

January 2024

**Consultation under section 12A
of the Water Industry Act 1991
on proposed modifications to
condition B of Thames Water
Utilities Limited's conditions of
appointment to extend the
separate price control
for delivery of the
Thames Tideway
Tunnel**

Ofwat

Consultation under section 12A of the Water Industry Act 1991 on proposed modifications to condition B of Thames Water Utilities Limited's conditions of appointment to extend the separate price control for delivery of the Thames Tideway Tunnel.

About this document

This document invites comments on the proposal of the Water Services Regulation Authority (Ofwat) to modify condition B of the conditions of appointment (licence) of Thames Water Utilities Limited (Thames Water). The purpose of the modification is to allow Ofwat to set a separate price control for the period 2025 – 2030 for the work Thames Water carries out on the Thames Tideway Tunnel project.

Under section 12A of the Water Industry Act 1991 (WIA91), we are able to modify the conditions of Thames Water's licence subject to the procedural requirements set out in sections 12A-12I of the WIA91.

This document is a notice under section 12A of the WIA91.

We have shared the modifications with Thames Water, who have agreed to the modifications.

We are proposing that, if made, the modifications will come into effect on 7 May 2024 and our reasons for this are set out in this document, as required by section 12B of the WIA91.

Proposed modification drafting is shown in the Annex.

Any representations with respect to the proposed modifications may be made no later than 8 March 2024.

Making representations

Any representations with respect to the proposed modifications may be made no later than 8 March 2024. Please email them to TTTLicensing@ofwat.gov.uk or post them to:

TTT Licensing
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, 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 Water Industry Act 1991, 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.

1. Background

The Thames Tideway Tunnel (TTT) is the first, and so far only, large infrastructure project to be delivered under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (SIPR). These regulations provide for a third-party infrastructure provider to deliver certain significant infrastructure on behalf of water or sewerage companies.

The TTT was specified for delivery under SIPR in 2014 and in 2015, following a procurement, as required by SIPR, Thames Water appointed Bazalgette Tunnel Limited (trading as Tideway) to deliver the project. Subsequently, Ofwat issued Tideway with a project licence.

Although the project is being delivered by Tideway, a preparatory works notice set out the work Thames Water was required or permitted to do in relation to the project. This included enabling works, interface works, obtaining and disposing of certain land rights and accepting and operating elements of the tunnel once completed.

The project is now in its final stages of construction and is expected to be commissioned for testing in 2024.

2. A separate price control for the TTT

Given the scale of activities for the TTT, prior to the price review in 2014 we considered it was important that there was a clear boundary not only between Thames Water's and infrastructure provider's activities on the project, but also between Thames Water's activities on the project and the rest of its activities to ensure effective regulation of those activities and to provide transparency for stakeholders. We also used the separate price control to introduce a bespoke interim determination mechanism and materiality threshold for the project to take into account the risks of the project during the construction phase.

At the time, Thames Water and Ofwat considered that a separate price control was in customers' interests for the following reasons:

- Increasing the level of transparency of TTT delivery;
- Increasing Thames Water's level of accountability;
- Greater ability to understand the delivery of TTT as a whole; and
- Allows for a bespoke interim determination mechanism.¹

For the above reasons, we amended Thames Water's conditions of appointment in 2014, to allow for a separate price control for Thames Water's activities on the TTT.

¹ See paragraph 9.4A of Condition B.

At that time, Thames Water only agreed to a separate price control for the period 2015 – 2020, to be reviewed at the end of that period. This was because most of the preparatory works fell to be carried out in that initial five-year period.

Thames Water subsequently agreed to an extension of the separate price control for the period 2020 – 2025. This extension was considered necessary to cover land disposals and to provide transparency of project costs over the whole life of the project.

Thames Water purchased land for the project, some of which subsequently has or will become surplus to Thames Water's requirements. Customers share 100% of any gains or losses in connection with disposals so there is a need for transparency.²

Between now and 2030, Thames Water's role in the project will increase as the project is tested and brought into operation and surplus land will continue to be sold. For these reasons, we have agreed with Thames Water to extend the separate price control for a further five-year period (from 2025 – 2030) and we are now consulting on our proposal to give effect to that extension.

When construction is complete and the asset has been tested and accepted by Thames Water, the project will become 'business as usual' for Tideway and for Thames Water. Under its project licence, Tideway will become subject to the normal price review process at the 2030 price review, and we expect that Thames Water's ongoing costs in relation to the project will become part of its Network Plus Wastewater Activities price control at that stage.

