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Trust in water

Draft Charging Rules for New Connection Services (English Undertakers) for consultation

Change History

Date of issue	Modification relative to previous issue
October 2018 for consultation	Proposed to make the June 2018 changes permanent. Changes relative to the 16 October 2018 version are marked in red.
June 2018	Temporary urgent amendment to definition of network reinforcement to ensure that infrastructure charges could be levied regardless of the method by which developer services are procured.
December 2017	First issue

WATER SERVICES REGULATION AUTHORITY

WATER INDUSTRY ACT 1991, SECTIONS 51CD, 105ZF AND 144ZA

Charging Rules for New Connection Services (English Undertakers)

Introduction

1. These rules are issued by the Water Services Regulation Authority under sections 51CD, 105ZF and 144ZA of the Water Industry Act 1991.
2. These rules have effect in relation to charges imposed on or after 1 April 2018 by water undertakers and sewerage undertakers whose areas are wholly or mainly in England.
3. For the avoidance of doubt, these rules do not apply to a relevant undertaker in relation to any:
 - a) request for a supply of water for non-domestic purposes to which section 55 of the Water Industry Act 1991 applies;
 - b) application for a consent to discharge trade effluent from any trade premises under section 119 of the Water Industry Act 1991;
 - c) request made by a water supply licensee for the connection of premises to a water undertaker's supply system, or other steps in respect of that system, to which section 66A of the Water Industry Act 1991 applies;
 - d) request made by a sewerage licensee for the connection of drains or sewers of premises to a sewerage undertaker's sewerage system, or other steps in respect of that system, to which section 117A of the Water Industry Act 1991 applies;
 - e) charges that may be imposed by a water undertaker under an agreement to provide one or more water undertakers with a supply of water in bulk; or
 - f) charges that may be imposed by a sewerage undertaker under an agreement to permit a main connection into its sewerage system by one or more sewerage undertakers.
4. The rules are supplementary to statutory provisions that apply to relevant undertakers under any enactment, or instrument made thereunder (including the conditions of their appointments). In the event of any conflict between the rules and any statutory provision, the latter shall prevail.

Interpretation

5. Unless the context otherwise requires, in these rules:

- a) **“Asset Payment”** means:
 - i. in relation to a section 51A agreement with a water undertaker, the amount described in section 51CD(3) of the Water Industry Act 1991; and
 - ii. in relation to a section 104 agreement with a sewerage undertaker, the amount described in section 105ZF(3) of the Water Industry Act 1991.

- b) **“Charging Arrangements”** means a document setting out the charges, Income Offsets and Asset Payments, and/or the methodologies for calculating those, applied by the water or sewerage undertaker in accordance with these rules.

- c) **“Charging Year”** means a calendar year running from 1 April in a given year to 31 March in the following year.

- d) **“Communication Pipe”** means any part of a Service Pipe which a water undertaker could be, or have been, required to lay under section 46 of the Water Industry Act 1991.

- e) **“Connection Charges”** has the meaning given by paragraph 31 below.

- f) **“Contestable Work”** means work or services that either the relevant undertaker or persons other than the relevant undertaker may do or provide.

- g) **“Developer”** means any person or business which is responsible for a Development.

- h) **“Development”** means premises on which there are buildings, or on which there will be buildings when proposals made by any person for the erection of any buildings are carried out, and which require connection with, and/or modification of, existing water or sewerage infrastructure.

- i) **“Diversion Charges”** has the meaning given by paragraph 42 below.

- j) **“Fixed Charges”** mean charges set for a given Charging Year which are fixed in amount or which are calculated by reference to a predetermined methodology set out in the undertaker’s Charging Arrangements, the

application of which allows calculation at the outset of the total amount owing in that Charging Year in respect of the charges in question. Such charges are to be fixed for a Charging Year, as defined above.

For the avoidance of doubt, and subject to the above, undertakers may impose Fixed Charges by reference to a unit measurement (for example, per mega-litre). Furthermore, undertakers may offer more than one Fixed Charge in charging for a service provided in accordance with the present rules (for example, by differentiating between different geographic areas).

