August 2017. This was preceded by a [discussion paper](#) in September 2016 and a stakeholder workshop in January 2017.

We received eighteen responses to our consultation from a broad range of groups including water and sewerage companies, SLPs and representative bodies. There was a general consensus that the broad approach that we proposed was a positive move for the sector. However some respondents raised specific concerns. We consider and address these in this document.

Our key conclusions are:

- **Our approach** - We consider that the approach we set out in our consultation remains the most appropriate option. Our approach aims to balance a framework of guiding principles and minimum requirements, with a requirement for the sector to engage closely with its customers to develop the detailed technical guidance documents for adoption agreements. We have decided, on balance, that any Sector Guidance and Model Adoption Agreements we approve should be incorporated by reference into our Code.
- **Procedure for amending the Sector Guidance and Model Adoption Agreements –** Given the above approach, we have made an amendment to the Code to provide that in approving or amending such documents, we will follow the procedures set out in sections 51CB and 105ZD of the Act. These procedures require us to consult relevant people (for example, the Chief Inspector of Drinking Water) before making the Code or approving changes to the Code.
- **Timetable** - We agree with the majority of respondents that it is sensible to delay the timetable for the development of the Sector Guidance in order to allow sufficient time for meaningful engagement with customers. We recognise, however, that there are areas of the Code that could still deliver benefits earlier

on the basis of the sector's current working arrangements for adoption agreements. Our final Code, therefore, takes a staggered approach to implementation from 15 January 2018.

- **Information and publication requirements** – Our Code requires companies to comply with specific information and publication requirements set out in the Code from 15 January 2018. The obligation to comply with the full list of information and publication requirements will apply from the date specified by Ofwat under paragraph B1.4 of our Code.
- **Redress** – Our Code requires companies to develop and implement appropriate redress if a Water or Sewerage Company fails to meet the minimum levels of service. Our Code also requires that, from 2 April 2018, water and sewerage companies must provide customers with appropriate redress if they fail to meet current minimum levels of service that they publically report against.
- **Panel** - We consider our proposal for the sector to set up panels to develop the Sector Guidance and govern any subsequent changes to them, to be appropriate.

## 2. Summary of consultation responses and our response

In our consultation, we asked interested parties the following:

Number	Question
1	Do you agree with our preferred approach in terms of the content and scope of our Code?
2	Do you agree with our proposed code principles and their definitions?
3	Do you think our proposed minimum information and publication requirements are appropriate and sufficient?
4	Do you agree with our proposed approach of requiring companies to develop Sector Guidance and Model Adoption Agreements in consultation with Developer Service Customers, according to a set of minimum requirements?
5	Do you agree with our proposed minimum requirements?
6	Do you agree with our proposed approach to deviations?
7	Do you have any comments on our proposed approach to governing the initial approval of and subsequent changes to the Sector Guidance and Model Adoption Agreements?
8	Do you consider the proposed timeline for submitting the Sector Guidance and Model Adoption Agreements to us for approval to be realistic and achievable? If no, what would you consider to be a suitable timeline?
9	Do you have any comments on assurance the sector will be required to provide to us when submitting the Sector Guidance and Model Adoption Agreements for us for approval?
10	Do you have any comments on our proposed transitional arrangements to enable companies to comply with the Sector Guidance and Model Adoption Agreements?

In the following sections we summarise the key points raised in the consultation responses we received and we set out our decisions on our final position.

## 2.1 The content and scope of our Code

The majority of respondents agreed with our preferred approach in terms of the content and scope of the Code. Some concerns were raised, however, and we respond to these in detail below.

### a. Scope

**Comment:** One respondent set out a number of concerns with our approach, in particular, in relation to the scope of the draft Code. The points raised include:

- i. The provisions of the draft Code extend beyond the provisions which may be included in a code by virtue of section 51CA(2)-(5) WIA91 (and the equivalent sewerage provision) in two respects:
  - o in imposing obligations and a governance process for the making of Sector Guidance and Model Adoption Agreements; and
  - o in imposing requirements as to the provision and publication of information.
- ii. The Model Adoption Agreements should form part of the Code prescribed by Ofwat rather than being developed by the sector and approved by Ofwat.
- iii. Principles included in the Code should be limited to the terms and conditions to be included in the Model Adoption Agreements and should not extend to the arrangements by which the Model Adoption Agreements and Sector Guidance are developed.
- iv. The Code itself is not legally binding on water and sewerage companies. Ofwat has a duty to make a Code, but obligations are only created for companies as and when Ofwat chooses to issue directions founded on the contents of the Code.

**Response:** Taking each of the comments above in turn:

- i. There is nothing in the relevant statutory provisions saying **how** Ofwat should develop the statutory codes. As there are already sector documents in existence and there are already processes in place to revise these documents, our approach has been to build on these processes rather than impose new codes on the sector. We recognise that the obligation on companies to develop Sector Guidance and Model Adoption Agreements, and the governance arrangements for changing those documents, may not be easy to enforce as against individual water and sewerage companies. However, if the sector fails to comply with this obligation, we also have the option of issuing a new code that is detailed and prescriptive.

We consider publication requirements to be an integral part of making provision about procedures for making, varying or terminating Adoption Agreements. We have amended the Code to clarify that the publication requirements are a means of communicating the relevant procedures to customers and potential customers.

- ii. We consider that Ofwat may provide for a process whereby it approves documents that sit outside the Code and requires, in the Code, compliance with those documents. Where the Sector Guidance or Model Adoption Agreements deal with matters set out in sections 51CA or 105ZC WIA91, then a provision in the Code which requires compliance with the Guidance or Model Adoption Agreements is within the scope of section 51CA or 105ZC WIA91 respectively.

Accordingly, we do not consider that it is necessary for the Sector Guidance and Model Adoption Agreements to form part of our Code for us to be able to enforce an obligation in the Code to comply with their terms. However, in this instance, we have decided, on balance, to incorporate any approved Sector Guidance or Model Adoption agreement into the Code by reference although we may revisit this approach in due course. We have therefore amended the Code to provide that in approving or amending such documents, we will follow the procedures set out in sections 51CB and 105ZD of the Act.

- iii. We note the reference to the principles for determining the terms and conditions under section 51CA (2)(f) WIA91 (and the sewerage equivalent). If the principles detailed under the Code go beyond these, we consider this to be legitimate in that we are providing parameters designed to assist the sector in developing the Sector Guidance and Model Adoption Agreements.
- iv. We agree with the respondent that there is no explicit duty placed on companies to comply with a Code made pursuant to Ofwat's duty under section 51CA(1) WIA91. However, section 51CA (8) WIA91 makes it clear that directions issued by Ofwat create an enforceable duty on a company in relation to a failure to comply with the Code. In those circumstances, there is potential enforcement action that may follow a failure to comply with the Code.

**Comment:** One respondent considered that our consultation document did not outline the distortion in the market we are trying to address, nor quantify the expected benefits of the proposed approach. It said that complaints regarding adoption agreements are rare.

**Response:** We do receive complaints about levels of service and information requirements and concerns about how companies are dealing with developers and

SLPs. To this end, we consider there is scope in the sector to improve how adoption agreements are managed (in particular because of the monopoly status of companies). We have not done an impact assessment of the expected benefits as this will not be fully known until the Sector Guidance and Model Adoption Agreements are in place. However, we consider that the consultation did set out the benefits of our preferred approach.

