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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Supplementary Charging Guidance to Ofwat

Welsh Government consultation on draft Supplementary Charging Guidance to Ofwat relating to Developer Charges, Bulk Supply Charges and Access Charges.

Date of issue: 21 November 2016
Action required: Responses by 16 January 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This six week consultation seeks views on the Welsh Government's draft Supplementary Charging Guidance to Ofwat the independent regulator of the water.

The Water Act 2014 sets out a new framework for the regulation of charging in the water industry.

We want your views on draft charging guidance relating to charges from the Welsh Government to Ofwat for:

- new connections to water and sewerage networks ('developer charges');
- bulk supply and bulk discharge; and
- access to water company networks .

We welcome your views and comments, including (but not limited to) anything you feel we may not have addressed.

How to respond

Please respond to the consultation by completing the questionnaire provided within this document.

Alternatively you can e-mail or send any comments to the address further below.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:
Water Branch
Energy, Water and Flood Division
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
email: water@wales.gsi.gov.uk
telephone: 029 2082 6391

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other

Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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1. Introduction

1.1. This consultation seeks your views on draft charging guidance relating to developer charges, bulk supply and access charges from the Welsh Government to Ofwat, the independent economic regulator of the water and sewerage sector in England and Wales.

1.2. The Welsh Government's Charging Guidance to Ofwat (the economic regulator for the Water Industry) was laid in the Assembly on 12 September 2016 and is expected to come into force on the 22nd October 2016. This guidance covered high level principles and following stakeholder engagement the Welsh Government committed to developing further rules.

- This draft charging guidance to Ofwat relates to three different areas of charges imposed by relevant undertakers¹:
 - charges for new connections to water and sewerage networks ('developer charges'²);
 - charges for bulk supply and bulk discharge³; and
 - charges for access to water company networks⁴.

1.1. For the most part, these are charges paid by other water and sewerage undertakers and by property developers, though individual householders may pay charges for new connections to water networks where they have developed their own property.

1.2. The Water Industry Act 1991 (as subsequently amended) provides powers for Ofwat to make charging rules for each of these types of charges and for Welsh Ministers to give guidance to Ofwat on those rules, insofar as they relate to charges imposed by undertakers operating wholly or mainly in Wales.

1.3. More detailed information on each of the particular provisions on charging regimes are listed in Annex 1. Throughout this document, references to the Water Industry Act 1991 (or to WIA91) are references to the Water Industry Act 1991 as amended by subsequent legislation, including the Water Act 2014.

1.4. This guidance sits alongside any other guidance the Welsh Ministers may provide which Ofwat must have regard to when it sets charging rules, including specifically the forthcoming Strategic Policy Statement to Ofwat.

¹ In the guidance, reference to relevant undertakers refers to water undertakers and water and sewerage undertakers who operate wholly or mainly in Wales.

² Welsh Ministers must issue guidance regarding the content of the rules under 144ZA WIA91 [Developer charges – connections]

³ Welsh Ministers may issue guidance to Ofwat on the principles applied in rules under 40E WIA91 [Bulk supply charges]

⁴ Welsh Ministers may issue guidance on the content of rules under 66E WIA91 [Access charges]

1.5. Prior to issuing guidance, the Welsh Ministers are required to consult the 'relevant persons' on a draft of the proposed guidance. The relevant persons are:

- the Secretary of State;
- the Consumer Council for Water;
- any relevant undertakers likely to be affected by the proposed Guidance;
- any water supply licensees or sewerage licensees likely to be affected by the proposed Guidance; and
- such other persons the Minister thinks appropriate.

- 1.1. Informal consultations with a range of interested parties have already been undertaken over the period between April and August 2016 and we welcome views on all aspects of the draft charging guidance presented in this consultation.
- 1.2. The consultation period will end on 16 January 2017. We will consider and act upon feedback where it is appropriate to do so. We aim to lay this Guidance before the National Assembly for Wales in early 2017 for a period of 40 days. If, at the end of this period the National Assembly for Wales does not resolve that the Guidance should not be issued, the Charging Guidance will be published on the Welsh Government website.
- 1.3. The UK Government has issued general charging guidance to Ofwat as well as consulting on specific guidance which will be applicable to Ofwat's rules on developer charges relating to undertakers operating wholly or mainly in England⁵.

