



Department  
for Environment  
Food & Rural Affairs

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# **Consultation on Amending the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (“the SIP Regulations”)**

## **Summary of responses and next steps**

**November 2014**



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# Background

1. The purpose of the consultation was to seek views on the draft Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2014 (“the draft Amending Regulations”). These draft Amending Regulations will amend the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, referred to as the “SIP Regulations”. They will be made pursuant to the powers conferred by Part 2A of the Water Industry Act 1991 (“the 1991 Act”). Under section 36G of that Act, the Secretary of State is required to consult those persons who in her opinion represent interests likely to be affected by the regulations. The SIP Regulations are generic in nature. They give the Secretary of State and Ofwat powers to specify by notice an infrastructure project in certain circumstances. Once specified, the incumbent water or sewerage undertaker must put the specified infrastructure project out to competitive tender. It is prohibited from undertaking that infrastructure project unless otherwise permitted or required by a separate preparatory work notice to carry out certain preparatory work. The successful bidder would then be expected to be designated as an “infrastructure provider” (“IP”) by the Secretary of State or Ofwat and awarded a project licence under section 17FA of the 1991 Act (as given effect by Schedule 1 to the SIP Regulations).
2. On 4th June 2014 the Government specified by notice the Thames Tideway Tunnel as an infrastructure project under the SIP Regulations. This came into effect on 5<sup>th</sup> June 2014. To date, this is the only infrastructure project to be specified. In accordance with its duty under the SIP Regulations, Thames Water Utilities Limited put the project out to tender on 10th June by publishing a contract notice in the Official Journal of the European Union. Ofwat will in due course consider designating the successful bidder as the IP for the project and granting it a Project Licence.
3. Currently the SIP Regulations do not provide for an IP’s Project Licence to contain a condition allowing it to pursue an appeal to the Competition and Markets Authority (CMA) on any Ofwat determination, such as a price control decision, unlike a water and sewerage undertaker’s licence which does allow that. In the absence of such a condition, the only route of challenge for a licensed IP against an Ofwat price determination would be by way of an application for judicial review to the High Court. This is a more limited form of appeal and is likely to be a lengthy process with corresponding associated costs. The main purpose behind the proposed amendment is therefore to bring Ofwat’s power to include conditions in an IP’s project licence into line with that which exists for water and sewerage undertakers.
4. The Amending Regulations will also update the SIP Regulations so that references to the Competition Commission are changed to the Competition and Markets Authority (CMA). This follows the abolition of the Competition Commission on 1 April this year and the transfer of its functions to the CMA.

5. The consultation ran for six weeks between 28 July and 8 September 2014, and was issued to 324 contacts by email, including:

- Ofwat;
- Mayor of London;
- Greater London Assembly members
- London local authorities;
- London MPs with an interest;
- MPs in the Thames Water region;
- EFRA Committee MPs;
- English Water and Sewerage companies;
- The Competition and Markets Authority; and
- The Consumer Council for Water.

6. The consultation documents were placed on the Defra consultation website and it was open to members of the public to submit their views and comments.

## Summary of replies

7. Defra received five replies to the public consultation; the types of respondents break down as follows:

Respondent Type	Number of Respondents
MPs/Lords	1
Water & Sewerage Companies	1
Public Bodies	3
<b>Total</b>	<b>5</b>

8. The public consultation invited comments on the proposed draft amendments to SIP Regulations. A summary of the main points raised by respondents, and the Government's response, is detailed below.

9. A full list of respondents to the consultation is attached at Annex 1, and the five responses received are reproduced at Annex 2.