- k) “**Income Offset**” means a sum of money offset against the charges that would otherwise be applied for the provision of a Sewer or Water Main in recognition of revenue likely to be received by the relevant undertaker in future years for the provision of:
- i. supplies of water to premises connected to the new Water Main; or
 - ii. sewerage services to premises connected to the new Sewer.

and “**Income Offsetting**” shall be construed accordingly.

- l) “**Lateral Drain**” means (a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or (b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 of the Water Industry Act 1991 above or in an agreement made under section 104 of this Act.
- m) “**Network Reinforcement**” refers to work other than Site Specific Work, as defined below, to provide or modify such other:
- i. Water Mains and such tanks, service reservoirs and pumping stations, or
 - ii. Sewers and such pumping stations

as is necessary in consequence of the Site Specific installation or connection of Water Mains, Service Pipes, Public Sewers and Lateral Drains pursuant to **an agreement with, or a duty imposed on the undertaker by owed under the Water Industry Act 1991 to, a person other than a relevant undertaker, whether by including a requisition (under sections 41(1), 98(1) or 98(1A)), under an agreement for adoption (under sections 51A or 104), under a section 66D of or a section 117E agreement,** pursuant

to section 45(1) (Duty to make connections with main) or in accordance with another duty imposed by the Act, or in consequence of the exercise of rights under section 106(1) (Right to communicate with public sewers). It also includes the additional capacity in any earlier **Water Main** ~~water main~~ or **Sewer** ~~sewer~~ that falls to be used in consequence of the provision or connection of a new **Water Main** ~~main~~ or **Sewer** ~~sewer~~.

- n) **“New Appointee”** means a company holding an appointment as a relevant undertaker where the conditions of that appointment limit the charges that can be fixed under a charges scheme by reference to the charges fixed by one or more other relevant undertakers.
- o) **“Non-contestable Work”** means work or services that only the relevant undertaker (or an agent acting on their behalf) can do or provide.
- p) **“Public Sewer”** means a sewer for the time being vested in a sewerage undertaker, whether under the Water Act 1989, the Water Industry Act 1991 or otherwise.
- q) **“Requisition Charges”** has the meaning given by paragraph 23 below.
- r) **“Service Pipe”** means so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to any premises as — (a) is or is to be subject to water pressure from that main; or (b) would be so subject but for the closing of some valve, and includes part of any service pipe.
- s) **“Sewer”** includes all sewers and drains (not being drains within the meaning given by section 219(1) of the Water Industry Act 1991) which are used for the drainage of buildings and yards appurtenant to buildings. This definition includes tunnels or conduits which serve as such a pipe and any accessories for such a pipe.
- t) **“Site Specific”** refers to work on, or the provision of, water or sewerage structures or facilities located on a Development as well as work to provide and connect a requested Water Main, Sewer, Communication Pipe or Lateral Drain on, to or in the immediate vicinity of, the Development and **“Site Specific Work”** shall be construed accordingly. It does not refer to costs or work required as part of **Network Reinforcement** as defined above.

- u) “**Small Company**” means a New Appointee ~~or Cholderton and District Water Company Limited.~~
 - v) “**Undertaker**” means a water undertaker or sewerage undertaker.
 - w) “**Water Main**” means any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker or licensed water supplier for the purpose of making a general supply of water available to customers or potential customers of the undertaker or water supply licensee, as distinct from for the purpose of providing a supply to particular customers. This definition includes tunnels or conduits which serve as a pipe and any accessories for the pipe.
6. Unless the contrary intention appears, words and expressions used in these rules have the same meaning as in any provision of the Water Industry Act 1991.

Consultation

7. Undertakers must determine what types of charges covered by these rules may or may not be imposed, and the amount of such charges, in accordance with the principle that changes to charges covered by these rules should only be made after proportionate, timely and effective consultation with groups of persons likely to be significantly affected by the proposed Charging Arrangements (or their representatives) and any other persons the undertakers consider it appropriate to consult.