⁵ Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496044/charging-guidance-ofwat-2016.pdf

2. The Role of Ofwat

- 2.1. The Water Services Regulation Authority (Ofwat) is the independent economic regulator for the water and sewerage sector in England and Wales. The Water Act 2014 introduces new powers for Ofwat with regards to issuing charging rules around what relevant undertakers can charge for water supply and sewerage services.
- 2.2. Ofwat's general duties as a regulator are laid down in Section 2 of the Water Industry Act 1991 (WIA91)⁶ Ofwat must:
- Further the consumer objective. This includes protecting the interests of consumers, where appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.
 - Secure that the functions of water and sewerage undertakers are properly carried out across Wales and England.
 - Secure that companies holding appointments under Chapter 1 of Part 2 of the Water Industry Act 1991 as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions.
 - Secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out.
 - To further the resilience objective⁷
- 2.3. Subject to these duties, Ofwat must also:
- Promote economy and efficiency by relevant undertakers in their work.
 - Secure that no undue preference or discrimination is shown by such undertakers in fixing charges.
 - Secure that consumers' interests are protected in relation to any unregulated activities of undertakers.
 - Contribute to the achievement of sustainable development.
- 2.4. In addition, Ofwat must have regard to the principles of best regulatory practice. These duties are supplemented by general duties in relation to the environment and recreation (see, for example, sections 3 and 4 of the Water Industry Act 1991). Ofwat also has a range of regulatory functions under the Competition Act 1998 and the Enterprise Act 2002.

⁶ (<http://www.legislation.gov.uk/ukpga/1991/56/contents>), as amended by the Water Act 2003 (<http://www.legislation.gov.uk/ukpga/2003/37/contents>).

⁷ The resilience objective mentioned is—to secure the long-term resilience of water undertakers' supply systems and sewerage undertakers' sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour, and to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

- 2.5. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities (including Ofwat) to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions. In so doing, public authorities must also seek to 'promote the resilience of ecosystems'. The duty replaces the section 40 duty in the Natural Environment and Rural Communities Act 2006 (NERC Act 2006), in relation to Wales, and applies to those authorities that fell within the previous duty.
- 2.6. The Water Industry Act 1991 allows for Welsh Minister's to set strategic guidance for Ofwat in order to bring to attention the Welsh Minister's priorities for relevant undertakers wholly or mainly in Wales. This includes improvements to natural resources and drinking water services in Wales. In doing so Welsh Minister's must seek to ensure compliance with domestic and European legislation.

3. The Welsh Government's Legislative and Policy Framework position.

- 3.1. The Welsh Government's vision for water is to ensure that Wales continues to have a thriving water environment which is sustainably managed to support healthy communities, flourishing businesses and biodiversity. We want the people of Wales to receive first class, value for money water services with water used efficiently, safely and respectfully by all.
- 3.2. Ofwat has an important role in supporting the delivery of our vision when undertaking their independent economic regulatory decisions. Chapters 4, 5 and 6 of this consultation document set out our draft guidance to Ofwat in relation to their charging rules for developer charges, bulk supply and access charges. In their interpretation of the charging guidance in each of those chapters, Ofwat should take account of the wider legislative and policy framework of the Welsh Government, also drawing on the material in this Chapter. That framework includes:
- The Welsh Government Water Strategy for Wales⁸ issued in May 2015
 - The Well-being of Future Generations (Wales) Act (2015)⁹
 - The Environment (Wales) Act 2016
 - The Social and Environmental Guidance to Ofwat¹⁰ issued under section 2A of the Water Industry Act 1991 (as amended by section 40 of the Water Act 2003) issued in June 2014.
 - The forthcoming Welsh Government Strategic Policy Statement issued under the Water Act 2014.
 - Charging Guidance to Ofwat (the economic regulator) 2016
- 3.3. Ofwat should also take account of our Charging Guidance within the context of other relevant legislation, such as competition law.

