



Code for Adoption Agreements Consultation

Strategy & Regulation

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Dear Sir/Madam

Consultation on the Code for Adoptions Agreement – Thames Water response

Thank you for consulting with us. Our response to each of the consultation questions is set out below. In our responses we have used the relevant technical terms, as defined in the draft Code and consultation.

1) Do you agree with our preferred approach in terms of the content and scope of our Code? Please explain your answer.

We welcome the proposed approach as it strikes the right balance between being unduly prescriptive and too light-touch. It allows a degree of flexibility and recognises the value of building on existing documents and processes, such as the Self Lay Code of Practice and Sewers for Adoption.

For clarity, as we understand it, pumping stations are part of a “pipe” as an accessory and are thus adoptable under the Water Industry Act 1991. However, Sustainable Urban Drainage Schemes (“SUDS”) are not considered to be sewers and are not currently adoptable. We would appreciate clarification that SUDS are out of scope of this Code.

In some cases, Bulk Supply pipes which connect NAV sites to the incumbent’s network are vested in the undertaker using a process broadly similar to an adoption. It would be helpful to have clarification whether the terms of Bulk Agreements (for water and waste) are within the scope of this Code.

2) Do you agree with our proposed Code principles and their definitions? Please explain your answer.

We believe that the Code’s proposed principles are reasonable and appropriate.

We note that, on some occasions, 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”*.

3) Do you think our proposed minimum information and publication requirements are appropriate and sufficient?

We believe that the proposed publication requirements align with the needs of the Customer.

We fully support the need to be open and transparent and we are keen that the new annual reports specified by requirement 4.1.1 (k) of the draft code are as helpful as possible. With this in mind, we note that reports setting out any agreed deviations from the Sectoral Guidance Documents or the Model Adoption Agreements may provide a counter-intuitive incentive. For example, 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 adoption customers into a one size fits all framework which is not tailored to their needs. It may be prudent, therefore, to test and refine the format of the first few reports before commencing publication.

4) Do you agree with our proposed approach of requiring companies to develop Sector Documents and Model Adoption Agreements in consultation with Developer Services Customers, according to a set of minimum requirements?

The draft Code requires that two panels (one for water and one for waste) are set up as part of the governance process to maintain the Sector Guidance Documents and Model Adoption Agreements. The draft Code describes the requisite membership (i.e. the membership should comprise Customers and proactive representatives from the water companies), and we felt it would be helpful if the final version of the Code also included the process for selecting these representatives.

We suggest that these panels are set up as soon as possible to push forward the development of the Sector Guidance Documents and Model Adoption Agreements, and to produce the recommendation to Ofwat to approve them. Once the initial documents are in place, the same panels can maintain the documents on an ongoing basis as set out in the current draft Code.

5) Do you agree with our proposed minimum requirements? Please explain your answer.

We agree with the minimum requirements proposed for these Sector Guidance Documents and Model Adoption Agreements.

We agree that the draft Sector Guidance Documents should include a dispute resolution process but have the following comments:

- To avoid unnecessary duplication, the complaints process should be 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.
- The draft Code does not specify the form of mediation proposed or the role Ofwat may play in dispute resolution. We suggest that 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.

6) Do you agree with our proposed approach to deviations? Please explain your answer.

The draft Code stipulates that any deviations from the Sector Guidance Documents or the Model Adoption Agreements should only be permitted by written agreement with the Customer, setting out the reasons for the deviation. Any deviations from the model agreement must also comply with the Code's principles. We agree with this approach in principle but the practicality of its application will only become apparent once the Code is in place.

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 – it may be possible to combine them into a single paragraph.

7) Do you have any comments on our proposed approach to governing the initial approval of and subsequent changes to the Sector Documents and Model Adoption Agreements?

The Code does not specify who would present the draft Sector Guidance Documents and Model Adoption Agreements to Ofwat for approval. In our response to Question 4, we suggested that the two governance panels described in section 3.7 of the draft Code should be established at an early stage, to lead the development of the Sector Guidance Documents and Model Adoption Agreements and also to provide Ofwat with the recommendation for approval of these Documents and Agreements. In addition, it would be helpful if the final version of the Code provided guidance on how the panel members would be selected.

We would like to play an active role in developing the Sector Guidance Documents and Model Adoption Agreements. We would be happy to put forward representatives to be considered for panel membership.

8) Do you consider the proposed timeline for submitting the Sector Documents and Model Adoption Agreements to us for approval to be realistic and achievable? If not, what would you consider to be a suitable timeline?

The challenges involved in developing the draft documents and agreements involving sufficient consultation across numerous interested parties in order to reach a broad consensus should not be underestimated. The water companies and Customers have

been working on reaching consensus over a Model Adoption Agreement for several years via the Water UK self-lay forum.

The draft Code's deadline for the submission of the draft documents for approval to Ofwat is 1 March 2018, but allows for this to be extended. We suggest that the panels should consider the proposed programme carefully and request an extension if it is necessary to achieve the overall objectives of the Code.

9) Do you have any comments on the assurances the sector will be required to provide to us when submitting Sector Documents and Model Adoption Agreements to us for approval?

The assurance terms are appropriate in our view.

10) Do you have any comments on our proposed transitional arrangements to enable companies to comply with the Sector Documents and Model Adoption Agreements

The draft Codes states that the Sector Guidance Documents and Model Adoption Agreements must be applied at a date set by Ofwat not earlier than 30 days after Ofwat's approval of the documents. At this stage, without knowing what these Documents and Agreements contain, it is difficult to comment on the practicability of the proposed transition arrangements.

Paragraphs B1.4 and B1.5 could allow retrospective application of the new Sector Guidance Documents and Model Adoption Agreements. This may pose significant issues if the Code related guidance and agreements are materially different to the historical position.

There are a few detailed drafting points related to the draft Code's Appendix B (Transitional arrangements). Specifically:

- Appendix B, paragraphs B1.4 and B1.6 refer to paragraph A1.4. We think these references should point to paragraph B1.3.
- Appendix B, paragraph B1.6 refers to paragraph 3.9 regarding compliance with information and publication requirements. We think this should refer to paragraph 4 .

Please do not hesitate to contact me if you have any queries about our response.

Yours faithfully



Colm Gibson
Head of Economic Regulation