Publication and Transparency

8. Relevant undertakers must publish charges developed under these rules in a single document (the Charging Arrangements). The Charging Arrangements must be published on the undertaker’s website and in any other manner the undertaker considers appropriate for the purpose of bringing the Charging Arrangements to the attention of persons likely to be affected by it.
9. The maximum amount of any charge that may be imposed by an undertaker under the provisions of the Water Industry Act 1991 covered by these rules shall be the amount set out in, or calculated in accordance with, the Charging Arrangements published by that undertaker. For the avoidance of doubt, the charges and charging methodologies set out in the Charging Arrangements must therefore include any

relevant miscellaneous and ancillary costs such as assessment, inspection, design, legal and supervision charges that the undertaker is entitled to recover, unless there is a different legal basis for the recovery of such costs.

10. The Charging Arrangements must be published no later than two months before the period in relation to which they have effect. Charging Arrangements must be published at least once in every year from 2018 onwards.
11. The Charging Arrangements must explain how each charge has been calculated or derived. Where an undertaker determines the applicable charges other than by Fixed Charges, the methodology for the calculation of such charges must be explained clearly in the Charging Arrangements.
12. The Charging Arrangements are to be written and presented in a clear and accessible manner, which takes due account of the varying levels of expertise of all Developers or other customers who may rely on the Charging Arrangements. Undertakers should consider publishing worked examples where this could aid customers' understanding.
13. Charges must be published with such additional information or explanation as is necessary to make clear what services are covered by each charge.
14. Undertakers must publish the charges covered by these rules in such a way that a Developer or other customer can confidently work out a reasonable estimate of the charges payable if they know the relevant parameters of a Development.
15. The Charging Arrangements must identify which charges are associated with Contestable Work and Non-contestable Work.
16. Undertakers must provide a reasonable choice of times and methods of payment of the charges and set these out in the Charging Arrangements.

Small companies

17. These rules apply to a Small Company subject to the following provisions:
 - a) a Small Company is not required to publish one or more of the charges or Asset Payments covered by these rules (or a methodology for calculating them) where it would be unreasonable to expect the company to do so (having had regard to the number of requests for the

relevant services that the company would reasonably expect to receive);

- b) the charges imposed, or Asset Payments made, by a Small Company under the provisions of the Water Industry Act 1991 covered by these rules must be calculated in accordance with the principles and requirements set out in these rules whether or not they are published in Charging Arrangements and this includes, where relevant, requirements to provide the option of upfront Fixed Charges;
- c) paragraph 9 of these rules does not restrict the maximum amount of a charge imposed by a Small Company if Charging Arrangements published by that company do not include relevant charges or charging methodologies;
- d) paragraph 10 of these rules does not apply to a Small Company – instead, a Small Company must publish any Charging Arrangements no later than five weeks before the period in relation to which they have effect; and
- e) for the avoidance of doubt, this paragraph does not exempt a Small Company from the requirement in paragraph 46 of these rules to clearly set out in its Charging Arrangements requirements for security in relation to any charges to be applied.

General charging principles

18. Relevant undertakers must determine what types of charges may or may not be imposed and the amount of any charges that may be imposed in accordance with the principle that charges covered by these rules should reflect:
- (a) fairness and affordability;
 - (b) environmental protection;
 - (c) stability and predictability; and
 - (d) transparency and customer-focused service.

Principles for Determining the Nature and Extent of All Charges Covered by these Rules

19. In setting charges in accordance with the present rules, undertakers should take reasonable steps to ensure that the present balance of charges between Developers and other customers prior to the implementation of these rules is broadly maintained. An undertaker may only depart from this general requirement where (and to the extent that) this is rendered necessary by circumstances providing clear objective justification for doing so. Any such justification must be clearly identified in any Charging Arrangements prepared pursuant to these rules.
20. Consistent principles and approaches must be applied to the calculation of charges and when they are payable for different classes of customer. For the avoidance of doubt, this includes the calculation of charges and when they are payable for Non-contestable Work, whether or not a person other than the undertaker is carrying out Contestable Work.
21. Charges (including any Income Offsets), any Asset Payments and arrangements for when they are each payable must be set in accordance with the principle that they should promote effective competition for Contestable Work.
22. For the avoidance of doubt, in charges covered by these rules undertakers may recover reasonable administrative expenses and other overheads incurred in discharging any rights or obligations under the relevant provisions of the Water Industry Act 1991.