Taking account of Wales specific policy

- 3.4. As noted above, the Welsh Ministers expect Ofwat to act in accordance with the legislative and policy framework of the Welsh Government. Any divergence in policy between the UK and Welsh Governments must be fully reflected in regulatory policy and practice, and Welsh customers must not be detrimentally affected.
- 3.5. Any proposed changes to the existing regulatory framework and any proposals for reform should be driven and set out in the

⁸ <http://gov.wales/topics/environmentcountryside/epq/waterflooding/publications/water-strategy/?lang=en>

⁹ See Annex 2

¹⁰ <http://gov.wales/topics/environmentcountryside/epq/waterflooding/publications/social-environmental-guidance-water/?lang=en>

context of Welsh Government policy and Welsh Legislation, and any supporting evidence should be based on data solely from undertakers that are wholly or mainly in Wales or within the geographical boundary of Wales. Where proposed changes apply to both England and Wales, separate consultation papers and explanatory notes should be provided in respect of undertakers that are wholly or mainly in Wales and those in England, even where the proposals are identical or similar. Two versions of codes and charging schemes should be produced – one for undertakers wholly or mainly in Wales and one for undertakers wholly or mainly in England. This will provide clarity for Government, undertakers and consumers as to exactly what applies to Welsh and English undertakers

- 3.6. Stability and predictability in bills can be particularly important for customers, who have to plan carefully for future costs. We expect Ofwat to take this into account when setting charging rules.
- 3.7. Ofwat should ensure that the information provided by water and sewerage undertakers on their charges should be sufficient to allow customers to understand how their overall charge has been arrived at and to be able to consider options to improve efficiency of their water use and reduce the cost of their bill in the future. Charges should be communicated in such a way that customers can have a reasonable idea of what their bill will be ahead of receiving it.
- 3.8. Ofwat will be required to set the rules on charges within the context of Welsh Government policy relating to market reform. We expect Ofwat to keep the impact of market reform under review and, where necessary take action to ensure that charges paid by customers served wholly or mainly in Wales remain both fair and affordable.

Water Strategy for Wales

- 3.9. We have drafted this Guidance within the context of two key themes of the Water Strategy for Wales:
 - Delivering excellent services to customers
 - Water for nature, people and business
- 3.10. We expect Ofwat to balance the long-term needs of a sustainable and resilient environment with the need to ensure that there are sufficient, reliable water resources with incentives that provide the right balance between rewards and penalties in the context of Welsh Government priorities and circumstances in Wales.

Delivering Excellent Services to Customers

- 3.11. The Water Strategy for Wales highlights the importance of ensuring a strong customer focus at the heart of the delivery of water and sewerage services in Wales.

- 3.12. Ofwat should take a proportionate regulatory approach that recognises the costs and burdens that regulation can place on the relevant undertakers and customers. In order to facilitate stable charges, Ofwat should seek to be consistent in its general approach to charging with any changes in Wales well signalled and subject to appropriate consultation with both the relevant undertakers and the customers affected.
- 3.13. We expect Ofwat and relevant undertakers to comply with the Welsh Language (Wales) Measure 2011. Ofwat and water undertakers are expected to comply in due course with the relevant Welsh Language Standards imposed upon them by the Welsh Language Commissioner. The Measure establishes that, in Wales, the Welsh language should not be treated less favourably than the English language. The Welsh Government expects undertakers to publish their charges schemes bilingually.

Water for Nature, People and Business

- 3.14. The Welsh Government is keen to take a long-term, 25 years plus approach to natural resource this will support our focus on sustainable development. By enhancing and managing our natural environment more holistically, we will not only secure our environmental wellbeing but also maximise the economic and social benefits for the long term.
- 3.15. The efficient use of water resources is fundamental to securing the long term resilience of water supplies and the environment. The Water Act 2014 introduced a primary duty which requires Ofwat to secure the long-term resilience of water and sewerage systems and provision of services to customers; taking into account environmental pressures, population growth and changes in consumer behaviour. We expect Ofwat to have regard to their duties and to ensure that relevant undertakers have a range of measures in place to manage water resources in sustainable ways. This should include increasing efficiency in the use of water and reducing demand for water in order to reduce pressure on water resources.
- 3.16. Ofwat must also have regard to their duty to sustainable development. Ofwat has a duty under the Water Industry Act 1991 (as amended) to exercise and perform its powers and duties in a manner it considers is best calculated to contribute to the achievement of sustainable development. To ensure that the interests of customers are at the heart of decisions about the water sector, Ofwat should take account of the Welsh Government definition of sustainable development as stated in the Well-being of Future Generations (Wales) Act 2015.
- 3.17. The Welsh Government expects Ofwat to ensure that a proportionate assessment of the impacts on both customers and investors of any

proposed changes to its regulatory framework for the water and sewerage sector has been carried out.