**Comment:** One respondent considered that there should be separate codes issued for water and sewerage as having separate codes would make each Code more accessible to market participants and would obviate the need for an updated code to be made by Ofwat in respect of water, where a change is required only in relation to sewerage (and vice versa).

**Response:** We consider that our Code includes provisions relating to both water and sewerage and that this is sufficient. We also note that we expect the sector to produce separate water and sewerage sector documents.

**Comment:** One respondent considered that section 51CA(2) WIA91 requires our Code to include provisions for the procedures we would follow to determine whether to make an order under sections 51B(4) or 51C(1) WIA91 and the procedures we would follow in connection with varying or terminating an agreement.

**Response:** Sections 51CA and 105ZC WIA91 require us to issue Codes and list various issues that may be included in those Codes. We do not consider that it is mandatory for our Code to deal with each of the issues listed. We will however, consider in the future whether to extend our Code to cover any additional areas.

**Comment:** One respondent considered that the Model Adoption Agreements should be rationalised by making reference to the guidance held within the Code rather than repeated within the agreement itself to avoid the documentation becoming overly cumbersome. A rationalised agreement operating alongside the code itself would simplify the process for new entrants and first time users.

**Response:** We recognise the point raised that it is important that the Model Adoption Agreements do not become overly cumbersome but we consider the minimum requirements for the Model Adoption Agreements to be appropriate. We note that it is for the sector to decide the form that the Model Adoption Agreements will take.

## **b. Approach**

**Comment:** It was noted that a more principles based approach would be a more proportionate approach that aligns more closely with Ofwat's principles based

regulatory model and would remove the need for a code panel. One respondent considered it would allow companies to be more responsive to the needs of their developer customers and would be supported by the existing Water UK measures of service and the proposed developer services measure of experience (**D-MEX**), which will drive improvements in the experience of developers across the country.

It was also noted that a more prescriptive approach would be preferable as the sector will not be able to work together to successfully achieve the collaborative working required for our preferred option (option 4). One respondent also highlighted that we did not outline any of the risks associated with the proposed options.

**Response:** We recognise that a more principles based approach may provide greater flexibility whereas a more prescriptive approach may provide greater certainty as to what to expect. We also recognise the risks associated with both of those approaches such as a more principles based approach may provide less certainty for customers but a more prescriptive approach may be too rigid and not sufficiently encourage innovation. We consider, however, that Option 4 is the best option as it balances moving the sector on from the current position by providing a more detailed framework whilst requiring companies to own customer engagement.

#### **c. Sustainable Urban Drainage Systems (SuDs)**

**Comment:** One respondent sought clarity that whilst pumping stations are adoptable under WIA91, in that they are an accessory to a pipe, SuDS are not considered to be sewers and, thus, are not currently adoptable.

**Response:** We agree with the respondent that pumping stations are accessories under section 219 WIA91 so can be adopted whereas SuDS are not sewers as defined in the WIA91 and are, thus, not currently adoptable. The Code does not, therefore, deal with the adoption of SuDS.

#### **d. Right of appeal to the Competition and Markets Authority (CMA)**

**Comment:** One respondent noted that the Code is not designated under the Water Industry Designated Codes (Appeals to the CMA) Regulations 2017 (SI 2017/447) and, as such, companies will have no right of appeal to the CMA under section 207A WIA91 with regards to our Code. The respondent proposed that the Secretary of State should make regulations designating our Code for the purposes of section 207A WIA91.

**Response:** We consider that this is a matter for the Secretary of State rather than Ofwat.

## **2.2 Code principles**

In our draft Code we set out a number of principles setting out our high level expectations of how water and sewerage companies should be delivering the relevant services. Companies must ensure that the services they deliver with respect to Adoption Agreements comply with our Code principles. Companies must also reflect the principles in the development, maintenance and application of the arrangements under the Code.

There was a general consensus amongst respondents at the proposed principles and the scope of the draft principles. Respondents did provide a number of specific comments on the proposed principles and these are set out, and addressed, in the table below.

Principle	Proposed definition	Respondents' comments	Our response to comments
<b>Customer focused</b>	<p>Arrangements under the Code must balance the interests of water and sewerage companies, customers and end-user customers, and:</p> <ul style="list-style-type: none"> <li>• seek to deliver the services customers need, in the timescales they require;</li> <li>• be customer focused and promote the participation of customers in the development and maintenance of those arrangements;</li> <li>• recognise the different types of customer water and sewerage companies may need to engage with under these arrangements; and</li> <li>• be flexible to opportunities to innovate or provide better service.</li> </ul>	<p>The arrangements in themselves cannot seek to deliver; it is the water and sewerage companies that will deliver the services customers need. The introductory clause should be amended to:</p> <p>“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...’.</p> <p>The Model Adoption Agreements and Sector Guidance have the potential to reduce the ability to be flexible and potentially limit the opportunity to innovate.</p>	<p>We agree that it will be for the water and sewerage companies to deliver the services that customers need and have amended the wording of the principle.</p> <p>The Model Adoption Agreements and Sector Guidance will deliver benefits for customers through greater consistency in approach between companies. However, the Code allows for deviations which should provide the flexibility required and the opportunity for innovation where this benefits customers.</p>
<b>Fair and proportionate</b>	<p>Arrangements under the code must be proportionate in relation to the costs and risks the water or sewerage company faces (and ultimately end-user customers) and those faced by the customer. The arrangements should also be fair and</p>	<p>This principle includes balancing different types of risk. The code should be clear that this is not safety risk – companies should not compromise on end-user safety (e.g. water quality).</p>	<p>We agree with the comments and have added some additional text to the Code to make this clear.</p>

Principle	Proposed definition	Respondents' comments	Our response to comments
	<p>reasonable in terms of who holds the balance of risk.</p> <p>Additionally, the arrangements under the code must:</p> <ul style="list-style-type: none"> <li>• be fit for purpose (and provide for regular review so they remain fit for purpose);</li> <li>• not be unnecessarily complex; and</li> <li>• not unfairly discriminate between customers.</li> </ul>		
<b>Clear, complete and current</b>	<p>Arrangements under the Code must comply with Ofwat's <a href="#">Information Principles</a>.</p>	<p>The information principles should be contained within the Code rather than providing a link to Ofwat's website. Further, the Code should not cross-refer to principles that may be developed outside of the Code. This is particularly important if there is to be no right of appeal afforded to companies in respect of the Code.</p>	<p>We note the concerns raised but we consider adding the information principles, which are currently on the Ofwat website, will add undue detail to the Code. Should we make any amendments to the information principles we will ensure that the sector is fully consulted.</p>
<b>Level playing field</b>	<p>Arrangements under the Code must:</p> <ul style="list-style-type: none"> <li>• ensure a level playing field that enables effective competition where parties can compete to provide new connections services;</li> </ul>	<p>The Code itself cannot ensure or guarantee a level playing field. It is only through water and sewerage companies complying with the arrangements that a level playing field can be ensured.</p>	<p>We agree with the suggested amendments.</p>

Principle	Proposed definition	Respondents' comments	Our response to comments
	<ul style="list-style-type: none"> <li>• minimise the scope of non-contestable services as far as practicable;</li> <li>• require the provision of non-contestable services on an equivalent basis for all relevant parties; and</li> <li>• 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.</li> </ul>	<p>The first bullet point should be amended to - "provide a framework that will enable effective competition where parties can compete with the water or sewerage company to provide new connections services";</p> <p>The second bullet point should be amended to - "minimise as far as practicable the number and type of services and activities that fall within the scope of non-contestable services";</p> <p>The third bullet point should be amended to - "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".</p>	
<b>Efficiency</b>	Arrangements under the Code must promote efficient and effective processes for entering into adoption agreements and to achieve adoption.	The Model Adoption Agreements and Sector Guidance could be used in conjunction with each other rather than repeated, which would lead to a more efficient process.	We consider that the Model Adoption Agreements and the Sector Guidance will be able to be used in conjunction with each other.

