

# Code for Adoption Agreements

## Water sector documents: Change proposal (Ref 005)

<b>Modification proposal</b>	Appendix G to the water sector guidance: Levels of service: Change of metric definition (S4/1)
<b>Independent Water Adoption Panel Recommendation</b>	The Panel recommended approving the change proposal
<b>Decision</b>	Ofwat has approved this change proposal
<b>Publication date</b>	23/03/2022
<b>Implementation date</b>	01/04/2022

## Background

Fair Water Connections (**FWC**) submitted this change proposal on 26 July 2021 to the Independent Water Adoption Panel (**the Panel**), with the Panel publishing the proposal on its website on the same day. The function of the Panel is to consider change proposals to the [water sector guidance and model water adoption agreement](#) which apply to companies operating wholly or mainly in England. These documents were developed by companies as required by the [Code for Adoption Agreements \(the Code\)](#) and came into effect in January 2021. A change proposal is defined in the Code as a proposed change to the sector guidance or the model adoption agreements.

FWC has raised a concern with the current wording of one of the levels of service metrics set out in Appendix G to the water sector guidance. Water companies must comply with the levels of service metrics in the performance of activities related to the delivery of self-lay schemes. Specifically, FWC has requested a change be made to self-lay performance metric (**SLPM**) S4/1 (source of water delivery date). When a self-lay provider (**SLP**) constructs new water assets, it is required to undertake water quality testing in order to demonstrate that the assets do not contaminate the water supply before the water company will adopt the assets. In order for a SLP to undertake the necessary water quality testing, it requires a source of water to be provided by the water company. SLPM S4/1 currently requires the water

company to provide a source of water on a date agreed between the SLP and the water company to allow the SLP to undertake this testing. However, it does not make it clear that, should the cause of any sampling water quality failures be traced back to incoming water quality issues, the water company that supplies the water carries the responsibility for additional disinfection and sampling and that this would be considered to be a failure to meet SLPM S4/1. FWC has therefore requested a change be made to SLPM S4/1. Specifically, FWC has requested a change be made to self-lay performance metric (**SLPM**) S4/1 (source of water delivery date). FWC has also requested that several associated changes are made to the accompanying water sector guidance document that it considers to be necessary in order to facilitate the proposed change to SLPM S4/1.

The Panel considered the change proposal at its meetings on 27 July 2021, 12 October 2021 and 7 December 2021. Following discussion at the first meeting, the Panel decided that it required further information and discussion in order to finalise its recommendation. On 25 October 2021, Ofwat confirmed that it would extend the deadline as requested for the Panel to provide its recommendation on the Proposal until 5 January 2022. On 5 January 2022, the Panel provided its recommendation to accept the proposed changes to the water sector guidance and the levels of service document.

## The change proposal

FWC has requested a change be made to SLPM S4/1 (source of water delivery date). This level of service metric currently reads:

“Right day metric – agreed date when the Water Company will provide the Source of Water for testing purposes, contractually binding in the Water Adoption Agreement.”

The accompanying notes explain:

“Water Company performance measured on a right day basis against the agreed date written into the Water Adoption Agreement. The interval between the receipt of a complete, signed Water Adoption Agreement and the Delivery Date is subject to a minimum of 28 calendar days. If the valid signed Water Adoption Agreement is returned later than 28 calendar days prior to the Delivery Date, then this will move the Delivery Category 2 030920 Water UK Appendix G-3 Date to 28 calendar days after receipt of the signed Water Adoption Agreement.”

FWC has requested a change because, in its view, the former Self-Lay Code of Practice made it clear that should the cause of any sampling water quality failures be traced back to incoming water quality issues, that water company carries responsibility for additional disinfection and sampling. FWC stated that this aspect of the former Self-Lay Code of Practice has not been included in the water sector guidance documents. FWC considers that, should a situation arise where the incoming water supply is found to be the source of a water

quality test being failed, it is beneficial to SLPs for the water sector guidance documents to be clear that the responsibility for resolving such a failure should lie with the water company supplying the water.