- 3.18. Charging can play a role in securing economically and environmentally efficient use of resources, encouraging innovation and ensuring that environmental benefits are costed appropriately. There are substantial cross subsidies inherent in the water sector, due to the reliance of all customers on sufficient resources and a resilient network. The Welsh Government does not see a general case for any widespread movement towards the de-averaging of network costs. The costs of water and sewage services should be apportioned on the same basis to customers across the network (taking into account our policies on social charging and metering etc.) – there should be no reductions or price increases for customers on the basis that the costs of providing them with water or sewerage services via the public network are higher or lower. In many cases unwinding these cross subsidies will be of little practical benefit and may lead to bill instability and unpredictability, creating winners and losers without delivering any measureable policy benefit. However, in some cases it may be beneficial to use targeted price signals to improve recognition of environmental costs.
- 3.19. The Sustainable Urban Drainage Systems (SuDS) approach is central to future surface water management, and can be used to help comply with European, UK and Welsh environmental and water quality legislation. SuDS schemes can reduce the volume and flow of excess surface water entering the sewerage infrastructure. In line with their legal and regulatory duties, sewerage undertakers may adopt SuDS features and infrastructure. There should be a general presumption that future investment in new and existing sewerage and drainage infrastructure will maximise the use of SuDS techniques except for where it can be demonstrated that not to do so would incur additional costs that would not justify the environmental benefits. Robust adoption and maintenance arrangements for SuDS should be in place, and where possible these should be taken on by the undertaker and funded through the charges schemes.
- 3.20. In setting the charging rules addressed in this consultation, Ofwat should consider what transitional arrangements are necessary in order to minimise the burdens on all parties of the transition from existing requirements to new charging requirements.

4. Guidance on charging rules for developer charges

- 4.1. The Water Industry Act 1991 provides for relevant undertakers to charge for new connections to the network, and for associated work. We use the term 'developer charges' to refer to the amounts that water and sewerage undertakers charge for new connections to water and sewerage networks and provision of any associated infrastructure. 'Developers' may include developer, self-build and self-lay customers.
- 4.2. This guidance on charging rules for developer charges applies to domestic use of water and sewerage services, either in a household or a non-household property. It relates to the following types of charging rules that can be introduced by Ofwat¹¹:
 - Self-lay and adoption of water infrastructure (section 51CD);
 - Self-lay and adoption of sewerage infrastructure (section 105ZF);
 - Water and sewerage connections and associated works (section 144ZA).
- 4.3. In the view of Welsh Ministers all developer charges, including requisition charges and infrastructure charges, and associated charging rules should reflect the objectives and principles set out in this guidance.
- 4.4. In addition to taking account of the Welsh Government's policy priorities, as set out elsewhere in this document, we believe that the following high level principles should be applied to developer charges:
 - Simplicity and transparency;
 - Stability, predictability and timeliness;
 - Fairness and cost reflectivity; and
 - Environmental sustainability.
- 4.5. We recognise that in practice there may be trade-offs between these principles. For example, fixed charges published up-front, could satisfy the first two principles. However, the lack of flexibility of a charge that is fixed in advance may have implications for cost-reflectivity, in the sense that it may reflect anticipated costs but not unanticipated costs.
- 4.6. One approach could be that Ofwat give equal weight to each of these principles when setting charging rules, but discussions with stakeholders to date suggest that transparency, predictability and timeliness are very high priorities for customers in Wales. These features would enable developers to invest with more confidence and could reduce the incidence of long-running disputes over charges, with consequent benefits for developers, undertakers, Ofwat and the Welsh economy.

¹¹ Section references are all to the Water Industry Act 1991 (as amended).

- 4.7. The Welsh Government believes that the application of the principles of fairness and cost reflectivity mean that developers should bear the reasonable on-site costs of their connections to water and sewerage systems. Developers should also bear the reasonable costs of any consequential need to augment the existing network infrastructure or to provide new infrastructure (on or off the development site). Existing customers should not cross-subsidise new development. Equally, developers should not bear any costs incurred to address pre-existing shortfalls in capacity or capability.
- 4.8. In order to address customer needs for transparency, predictability and timeliness, we believe that charging rules should require undertakers in Wales to offer a default tariff option that should have the characteristics set out below. In order for undertakers to be able to respond flexibly to the different, and perhaps changing, needs of their customers we suggest that they consult their customers, take their views into consideration and be free to offer alternative tariff options in addition to the default tariff option if they wish. Those default tariff options should also be consistent with the principles set out above.