Principle	Proposed definition	Respondents' comments	Our response to comments
<b>Predictability and transparency</b>	<p>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.</p> <p>Any changes to the arrangements under the Code (including company-specific practices) should be adequately signposted to customers in advance of the change.</p>	<p>There may be a tension between some of the various principles in the draft Code, particularly between innovation and predictability. To address this, we suggest minor changes to the definitions of the Predictability and Innovation principles. For example, the Innovation definition could be amended as: "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";</p>	<p>We agree with the proposed amendment and have reflected it in the revised Code.</p>
<b>Encourage innovation</b>	<p>Arrangements under this Code should encourage innovation and not unduly prevent opportunities for innovation that could deliver a better service for customers.</p>	<p>We need to balance the prescriptive nature of this proposal while allowing and encouraging innovation in the sector. This should be done in a manner that does not artificially lengthen the process, which could in effect deter innovation as it could be treated as non-standard practice.</p>	<p>We consider the process for deviations does not overly lengthen the process for non-standard practice.</p>
<b>Resilience and sustainability</b>	<p>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'</p>	<p>This principle should be extended to include that the arrangements must have regards to the adoption of quality and resilient infrastructure in general, to ensure water</p>	<p>We consider the current wording addresses these concerns.</p>

<b>Principle</b>	<b>Proposed definition</b>	<b>Respondents' comments</b>	<b>Our response to comments</b>
	sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour.	quality and service performance is maintained for end-user customers, and not only in regards to environmental pressures, population growth and changes to consumer behaviour.	

## 2.3 Companies to develop Sector Guidance and Model Adoption Agreements

In our consultation we set out that our Code will require water and sewerage companies to develop Sector Guidance and Model Adoption Agreements in consultation with their developer service customers.

There was a general agreement amongst respondents with our proposed approach. There were some concerns raised, however, and these are addressed in detail below.

### a. Concerns with our approach

**Comment:** One respondent considered that our approach will allow water companies to write their own rule book, whilst giving the impression they have consulted, which they consider will serve the interests of nobody other than the water companies.

**Response:** Our Code sets out means for ensuring customer engagement happens and is transparent. When submitting a recommendation to us concerning the Sector Guidance and Model Adoption Agreements, each recommendation must set out and provide evidence of whether, and to what extent, customers have been consulted, whether the documents reflect the consensus of opinion and confirmation they have complied with the Code in producing the documents. Where there are differing views being expressed it needs to be set out clearly why one view is being taken over another. We consider this is sufficient to mitigate the risks set out above.

**Comment:** One respondent considered that companies should not be required to develop and then abide by common adoption agreements. They stated that gas and electricity companies do not use harmonised adoption agreements.

**Response:** We consider that our Code is sufficiently flexible to allow for both Model Adoption Agreements and bespoke adoption agreements where there is agreement between the customer and the company.

**Comment:** One water company responding considered that we cannot enforce the obligation to develop the sector documents.

**Response:** We consider this to be an academic issue as the sector is already developing sector documents and has indicated its agreement with this approach. If the sector fails to develop acceptable Sector Guidance and Model Adoption Agreements, Ofwat has the option of issuing a detailed technical code that will take

the place of the Sector Guidance and Model Adoption Agreements. Neither Ofwat nor the sector consider this to be the optimal approach.

#### **b. Amendments to our approach**

**Comment:** One respondent considered that the supply chain should be consulted in the development of the Code to ensure correct standards/products are referenced in the Code prior to publication.

**Response:** We understand that pipe manufacturers provide daily support to the sector (house builders, designers) on the design of drains and sewers and are integral to the process. To this end, we expect the sector to ensure it is sufficiently consulting with its customers before submitting the Sector Guidance and Model Adoption Agreements for approval.

**Comment:** One respondent considered that we should take the lead in the production of the Model Adoption Agreements as this would better recognise the imbalance which exists between the legal resources available to water companies against the expertise which their customers, particularly, SLPs, can readily access.

**Response:** We have recognised the concerns raised around the availability of resources by extending the timetable for the production of the Sector Guidance and Model Adoption Agreements. See [section 2.9](#) for further details.

#### **c. The role of Water UK**

**Comment:** One respondent raised a number of issues with Water UK's role in the development of the Sector Guidance and Model Adoption Agreements. In particular it considered that it gave Water UK (a body which represents the interests of companies) too much control over the process and it considered that Ofwat should instead lead the engagement with the sector on producing new adoption agreements.

The issues raised include:

- Water UK will operate as a protectionist body with an arm's length relationship with stakeholders;
- All its members will want to be directly involved which would make a steering panel very unwieldy;
- It will come up with reasons for wanting more time but not take advantage of a delayed implementation to deliver promises and work up standardised approaches;

- It has a limited understanding of what is important to its members and, as demonstrated by its recent audit of developer standards, this leaves it unable to give the level of assurance customers seek;
- It does not have good working relationships with developer bodies which will compromise the functioning of the proposed panel; and
- It does not recognise the frustrations of WIRS members.

**Response:** We note the concerns raised about the potential role of Water UK. We consider it is for companies to decide how best to coordinate the development of the Sector Guidance and Model Adoption Agreements, which may include support from Water UK. Our Code requires the sector to demonstrate it has engaged its customers in developing the Sector Guidance and Model Adoption Agreements. Further, we will be monitoring progress against the timeline for implementation and we will highlight to the sector if we have concerns the timetable will not be met.

## 2.4 Minimum requirements for the Sector Guidance and Model Adoption Agreements

There was a general agreement amongst respondents with the proposed minimum requirements for the Sector Guidance and the Model Adoption Agreements. Some specific issues were raised and these are covered below.

### a. Inspection and approval of works

**Comment:** One respondent raised a concern that they consider one of the minimum requirements to effectively be a prohibition on water company inspection and approval of works and whilst they understood the reasoning they still have serious reservations regarding it and its implications for customer safety.

**Response:** We do not consider that the minimum requirements prohibit water companies inspecting and approving works.

### b. Service levels

**Comment:** There were a number of comments made regarding the service levels with the central message being that the requirements must set out the minimum levels of service which a customer must receive (rather than just expect to receive) and what the redress will be for failure to meet those levels. That is, paragraph 3.1.3 (a) of our Code should not define the levels of service that a customer can expect to receive but instead the minimum levels of service which a customer must receive and what the redress for failure is.

**Response:** We agree that there should be redress for customers where service levels are not met. We set out in section 3.1.3 (b) of our final Code that we expect the draft Water Sector Guidance and draft Sewerage Sector Guidance, as a minimum, to include the appropriate Customer redress if a Water or Sewerage Company fails to meet the minimum levels of service. Furthermore, we set out in the transitional arrangements (paragraph B1.6 of our final Code) that water and sewerage companies must provide customers with appropriate redress if they fail to meet current minimum levels of service that they publically report against.

### c. Dispute resolution

**Comment:** One respondent said the Sector Guidance should include a dispute resolution process that is well defined, and aligned with established company processes. This will allow complaints to be managed, escalated, and reported on in an effective way without the disproportionate cost of changing companies' systems.

