

April 2024

Decision under sections 12A and 13 of the Water Industry Act 1991 to modify Condition B of water companies' licences

About this document

This document sets out the decision of the Water Services Regulation Authority (**Ofwat**) to modify the definition of "Excluded Charges" in Condition B: Charges in the Instruments of Appointment (**licences**) of the 16 largest appointed water companies¹ in England and Wales, collectively referred to as 'water companies' or 'companies' in this document. It also includes the effect of the modifications and the reasons for our decision.

The modifications were made under:

- section 12A of the Water Industry Act 1991 (**WIA91**), for water companies whose areas are wholly or mainly in England (**English water companies**); and
- section 13 of the WIA91, for water companies whose areas are wholly or mainly in Wales (**Welsh water companies**).

We published a [statutory consultation in August 2023](#). This document also sets out the responses to that consultation and how we have taken account of them in making our decision.

The modification to each company's licence has effect from 12 June 2024.

¹ For the purpose of this document, a reference to a water company or a company means a company holding an appointment as a water undertaker and/or a sewerage undertaker under the Water Industry Act 1991. A reference to a wastewater company means a company holding an appointment as a sewerage undertaker.

Contents

1. Introduction	3
2. Consultation responses and our decisions	5
3. The modifications, their effect and the reasons for our decision to make them	8

1. Introduction

Developer services describes the activities delivered to connect new houses and businesses to the water and/or wastewater network.

Developer services can be broken down into site-specific and network reinforcement work. Site-specific work includes new connections, water main and sewer requisitions, and diversions under section 185 of the WIA91 ([section 185 diversions](#)). Network reinforcement includes the provision or upgrading of network assets to supply new customers with no net deterioration of existing levels of service.

Network reinforcement work is mostly delivered by the incumbent company. But site-specific work is mostly contestable and can be provided by the incumbent, a new appointee, or a selflay provider ([SLP](#)). SLPs and new appointees may provide faster, more responsive services and lower prices than incumbents.² They can also sometimes provide developer services across utilities, reducing coordination issues.³

At our 2019 price review ([PR19](#)), developer services revenue was included within the water and wastewater network plus price controls, with the aim of driving cost efficiencies and preventing companies from overcharging new connection customers. For our 2024 price review ([PR24](#)) we are making several changes to our approach to facilitate the development of competition in the developer services market. This includes removing regulation where it is no longer required and focusing regulation in areas where it will provide the most benefits to developer services customers.

In summary, in relation to developer services revenue the [PR24 Final Methodology](#) set out our decisions⁴ that for the 2025–2030 period:

- We will remove wastewater site-specific developer services from the wastewater network plus price control.
- For English water companies, water site-specific developer services will be removed from the water network plus price control, but they will still be subject to our charging rules.⁵
- For Welsh water companies, water site-specific developer services will remain in the water network plus price control because competition is less widespread, and we do not have powers to establish charging rules to protect developer services customers.

² Ofwat, '[Review of incumbent company support for effective markets](#)', August 2020, pp. 30–31.

³ Ofwat, '[Review of incumbent company support for effective markets](#)', August 2020, pp. 30–31.

⁴ Ofwat, '[Creating tomorrow, together: Our methodology for PR24, Appendix 3: Developer services](#)', December 2022.

⁵ The exception is section 185 diversions, which will remain in the water network plus price control as they are not currently contested.

- Network reinforcement remains in the water and wastewater network plus controls at PR24 as it is not currently contested and is more difficult to separate from other company activities.

The licence modifications set out in this document implement those decisions.

Non-section 185 diversions

At PR19, we removed diversions that were not requested under section 185 of the WIA91 from price controls. These are:

- diversions requested under the New Roads and Street Works Act 1991, where legislation restricts the amount companies can charge to the end customer of around 82% of costs; and
- other non-section 185 diversions, such as those required for High Speed 2.

In the [PR24 Final Methodology](#) we set out our decision that non-section 185 diversions (water and wastewater) would be within price controls for the 2025–30 period as part of third-party services. This does not require a licence modification because the relevant Excluded Charge in the definition of "Excluded Charges" in Condition B says that it only applies in relation to the period from 1 April 2020 to 31 March 2025.

2. Consultation responses and our decisions

We published a [statutory consultation in August 2023](#). We received consultation responses from 14 of the 16 water companies for whom the licence modifications were proposed and Independent Water Networks (IWNL). We set out consultation responses and how we have taken account of them in making our decision below.

We received general support for the proposed licence modifications, with some suggestions for changes, and both Welsh water companies (Dŵr Cymru and Hafren Dyfrdwy) consented to the modifications for the purposes of section 13 of the WIA91.