Default tariff option

- 4.9. Under the default tariff option, undertakers would offer a menu of developer charges that are fixed in advance, based on a simple price structure, such as a cost per dwelling, which covers all on-site and off-site costs. The nature of this approach means that prices would not reflect site-specific costs, but would need to be based on average costs. We believe that averaging across the undertaker's area is likely to be the simplest and most transparent approach.
- 4.10. In order to ensure that charges are reasonable and fair, and to achieve stability in charges, we believe that for the default tariff option Ofwat needs to ensure that revenues from these charges match the relevant and reasonable costs across the undertakers' area over an appropriate period of time – this might be a rolling five year period, for example. In order to build confidence in these charges and to reduce the potential for disputes, this process needs to be transparent and have a clear methodology alongside appropriate reporting and auditing mechanisms.
- 4.11. This simplified structure of charges, based on average costs, means that for some developments developers will pay charges that are above the site-specific costs of the development and for other developments they will pay prices that are below site-specific costs. This approach will however achieve greater transparency and predictability.
- 4.12. We recognise that this approach compromises cost reflectivity to some extent, though we note that the existing system can lead to large

discrepancies between quoted costs and the charges that developers actually pay. In these circumstances, the price signals sent by the quoted costs are not cost reflective in any case.

- 4.13. In order to introduce an element of further cost reflectivity, we believe that it would be appropriate to define some extreme circumstances where the additional costs of connection to the network are so high (or so low) that those connections fall outside the general charging regime for the default tariff outlined above. These extreme circumstances might, for example, be defined by distance from existing networks or by the size of the additional costs over and above standard charges. The purpose of this type of approach would be to send appropriate price signals in cases where new development would be extremely costly in terms of connection to water and sewerage networks and to ensure that other developers are not having to cross-subsidise developments of this kind.

Other issues

- 4.14. In formulating rules for developer charges, there are a number of further issues that have been raised by stakeholders and that we believe Ofwat will need to consider:
- whether any proposed charging rules have different implications for single build applications and multiple builds and if so, whether charging rules should apply differently in order to reflect these impacts;
 - appropriate practices for security bonds, taking account of the different position in Wales on the adoption of infrastructure¹²;
 - transitional arrangements between charging regimes, so that developers and undertakers can manage their relationships and plan with confidence and clarity; and
 - Reporting, monitoring and auditing of charges, in order to ensure transparency and clarity of charges, and build confidence in the charging rule system, as well as to reduce the incidence of disputes.
- 4.15. In taking its decisions, Ofwat should bear in mind that we expect water undertakers in wholly or mainly in Wales to engage effectively with local authorities, housing associations and developers when proposals for development are brought forward.

¹² Section 42 of the Flood and Water Management Act 2010 has been fully implemented in Wales. This makes the adoption of all sewers and lateral drains obligatory in the Dwr Cymru Welsh Water sewerage operating area.

Developers' (or any other owner/occupier) are required to put in place a section 104 WIA91 agreement before connection to the public network. This is an agreement between the sewerage undertaker and a developer which prescribes that the proposed sewerage system or lateral drain will be built to a suitable standard in order to be adopted as part of the public sewerage system maintained by the relevant sewerage undertaker.

5. Guidance on charging rules for bulk supply and bulk discharge

Bulk supply

- 5.1. Bulk supply agreements are agreements between appointed water undertakers for the connection and transfer of water from one undertaker to the other. They are important because they can be a mechanism for improving network resilience, they can aid water undertakers in meeting their obligation to supply water services more efficiently, and they can be a means for new appointees to supply water to their customers.
- 5.2. Under section 40E of WIA91, Ofwat has the power to make charging rules for bulk supply agreements. The Welsh Ministers have powers to issue guidance of Ofwat on the content of those charging rules under section 40I of WIA1991. Under section 144ZE of the WIA91, Welsh Ministers also have powers to give guidance to Ofwat on the principles applied by these charging rules.
- 5.3. In setting charging rules in respect of bulk supplies, Ofwat should consider the correct balance of incentives to ensure that charges for bulk supplies reflect the full cost of the trade, including environmental costs and impacts on the resilience of water supplies for Welsh customers in the event of increases in demand or in the event of extreme conditions. The Welsh Government expects Ofwat to ensure that cross-border bulk supplies are not subsidised by Welsh customers.
- 5.4. Bulk supply charges should be transparent and predictable where possible. Ofwat should consider how to achieve this, including whether charging rules should provide clear guidance on how costs should be measured and on how common costs should be allocated to the bulk supply and whether charges and/or the methods for calculating those charges should be published by undertakers.
- 5.5. Many existing bulk supply agreements are long-standing arrangements that have been in place for many years. In setting charging rules in respect of bulk supplies, Ofwat should consider transitional arrangements and in particular, whether and how new charging rules would apply to existing arrangements.