One respondent also said that the draft Code does not specify the form of dispute resolution proposed or the role Ofwat may play in dispute resolution. One of the duties of the panels could be to develop and agree the mediation body or bodies and the mediation process to be followed, including Ofwat's role.

**Response:** We agree that the Sector Guidance should include a dispute resolution process that is well defined and aligned with established company processes. In regards to the role Ofwat may play in dispute resolution, we consider the Code is clear that parties should try and resolve any issues first but nothing prevents either party from referring a dispute over which Ofwat has jurisdiction to us.

#### **d. Suggested additions to our Code**

**Comment:** One respondent considered the level of staff competency for carrying out works should apply to all persons allowed to carry out works, whether water company or other.

**Response:** We agree that the Code should set out the level of competency required for a person whether water company or not and have amended the Code accordingly.

**Comment:** The draft Code provided that the Sector Guidance must include design and construction guidance for all aspects of contestable work (see paragraph 3.1.3(f) of our Code). One respondent considered this should be extended to also cover design and construction guidance for all aspects of non-contestable works to provide transparency and allow companies to allow non-contestable work to become contestable in the future.

**Response:** We do not consider there is sufficient evidence at this stage to incorporate design and construction guidance for non-contestable works as well as contestable works into our Code. We will, however, engage with the sector on this and keep the position under review.

**Comment:** One respondent considered that the Sector Guidance should either set out the standards that are to be adhered to for the work (e.g. design standards, construction standards), or alternatively reference the locations where such standards can be obtained.

**Response:** We agree with this but consider the current wording of section 3.1.3 of our Code makes it clear that this is what is expected.

#### **e. Additional issues**

**Comment:** One respondent questioned whether there are any gaps in the current accreditation arrangements, and asked if there is a need to promote the development of accreditation in areas that are not currently covered. This would be consistent with the principle of minimising the scope of non-contestable services as far as practicable.

**Response:** We recognise that there is currently no accreditation required for sewerage, whereas there is for water, but in such instances we consider that companies can still seek assurances, such as a defect liability period or build requirements. For more information on assurances see [section 3 of this document](#).

**Comment:** One respondent questioned why there would be a schedule of design and technical requirements in the adoption agreement. It considered there must be a clear distinction between a general schedule available to anybody who is interested in pricing the construction of new networks (equivalent to an electrical G81 appendix and design manual), and the approved site specific design with only the latter being within the adoption agreement.

**Response:** Our Code sets out that the Sector Guidance must include design and construction guidance for all aspects of contestable works to be adopted. Our Code also sets out that the Model Adoption Agreements must include a schedule of the design and technical requirements for the contestable works that will be constructed under the agreement and which will be specific to each site. We consider that this arrangement ensures there is clarity in the sector on how contestable works should be designed and constructed whilst also providing additional clarity for individual sites.

**Comment:** One respondent considered that Ofwat should not allow any requirements in adoption agreements that are not specified in standard requisitioning documentation as this would help address the problem where, for SLPs, there are differences between the criteria imposed (particularly on developers) in adoption agreements compared to what is formalised should mains and services be provided by the water company, saying that this discrepancy disadvantages SLPs.

**Response:** We consider that adoption agreements are necessarily different from equivalent requisition documentation because they relate to different services and different ownership of the assets until vesting. We do also consider, however, that the self-lay agreement process should be as straight forward and smooth as possible and our Code should help achieve this.

**Comment:** One respondent considered that section 3.1.2 (d) of our draft Code did not read well and, subsequently, needed clarifying.

**Response:** We recognise that section 3.1.2 (d) did not read well and we have amended that section of our Code accordingly.

## 2.5 Deviations

The proposals we consulted on recognised that there may be circumstances where it is appropriate for water and sewerage companies to move away from delivering in line with the Sector Guidance where their customer agrees to do so and they continue to deliver their adoption agreement in line with the Code's principles. We believe this strikes the right balance between providing greater certainty and consistency for customers, whilst still enabling flexibility for innovation where this benefits customers.

We also set out in our Code where a company may depart from the definition of contestable works and we proposed limiting companies to only taking a narrower view where it is justified by the site-specific circumstances and the company has evidenced that the associated risk to the provision of services to end-user customers is unacceptable.

There was a general agreement amongst respondents with our proposed approach to deviations although there were some issues raised which are covered below.

### a. Retaining flexibility

**Comment:** A number of respondents highlighted the importance of retaining flexibility around agreeing adoption agreements. It was noted that water and sewerage companies should be able to tailor scheme specific adoption agreements to meet the needs of the customer, whilst still complying with the code principles. But also that adoption agreements should allow SLPs and developers to innovate and agree different commercial and operational approaches with companies.

**Response:** We recognise this and consider that our Code allows for this to happen.

**Comment:** One respondent highlighted that the panels, which are set up for considering change proposals to the Sector Guidance and Model Adoption Agreements, could extend their remit to reviewing any company principles/ideas that are outside the Code. A potential sign off procedure that means that the panel are happy that the idea is not detrimental to the SLP/developer/end user.

**Response:** At this stage we do not consider it appropriate for the panels to be reviewing and approving individual deviations from the sector documents. We consider that the proposal that as long as both parties agree to a deviation it can go ahead is sufficient. Furthermore, any deviations must also, as a minimum, still comply with the principles set out in the Code. We also note that if the parties cannot

agree on the terms of an adoption agreement, either party may appeal to us under sections 51B or 105 WIA91.

**Comment:** One respondent noted that the process should be simpler and that a deviation should be able to be accepted by the water company as long as the water company has had adequate information, performance guarantees/data, and maintenance information supplied with the application. Adding additional formal processes and written applications will discourage innovation and a change from the norm.

**Response:** We do not consider that our Code adds any additional formal processes to agreeing deviations. As set out above, if both parties agree to a deviation then it can proceed.

**Comment:** There were a couple of comments about how deviations should be kept to a minimum and only arise in exceptional circumstances. It was suggested that we should take the lead from the electricity sector where discussion and debate specific to the management of deviations was effectively resolved to the extent that it became a minor consideration. It was also noted that deviations could be minimised by using more generic diagrams.

**Response:** We recognise that deviations should be kept to a minimum but we also consider that, as set out above, companies and customers should be allowed a degree of flexibility to enable innovation. Further, the Code sets out that any deviations still have to comply with the principles set out in the Code which mitigates against the risk of deviations not meeting customers' expectations. Customers also have to agree to any deviations. We consider that generic diagrams would aid keeping deviations to a minimum but do not consider we need to set any requirements out in relation to this.

## **b. Reporting deviations**

**Comment:** It was noted that companies should be required to report all occasions where they introduce deviations and there should be a deviations register so they can be effectively audited. This would enable Ofwat to then analyse the data and thereafter provide a better informed Code.

**Response:** The Code sets out that companies are required to report and publish all deviations on either their websites or a central sector website. We consider this sufficient to address the point raised above.

**Comment:** One respondent considered that the annual report setting out any agreed deviations should be limited to the number of deviations and their relevant categories as leaving the scope open may present risks that commercially sensitive information of customers is divulged.

**Response:** We recognise the risk being raised, however, we consider that requirements as set out in the Code do not include the need for any commercially sensitive information to be published.

**Comment:** One respondent considered that the report may be counter-intuitive in that companies that report a low number of deviations may appear to be complying with the code, whereas in reality they may be offering poor service by constraining customers into a one size fits all framework which is not tailored to their needs.