## Main points

10. The five respondents provided views and comments on the proposed draft Amending Regulations, as well as a range of other issues related to the proposed Thames Tideway Tunnel project. Although the points raised on aspects of the Tunnel project itself were not relevant to this consultation exercise, for the sake of completeness they have been included in the summary below:-

- **Supportive of the proposed draft amendments to the SIP Regulations**
  - Agree with the proposal to bring Ofwat's power to include conditions in an Infrastructure Provider's project licence into line with that which exists for water and sewerage undertakers.
  - Referring disputes to the Competition and Markets Authority (CMA) is preferable to applications for judicial review, the costs of which would be passed on to consumers.
  - CMA engagement with key stakeholders in the event of a dispute provides reassurance to consumers that an objective decision would be reached taking their best interests into account.
  - Project costs should be kept lower by reducing perceived project risks without CMA involvement, thus reducing rates of return sought by investors and resulting in lower customer bill impacts.
  - Minor textual drafting amendments suggested to improve clarity.
- **Neutral on the proposed draft amendments to the SIP Regulations**
  - Draft proposed amendments to the SIP Regulations are outside the remit of the organisation, therefore no substantive comments to make.
- **Need for the Thames Tideway Tunnel questioned**
  - The problem of Combined Sewer Overflows (CSOs) not quite as bad as portrayed insofar as the spills are untreated sewage diluted with surface rainwater runoff.
  - Upgrades to London Sewage Treatment Works should significantly reduce the likelihood of fish kills, rather than the Tunnel preventing CSO spills.
  - The Tunnel will make little difference to the visual appearance of the river due to its natural turbidity.
  - Health benefits for river users relatively small.

- Increased costs of the Tunnel project render it incompatible with the EU Urban Waste Water Treatment Directive compliance using Best Technical Knowledge Not Entailing Excessive Cost.
- Cost-benefit analysis deeply flawed, and concerns about £80 increase on customer bills hitting the poorest hardest.
- Other alternatives are available for addressing the issue of sewage discharges.

## Government response

11. We have noted the views and comments received from respondents on the draft Amending Regulations. Other comments relating to the merits of the Thames Tideway Tunnel project itself were also received and noted, although these are considered to be outside the scope of the consultation. The purpose of the consultation was not to review the merits of the Tunnel, but to consider proposed amendments to the SIP Regulations that would (i) bring the Ofwat's powers to include conditions in a project licence which allow for certain questions or matters to be referred to, and determined by, the CMA into line with those already available in relation to water and sewerage undertakers, and (ii) to update the SIP Regulations so that references in Schedule 1 to the "Competition Commission" become "CMA".

12. The case for a tunnel has already been addressed in the Government's Waste Water National Policy Statement, which was debated and approved by Parliament in March 2012. The Government supports a tunnel-based solution as the most cost-effective, timely and comprehensive response to the problem of significant sewage pollution in the River Thames, and to comply with the judgment of the Court of Justice of the European Union in October 2012 that the UK was in breach of the Urban Waste Water Treatment Directive in respect of London. A Development Consent Order to build the Thames Tideway Tunnel was granted on 12 September 2014. A range of alternative solutions over the last decade or so, including the use of green infrastructure and sustainable drainage systems (SuDS) either on their own or in combination with various smaller tunnel options, were assessed as being unable to meet the environmental standards for the Thames Tideway or to reduce the number of Combined Sewer Overflow spills to a level that would achieve compliance with the Urban Waste Water Treatment Directive.

13. The draft proposed amendment to bring Ofwat's power to include conditions in an Infrastructure Provider's project licence to refer disputes to the Competition and Markets Authority (CMA) into line with that which exists for water and sewerage undertakers will contribute to keeping project costs down by reducing the perceived project risks of an appeal route to the CMA being unavailable, thus reducing rates of return sought by investors and resulting in lower customer bill impacts. Without this proposed amendment, the only avenue of appeal would be by application for judicial review, the costs of which could be passed on to customers. Additionally, CMA engagement in a dispute would

provide customers with reassurance that their best interests are being taken into account in reaching a decision.

14. The Government has considered the minor drafting points raised by Thames Water and accepted the suggestion that the new section 17HA(8) and (10) of the 1991 Act (as given effect by paragraph 4 of the SIP Regulations) should refer to the provisions in Chapter 1A of Part 2 of the 1991 Act (“Licensing of water suppliers and licensed infrastructure providers”) rather than the provisions in Chapter 1 (“appointments”).