FWC has therefore proposed the following change to SLPM S4/1 which has been highlighted in red text:

“Right day metric – agreed date when the Water Company will provide the Source of Water for testing purposes **with a supply that satisfies water quality requirements**, contractually binding in the Water Adoption Agreement.”

FWC has also requested that similar changes are made to the water sector guidance to ensure that the guidance set out in this document is consistent with the proposed change to the levels of service metrics set out in Appendix G. Specifically, FWC requested the following additional text be added to this document which has been highlighted in red:

#### Section 4 Procedures

“4.1.3 A key innovation of the new arrangements is the commitment of Water Companies to provide a Source of Water for testing purposes **with a supply that satisfies water quality requirements** within an agreed period or within a minimum of 42 days of the initial application. This will entail the Water Company working at risk until such time as the WAA is entered into. Water Companies may introduce payments in their Charging Arrangements to reimburse them for abortive costs where a WAA is never entered into. Water Companies will in their application forms specify if they require such reimbursement.”

#### Appendix A – Defined Terms

**Delivery Date** – “is the date specified in Schedule 1 of the WAA for the provision of a viable Source of Water connection **with a supply that satisfies water quality requirements** for Testing, being not less than twenty-eight (28) calendar days from the Day the Water Company receives the signed WAA, or if that date is not a Day, on the next Day.” and

**Source of Water Connection** – “a source of water **which satisfies water quality requirements** made available to the SLP for the purpose of Testing.

### Consultation and assessment

In considering the Proposal, the Panel has:

- discussed the Proposal at three meetings;

- sought feedback from the Water UK Lawyers' Network and New Connections Committee on the Proposal; and
- obtained external legal advice on the legal implications of the proposal on the rest of the Code documentation.

Ofwat has consulted with the Drinking Water Inspectorate (**DWI**) about this change proposal. The DWI did not raise any concerns with the proposed change.

## Panel recommendation

On 5 January 2022, the Panel recommended to Ofwat, by unanimous decision, that we approve the change proposal. The Panel has recommended making the changes as set out in FWC's change proposal and had not proposed any alternative wording or additional changes. In reaching its decision, the Panel stated that it had taken into account the following issues:

- The onus is on water undertakers to carry out mains testing and accordingly there is scope for this point to be clarified in the Code documentation;
- From its consultation with the Water UK Lawyers' Network and New Connections Committee, it does not appear to the Panel that this is a widespread issue. However, the Panel considers that it may have a disproportionate effect on smaller SLPs, who are less able to absorb the costs of testing; and
- Overall, the Panel considers that the clarification proposed would be useful in some cases and would ensure better clarity in the Code documentation.

The Panel considers that the proposal does not appear to cause any legal issues for the rest of the mode water adoption agreement.

## Our decision and reasons

We have considered the above issues, and all the supporting documentation provided to us by the Panel, and have decided to approve the change proposal. The purpose of SLPM S4/1 is to measure the performance of a water company in providing a source of water for testing purposes by the date agreed between a water company and a SLP. If the source of water that is provided is itself unable to meet water quality requirements<sup>1</sup> or is the cause for such tests to be failed, for almost all practical purposes it is not materially different from failing to provide a water supply at all by the agreed date. As a result, it is reasonable that this would be considered under the water sector guidance documents to be a failure of the water company to meet this level of service metric.

We consider that making the changes recommended by the Panel is aligned with the Code principles, in particular the principles to be fair and proportionate. It is in the interests of

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<sup>1</sup> Requirements are set out in the Water Supply (Water Quality) Regulations 2016

customers (SLPs) that water companies should be responsible for ensuring their source of water meets water quality requirements. In addition, this change is supported by the efficiency principle, as it clarifies responsibilities and should reduce any risk of delay or disagreement for this reason.

Taking into account both the Code principles and the recommendation by the Panel, we have decided to make the changes to both the metric definition for SLPM 4/1 and the water sector guidance document as set out earlier in this document in red text.

## **Decision notice**

In accordance with paragraph 3.9.4 of the Code Ofwat approves this Change Proposal.

**Emily Bulman**  
**Director, Markets and Charging**