**Response:** We recognise the concerns raised but would highlight that customers can propose deviations to companies where they consider the standard offering is not appropriate. Further, we do not consider there is a direct correlation between a company offering an adoption agreement that complies with the Code and the customer experiencing poor customer service. Where a customer receives poor customer service, the Code sets out the channels for resolving that including redress where customer service levels are not met.

### **c. Additional comments**

**Comment:** One respondent considered that any generic deviations (i.e. for all projects in a water/sewerage company area) should be permitted only if technically justified and costed, and proposed by both water/sewerage company and developer services customers for agreement by Ofwat.

**Response:** As set out above, we consider that the proposal that as long as both parties agree to a deviation it can go ahead is sufficient. We also note that if both parties do not agree that either party could appeal to us.

**Comment:** One respondent considered that Ofwat should follow electricity where each electrical Distribution Network Operator (**DNO**) has a Competition in Connections (**CIC**) manager and any issue which cannot be resolved with operational staff is referred to him or her by the CIC contractor. The CIC manager would give an immediate determination and if the CIC contractor had sufficient grounds they could refer to Ofgem for a determination.

**Response:** We consider the dispute resolution process and appeal right to us to be sufficient.

**Comment:** It was noted that paragraphs 5.2.2 and 5.2.3 of the draft Code seem to duplicate the stated requirements regarding deviations to Model Adoption Agreements but using slightly different words and that it may be possible to combine them into a single paragraph.

**Response:** We agree with the comment and have amended the Code accordingly.

## 2.6 Governance of the Sector Guidance and Model Adoption Agreements

### Ofwat will approve the first set of Sector Guidance and Model Adoption Agreements

Our consultation set out our proposal that the first set of Sector Guidance and Model Adoption Agreements be approved by us. We are maintaining this position in the final Code. Whilst there were some concerns raised by respondents, which we address in more detail below, there was general agreement amongst respondents with the proposed approach.

**Comment:** One concern raised was that the adoption agreements are technical documents that include provisions regarding safety, design and materials and Ofwat may need to engage additional support to review and approve the documents.

**Response:** We recognise that we may need to engage additional technical support to review and approve the documents and, if necessary, we will do so.

**Comment:** There was also a practical comment on who should submit the Sector Guidance and Model Adoption Agreements to Ofwat and whether the views of a panel should be sought first.

**Response:** In terms of how the documents will be submitted, it is for companies to coordinate how they submit the draft Sector Guidance and Model Adoption Agreements to us for approval. Furthermore, while the Code requires that a panel be set up to consider any changes to the sector documents, there is nothing stopping companies from setting up such a panel earlier in the process. To this end, it was noted by respondents that shadow panels might need to be set up to develop the Sector Guidance and Model Adoption Agreements (see section 2.7 of this document for more details).

**Comment:** It was also noted that there needs to be more detail on the process and criteria by which Ofwat would consider these documents and it was proposed that this take the form of guidance.

**Response:** We do not consider we need to issue any additional guidance as to how this process will operate. The documents will be considered and assessed against the requirements set out in the Code.

**Comment:** One respondent asked what will happen if water companies fail to submit the sector documents or if what is presented does not meet Ofwat expectations.

**Response:** If the recommendations do not meet the requirements set out in the Code then we will go back to water companies to set out where we consider they fail to meet the Code's requirements and to require that changes are made to ensure they are compliant with the Code. However, as indicated in section 2.1, we accept that this obligation may be difficult to enforce and we consider that if the sector fails to develop acceptable sector documents we have the option of Ofwat issuing a detailed technical code that will take the place of the Sector Guidance and Model Adoption Agreements. Currently, neither Ofwat nor the sector consider this to be the optimal approach.

### **The sector will provide assurances when submitting the Sector Guidance and Model Adoption Agreements for approval**

We set out in our consultation that when submitting the draft Sector Guidance and Model Adoption Agreements to us for approval, the sector must also submit to us assurances confirming:

- the Sector Guidance and Model Adoption Agreements comply with the Code;
- whether customers have been consulted, providing examples to evidence the extent of their involvement; and
- whether the draft Sector Guidance and Model Adoption Agreements reflect broad consensus of opinion amongst customers and the water companies or sewerage companies as applicable. Where this is not the case the recommendation must set out where those parties have differing views and the reasons for following one view over an alternative view.

We are maintaining the above requirements in our final Code. Whilst there were some concerns raised, which we address in more detail below, there was a general consensus amongst respondents that the assurances are appropriate.

#### **a. The role of Water UK**

**Comment:** It was noted by a respondent that Water UK will, most likely, play a key role in providing the above assurances and there should be guidance on how formal the assurances must be and the type of evidence that would be required to meet the approval requirements.

**Response:** We recognise that Water UK may play a key role in coordinating the above assurances, however, as set out in the Code, it is for the water and sewerage companies to work together to provide recommendations and to assure themselves and us that the recommendations meet the requirements set out in the Code. We do not consider we need to be any more prescriptive as to the form this should take.

## **b. Potential for lack of agreement**

**Comment:** It was noted by one respondent that water and sewerage companies may be in a negotiating position with customers and there may be areas where parties are unable to reach agreement.

**Response:** We set out in the Code that when recommending the documents to us companies must set out whether a recommendation reflects the broad consensus of opinion and, where it does not, the recommendation must set out those differing views and the reasons for following one view over an alternative view. This should address any areas where parties are unable to reach agreement. As Ofwat must approve the final Code, if there is disagreement, Ofwat will decide the content of the Code in respect of that issue.

## **c. Panel commentary**

**Comment:** It was noted that non-water company representatives on each panel should provide their own commentary on what is being submitted to Ofwat for approval.

**Response:** We consider that it is important that non-water company representatives' views are taken account of and we consider that panels being an equal balance of companies and customers should sufficiently mitigate against this risk. Furthermore, where there are differing views these need to be set out including why one view is being taken over another.

## 2.7 The sector to establish panels to govern changes to the Sector Guidance and Model Adoption Agreements

We set out in our consultation that once the first set of Sector Guidance and Model Adoption Agreements have been approved by us that the sector should establish two panels to consider any future changes to those documents. One panel would consider changes to the Water Sector Guidance and Model Water Adoption Agreement and the other panel would consider changes to the Sewerage Sector Guidance and Model Sewerage Adoption Agreement.

The role of the panels will be to consider change approvals and submit change recommendations to us, in accordance with Chapter 3 of the Code. We will consider the panel's recommendations and publish our decision whether to approve or reject the change.

Our consultation stated that each panel will need to be have an equal number of representatives from water companies and developer services customers. Where there is a sector-recognised accreditation scheme the relevant panel must include a representative from the scheme's advisory panel, but their attendance will be advisory only and will not include the ability to vote on change proposals. Having said this, any views from an accreditation scheme representative must be taken account of in any recommendations to us regarding change proposals.

Our final Code retains the need for panels to be established to consider changes to the Sector Guidance and Model Adoption Agreements. Whilst there were some concerns raised, which we address in more detail below, there was a general consensus amongst respondents that the establishment of panels is appropriate.

### a. Concerns with the use of panels

**Comment:** One respondent considered that our consultation document did not provide sufficient detail on the expected benefits of the panels. It noted that the CMA, in its review of the energy market, highlighted the proliferation of industry codes and panels as a factor potentially restricting competition.