Charges for the Requisition of Water Mains and Public Sewers

23. Each undertaker shall set out in its Charging Arrangements charges that will be imposed by that undertaker for work carried out by it in accordance with the duties imposed by section 41(1) (provision of requisitioned Water Main) and section 98(1) (provision of requisitioned public sewer) of the Water Industry Act 1991 (together, "**Requisition Charges**").
24. These charges are concerned with the cost to the undertaker of providing Site Specific infrastructure necessary for the provision of a Water Main and/or Public Sewer.
25. In relation to Requisition Charges, an undertaker:
 - a) must provide for the option of upfront Fixed Charges in respect of any work carried out by the undertaker; and

- b) may also provide for other alternative methods for calculating charges but, where it does so, each alternative method must be explained clearly in the Charging Arrangements.
- 26. Requisition Charges must relate to the costs of providing the requisitioned Water Main and/or Public Sewer. Such charges may not include any amount for Network Reinforcement costs.
- 27. Any Requisition Charges imposed by an undertaker:
 - a) must relate only to Site Specific Work carried out and costs incurred by the undertaker in order to meet its duties under sections 41(1) or 98(1) of the Water Industry Act 1991; and
 - b) must not relate to work needed or desired to modify or enhance existing network infrastructure in order to address pre-existing deficiencies or to enhance network flexibility, in capacity or capability, unrelated to requirements associated with the requisition.
- 28. Where an undertaker provides a Water Main or Public Sewer pursuant to a requisition and, in so doing, decides to increase the capacity of pipes or other infrastructure beyond that which is needed to meet the undertaker's duty under section 41(1) or section 98(1) of the Water Industry Act 1991, the costs of this work shall, if this increases the costs of the work, be apportioned so that the person making the requisition only pays costs which are in proportion to the particular capacity required by his or her requisition.
- 29. In setting Requisition Charges an undertaker may (but is not required to) provide for an Income Offset.
- 30. As regards the methodology for the calculation of Income Offsetting arrangements:
 - a) Each undertaker has discretion as to the methodology to be applied to calculate an Income Offset. Such methodology must, however, be clearly explained in the applicable Charging Arrangements;
 - b) In addition as regards Water Mains, the methodology for the calculation of any Income Offset applied in respect of requisitioning charges must be equivalent to the methodology applied in calculating any Asset Payment an undertaker may make in respect of the adoption of Water Mains and

- c) Nothing in these rules prevents an undertaker from providing for Income Offsetting arrangements in relation to the requisition of Public Sewers if it does not make any Asset Payments in respect of the adoption of Sewers. But if the undertaker does make Asset Payments in respect of the adoption of Sewers or Lateral Drains then the methodology for the calculation of any Income Offset applied in respect of Requisition Charges must be equivalent to the methodology applied in calculating any such Asset Payment.

Charges for the Provision of Lateral Drains, the Connection of Water Mains and Communications with Public Sewers and for Ancillary Works

- 31. Each undertaker shall set out in its Charging Arrangements charges that will be imposed by that undertaker for work carried out by it in accordance with the duties (or rights) created by the following provisions of the Water Industry Act 1991: section 45(1) (connection with Water Main); section 46(1) (ancillary works for purposes of making a domestic connection); section 98(1A) (provision of lateral drains); section 101B (construction of lateral drains following construction of a public sewer) or section 107(1) (right of undertakers to make communication with Public Sewer) (together, “**Connection Charges**”).
- 32. In relation to Connection Charges an undertaker:
 - a) must provide for the option of upfront Fixed Charges in respect of any work carried out by the undertaker; and
 - b) may also provide for other alternative methods for calculating charges but, where it does so, each alternative method must be explained clearly in the Charging Arrangements.
- 33. Any Connection Charges imposed by an undertaker must relate only to Site Specific Work carried out and costs incurred by the undertaker pursuant to sections 45(1), 46(1), 98(1A), 101B or 107(1) of the Water Industry Act 1991.
- 34. Undertakers shall not provide for Income Offsets in setting Connection Charges.

