

August 2022

# Consultation on proposed revision of the Code for Adoption Agreements

Ofwat

## About this document

This is a consultation on our proposal to issue a revised version of the [Code for Adoption Agreements](#) (**the Code**). Adoption agreements are the agreements between a water company and another party to adopt new water or wastewater infrastructure after it has been constructed, usually as part of a new development.

The Code applies to water and sewerage companies that operate wholly or mainly in England. It requires companies to develop model adoption agreements as well as sector guidance setting out standard procedures for entering into, varying and terminating those adoption agreements. When a proposal is made to change the sector guidance or the model adoption agreements, an independent panel reviews the requests and makes a recommendation to us on whether the proposed change should be implemented. We are proposing to increase the amount of time that the panel has in which to make this recommendation from three months to four months to better reflect the practicalities of making this recommendation and the administrative burdens that are placed on the panel.

## Responding to this consultation

We invite the water and sewerage companies, and other relevant stakeholders, to comment on our proposed revised version of the Code by **21 September 2022**. Please email your responses to [codeforadoption@ofwat.gov.uk](mailto:codeforadoption@ofwat.gov.uk).

Subject to our consideration of any representations received in response to this consultation, we propose to issue a revised version of the Code with coming into effect from **21 October 2022**.

We intend to publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk). Subject to the following, by providing a response to this consultation you are deemed to consent to its publication. If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed and provide a redacted version of your response, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

In relation to personal data, you have the right to object to our publication of the personal information that you disclose to us in submitting your response (for example, your name or contact details). If you do not want us to publish specific personal information that would

enable you to be identified, our [Privacy Policy](#) explains the basis on which you can object to its processing and provides further information on how we process personal data.

In addition to our ability to disclose information pursuant to the WIA91, information provided in response to this consultation, including personal data, may be published or disclosed in accordance with legislation on access to information – primarily the Freedom of Information Act 2000 (**FoIA**), the Environmental Information Regulations 2004 (**EIR**) and applicable data protection laws.

Please be aware that, under the FoIA and the EIR, there are statutory Codes of Practice which deal, among other things, with obligations of confidence. If we receive a request for disclosure of information which you have asked us not to disclose, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

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# 1. The Code for Adoption Agreements

The Code sets a framework of overarching principles which companies must have regard to when carrying out work under the Code and places obligations on companies to work with customers (including developers and self-lay providers) and other stakeholders to develop, agree and maintain sector guidance (setting out the processes by which parties can enter into adoption agreements) and model adoption agreements (collectively, the **Sector Documents**). The Code sets out the minimum requirements for the Sector Documents, including information and publication requirements; when deviations from them may be permitted; and governance arrangements, which include the sector convening governance panels to consider future changes to the sector documents.

The Code makes provision for governance panels whose function is to consider, and make recommendations to Ofwat, on change proposals to the Sector Documents. There are two panels – one for the [water](#) Sector Documents and one for the [sewerage](#) Sector Documents (**the Panels**). These Panels consist of representatives of both water and sewerage companies and other parties to adoption agreements. The Panels must consider proposed changes to the water and sewerage Sector Documents following the procedures set out in sections 3.8 and 3.9 of the Code and make recommendations to us on whether the proposed changes should be made.

Under sections 51CA(10) and 105ZC(9) of the Water Industry Act 1991 (**WIA91**) Ofwat is able to review the Code and issue a revised Code, subject to the procedural requirements set out in sections 51CB and 105ZD of the WIA91. This includes a requirement for us to prepare a draft of the proposed revised Code and consult the relevant persons about it. A draft version of the proposed revised version of the Code is attached in Appendix 1.<sup>1</sup>

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<sup>1</sup> We have also taken the opportunity to make some minor spelling and grammatical changes. These changes are marked in red text and do not change the meaning or the requirements of the Code.

## 2. The problem we are seeking to address

Paragraph 3.9.2 of the Code sets the maximum time by which the Panels must make a recommendation to us on a proposed change to the Sector Documents, as follows:

“3.9.2 Each panel must submit their recommendations to Ofwat no later than 3 calendar months after publishing the relevant Change Proposal in accordance with paragraph 3.8.11(b).”

The Panels have contacted us to raise a concern with this requirement. The Panels have told us that to make a recommendation on a typical change proposal, they would like to consider it at two panel meetings. The first meeting allows them to decide what consultation, or necessary advice, is needed to inform their recommendation. The second meeting allows them to consider the results of the consultation and the additional information gathered to make the recommendation. The Panels also note that, in practice, due to the requirement to consult on each change proposal, the time available for the relevant Panel to make its decision, once it has the information it requires, is less than three months.

The current requirement for the Panels to make a recommendation to Ofwat within three months of a change proposal being published would require the Panels to meet almost monthly to have two Panel meetings within this time. Given the number of change proposals that have been submitted to each Panel to date, meeting this frequently would be excessive.

In practice, the current requirements of section 3.9.2 have resulted in the Panels not always being able to make a recommendation on change proposals within the required three-month timeframe. Instead, the Panels have needed to seek extensions to this timeframe under paragraph 1.4 of the Code, placing an additional administrative burden on both the Panels and Ofwat.

### 3. Our proposed solution

The Panels have requested that paragraph 3.9.2 of the Code be modified to provide the Panels with four months in which to submit their recommendations to us. To support this proposed change, we have also asked the Panels to consider updating Appendix 1 of their terms of references to confirm that they will meet every two months to ensure that all but the most complex change proposals are processed within this four-month period.

We consider that a balance is needed between allowing the Panels to have sufficient time to properly assess and consult on the proposed changes to the Sector Documents, and the need for the changes to be processed within a reasonable timeframe to address any issues that stakeholders may identify with the Sector Documents.

Since July 2021, there has been approximately one change proposal submitted to the Panels per month. As the Code and the Sector Documents are relatively new, we expect that this frequency of change proposals is likely to reduce over time as issues within the initial versions of the Sector Documents are identified and addressed through the change proposal system. As a result, the requirement for the Panels to consult on and make a recommendation to Ofwat on each change proposal within three months of publication may be disproportionate and unduly burdensome on the Panels.

We recognise that it is to the benefit of stakeholders for the process of assessing change proposals to the Sector Documents to be fair, thorough, reliable and to happen within a reasonable time frame. As a result, some stakeholders may consider that extending the time for the Panels to assess change proposals and make their recommendations to Ofwat is not reasonable. However, under the current approach, the Panels have not always been able to meet the requirement to assess, consult and make a recommendation on each change proposal within three months, leading to uncertainty over the time in which our decisions on change proposals will be made.

As a result, we consider that extending the time frame for the Panels to assess change requests from three months to four months will allow the Panels to meet twice within the required time and provides a reasonable balance between the needs of stakeholders and the administrative burden placed on the Panels to fulfil their duties to assess, consult, and make a recommendation to Ofwat on each change proposal.

We are therefore asking for stakeholder views on our proposal to modify section 3.9.2 to read:

“3.9.2 Each panel must submit their recommendations to Ofwat no later than 4 calendar months after publishing the relevant Change Proposal in accordance with paragraph 3.8.11(b).”

## 4. Next steps

We welcome feedback to our consultation by **21 September 2022**.

We will consider all the responses we receive and, subject to considering any confidentiality requests, we aim to publish all the responses we receive to this consultation.

If we decide to issue a revised Code, we will publish it on our website, and it will come into effect from **21 October 2022**.

**Ofwat (The Water Services Regulation Authority)  
is a non-ministerial government department.  
We regulate the water sector in England and Wales.**

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