

August 2023

**Consultation under sections 12A
and 13 of the Water Industry Act
1991 on proposed modifications
to Condition B: Charges of 16
water companies' licences**

About this document

This document invites comments on the proposals 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.

The [Final Methodology](#) for our 2024 price review (**PR24**) set out our decisions on the site-specific developer services that will be excluded from the price controls we will set for the 2025-2030 period.² We are now proposing licence modifications to implement those decisions.

We are able to modify the conditions of the licence of a water company whose area is wholly or mainly in England under section 12A of the Water Industry Act 1991 (**WIA91**) subject to the procedural requirements set out in that Act. This document is a Notice under section 12A of the WIA91 in relation to 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.

We are able to modify the conditions of the licence of a water company whose area is wholly or mainly in Wales under section 13 of the WIA91 if it agrees to the changes that we are proposing to make. This document is a Notice under section 13 of the WIA91 in relation to Dŵr Cymru Cyfyngedig and Hafren Dyfrdwy Cyfyngedig.

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.

² Ofwat, '[Creating tomorrow, together: Our methodology for PR24. Appendix 3: Developer services](#)', December 2022.

Making representations

Any representations on, or objections to, the proposed modifications may be made no later than 15th October 2023 at 5pm. Please email them to PR24@ofwat.gov.uk or post them to:

Proposed modifications to Condition B: consultation response
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

We intend to publish responses to this consultation on our website at 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. Introduction

Developer services describes the activities delivered to connect new houses and businesses to the water and/or wastewater network. There are around 200,000 new connections every year across England and Wales. Developer services revenue accounted for 4.4% of water and wastewater network plus allowed revenue at our 2019 price review (**PR19**).

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 self-lay provider (**SLP**). SLPs and new appointees may provide faster, more responsive services and lower prices than incumbents.³ They can also sometimes provide developer services across utilities, reducing coordination issues.⁴

At 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 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 [Final Methodology](#) for **PR24** set out our decisions⁵ 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.⁶
- 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.

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

⁴ Ofwat, '[Review of incumbent company support for effective markets](#)', August 2020, pp. 30–31.

⁵ Ofwat, '[Creating tomorrow, together: Our methodology for PR24, Appendix 3: Developer services](#)', December 2022.

⁶ 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.

This document sets out the proposed licence modifications that are necessary to 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 [Final Methodology](#) for **PR24** 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.⁷ 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.

⁷ Ofwat, '[Creating tomorrow, together: Our methodology for PR24, Appendix 9: Setting expenditure allowances](#)', December 2022, p. 19.

2. The changes we are proposing, their effect and the reasons why we are proposing them

The changes we are proposing are to implement decisions that we set out in the [Final Methodology](#) for PR24.

The licence modifications that we are proposing to make are set out in the blue boxes below. They will 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 2030.⁸ This will include any amounts payable on or after 1 April 2025 in relation to agreements or requisitions made before 1 April 2025.

2.1 Water developer services (English water companies only)

The licence modifications to include new Excluded Charges for water site-specific developer services are only being proposed for the 14 English water companies for whom we will set price controls at PR24.⁹

We are proposing 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:

⁸ 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.

⁹ 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 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
- 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.

Proposed modifications 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 needs 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);"

2.1.1 Water mains

The effect of Excluded Charge (2B) would be 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.

2.1.2 New water connections

The effect of Excluded Charge (2C) would be 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 would 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.

2.1.3 Adoption of water infrastructure

The effect of Excluded Charge (2D) would be 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 is 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.

2.2 Wastewater developer services

The licence modifications to include new Excluded Charges for wastewater site-specific developer services are only being proposed for the 9 English wastewater companies and the 2 Welsh wastewater companies for whom we will set price controls at PR24.¹⁰ Different licence modifications are being proposed for the English wastewater companies and the Welsh wastewater companies to reflect relevant differences in the legal frameworks.

We are proposing 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.¹¹

Our approach will also support 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.

Proposed modifications 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);

¹⁰ 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.

¹¹ In July 2023 we published a [Consultation on the measures of experience performance commitments at PR24](#) that sets out our proposals for the high-level design of D-Mex and other measures of experience at PR24.

- (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);
- (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;"

2.2.1 Public sewers and lateral drains

The effect of Excluded Charge (3A) would be 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.

2.2.2 Communications with public sewers

The effect of Excluded Charge (3B) would be to exclude from the price control for Network Plus Water 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.

2.2.3 Adoption of wastewater infrastructure

The effect of Excluded Charge (3C) would be 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.

2.2.4 Works by agreement with owners or occupiers

The effect of Excluded Charge (3D) would be 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, 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.

2.2.5 Wastewater diversions

The effect of Excluded Charge (3E) would be to exclude from the price control for Network Plus Wastewater Activities any amounts payable to the wastewater company in relation to the

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.

3. Next steps

Subject to our consideration of any representations on, or objections to, the proposed modifications, we propose that the modifications to water company licences would take effect in early 2024. The exact date would not be less than 56 days from publication of our decision to make the modifications.

Annex – Extract from a current "Excluded Charges" definition

For ease of reference this Annex sets out the first part of the current definition of "Excluded Charges" in Condition B that would be amended by the proposed licence modifications. This is only an example because the definition is not the same for all companies (in particular, water and wastewater companies, such as this example, have a longer list of Excluded Charges than water only companies). The current definition for each company is included in the consolidated working copies of water company licences published on [the Licences and licensees page of the Ofwat website](#).

Extract from the definition of "Excluded Charges" in Condition B of the licence of Anglian Water Services Limited:

"Excluded Charges" unless and until otherwise agreed between the Water Services Regulation Authority and the Appointee, are

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Water Industry Act 1991;
- (2A) in relation to the period from 1 April 2020 to 31 March 2025, amounts payable in relation to the alteration or removal of any relevant pipe (as defined in section 158 of the Water Industry Act 1991) or other apparatus that the Appointee is required to carry out under the New Roads and Streets Works Act 1991 or any other statutory provision except a provision of the Water Industry Act 1991;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee or, as the case may be, the Water Authority, of matter delivered to the Appointee or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974;
- (4) charges for unmeasured supplies of water to cattle troughs;
- (5) charges for unmeasured building water supplies;
- (6) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;

- (7) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (7A) at any time before (but not including) 1 April 2015, charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Prior Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Water Industry Act 1991

[...]

**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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