Anglian Water does not agree that all the activities selected are suitable for moving outside of price controls in their entirety. Specifically, Anglian Water has concerns about excluding from price controls the revenues and costs associated with the installation of public lateral drains, in accordance with section 101B of the WIA91, to connect premises to first time mains sewerage schemes that a wastewater company is required to provide under section 101A. Such first time mains sewerage schemes are provided in circumstances where existing private arrangements (such as septic tanks or cess pits) are adversely affecting the environment or amenity, or are likely to do so. Anglian Water considers that schemes would be made financially and operationally unviable (unless the Environment Agency compelled participation) if the costs of providing public lateral drains could no longer be subsidised from bills paid by the generality of customers. The costs of providing a lateral drain would normally be paid by an owner or occupier asking for their premises to be connected to a public sewer.

We have considered Anglian Water's argument, but have decided not to amend the proposed licence modification. We consider that it is not proportionate or necessary to exclude from price controls charges for the provision of some lateral drains but not others. While some companies currently waive some or all of the costs of a lateral drain in such cases⁶, others expect the owners or occupiers of connecting premises to pay.⁷ There are also other ways in which companies can potentially incentivise connections to mains sewerage if they do not waive the cost of the lateral drain. For example, Severn Trent Water and Anglian Water also waive the one-off infrastructure charge and the first six months of ongoing sewerage charges to customers connecting to first time mains sewerage schemes.⁸ ⁹ We also note that no other wastewater company has raised this issue in response to our proposals.

Hafren Dyfrdwy, Severn Trent Water, Thames Water and United Utilities consider non-section 185 diversions should also be included in the modifications and excluded from price controls. In the [PR24 Final Methodology](#) we set out our decision that non-section 185 diversions (water

⁶ For example, Anglian Water and Severn Trent Water.

⁷ For example, Wessex Water, South West Water and Northumbrian Water.

⁸ Severn Trent Water, '[S101a Guidance Notes](#)'.

⁹ Anglian Water, '[Your guide to first time sewerage for existing properties](#)'.

and wastewater) would be within price controls for the 2025–30 period as part of third-party services. This does not require a licence modification because the relevant Excluded Charge in the definition of "Excluded Charges" in Condition B says that it only applies in relation to the period from 1 April 2020 to 31 March 2025. It was therefore not part of the statutory consultation on the proposed licence modifications. Incumbent water companies can be required to deliver non-section 185 diversions and inclusion in the PR24 third party services end-of-period reconciliation mitigates volume and timing uncertainty while aligning the approach with other price control third-party services. We consider that bill volatility caused by outturn non-section 185 diversions revenue being different to forecast revenue is likely to be small. And inclusion of non-section 185 diversions in price controls also means we can challenge cost efficiency at the end of period reconciliation – protecting third parties and end-user customers.

Thames Water considers that water section 185 diversions are contested and should also be included in the modifications and excluded from price controls. In the [PR24 Final Methodology](#) we set out our decision that water section 185 diversions would remain within the water network plus price control at PR24 but that we would include them in the third-party services and the third-party services reconciliation mechanism. It was therefore not part of the statutory consultation on the proposed licence modifications. In addition, we note that no other company has requested this at this stage of the price review, and our review of water companies contestability summary suggests water section 185 diversions are not currently contested to any significant extent across England and Wales.

Hafren Dyfrdwy supports removing water site-specific developer services from price controls for Welsh companies, as we proposed to do for English water companies. It argues that its water site-specific developer services market is closely linked to, and therefore subject to the same competitive conditions, as the neighbouring English market. In the [PR24 Final Methodology](#) we set out our decision that water site-specific developer services will remain in the water network plus price control for Welsh companies because competition is not as widespread as in England, and we do not have powers to establish charging rules to protect developer services customers.

Thames Water believes that it would be helpful to have a specific exclusion for charges raised under section 66D and section 117E agreements with water supply licensees and sewerage licensees (retailers in the business retail market) respectively. Where possible, the licence modifications we proposed define Excluded Charges by reference to the services in relation to which amounts are payable, rather than by reference to specific agreements or statutory provisions under which amounts may be payable. In relation to site-specific developer services, we consider that this approach is clearer, and less likely to create unintended gaps or ambiguity. We therefore do not consider that any changes to the proposed licence modifications are needed for this purpose. Most amounts payable by business retailers under section 66D or section 117E agreements will be within price controls because they will be for wholesale charges for supplies of water or the provision of sewerage services to non-

household premises. It will only be amounts payable under such agreements for site-specific developer services included in Excluded Charges (for example, amounts payable in relation to making a communication with a public sewer) that will be outside price controls. This will be the case whether a customer has gone through a business retailer or dealt directly with a water company. Chapter 3 explains the effect of each Excluded Charge.