**Response:** We consider that the arrangements we are putting in place are reflective of what the sector needs to ensure that there is certainty and fairness for all parties to adoption agreements.

**Comment:** One respondent set out that the development of panels is a costly and resource intensive exercise, adding to the regulatory burden for companies and that to fully understand the requirements, Ofwat should liaise with those parties involved

in the running of the panel currently in place to manage changes to the Wholesale Retail Code (**WRC**) and Market Arrangements Code (**MAC**), plus their supporting technical groups.

**Response:** We recognise that the development of the panels will have resource implications but we consider they are the most appropriate mechanism for the on-going maintenance of the Sector Guidance and Model Adoption Agreements. Given the limited degree of change seen in the sector's existing documents in recent years, we do not expect that the panels will be as resource intensive as those established for the business retail market.

**Comment:** One respondent set out that change recommendations are burdensome, adding to the overall difficulty and cost of the proposed governance.

**Response:** We consider that the Sector Guidance and Model Adoption Agreements must be live documents that are able to adapt as required in the future to remain fit for purpose going forward and that if change recommendations are handled appropriately and proportionately this can mitigate against any risks associated with complexity or cost.

**Comment:** One respondent considered that as time is critical in construction, using panel meetings to resolve issues, will not work, in particular because of the presence of third parties who have no direct involvement in the issue in dispute.

**Response:** We recognise this potential risk, however, the panels will not have a dispute resolution role. The purpose of the panels is to consider changes to the Sector Guidance and Model Adoption Agreements. The dispute resolution process will clearly set out how issues will be resolved in a timely fashion as required by customers in commercial arrangements.

## **b. Panel membership**

**Comment:** A number of respondents commented on our proposals for the panels' membership. They noted that the views of different groups need to be represented (one stated that one SLP in a panel of developers is not acceptable) and the Code needs to be more specific about the membership requirements. The Code sets out that the panel will consist of equal number of voting members from water and sewerage companies and customers but some respondents considered the panels should also include:

- End customers;
- The Drinking Water Inspectorate (**DWI**);

- The Environment Agency (**EA**);
- SLPs; and
- Representatives from smaller scale and individual developers.

**Response:** We consider that equal voting members from water and sewerage companies on the one hand and customers on the other, is a sensible starting point and is a fair representation of the main parties involved in adoption agreements.

### **c. Panel operation**

There were a number of comments from respondents regarding how the panel will operate.

**Comment:** One respondent considered that if all water and sewerage companies are involved the panel will be too large to function. There were also a number of comments requesting that the Code set out more information on how the panel will be formed and what the selection process should be for panel members.

**Response:** As set out above, the Code requires equal voting members from water and sewerage companies and customers but the actual size of the panel will be a consideration the sector will need to consider to ensure a balance of sufficient representation with the practicalities of the panel functioning efficiently.

**Comment:** One respondent considered that panel members should have to represent the views of all companies and relevant customers and not act or vote on the basis of their own organisation's interests.

**Response:** We recognise these concerns but consider that our Code sets out specifically that all recommendations must set out how they have been assessed and must confirm that interested parties have been consulted. We consider this is sufficient to mitigate against the above concerns.

**Comment:** One respondent questioned whether the panels should be national and service specific, regional and service specific, or company specific.

**Response:** The Code sets out that there should be two panels, one to consider changes to the Water Sector Guidance and Model Water Adoption Agreement and one to consider changes to the Sewerage Sector Guidance and Model Sewerage Adoption Agreement. We do not consider we need to be more specific than this.

**Comment:** One respondent questioned what would happen if there is no accreditation scheme representative and what recourse will an accreditation scheme

representative have if they believe that the panel is ignoring advice and acting unwisely, inappropriately or unlawfully.

**Response:** Section 3.8.1 of our Code sets out that when submitting a recommendation on a change proposal, each recommendation must set out in writing whether the recommendation reflects consensus of opinion of panel members. Where the recommendation does not reflect the consensus of opinion the panel must set out the differing views of its members and the reasons for following one view over an alternative view. We have made a further amendment to the Code to provide that if the Scheme Representative does not agree with a recommendation, the views of the Scheme Representative must also be set out (see paragraph 3.9.1 (f) of the Code).

**Comment:** One respondent questioned how a situation where agreement cannot be reached through a panel would be remedied without Ofwat getting directly involved.

**Response:** We recognise the point raised and consider that we would need to get involved and make the final decision.

**Comment:** One respondent considered that work should be allowed to progress where there is under representation from customers or an accreditation scheme representative. Further, another respondent considered that participation from representatives from developer services customers and accreditation schemes' advisory panels cannot be mandated.

**Response:** We have decided to delete the provision that stated that no business could be conducted by the panel unless there was an equal representation of company representatives on the one hand and Customers on the other. We consider it is sufficient to provide that the panels must each comprise an equal number of members from the two categories (companies and customers) and that each panel must agree its own procedures (including quorum).

**Comment:** One respondent set out that there needs to be a mechanism for stakeholders to veto the panel arrangements, and refer issues to Ofwat, if they do not have confidence about what water companies/Water UK set up will work.

**Response:** We consider that if there is a deadlock in setting up the panel, we will need to intervene (probably by amending the Code to be more prescriptive on issues in relation to the panel).

**Comment:** One respondent also set out that there should be two panels. A management panel with a monitoring and oversight role and a panel for specialist groups of practitioners to work up the detail for approval by the management panel.

**Response:** We consider the above proposal is sensible but we also consider that our Code does not need to prescribe this. If the sector considers it needs to set up working groups to inform the work of the panel then the sector can do so.

**Comment:** One respondent asked which department in Ofwat will own adoption agreement related matters.

**Response:** The Market Outcomes and Enforcement Programme will manage any future change proposals and complaints.

## 2.8 Minimum information and publication requirements

Our consultation proposed placing minimum information and publication requirements on water and sewerage companies in relation to the services they provide with respect to adoption agreements. We consider this is vital to ensure developer services customers have access to the information they need to be able to make informed choices and, if they wish to, successfully apply for and enter into adoption agreements, and achieve adoption of self-laid infrastructure.

We set out in our consultation that we are aware that the sector may prefer to make this information available on a central sector website and our code will allow the sector to take this approach if companies wish. We noted that where companies choose to do this the code would require their websites to provide clear and sufficient sign-posting to where the information can be found.

We are maintaining the above approach in our final Code. Whilst there were some concerns raised, which we address in more detail below, there was a general consensus amongst respondents that the approach is appropriate.

### a. Online issues

**Comment:** There were a couple of comments made by respondents regarding the use of online documents. It was noted that the management of updates needs to be carefully managed if online documents are used as there have been problems with a simplified version of Sewers for Adoption being available in Wales which has led to document inconsistency and decisions being based on insufficient information. It was also noted by one respondent that there should be standard search engine terminology as even when information is published by companies it can be difficult to find on their websites.

**Response:** We recognise the above concerns but consider it is for companies to manage the risks presented above in order to ensure they are complying with our Code.

### b. Timeframe for implementation

**Comment:** It was noted that Ofwat should set an early date, no later than 1 February 2018, for the information and publication requirements to be implemented.

**Response:** We set out in our draft Code that information and publication requirements would become effective on the date that the Sector Guidance and Model Adoption Agreements will apply, which may not be earlier than 30 days after Ofwat has

approved the relevant Sector Guidance and Model Adoption Agreements. We consider this to be reasonable, as most of the information and publication requirements relate to those documents. However, we have amended the transitional arrangements to provide that from 15 January 2018, water and sewerage companies must publicise any current procedures for making, varying or terminating adoption agreements (paragraph B1.8).

