

March 2022

# **Decision under section 12A of the Water Industry Act 1991 to modify condition C of English water companies' licences**

**Ofwat**

## About this document

This document summarises the reasons for our decision to modify condition C of the Instrument of Appointment (**licence**) of each water company wholly or mainly in England (**English companies**), under section 12A of the Water Industry Act 1991. We [consulted on our proposal in January 2022](#). This document also sets out responses to that consultation and our decisions in the light of the responses we received.

The companies whose licences we have decided to modify are:

Anglian Water Services Limited	Severn Trent Water Limited	Sutton and East Surrey Water plc
Affinity Water Limited	South East Water Limited	Thames Water Limited
Bristol Water plc	South Staffordshire Water plc	United Utilities Water Limited
Northumbrian Water Limited	Southern Water Limited	Wessex Water Services Limited
Portsmouth Water Limited	South West Water Limited	Yorkshire Water Services Limited

This decision does not apply to the licences of companies whose areas are wholly or mainly in Wales as the legislative changes amending the charging regime have not yet been brought in by the Welsh Government, and for the time being condition C still applies in its entirety to those companies.

The modification to each English company's licence has effect from midnight on 31 March 2022.

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## 1. Summary of our decision

### 1.1 Licence condition C – Infrastructure charges

Each water company's licence includes a series of conditions setting out obligations which apply to its regulated activities as an appointed water company. Licence condition C relates to setting infrastructure charges.

On 1 April 2018, a new charging regime for developer services was introduced for English companies. As part of this change to the charging regime, we modified the licences of the English companies to remove licence condition C, but with transitional provisions intended to allow connections made under agreements made before 1 April 2018 (**Legacy Agreements**) to be charged for under the old charging arrangements. Our intention was to remove condition C entirely at a later date once the Legacy Agreements had been completed and the condition was no longer needed.

### 1.2 The problem we are addressing

The aim of the transitional process provided by condition C was to allow the new charging regime to come into effect without disrupting Legacy Agreements that had been made between a water company and its customers to provide new connection services. However, the wording of the transitional process in paragraph 16.2 of condition C may result in it applying to the provision of new connections in circumstances that were not intended. Specifically, the limit set out in condition C continues to apply whenever any infrastructure charge is imposed in relation to a new connection made to a water main or sewer that was charged for under the old charging regime, even if it was not a connection provided for or connected with a Legacy Agreement. This was not the intention of the transitional process.

The current wording of condition C has the potential to have a material and unintended impact on the infrastructure charges set by several water companies. The results of this unintended consequence would adversely impact the charges being set for customers and could lead to charges that are less fair and less cost reflective. Following our consultation, we have therefore decided to modify the licences of the English companies to remove this issue.

## 1.3 The modification and its effect

The solution upon which we consulted is to remove condition C entirely. We consider that condition C is not providing any additional customer protection above that which is provided by the existing charging rules and the incentives placed on water companies, such as the Developer Services Measure of Experience (D-MeX).<sup>1</sup>

The effect of this modification will be that the cap imposed by condition C on the level of infrastructure charges no longer applies to any infrastructure charges imposed by English companies. The level of infrastructure charges will be solely regulated by the requirements of the charging rules.

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<sup>1</sup> [Customer and developer services experience - Ofwat.](#)

## 2. Summary of consultation responses and our decision

We received responses from twelve English companies, the Consumer Council for Water (CCW) and Barratt Homes. The twelve companies are Affinity Water, Anglian Water, Bristol Water, Northumbrian Water, Portsmouth Water, Southern Water, South East Water, South West Water, Sutton and East Surrey Water, Thames Water, United Utilities and Yorkshire Water. We have published the responses on [our website](#).

CCW and all water companies supported our proposal to remove licence condition C and to reduce the time between making the modification and the modification taking effect; Barratt Homes made one specific comment, as outlined below.

CCW raised a point about the relevant multiplier calculation, which is an alternative approach used by companies to set infrastructure charges for specific types of premises based on the number of water-using fixtures and fittings in a property and is set out licence condition C. CCW suggested the removal of licence condition C might mean some water companies would use different methods of calculating relevant multipliers. We do not think that this is the case because companies already have flexibility to move away from relevant multipliers save for those connections for which the condition C cap applied. Water companies are tending to still use the relevant multipliers, it is a standard approach used by them and familiar to developer customers, and the formula is part of British Standards guidance for domestic plumbing.

Barratt Homes asked for clarification on the potential for retrospective application of infrastructure charges. We explained in our consultation paper that for developments agreed post-2018, infrastructure charges are set by the companies with reference to our charging rules (rather than licence condition C). For developments agreed pre-2018 and for which infrastructure charges have not yet been levied, companies are required by our charging rules to set charges under our principles including fairness, predictability and transparency. Companies are also required to take reasonable steps to ensure that the balance between contributions to costs by developers and other customers prior to 1 April 2018 is broadly maintained. The removal of the limit on infrastructure charges provided by condition C would not require the English companies to charge customers with legacy agreements the same infrastructure charges as customers that requested a developer service after 2018.

Given the support from respondents to our consultation, we have decided to proceed with the modification and to remove condition C from the licences of the English companies with effect from midnight on 31 March 2022.

### 3. Date when the licence modification takes effect

Following a consultation on a proposal to modify the licence of a water company under section 12A of the WIA91, having considered any representations (and unless the Secretary of State has directed us not to), we may decide to modify the licence and we must give notice of that decision, stating the date at which the modification will have effect. Under s12A, that date must usually be not less than 56 days from the date of the decision and during that period the companies whose licences are affected (as well as any person whose functions include representing these companies, or the Consumer Council for Water) may appeal against our decision to make the modification to the Competition and Markets Authority ([CMA](#)).

However, section 12B provides Ofwat with the power to reduce the period between the decision and the taking effect of the modification where:

- we consider it necessary or expedient for the modification to have effect more quickly, and
- where we have in our original consultation stated
  - the date from which the proposed modification should have effect,
  - our reasons for proposing the earlier effective date and
  - why it is our view that this earlier effective date would not have a material adverse effect on any person holding an appointment as an undertaker or a licensee.

We followed this approach in our [January consultation](#). We proposed that this licence modification should have effect before 1 April 2022 to provide the certainty that these companies will need to set their charges in the 2022-23 charging year.

Given the support from respondents to this approach, we have decided, consistent with the date specified in our consultation, that the licence modifications shall take effect at midnight on 31 March 2022, 14 days from the date of the publication of this decision.

We are aware that the CMA has not yet published its guidance setting out how it will process appeals against a decision to modify an English company's licence. However, this does not prevent any English company from making such an appeal as they would still have the right to do so even before the guidance has been issued. No English company has indicated that they intend to make such an appeal.

**Ofwat (The Water Services Regulation Authority)  
is a non-ministerial government department.  
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Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA  
Phone: 0121 644 7500

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