## **Next steps**

15. In the light of the responses to the consultation, the Government intends to proceed with finalising the draft Amending Regulations, amended as described in paragraphs 13 and 14 above, and laying them in Parliament for approval by Affirmative Resolution. This process is expected to be complete in 2015.



## **Annex 1: list of respondents**

Mark Field MP

Thames Water Utilities Ltd

Consumer Council for Water

Competition and Markets Authority

Natural England

## Annex 2: consultation responses received

### Mark Field MP

Dear DEFRA,

Mark asked me to send through his speech (attached) on the Thames Tideway Tunnel from March 2012 which sets out his views on the project more broadly.

Kind regards,

*[name removed]*

Office of Mark Field MP

### Thames Tideway Tunnel (March 2012)

**Mr. Mark Field (Cities of London and Westminster) (Con):** I am one of 144 Members of Parliament in the Thames Water area directly affected by the issue of the Thames tunnel, and I hope that both the Minister and Gavin Shaker will forgive me if I restrict my comments to the area that is close to my heart.

It is good to have consensus at times in politics and to be able to discuss issues in a measured way. One of the difficulties with the Thames tunnel is that there will be one hell of an outcry from many Thames Water customers in the years to come when they recognise the sheer cost implied by what is being put into place through this national policy statement for waste water, as it affects not only the London area, but the Thames Water area. Those living in the centre of London will see the tunnel being constructed, as I am sure it will be in the years to come, and will recognise that that does not come entirely cost free. I suspect that Thames Water customers in the Oxfordshires and Gloucestershires of this world will put a lot more pressure on. It is, therefore, all the more important that I use this opportunity to put certain concerns about this policy statement on the record, although I do not wish to break away too far from elements of the happy consensus that we have seen tonight.

I think we all acknowledge that if the Thames tunnel goes ahead, as I confidently predict it will, it will be a nationally significant infrastructure project. It is therefore sensible to make it one in the formal sense, both in relation to the Planning Act and, as the framework suggests is needed with such projects, with the sort of national policy statement we are debating tonight. I agree with other Members that although this debate has been relatively short, this opportunity to debate such a crucial issue is welcome. The Select Committee on Environment, Food and Rural Affairs certainly thought so when it examined this draft national policy statement last year, as we gathered from my hon. Friend Miss McIntosh earlier.

The Committee also signalled some concerns about the way that the document appeared to pre-empt elements of the planning process. The waste water NPS is the key document

against which the planning application for the Thames tunnel will be judged. For that reason, the Committee said that it should be “*a purely generic document*” to prevent the justification for the Thames tunnel project from being removed from scrutiny. It also warned that although reference to specific schemes could be put in an annex to the national policy statement, “*it should be made clear that it does not constitute information to which decision makers must have regard when considering project applications.*”

I fear that the Government have rejected that element of the advice. Instead, the NPS makes it clear, on page 21, that the tunnel is the “*only option*” and that what would be left to the Planning Inspectorate would merely be the “*specific design and route*”. In its response to the Select Committee report, DEFRA said the Government want to provide a “*degree of certainty*” to Thames Water. I do not think there is any doubt that they have been able to achieve that result.

Let us be quite clear about what the national policy statement means in practice. It means there will be no independent analysis of the very case for a tunnel. The document we are debating removes the case for the tunnel from the planning process. I think the Minister will argue that that is reasonable because the arguments have already been heard in detail—perhaps privately in his office and the offices of his predecessors—that the evidence is overwhelming and that the final NPS makes an unarguable case. If that were true, he would have a point, but the NPS is far from entirely convincing, not least because there are a number of things that one would never learn just from reading the document. In my brief contribution tonight I shall list the ones that seem the most significant, and I join the Select Committee in asking whether there really is no need for an independent assessment.