3. What are the changes that we are proposing?

The licence modifications we are proposing to make are set out in the Annex. The purpose of these proposed modifications is to extend the separate TTT price control for a further 5-year period (i.e. 2025 – 2030). This is in general effected simply by substituting the date of 2025 with the date of 2030 (and replacing a reference to the 2020 – 2025 period with a reference to the 2025 – 2030 period) in the relevant provisions in Condition B of Thames Water's Licence.

The effect of the proposed modifications will also be that the Thames Tideway Tunnel price control will be absorbed into the Network Plus Wastewater Activities price control from 1 April 2030, subject to any future licence modifications.

The transitional provisions in the proposed new paragraph 20 would replace the (now redundant) transitional provisions for the 2019 price review (PR19) licence modifications in Part VIII of Condition B to:

- preserve the effect of the current version of Condition B in relation to the existing price controls ending on 31 March 2025 (including any interim determinations); and

² See paragraph 4.1 of Condition T.

- provide that, if Ofwat fails to make the PR24 final determinations by 31 December 2024, the 2024-25 price control for Sewerage Services for the Thames Tideway Tunnel Project will roll over until a determination is made.

4. Early effective date

We propose that the modifications, if made, will come into effect on 7 May 2024.

Under section 12B of the WIA91, modifications should come into effect not less than 56 days after the decision to make the modifications is published, unless Ofwat considers it necessary or expedient for them to come into effect at an earlier date. If Ofwat does consider it necessary or expedient for modifications to come into effect before the 56 day period, it should set out its reasons for that view and should say why it considers this will not have an adverse effect on any undertaker.

We anticipate the decision to make the modifications being made by the end of March, which would mean an effective date in the second half of May. Ofwat proposes issuing draft determinations for the next price review (PR24) in May or June 2024 and we consider it necessary to have the modifications in place a few weeks prior to us issuing draft determinations. We consider that bringing this period forward by a week or two to achieve this, will have no adverse effect on Thames Water or any other undertaker.

5. Next steps

This consultation ends on 8 March 2024. We will then consider the responses received to this consultation and decide whether to proceed with modifying condition B of Thames Water's appointment conditions. As required by section 12A(9) of the WIA91, we will publish the modifications and our reasons for making the modifications and say how we have taken into account any representations received.

Annex

Price Control for Sewerage Services for the Thames Tideway Tunnel Project

Proposed licence modification to allow Ofwat to set a Price Control for Sewerage Services for the Thames Tideway Tunnel Project for the 2025-30 period

[Changes relate to Condition B as set out in the Condition B of Thames Water's licence, a consolidated version of which is published on the Ofwat website at www.ofwat.gov.uk/regulated-companies/ofwat-industry-overview/licences/#ioa.]

Condition B: Charges is amended as follows:

1. In sub-paragraph 9.4(2), for "1 April 2020 to 31 March 2025" insert "1 April 2025 to 31 March 2030".
2. In sub-paragraph 9.4(2A), for "1 April 2020 and ending on 31 March 2025" insert "1 April 2025 and ending on 31 March 2030".
3. In sub-paragraph 9.4A(1A), for "1 April 2025" insert "1 April 2030".
4. In sub-paragraph 9.4A(3), for "31 March 2025" insert "31 March 2030".
5. In sub-paragraph 9.6A:
 - (a) for "on 31 March 2025" insert "on 31 March 2030";
 - (b) for "1 April 2025", in both places, insert "1 April 2030"; and
 - (c) for "1 April 2020 to 31 March 2025" insert "1 April 2025 to 31 March 2030".
6. In sub-paragraph 9.7(2):
 - (a) for "31 December 2024" insert "31 December 2029"; and
 - (b) for "31 March 2025" insert "31 March 2030".
7. Part VIII (paragraph 20) is deleted and replaced with the following text:

"Part VIII. Price Controls in effect before 1 April 2025

20

20.1 The provisions of Condition B of this instrument in the form that had effect immediately prior to 1 May 2024 shall continue to have effect in respect of the Price Controls set for a period ending before 1 April 2025

and in respect of the making of any Interim Determinations to set any such Price Controls.

20.2 In the event that the Water Services Regulation Authority is, in respect of the Appointed Business, unable to determine Price Controls, for the period or periods starting on 1 April 2025, under sub-paragraph 9.3 and sub-paragraph 9.4 of this Condition B by 31 December 2024, sub-paragraph 9.7(2)(b) shall have effect as if it provided that:

"the previous determination pursuant to sub-paragraph 9.4(2A) in respect of the Charging Year ending on 31 March 2025 shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 9.4(2A) (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 16) or the next relevant Interim Determination becomes effective;"

**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