#### **c. Publishing revisions to the sector documents**

**Comment:** There were a couple of concerns raised around companies publishing revisions to the Sector Guidance. It was considered that publishing the most current versions of these documents should be enough or just publishing summaries of the changes rather than every revision.

**Response:** We have amended the Code so that it now provides that water companies and sewerage companies must clearly publish on their websites or a central sector website the currently used Sector Guidance and Model Adoption Agreements as approved by Ofwat, and must draw attention to any recent revisions.

#### **d. Reporting on service levels**

**Comment:** It was noted that a report that complies with any reporting requirements in respect of service levels should be produced periodically (annually or quarterly). More regular reporting would increase costs for companies for little additional value.

**Response:** The Code does not specify the frequency of the reporting and we consider it is for the companies to decide how best to report on this area.

#### **e. Additional comments**

**Comment:** One respondent considered that there should be publication requirements for developers who feed information into water companies' developer services teams. There should also be a minimum amount of information submitted to also help speed up the process.

**Response:** We recognise the points raised and consider that the sector can consider this in developing the Sector Guidance if it wishes to do so. Section 3.1.3 (c) also sets out that the Water Sector Guidance and Sewerage Sector Guidance must as a minimum include the minimum information requirements of each party at each stage of each procedure.

**Comment:** One respondent considered it may be difficult to prescribe details of where water or sewerage companies require greater input into the design of contestable works beyond that specified in the Sector Guidance. This needs to be dealt with and published by the companies on a case by case basis.

**Response:** We recognise that there may be instances where water or sewerage companies require greater input into the design of contestable works beyond that specified in the Sector Guidance. To this end, our Code specifies that the Model Adoption Agreements must include a schedule of the design and technical requirements for contestable works that will be constructed under the agreement and which will be specific to each site.

**Comment:** One respondent considered any terms used, that are open to interpretation, need defining to ensure that they are applied consistently across the sector. For example the term ‘high risk’ is used for elements of service connections, offsite reinforcement and mains connection that cannot be carried out by SLPs because they may have an impact on existing customers or have a detrimental effect on the network. Therefore, any work that is considered ‘high risk’ will stay as non-contestable. The term high risk, however, has a varied interpretation and, thus, needs to be clearly defined.

**Response:** We recognise the concerns raised about the interpretation of terminology and we consider this is for the sector to consider when it develops the Sector Guidance and Model Adoption Agreements.

## 2.9 Timeline for submitting the Sector Guidance and Model Adoption Agreements for approval and transitional arrangements

### Timeline for submitting the Sector Guidance and Model Adoption Agreements for approval

Our consultation set out our proposal that water and sewerage companies must develop and submit the first set of Sector Guidance and Model Adoption Agreements developed under our Code to us by 1 March 2018. We proposed we would then review and approve them by 1 April 2018 and companies would be required to comply with them no later than 1 May 2018.

#### a. Challenges to meeting the timetable

Five of the respondents considered the proposed timeline to be achievable. However, nine respondents considered the proposed timeline to be challenging. The main concerns put forward around meeting the timetable for submitting the Sector Guidance and Model Adoption Agreements for approval were:

- It will involve significant resources from companies, customers, Water UK and other stakeholders at a time when there are significant other pieces of work being undertaken, including on developer services issues;
- The 2019 price review (**PR19**) will place an increased demand on resources, including companies considering their business plans for the next asset management period, and companies are also developing new connection charges, formulating their water resource management plans and taking into account D-Mex;
- Shadow panels would need to be set up, to ensure the sectoral documentation meets customers' expectations, and it would take some time to identify the necessary individuals for this work and it would need to be assessed how much time those individuals would be able to devote to this work. For more information on our response to Shadow panels see section 2.7 of this document;
- Water companies and customers have been working on reaching consensus on a Model Adoption Agreement for several years via the Water UK self-lay forum and the Water UK working group on SuDS has been ongoing for over a year with a recommendation not yet reached;
- The Code sets out a substantial number of requirements that the Sector Guidance must comply with, some of which will require detailed further analysis, e.g. in relation to the construction process and in respect of the provision for mediation; and

- Water UK is updating Sewers for Adoption 7 to take account of the new SuDS policy, and the timetable for updating that document does not align with the timetable in the Code. A quantitative impact assessment is needed before a decision is made and this will have implications for the proposed timetable.

One respondent also noted that whilst the timetable is challenging it is important that it is achieved before the competitive water connections market can fully function. Further, it was also noted that supporting information should be available now and should not be subject to a deferred timetable.

Respondents put forward a number of suggestions for an alternative timetable. These included:

- Delaying the planned timescale by six months or twelve months;
- Securing the relevant information from respective companies by May 2018, developer service customer consultation taking place after this date and looking to have codes in place by September 2018 or no later than 1 January 2019; and
- Extending the timetable for submitting the sewerage documentation to 1 April 2019.

#### **b. Revised timetable**

Reflecting respondents' concerns we have amended the timetable to stagger the Code's implementation over a longer timeline, bringing key benefits for customers (particularly in relation to publication of information and redress) into effect early based on the sector's current working arrangements, whilst allowing a longer period for water and sewerage companies to have meaningful engagement with their customers to develop the new sector documents. Our revised timetable also reflects the different stages of progress the sector is currently at in reviewing its existing Sector Guidance, with the review of water documents ahead of sewerage documents.

The main change compared to the timetable we consulted on is that the submission of the sector documents to us for approval has been delayed until 1 October 2018 for the Water Sector Guidance and Model Water Adoption Agreement and until 1 April 2019 for the Sewerage Sector Guidance and Model Sewerage Adoption Agreement. We will also be monitoring the sector's progress against the above timetable.

We have also introduced into the timetable that, from 15 January 2018, companies are required to publicise any current procedures for making, varying or terminating adoption agreements and, from 2 April 2018, companies are required to provide

customers with appropriate redress if they fail to meet current minimum levels of service that they publically report against.

The revised timetable is:

Action	Date
Companies are required to publicise the procedures for making, varying or terminating adoption agreements.	15 January 2018
Companies to develop and implement means of redress for existing levels of service for self-lay under existing voluntary levels of service reporting.	2 April 2018
Companies submit Water Sector Guidance and Model Water Adoption Agreement.	1 October 2018
Ofwat approves the Water Sector Guidance and Model Water Adoption Agreement.	31 December 2018*
Companies submit Sewerage Sector Guidance and Model Sewerage Adoption Agreement for approval.	1 April 2019
Water Sector Guidance and Model Water Adoption Agreement are brought into effect for compliance purposes.	1 April 2019*
Ofwat approves the Sewerage Sector Guidance and Model Sewerage Adoption Agreement.	31 July 2019*
Sewerage Sector Guidance and Model Sewerage Adoption Agreement brought into effect for compliance purposes.	31 October 2019*

\* To note, these dates are indicative.

## Transitional arrangements

Our consultation proposed that once the Sector Guidance and Model Adoption Agreements have been approved, companies would have a short time to adjust, with the obligations to comply with those documents coming into effect on a date specified by us, a date which may not be earlier than one month after our approval of the documents. Based on this, the consultation document set out that we anticipate companies would be required to comply with the Sector Guidance and Model Adoption Agreements for all new applications for adoption agreements from no later than 1 May 2018.