First, the tunnel will not collect 39 million tonnes of sewage. Like Thames Water, the NPS mentions 39 million cubic metres of discharge into the Thames each year. It then states that the Thames tunnel is the preferred way to address this issue. The casual reader of the document will assume that the tunnel collects 39 million tonnes of discharge, but that figure will be more than halved without the tunnel being built. The construction of the Lee tunnel and the upgrades to the sewage treatment works will prevent 21 million tonnes from entering the tidal Thames, and improvements to Mogden sewage treatment works will tackle several million more upstream.

Rather than celebrating the huge strides already being made to clean up the Thames—I am not entirely complacent about that; there should be huge strides and we should always be looking to improve the quality of water in the Thames—the NPS makes only oblique references and never entirely quantifies them in the way that I have tried to do tonight. It is worth repeating that the amount of sewage entering the Thames will fall dramatically without the Thames tunnel project. Only 18 million tonnes of discharge will be addressed by the tunnel, by no means all of which would be stopped as there would still be three large discharge events in an average year.

Unlike the publicity we have seen from Thames Water the NPS does at least describe the discharges as a mixture of “*untreated sewage and rain water*”, but it does not explain that the rain water accounts for more than 95% of the total. That somewhat disingenuous use of statistics has understandably misled countless members of the public and even Members of this House. In last week’s debate on the Water Industry (Financial Assistance) Bill, my hon. Friend Mr Offord talked about tackling the “*39 million tonnes of effluent*” but

the reality is that there are just 18 million tonnes of discharge, of which not even 1 million tonnes are effluent. Any discharge of sewage is regrettable but we should deal in facts.

**Anne McIntosh (Thirsk and Malton) (Con):** When the Committee put questions on the national policy statement to the Department, we asked particularly about the potential impact of SUDS and other rainfall harvesting. If, as my hon. Friend says, we are talking about mostly rainfall, that impact would be quite substantial.

**Mark Field:** I accept that there would be an impact, but the use of the word “*effluent*” in relation to the 39 million cubic metres gives the public and many Members of this House a somewhat misleading impression of the sheer urgency of the need to undertake the project at this time.

It has been asserted that the river has been getting better and will continue to do so, and there is no doubt about that, but a feature of debates on the Water Industry (Financial Assistance) Bill last week and less recently was the number of hon. Members who suggested that the Thames had been getting worse, and will continue to get worse without the tunnel. The hon. Members for Hammersmith (Mr Slaughter) and for Islington North (Jeremy Corbyn) made that statement in part. That claim is not supported by the facts, as regards the immediate future; it is also probably not entirely true as regards the past and present.

I note that the Environment Agency’s website no longer hosts a press release that it issued only 17 months ago, but at that time, it went so far as to describe the Thames as “*the beauty queen of the planet’s waterways.*”

That perhaps goes a little too far, even for those who have no desire whatever for a Thames tunnel-type project, but what prompted the comment was real enough: the sustained and continuing improvement of the Thames, which saw it win the international Theiss river prize for outstanding achievement in river management and restoration.

**Jeremy Corbyn (Islington North) (Lab):** The hon. Gentleman mentioned my contribution last week. Surely there is irrefutable evidence that in the past few years, there have been significant discharges into the Thames, which have damaged the water quality. There is no getting away from that. I welcome all the improvements, including upstream, but the solution has to be a combination of rainwater harvesting, better treatment and, eventually, a Thames tunnel. It will not make the river perfect, but if we do not do all those things, the river quality will continue to deteriorate. That is not what he, I, or anyone in London wants.

**Mark Field:** I accept the hon. Gentleman’s point, but there is the issue of the sheer cost of the proposal, and whether we need to go for what is seen as being the only game in town, and take up the Thames Water proposal that we spend £4.1 billion—already a significant increase on the figure originally presented for this project.

It is worth saying that population growth and climate change will not reverse the improvements that have already taken place. Given that a 60% reduction in discharges is on the way, it would take something much more significant to reverse the trend. The NPS identifies two potential factors—population growth and climate change—but neither seems of any great magnitude in relation to this issue. New housing developments are already being built with SUDS and mitigation designed in, and retrofitting will slowly improve the existing housing stock. Moreover, the NPS says that more than 1 billion litres per day of

sewage need in England can be saved through water efficiency, but then bizarrely ignores how that can help offset the projected changes in London's population.

