

Code for Adoption Agreements

Sewerage sector documents: Change proposal (Ref 016)

Modification proposal	Sewerage Sector Guidance Appendix C – Design and Construction Guidance: Flow controls and confined spaces regulations
Independent Water Adoption Panel Recommendation	The Panel recommended rejecting the proposed change
Decision	Ofwat has rejected the proposed change
Publication date	[12 10 2023]
Implementation date	N/A

Background

Chris Faulkner Flow Controls (**CFFC**) submitted this change proposal to the Independent Sewerage Adoption Panel (**the Panel**) on 30 March 2023, 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 [sewerage sector guidance and model sewerage adoption agreement](#) (**the Sewerage Sector Documents**) 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 April 2020. A change proposal is defined in the Code as a proposed change to the sector guidance or the model adoption agreements.

The change proposed by CFFC concerns flow controls in manholes and inspection chambers. CFFC states that the current Sewerage Sector Documents Appendix C – Design and Construction Guidance (**DCG**) is resulting in sewerage companies approving the installation of flow control devices that do not fully comply with the Confined Spaces Regulations 1997 (**CSR 1997**) and the declaration of performance requirements under the regime for supplying

construction products to the market.¹ CFFC states that this is due to the DCG allowing for designs of manholes and inspection chambers that place maintenance personnel at increased risk.

The change proposal

CFFC considers that the DCG does not currently comply fully with current legal requirements. In its change proposal form submitted to the Panel, CFFC considers that under the current DCG, sewerage companies are approving control devices for manholes and inspection chambers that introduce foreseeable risks to installation contractors and maintenance personnel.

It also states that contractors are being required to design and build control structures and control devices that do not meet health and safety regulations. This is due to the need to have these approved and adopted by sewerage companies that are basing their assessment on the requirements of the current DCG.

CFFC proposed the following additions to section C7.12 – ‘Flow Control Devices’ to address this concern:

“The design of flow control devices to be placed in manhole or inspection chambers should comply with the Confined Spaces Regulations 2010 and be fully roddable from upstream or down and allow clearing, cleaning testing and inspection from outside the control structure Control devices should be supported by a statutory Declaration of Performance as required under the Construction Products Regulations 2021 which should include evidence of independent testing.

The flow control should be able to be installed in all Manhole and inspection chamber designs with all channels and benching required and as shown in the Design and Construction Guidance.”

Consultation and assessment

In submitting its recommendation, the Panel confirmed that it met the Code requirement² to assess the change in terms of:

- The need for change, for example, is it a service improvement or is it needed to address a particular issue?

¹ [Construction Products Regulation in Great Britain - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

² See paragraph 3.8.11 of the Code.

- Consistency with the principles and objectives of the Code, and any relevant statutory requirements; and
- The impact of the change (be it positive and/or negative) on customers and on water companies.

In considering the change proposal, the Panel has:

- discussed the proposal at two meetings; and
- asked CFFC to provide further clarification on the scale of the problem and the practical difficulties caused by it.

Panel recommendation

On 26 July 2023, the Panel recommended to Ofwat, by unanimous agreement, that we reject the proposed change to the sewerage sector documents. In reaching its decision, the Panel stated that it has considered the following issues:

- As flow control devices are very site/asset specific, the DCG is not overly prescriptive of them and it is not for companies to provide design solutions for the devices.
- The DCG allows for parties to deviate from it by agreement where required.
- In terms of any health and safety risk, the chambers are designed to be operated from above ground, with safe means of access if required. A safe system of work would be covered by water companies' procedures for carrying out jobs requiring access.
- Section C7.12.3(f) of the DCG already states that access should be provided to the upstream and downstream sections of a flow control device to allow maintenance.
- While the Panel appreciated that CFFC may have experienced individual issues relating to accessibility of flow control devices, it was not persuaded that this indicated that there was a wider problem that could not be addressed by the existing provisions or facilities within the Code itself.

The Panel stated that the proposal should be rejected on the basis that there are already mechanisms within the Code to address the issue and amending the DCG would be disproportionate in this instance. In addition, the Panel stated that it was not persuaded due to the lack of sufficient evidence that the existing provisions could be deemed to inadvertently be facilitating non-compliance with current legal requirements and the existing flexibility in the current arrangements.

Our decision and reasons

We have considered the above issues and all supporting documentation provided to us by the Panel and have decided to reject the proposed change.

We agree with the Panel that the DCG already has flexibility to allow parties to design systems that comply with all relevant legal requirements. We also agree with the Panel that CFFC hasn't presented evidence to show that there is a widespread issue that needs to be addressed that cannot be resolved using the current arrangements and flexibility within the DCG.

We therefore consider that there is insufficient evidence to support the proposed changes to section C7.12 of the DCG and that it would not be consistent with the Code principles to do so.

Decision notice

In accordance with paragraph 3.9.4 of the Code Ofwat rejects this change proposal.

Emily Bulman

Director, Charges, customers and developer services