Thames Water also seeks clarification on whether "section 106 consent fees" are also covered by the proposed wording. It is not clear what Thames Water means by "section 106 consent fees", but Excluded Charge (3B) is intended to include any amounts payable to the wastewater company in relation to making a drain or sewer communicate (connect) with a public sewer, including amounts payable for reasonable administrative expenses and other overheads.

Hafren Dyfrdwy, Severn Trent Water and South West Water suggested removing the time limit of 1 April 2025 to 31 March 2030 from the proposed Excluded Charges. We disagree. As set out in the [PR24 Final Methodology](#), we intend to monitor the effectiveness of competition as a constraint on incumbents' market power, and leave the door open to a return to price control regulation at our next price review if necessary.

Hafren Dyfrdwy and Severn Trent Water suggest that Condition B could be improved by a more principles-based approach and a list of items that are specifically included in price controls rather than a list of what is excluded. This would involve more radical changes to Condition B than we proposed and it would not be appropriate for such changes to be adopted without further consideration and consultation. It is something that companies could propose when we consider the appropriate framework for our next price review.

IWNL consider the proposals provide a clear rationale for Ofwat to strengthen the foundation of charging arrangements and to complete this process in parallel. We agree. We recently consulted on changing Ofwat's charging rules to support the new developer services framework.¹⁰ We will be publishing our decision document in the near future.

¹⁰ Ofwat, '[Changing Ofwat's charging rules to support the new developer services framework](#)', 2023.

3. The modifications, their effect and the reasons for our decision to make them

The licence modifications that we have made are set out in the boxes below and will have effect from 12 June 2004. They change the definition of "Excluded Charges" in Condition B of the relevant water companies' licences to add new Excluded Charges in relation to amounts or charges payable to those water companies for the specified developer services.

The effect of these changes will be to exclude the revenue for these activities (including amounts payable for reasonable administrative expenses and other overheads) from the scope of the network plus price controls that we will be setting for the period from 1 April 2025 to 31 March 2030.¹¹ This will include any amounts payable on or after 1 April 2025 in relation to agreements or requisitions made before 1 April 2025.

3.1 Water developer services (English water companies only)

The licence modifications to include new Excluded Charges for water site-specific developer services have only been made for the 14 English water companies for whom we will set price controls at PR24.¹²

We have made these licence modifications because there are relatively high levels of competition for these services. Developer services customers' needs and interests will be protected by competition, charging rules and competition law. We consider this will offer a more targeted and flexible approach to regulating water site-specific services. Charging rules can be more targeted to specific charges for developer services and also more flexible than price controls as they can be more easily amended if necessary.

Protecting developer services customers through charging rules instead of the water network plus price control where necessary also has the following benefits:

- it is less complex and burdensome because the need for challenging cost assessment and reconciliation mechanisms is removed;
- it removes potential market distortions caused by the inclusion in the price control; and

¹¹ We also set price controls for "Retail Activities" that currently include some aspects of developer services (providing developer information and administration for new connections). Revenue from Excluded Charges is not automatically excluded from the scope of price controls for Retail Activities, but at PR24 we intend to change our designation of "Retail Activities" to remove those activities.

¹² These are Anglian Water Services Limited, Affinity Water Limited, Northumbrian Water Limited, Portsmouth Water Limited, Severn Trent Water Limited, South East Water Limited, South Staffordshire Water plc, Southern Water Services Limited, South West Water Limited, Sutton and East Surrey Water plc, Thames Water Utilities Limited, United Utilities Water Limited, Wessex Water Services Limited and Yorkshire Water Services Limited.

- it should improve water bill predictability for end users because unexpected year-on-year changes in water site-specific developer services revenue would no longer lead to changes in water customer bills.

Modifications made to include new Excluded Charges for water site-specific developer services in Condition B for English water companies

In the definition of "Excluded Charges" in paragraph 2 of Condition B: Charges, insert after sub-paragraph (2A):

"(2B) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the provision of a water main;

(2C) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to connecting a service pipe with one of the Appointee's water mains and for such ancillary works that need to be carried out before the connection can be made;

(2D) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the adoption of water mains or service pipes, including charges imposed by the Appointee under an agreement made under section 51A of the Water Industry Act 1991 (which, for the avoidance of doubt, includes an order under section 51B of that Act which is deemed to be such an agreement by virtue of section 51B(5) and any such agreement which has been varied by order under section 51C(1) of that Act);"

3.1.1 Water mains

The effect of Excluded Charge (2B) is to exclude from the price control for Network Plus Water Activities any amounts payable to the water company in relation to the provision of a new water main. This is primarily intended to cover charges that would be payable under section 42(2)(a) (provision of new water main) of the WIA91 where a water main is requisitioned from a water company under section 41 (Duty to comply with water main requisition).