Bulk discharge

- 5.6. Bulk discharge agreements are agreements between sewerage undertakers to make a main connection into one of the undertakers' sewerage systems. These agreements are referred to as 'sewerage main connection agreements' in the Water Industry Act 1991 and are analogous to a bulk supply agreement for water.

- 5.7. Under section 110F of WIA91, Ofwat has the power to make charging rules for sewerage main connection agreements and Welsh Ministers have powers to issue guidance of Ofwat on the content of those charging rules. Under section 144ZE of the WIA91, Welsh Ministers also have powers to give guidance to Ofwat on the principles applied by these charging rules.
- 5.8. In setting charging rules in respect of bulk discharges, Ofwat should consider the correct balance of incentives to ensure that charges for bulk supplies reflect the full cost of the trade, including environmental costs and impacts on the resilience of sewerage services for Welsh customers in the event of increases in demand or in the event of extreme conditions. The Welsh Government expects Ofwat to ensure that cross-border bulk discharges are not subsidised by Welsh customers.
- 5.9. Bulk discharge charges should be transparent and predictable where possible. Ofwat should consider how to achieve this, including whether charging rules should provide clear guidance on how costs should be measured and on how common costs should be allocated to the bulk discharge and whether charges and/or the methods for calculating those charges should be. Many existing bulk discharge agreements are long-standing arrangements that have been in place for many years. In setting charging rules in respect of bulk supplies, Ofwat should consider transitional arrangements and in particular, whether and how new charging rules would apply to existing arrangements.
- 5.10. Undertakers should only agree bulk discharge agreements where they can demonstrate that it would not be detrimental to their customers or to the environment or ecosystem of the catchment area and appointment area of the receiving and exporting incumbent company. Where an undertaker's preferred solution includes a bulk discharge agreement to an undertaker which is wholly or mainly in Wales, it should provide an opportunity for Welsh Ministers and Natural Resources Wales to give representations.
- 5.11. The costs arising from any agreement should be met by the discharging undertaker although where there are benefits to the recipient; the costs may be met by both companies in proportion to the expected benefits. The costs arising from any agreement will need to be accurately estimated and to be fully recovered from the agreement. This should include where relevant building / maintaining infrastructure, treating water, work to prevent or repair any environmental damage, work required to comply with relevant legislation, and any consequential costs.
- 5.12. Any agreement should not be to the detriment of the environment or network.

- 5.13. There should be a clear rationale for any agreement period that lasts for more than 25 years. Welsh Ministers and Natural Resources Wales should be consulted before an agreement is extended or renewed published by undertakers.
- 5.14. Existing bulk discharge agreements may be long-standing arrangements that have been in place for many years. In setting charging rules in respect of bulk discharges, Ofwat should consider transitional arrangements and in particular, whether and how new charging rules would apply to existing arrangements.

6. Guidance on charging rules for access to water networks

- 6.1. Section 66E of the Water Industry Act 1991 provides for water undertakers to charge water licensees for use of the water undertakers' networks for the supply of water to customers of water licensees.
- 6.2. Ofwat must issue rules about charges under section 66E WIA91 and under section 144ZE of the Act, the Welsh Ministers must issue guidance to Ofwat about the principles underlying those charging rules. In addition, Welsh Ministers may, under section 66ED provide guidance to Ofwat on the content of such charging rules¹³.
- 6.3. In setting charging rules in respect of access, Ofwat should consider the correct balance of incentives to ensure that charges reflect the full cost of access, including impacts on existing customers. The Welsh Government expects Ofwat to ensure that access is not subsidised by existing customers.
- 6.4. Access charges should be transparent and predictable and Ofwat should aim to limit the scope for future disputes based on differences in the interpretation of the charging rules as far as possible. Ofwat should consider alternative means for achieving this, including how charges and/or the methods for calculating those charges should be published; and by ensuring that any charging rules for access provide clear guidance on how costs should be measured and on how common costs should be allocated to access. Ofwat should also be clear about the relevance of the charging rules to combined supplies.
- 6.5. In setting charging rules in respect to access, Ofwat should consider transitional arrangements and in particular, whether and how new charging rules would apply to existing access arrangements. Ofwat should also consider actual or proposed arrangements for rules about non-price terms in access agreements, such as section 66DA codes, to ensure consistency of the charging rules with those requirements.