Charges and Asset Payments in respect of an Agreement under Section 51A or 104 of the Water Industry Act 1991

35. Each undertaker shall set out in the applicable Charging Arrangements the charges to be imposed and the Asset Payments, if any, to be made in respect of an agreement under section 51A or section 104 of the Water Industry Act 1991.
36. These charges are concerned with the cost of Site Specific Work necessary as part of the adoption or connection of a Water Main, Communication Pipe, Public Sewer and/or Lateral Drain. Such charges may not include any amount for Network Reinforcement costs.
37. Any charges imposed by an undertaker in respect of an agreement under section 51A or section 104 of the Water Industry Act 1991:
 - a) must relate only to Site Specific Work carried out and costs incurred by the undertaker in order to meet its duties under such an agreement; and
 - b) must not relate to work needed or desired to modify or enhance existing network infrastructure in order to address pre-existing deficiencies, in capacity or capability, unrelated to requirements associated with the agreement.
38. Insofar as section 51A agreements are concerned, water undertakers shall provide for Asset Payments where the undertaker calculates the requisition charge for a Water Main to include an Income Offsetting arrangement.
39. Insofar as section 104 agreements are concerned, sewerage undertakers may provide for Asset Payments for the adoption of a Sewer.
40. Where an undertaker provides for Asset Payments in respect of the adoption of a Water Main pursuant to an agreement under section 51A of the Water Industry Act 1991, or the adoption of a Sewer pursuant to an agreement under section 104 of the Water Industry Act 1991, the calculation of any Asset Payment must be equivalent to the methodology applied in calculating an Income Offset applied in respect of Requisition Charges.
41. Undertakers shall not provide for Asset Payments for the adoption of a Communication Pipe or Lateral Drain.

Charges for Diversions of Pipes and other Apparatus under Section 185 of the Water Industry Act 1991

42. Each undertaker must set out in its Charging Arrangements its method(s) for calculating the charges imposed by that undertaker pursuant to section 185(5) of the Water Industry Act 1991 (“**Diversions Charges**”). In relation to Diversions Charges an undertaker:
- a) may provide for the option of upfront Fixed Charges in respect of any work carried out by the undertaker; and
 - b) may also provide for other alternative methods of calculating charges but, where it does so, each alternative method must be explained clearly in the Charging Arrangements.
43. Charges levied pursuant to section 185(5) must be calculated by reference to the principle that the undertaker is only entitled to recover costs reasonably incurred as a result of complying with the duty imposed by section 185(1) of the Water Industry Act 1991.

Security/Deposit Arrangements

44. An undertaker is allowed to require security prior to commencing work, whether in the form of a sum deposited with the undertaker or otherwise:
- a) under section 42(1)(b), 47(2)(a), 99(1)(b), 101B(3A), 107(3)(b)(ii) or 185(4);
or
 - b) for the purposes of any charges imposed under an agreement under section 51A or section 104 of the Water Industry Act 1991.
45. The type and amount of security should not be unduly onerous, taking into account the risk to be borne by the undertaker in carrying out the work in question. Where undertakers require security, the type and amount of security and the payment of interest on the security should reflect the general charging principles set out in paragraph 18.
46. The undertaker must clearly set out requirements for security in relation to any charges to be applied in its Charging Arrangements.

Exception from requirements to provide upfront Fixed Charges

47. Undertakers are not required to provide for the option of upfront Fixed Charges in accordance with paragraphs 25 (Requisition Charges) of these rules, or to comply with paragraph 14, where, and to the extent that, it would be unreasonable to expect an undertaker to do so (having had regard to the practicality of setting a cost-reflective upfront Fixed Charge and the benefit to customers of producing such a charge).
48. Where paragraph 47 applies, an undertaker must set out, and explain clearly, in its Charging Arrangements the alternative method or methods that will apply for calculating charges.

Annex: Information requirements

A1. Each undertaker should provide to the Water Services Regulation Authority an assurance statement from its Board of Directors and publish its statement no later than the time of publication of their Charging Arrangements:

- i. confirming that the company complies with its obligations relating to these Charging Rules;
- ii. confirming that the company has appropriate systems and processes in place to make sure that the information contained in the charges scheme, and the additional information covered by this annex is accurate; and
- iii. explaining how the present balance of charges between Developers and other customers is broadly maintained.

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

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