Climate change is cited as producing more *"extreme rainfall events"* like those of August 2004; that may have an impact, as was discussed in the exchange with the hon. Member for Islington North. That discharge of eight years ago caused the death of many thousands of fish, yet on page 18, the NPS admits that the fish deaths were caused by the Mogden sewage treatment works, which of course have nothing to do with the tunnel, and are already being upgraded. Thames Water was quoted last week as claiming that climate change will produce less rainfall and more droughts, and will require more reservoirs to be constructed, which implies less in the way of combined sewage overflow overall.

Fish kills are already being addressed. Mogden, which is well upstream of the Hammersmith pumping station, is thought to be responsible for both major fish kills mentioned in the policy statement. The other occurred last summer, near Kew. It is reasonable to suppose that the number of fish kills will be significantly lower in future without the Thames tunnel, and before possible alternatives to the tunnel are considered. Thames Water claims that the Lee tunnel will not benefit the higher reaches of the river, but Mogden demonstrates that the whole of the tidal Thames is set to get cleaner.

The tunnel will not significantly alter the appearance of the river. The natural turbidity of the Thames means that the water will never be clear. In fact, an Economics for the Environment Consultancy review of the tideway project options concluded that *"little aesthetic change in the water is to be expected"* from a tunnel. This was endorsed by the Health Protection Agency's study in 2007, which reported: *"Shortly after discharge, floating matter disseminates relatively quickly, so the plug of sewage effluent moves unnoticed with the ebb and flood of the tide."*

No one is suggesting that sewage discharge does not matter, but it is a fact that for most people it passes unobserved. The findings of the study for the Thames tunnel make one particular and unsourced claim in the NPS seem somewhat dubious when it refers to *"large quantities of offensive solid material being...deposited on the foreshore"*, whereas the published evidence does not.

The hon. Member for Hammersmith made rather unfair sport of the views of Professor Chris Binnie in the exchange that we had last Wednesday. I shall discuss those views in a moment. Professor Binnie is an expert on water and designed the original Thames tunnel scheme, so his conclusion that only 10% of litter is sewage-derived should be heeded. It follows that if the tunnel can reduce litter deposits by some 10%, 90% of the visible rubbish that swills about the river will remain, whatever happens to the combined sewer overflows. The idea that the appearance of our improving river is causing an international *"reputational risk to the UK"* seems a little far-fetched, and I suspect that a 10% reduction along the lines that I have set out would do little to help.

The health benefits are real, but limited. Again, there must be a balance, given the cost of the project. Recreational users of the Thames would undoubtedly benefit from the tunnel, if not quite as much as is sometimes thought.

For example, although gastric infection in rowers runs at 13 cases per thousand rowers per year, that is far lower than the rate in the general population, which is 190 cases per thousand. Likewise, the actor David Walliams's swim is much touted, but he fell ill long before reaching the tidal stretches of the River Thames.

The Environment Agency has too little regard for the cost. The NPS highlights the curious role that has been given to the Environment Agency, whose sole concern is the environmental impact of the tunnel, with no attempt to weigh that impact against the rising cost. Apparently, the Government *“considers that the need...will have been demonstrated if the Environment Agency has concluded that the project is necessary for environmental reasons”*.

That is almost a blank cheque for what constitutes environmental necessity. The agency is understandably fond of large-scale projects. Despite the claim to a purely environmental rationale, however, when pressed on the justification for a £4 billion tunnel in a climate of austerity, when discharges will more than halve anyway, both the Environment Agency and Thames Water hide behind legal arguments about the European directive.

The directive overrides many of the environmental assessments. The NPS admits that *“the Urban Waste Water Treatment Directive is the initial driver for the Thames Tunnel.”*

In practice, compliance rather than the environment is both the root cause and the benchmark, as this stifles concerns about value. Terms such as *“unacceptable”* and *“necessary”* are used ambiguously in both the NPS and Thames Water’s literature. They appear to make an environmental judgment but, under challenge, a legal interpretation is always offered, with dark mutterings about infraction proceedings.