¹³ For cross border supplies, guidance must be joint with the UK Government.

Consultation Response Form

Your name:

Organisation (if applicable):

Email / telephone number:

Your address:

Consultation questions

Question 1:

Please provide your views on the proposed guidance to Ofwat on developer charges set out in section 4.

Question 2:

Do you think that each of the principles set out in paragraph 4.4 should be given equal weight in setting charges, or do you agree that transparency, predictability and timeliness should be given a higher weight in decisions about charging rules?

Question 3:

Do you agree that all developer charges, including requisition charges and infrastructure charges, and associated charging rules should reflect the objectives and principles set out in this guidance? Should requisition charges and infrastructure charges be incorporated into the simpler charging structures that are referenced in Chapter 4?

Question 4:

Do you think that the approach of requiring a default tariff and the flexibility to offer alternative tariffs (paragraph 4.8) is appropriate?

Question 5:

Please provide your views on the proposed default tariff.

Question 6:

Paragraph 4.14 raises a number of issues that Ofwat needs to consider in setting charging rules for developer charges.

- a. Do you think Welsh Government should give further guidance to Ofwat on each of these points? If so, what should that guidance be?

b. Are there other issues that should be included in this list of issues?

Question 5:

Please provide your views on whether it would be helpful for Ofwat to introduce a charging scheme for bulk supply and/or bulk discharge.

Question 6:

Please provide your views on the proposed guidance to Ofwat on bulk supply charges set out in section 5.

Question 7:

Please provide your views on the proposed guidance to Ofwat on bulk discharge charges set out in section 5.

Question 8:

Please provide your views on the proposed guidance to Ofwat on access charge rules set out in section 6.

Please enter responses here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

Annex 1

The Water Act 2014 – a new framework for charging

The Water Act 2014 introduced a number of changes to legislation to support the Welsh Government's overarching policy objectives for the water sector. This included a new framework governing the regulation of water and sewerage charges. This provides the UK and Welsh Governments with new powers and duties to produce charging guidance for Ofwat, setting out a policy framework for Ofwat's approach to regulating charges.

The legislation requires that Welsh Ministers must issue guidance about the principles to be applied by Ofwat in setting:

- rules under section 66E in relation to the charges which water undertakers impose on water supply licensees;
- rules under section 117I¹⁴ in relation to the charges which sewerage undertakers impose on sewerage licensees;
- rules under section 143B in relation to the charges schemes published by water and sewerage undertakers;

In addition to this, the Act provides that Welsh Ministers may issue guidance about the principles to be applied by Ofwat in determining the provisions of:

- rules under section 40E in relation to charges imposed by a water undertaker under a bulk supply agreement with another undertaker and inset appointees;
- rules under section 51CD in relation to charges imposed by a water undertaker under an agreement for adopting a water main or service pipe at a future date;
- rules issued in accordance with regulations under section 66M imposed under a water supply agreement;
- rules under section 105ZF in relation to charges imposed by sewerage undertakers under an agreement for adopting a sewer, drain or sewage disposal works at a future date;
- rules under section 110F in relation to the charges that may be imposed by a sewerage undertaker on another undertaker or inset appointee under a main connection agreement;
- rules under section 144ZA in relation to charges which may be levied by water undertakers and sewerage undertakers for connections to, and the provision of, water mains, public sewers and some associated infrastructure.

Furthermore, the Welsh Ministers may also issue general guidance about the principles to be applied by Ofwat setting rules about charges that may be imposed by either water and sewerage undertakers or water supply or sewerage licensees in other documents (e.g. licence conditions, deemed contracts, non-statutory guidance, etc.).

Ofwat's charging rules will be subject to public consultation. The Welsh Ministers have a power in respect of relevant undertakers to direct Ofwat not to issue the rules, for example, where rules are not consistent with Welsh Government policy. Where the Welsh Government issues revised guidance, the Act requires that Ofwat should review and, if necessary revise, the relevant charging rules.