It would also cover other charges for the same services, including any amounts that may be payable by a retailer in the business retail market for a water main that it asks the water company to provide for the purpose of supplying water to one or more of the business retailer's customers.

3.1.2 New water connections

The effect of Excluded Charge (2C) is to exclude from the price control for Network Plus Water Activities any amounts payable to the water company in relation to the connection of premises to a water main. This would include, for example, amounts payable in relation to the laying of so much of a service pipe to be connected with a water main as is necessary, for the purpose of making a connection, to lay in a street.

The Excluded Charge is primarily intended to cover charges that would be payable under:

- section 45(6) (connections with water main) of the WIA91; and
- section 46(7)(b) (ancillary works for domestic connection) of the WIA91.

It will also cover:

- the connection of premises for the purposes of providing a supply of water for non-domestic purposes (including where a request for such a supply is made under section 55 of the WIA91);
- cases where a water company requires the provision of a separate service pipe to premises under section 64 of the WIA91 (where sections 45 to 51 of the WIA91 apply as if the consumer had required the water company to connect the separate service pipe to the company's water main); and
- other charges for the same services, including any amounts that may be payable by a retailer in the business retail market for a connection to a water main that it asks the water company to provide for the purpose of supplying water to one or more of the business retailer's customers.

The wording of Excluded Charge (2C) in the licence modifications that we have made is slightly different from the wording set out in the [statutory consultation](#) (it includes the word "need" instead of "needs"). This change has been made correct a typographical error and for greater clarity.

3.1.3 Adoption of water infrastructure

The effect of Excluded Charge (2D) is to exclude from the price control for Network Plus Water Activities any amounts payable to the water company in relation to the adoption of water mains or service pipes. This primarily intended to cover any charges that may be imposed under an agreement under section 51A (agreements to adopt water main or service pipe at future date) of the WIA91, including any order made by Ofwat under section 51B that has effect as a section 51A agreement and any adoption agreement varied by Ofwat under section 51C.

3.2 Wastewater

The licence modifications to include new Excluded Charges for wastewater site-specific developer services have only been made for the 9 English wastewater companies and the 2 Welsh wastewater companies for whom we will set price controls at PR24.¹³ Different licence modifications have been made for the English wastewater companies and the Welsh wastewater companies to reflect relevant differences in the legal frameworks.

We have made these licence modifications because nearly all wastewater site-specific developer services are delivered by developers (98%), so incumbent companies have little overall market power. We consider that our approach is proportionate and targeted given the current state of competition for wastewater site-specific services. It will substantially reduce regulatory complexity and burden compared with the PR19 approach. For example, there will be no need for challenging cost assessment or revenue reconciliations. And developer service customers' needs and interests will be met through competition, charging rules (in the case of English wastewater companies) and the developer services measure of experience (**D-MeX**) incentive.

Our approach supports the continued development of the market for wastewater site-specific developer services by removing potential market distortions caused by the inclusion in the price control. For example, inappropriate cost allocation leading to potential cost cross-subsidisation with other wastewater company activities.

Modifications made to include new Excluded Charges for wastewater site-specific developer services in Condition B

For English wastewater companies:

In the definition of "Excluded Charges" in paragraph 2 of Condition B: Charges, insert after sub-paragraph (3):

"(3A) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the provision of a public sewer or a lateral drain (which, for the avoidance of doubt, does not include any charges fixed in accordance with a charges scheme under section 143 of the Water Industry Act 1991);

(3B) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to making a communication with a public sewer;

¹³ The 9 English wastewater companies are: Anglian Water Services Limited, Northumbrian Water Limited, Severn Trent Water Limited, Southern Water Services Limited, South West Water Limited, Thames Water Utilities Limited, United Utilities Water Limited, Wessex Water Services Limited and Yorkshire Water Services Limited. The 2 Welsh wastewater companies are: Dŵr Cymru Cyfyngedig and Hafren Dyfrdwy Cyfyngedig.