Taking into account what we have set out above regarding the timetable, we have now pushed compliance with the Sector Guidance and Model Adoption Agreements back.

Although there was general consensus amongst respondents that the transitional arrangements are appropriate, some of the respondents did not agree with aspects of the proposed transitional arrangements.

#### **c. Disagreement with the approach**

**Comment:** It was noted that it would be unfair as part of the transitional arrangements to utilise the Code to inform any Ofwat decision in respect of appeals to the terms of a water adoption agreement under s51B WIA91 submitted to us prior to the Code's enactment.

**Response:** We acknowledge the point raised and have deleted the relevant provision that was in the draft Code.

#### **d. Timing of the implementation period**

**Comment:** A number of respondents expressed concerns around the timing of the implementation period. The main concern was that the implementation date was too soon after the approval date and would not allow for enough time for companies to put in place the necessary procedures and expertise. It was noted that system changes can take months to arrange as has been demonstrated by the work on build over agreements.

In terms of suggestions for an alternative timetable, a period of three to six months transition was suggested. It was also noted that there would need to be a longer implementation period for the Sewerage Sector Guidance and Model Sewerage Adoption Agreement.

It was also noted that it would not be possible to agree on an appropriate timeframe for the implementation period until the guidance documents and adoption agreements were submitted to Ofwat for approval. This is because the documents will be agreed collaboratively so individual companies will not be in complete control.

It was also noted that Ofwat could adopt a staggered implementation where some elements of the Code are implemented at a later agreed date.

**Response:** We recognise the concerns expressed above but note that the Code does not set a specific date for implementation. Rather, it says that the Sector Guidance

and Model Adoption Agreements will apply to all new pre-development enquiries and applications for water adoption agreements and sewerage adoption agreements from a date specified by Ofwat, which may not be earlier than 30 days after Ofwat has approved the relevant Sector Guidance and Model Adoption Agreements.

We anticipate specifying such a date at a point when we have reviewed the Sector Guidance and Model Adoption Agreements and can take an informed view of the appropriate implementation date. We have, however, set out our indicative timetable above.

#### **e. Retrospective application**

**Comment:** There was a concern at two provisions that were considered would allow retrospective application of the new Sector Guidance and Model Adoption Agreements. One of these has been deleted from the final Code (the approach to appeals by Ofwat - see subsection c. above) and the other allowed a customer to agree with a company to follow the new Sector Guidance and Model Agreement in circumstances where an application for an adoption agreement is submitted before those documents come into effect.

**Response:** We consider that the requirement for consent from both parties alleviates the concern.

### 3. Other comments and issues

#### New Appointments and Variations

We received a small number of comments regarding New Appointments and Variations (**NAV**s).

**Comment:** One respondent considered that our Code should include (or make reference to) an industry standard model for bulk supply agreements with NAVs. It was also noted that bulk supply pipes which connect NAV sites to the incumbent's network are, in some cases, vested in the incumbent using a process broadly similar to an adoption and, as such, the terms of bulk agreements (water and waste) should be within the scope of our Code. One respondent also considered there should be a separate code of practice for the provision of connections to competing NAVs even though many of the principles and provisions in our Code would be common.

**Response:** The Code only applies to agreements under section 51A and section 106 WIA91. It does not apply to bulk supply or bulk discharge agreements under sections 40 or 110A WIA91. On 10 October 2017, we published a [summary of findings and next steps following a study into the market for new appointments and variations](#). We set out that we will consider the merits of introducing a statutory code of practice for bulk supply/discharge agreements. Sections 8 and 9 WA14 amend sections 40 and 110 WIA91 and introduce new sections, sections 40(B) and 110(C), to enable us to issue one or more codes in respect of bulk supply/discharge agreements. These provisions, however, have yet to be commenced by either the UK Government or Welsh Government.

**Comment:** One respondent considered that we should set out expectations on service levels that NAV companies should be able to expect from incumbent water companies.

**Response:** We note that there are already voluntary levels of service for NAVs as part of the levels of service reported by water companies each quarter via Water UK.

#### Other

**Comment:** One respondent commented on the assurance terms in the Model Adoption Agreements, in particular the use of defect liability. It was noted that paragraph 3.4.6 of the Code does not permit defects liability retention payments for water infrastructure unless there is 'robust evidence' that it is required whereas paragraph 3.5.4 neither 'prevents nor requires' this for sewerage infrastructure. The

use of retention payments for work carried out by third parties is common practice in other industries, forming a useful protection against inadequate work from parties who will have no lasting relationship with end users once the contractual work is complete. It would seem useful for this practice to be expected, on a reasonable basis, for work on water infrastructure as well as that for sewerage.

**Response:** We recognise the point raised but note that there is no accreditation for sewerage as there is in water. Having accreditation in water provides an extra layer of assurance that we consider precludes the requirement for anything additional such as a defect liability retention period except in exceptional circumstances. For sewerage, however, companies may wish to seek a defect liability retention period. We do note, however, that sewerage companies can still seek other assurances, such as build requirements, and in doing so take a more risk based approach.

**Comment:** One respondent considered that references to contestable and non-contestable need to be expanded and clarified.

**Response:** We consider this is for companies to do in developing the sector documents with their customers.

**Comment:** One respondent noted that in Appendix A (Definitions and Interpretations) WIRS is linked directly to Lloyd's Register but it is for the water industry to decide on their contractor (which could in the future change) so the wording "operated on behalf of the Lloyd's Register Group" should be deleted.

**Response:** We agree with this proposal and have amended the Code accordingly.

**Comment:** One respondent considered that we should write to each SLP and water company at each step and briefly update them and refer them to where the latest information can be found.

**Response:** We agree that it is important for all relevant parties to be kept informed of the progress of the Code and we consider that once we have published the Code it is for companies to manage its relationships with its stakeholders to ensure this happens. To this end, we note that in producing recommendations on the Sector Guidance and Model Adoption Agreements companies must set out whether companies have been consulted providing examples to evidence the extent of their involvement.

**Comment:** One respondent considered the 'Codes of Practice for the Self-Laying of Water Mains and Services – England and Wales – Edition 3.1 May 2017' should not be included in any proposed adoption agreements as it believes it is anticompetitive.

**Response:** We will only approve future versions of the Sector Guidance that comply with the requirements of the Code and with competition law.

**Comment:** Ofwat should introduce a requirement to report all instances where any form of bond is applied to self-lay work.

**Response:** This is something the sector could consider in finalising the Sector Guidance. We do not consider that there should be reporting to us in this regard.

**Comment:** One respondent noted that more onerous financial conditions could be applied in the new agreements beyond those imposed at present.

**Response:** The Code makes no reference to charging which will be dealt with separately under the Charging Rules.

## 4. Next steps

As set out above, the next steps for the sector include:

- From 15 January 2018, water and sewerage companies must publicise any current procedures for making, varying or terminating adoption agreement.
- From 2 April 2018, water and sewerage companies must provide Customers with appropriate redress if they fail to meet minimum levels of service that they publically report against.
- By 1 October 2018, Water Companies must develop and submit the Water Sector Guidance and Model Water Adoption Agreement to Ofwat for review and approval; and
- By 1 April 2019, Sewerage Companies must develop and submit the Sewerage Sector Guidance and Model Sewerage Adoption Agreement to Ofwat for review and approval.

As set above, we will be monitoring progress against the timeline for implementation and we will highlight to the sector if we have concerns the timetable will not be met.