In addition to this overarching statement of charging policy and principles, the Welsh Ministers are required in some instances to issue guidance in relation to the content of the particular charging regimes, duties and powers to issue further, more detailed guidance on each of the

¹⁴ Not currently devolved to Wales

particular charging regimes issues listed above. In many areas we may consider that the overarching statement of principles published here is sufficient, in others we may take the view that further detail in relation to content is required at a later date. For example, Welsh Ministers must use the power in section 144ZD to publish guidance on the content of the rules about charges for connections that relevant undertakers may make to developers.

The Act also provides that Welsh Ministers may issue guidance about the content of the rules under section 143B to be applied by Ofwat.

The Act also provides that Welsh Ministers must issue guidance as to the content of the rules under section 144ZA.

Summary of Welsh Ministers' powers and duties to issue guidance on charges to Ofwat

	WIA91 (as amended)	WA14
Duties		
Welsh Ministers <u>must</u> issue guidance about the <u>principles</u> underlying charging rules issued by Ofwat under 66E [Access charges]	144ZE	38
Welsh Ministers <u>must</u> issue guidance to Ofwat on the <u>principles</u> applied in rules on charges schemes issued under 143B [Charges schemes]	144ZE(1)(c)	38
Welsh Ministers <u>must</u> issue guidance regarding the <u>content</u> of the rules under 144ZA [Developer charges – connections]	144ZD(1) – (2)	17
Powers		
Welsh Ministers <u>may</u> issue guidance about the <u>principles</u> to be applied by Ofwat in determining the contents of other documents produced by Ofwat about charges [General guidance on charges]	144ZE(4)	38
Welsh Ministers <u>may</u> issue guidance on the <u>content</u> of rules under 66E [Access charges]	66ED(1)	Sch. 2(5)
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>content</u> of charging rules issued under 143B [Charges schemes]	143E(1)	16
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied in rules under 144ZA [Developer charges – connections]	144ZE(2)	38
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied in rules under 40E [Bulk supply charges]	144ZE(2)	38
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>content</u> of charging rules issued under 40E [Bulk supply charges]	40I	8
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied in rules under 110F [Sewerage mains connection charges]	144ZE(2)	38
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>content</u> of rules under 110F [Sewerage mains connection charges]	110J(1)	9
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied in rules under 51CD [Charges for adoption of water infrastructure]	144ZE(2)	38
Welsh Ministers <u>may</u> issue guidance on the <u>content</u> of rules under Section 51CD [Charges for adoption of water infrastructure]	51CG	10
Welsh Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied in rules under 105ZF [Charges for adoption of sewerage]	144ZE(2)	38

	WIA91 (as amended)	WA14
infrastructure]		
Welsh Ministers <u>may</u> issue guidance regarding the <u>content</u> of rules under 105ZF [Charges for adoption of sewerage infrastructure]	105ZI	11
Ministers <u>may</u> issue guidance to Ofwat on the <u>principles</u> applied by charging rules issued in accordance with regulations under 66M [Water supply agreements]	144ZE(2)(c)	38

Annex 2

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 sets out seven goals which provide a shared vision and framework for its activity. The Act also requires the Welsh Government to demonstrate it has applied five key behaviours when making decisions, through the sustainable development principle. We want Ofwat to work towards the seven goals and take account of the sustainable development principle in how it goes about its work.

The Well-being of Future Generations (Wales) Act 2015 Seven Goals:

1. A prosperous Wales – An innovative, productive and low carbon society which recognised the limits of the global environment and therefore uses resources efficiently and proportionately (including action on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
2. A resilient Wales – A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).
3. A healthier Wales – A society in which people's physical and mental well being is maximised and in which choices and behaviours that benefit future health are understood.
4. A more equal Wales – A society that enables people to fulfil their potential no matter what their background and circumstances (including their socio economic background and circumstances).
5. A Wales of cohesive communities – Attractive, viable, safe and connected communities.
6. A Wales of vibrant culture and thriving Welsh language – A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, sports and recreation.
7. A globally responsible Wales – A nation which, when doing anything to improve the economic, social, environmental and cultural well being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

5 Key behaviours:

1. **Long-term** – balancing short-term needs with the need to safeguard the ability to also meet long-term needs;
2. **Prevention** – acting to prevent problems occurring or getting worse
3. **Integration** – considering how the objectives of the organisation may impact upon each of the well-being goals, on their objectives, or on the objectives of other public bodies;
4. **Collaboration** – acting in collaboration with any other person, or different parts of the public body itself, that could help the body meet its well-being objectives;
5. **Involvement** – involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.