- (3C) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the adoption of sewers, drains or sewage disposal works, including any charges imposed by the Appointee under an agreement made under section 104 of the Water Industry Act 1991 (which, for the avoidance of doubt, includes an order under section 105ZA of that Act which is deemed to be such an agreement by virtue of section 105ZA(5) and any such agreement which has been varied by order under section 105ZB(1) of that Act);
- (3D) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the recovery by the Appointee of any sums under section 160 of the Water Industry Act 1991;
- (3E) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to any works carried out by the Appointee under section 185 of the Water Industry Act 1991 in its capacity as a sewerage undertaker;"

For Welsh wastewater companies:

In the definition of "Excluded Charges" in paragraph 2 of Condition B: Charges, insert after sub-paragraph (3):

- "(3A) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the provision of a public sewer or a lateral drain (which, for the avoidance of doubt, does not include any amounts payable in relation to the costs described in section 100(4) of the Water Industry Act 1991 or any charges fixed in accordance with a charges scheme under section 143 of the Water Industry Act 1991);
- (3B) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to making a communication with a public sewer;
- (3C) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the adoption of sewers, drains or sewage disposal works, including any charges imposed by the Appointee under an agreement made under section 104 of the Water Industry Act 1991 (which, for the avoidance of doubt, includes an order under section 105ZA of that Act which is deemed to be such an agreement by virtue of section 105ZA(5) and any such agreement which has been varied by order under section 105ZB(1) of that Act) other than any amounts payable in relation to the costs described in section 100(4) of the Water Industry Act 1991;
- (3D) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to the recovery by the Appointee of any sums under section 160 of the Water Industry Act 1991;

(3E) in relation to the period from 1 April 2025 to 31 March 2030, amounts payable in relation to any works carried out by the Appointee under section 185 of the Water Industry Act 1991 in its capacity as a sewerage undertaker;"

3.2.1 Public sewers and lateral drains

The effect of Excluded Charge (3A) is to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation to the provision of a new public sewer or a lateral drain. This is primarily intended to cover charges that would be payable under:

- section 99(2)(a) or (2A)(a) (provision of public sewer or lateral drain) of the WIA91; and
- section 101B(3) (lateral drains) of the WIA91.

It would also cover other charges for the same services, including any amounts that may be payable by a retailer in the business retail market for a public sewer or lateral drain that it asks the wastewater company to provide for the purpose of enabling the business retailer to provide sewerage services to one or more of its customers.

The reference to “charges fixed in accordance with a charges scheme” is to make it clear that the Excluded Charge will not cover the recovery of costs for sewers provided under section 101A (Further duty to provide sewers) of the WIA91. The costs of providing such sewers (sometimes known as first time sewerage) are borne by the generality of customers.

For Welsh water companies the reference to "any amounts payable in relation to the costs described in section 100(4) of the Water Industry Act 1991" is to make it clear that the Excluded Charge does not cover the recovery of costs in relation to network reinforcement work. Network reinforcement will remain in network plus price controls at PR24.

3.2.2 Communications with public sewers

The effect of Excluded Charge (3B) is to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation making a drain or sewer communicate (connect) with a public sewer. This is primarily intended to cover charges that would be payable under section 107(3)(b)(i) (communications with public sewers) of the WIA91.

It would also cover other charges for the same services, including any amounts that would be payable for making such a communication:

- under an agreement for the adoption of sewer, drains or sewage disposal works; and
- by a retailer in the business retail market where it asks the wastewater company to make a communication for the purpose of enabling the business retailer to provide sewerage services to one or more of its customers.

3.2.3 Adoption of wastewater infrastructure

The effect of Excluded Charge (3C) is to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation to the adoption of sewers, drains or sewage disposal works. This is primarily intended to cover any charges that may be imposed under an agreement under section 104 (Agreements to adopt sewer, drain or sewage disposal works, at future date) of the WIA91, including any order made by Ofwat under section 105ZA that has effect as section 104 agreement and any adoption agreement varied by Ofwat under section 105ZB.

For Welsh water companies the reference to "any amounts payable in relation to the costs described in section 100(4) of the Water Industry Act 1991" is to make it clear that the Excluded Charge does not cover the recovery of costs in relation to network reinforcement work. Network reinforcement will remain in network plus price controls at PR24.

3.2.4 Works by agreement with owners or occupiers

The effect of Excluded Charge (3D) is to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation to work that a wastewater company, by agreement with the owner or occupier of any premises, carries out at that person's expense:

- in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or
- which the wastewater company has required that person to carry out under Part IV of the WIA91.

3.2.5 Wastewater diversions

The effect of Excluded Charge (3E) is to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation to any works to alter or remove wastewater pipes or apparatus it carries out under section 185 (Duty to move pipes etc. in certain cases) of the WIA91.

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

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA
Phone: 0121 644 7500

© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to mailbox@ofwat.gov.uk.

OGL