No one has asked the EU. The apparent failure of any of the three parties behind this scheme to approach the Commission is staggering, particularly on the part of the Environment Agency and DEFRA. Without reference to the Commission, DEFRA has disregarded the urban waste water treatment directive’s principle of using the best technical knowledge not entailing excessive cost, and stipulated that only a collection device for combined sewer overflows meets the requirement *“to limit pollution from sewer overflows”*.

It seems that the Environment Agency applies its zeal to say no discharges are acceptable, irrespective of cost. That is fine if we factor that into our thinking about that body, but the worry is that DEFRA takes that on board and then applies gold-plating by saying that no discharges are permissible under the directive, and Thames Water applies for a project to which the answer can no longer be no. The huge cost is relevant, not just for all of us who are Thames Water users, but for legal reasons. It was the legal position that prompted Professor Binnie’s reassessment of the need for the tunnel that he had initially recommended, given the work that is already under way and the lessons that have been learned from in-river bubbler systems in the seven years since he chaired the Thames tideway strategic study. His examination of the directive has led him to believe that a tunnel is unnecessary.

What Professor Binnie revealed at the meeting chaired by Simon Hughes, which I think was misreported in the exchanges we heard last week, was the detail of his discussions with DEFRA’s lawyers. His view was that the increased cost of the tunnel has made it disproportionate in the sense of the directive, as exemplified by the Whitburn infraction proceedings. However, the senior DEFRA lawyer stuck relentlessly to the Department’s interpretation. I was not at the meeting, but I understand that Professor Binnie said that on legal matters he felt that ultimately he had to defer to those who ought to know. His understandable reluctance to challenge civil servants is not always shared by the rest of us, and nor should it be.

In my view, the cost-benefit analysis is deeply flawed, and there is no better example of flawed DEFRA analysis than the series of cost-benefit analyses that have accompanied the Thames tunnel project. When the cost was initially touted as £1.7 billion, the benefits were judged to be worth around £1.7 billion. Now that the cost has risen to £4.1 billion, with the Lee tunnel and sewage treatment works upgrades already under way, hey presto, the benefits have been judged to have risen to around £4.1 billion. It is either a near miracle of fortuitous recalculation or, as those of us inclined to be more sceptical might think, a somewhat cynical sleight of hand. I think that Professor Binnie is in no doubt about this non-legal point. Using Treasury green book rules and standard, quality-adjusted life year metrics, he calculated the health benefits of the tunnel to be about £2 billion. The NPS means that no independent examination of DEFRA's figures will take place.

There are no net economic benefits. The economic case for the tunnel on the basis of job creation is starting to be talked up, and I understand that a report on that by Thames Water is imminent. The Minister described the estimated 4,200 jobs only last Wednesday as *“a big win for London”*.

Unlike other infrastructure projects, however, the tunnel will do relatively little for the economy once it is complete. Even the boring machines are being bought from Germany—as we speak, the same applies to Crossrail. Although the temporary creation of construction jobs will have some benefit, it would be considerably cheaper to pay 4,000 people an MP's salary for the duration of the project, and considerably better value to build something else, whether in London or not. I am afraid that the lasting economic impact of the tunnel will be the £80 a year reduction in the disposable income of each and every Thames Water customer for decades to come.

I fear that the poorest will be hardest hit, and this is the debate we will be having in this House in four or five years' time. We will be talking about those bills, and Thames Water customers will be in the position South West Water customers were in last week when we debated the Water Industry (Financial Assistance) Bill. Sewerage bills are regressive. We have only just debated the pernicious effect of such bills in the south-west, and the rising cost of energy is a cause of great concern across the House. It is not good enough for Thames Water to defend this simply by saying that water bills will rise only towards the average. Together, London and the wider Thames Water sewerage area already have the highest living costs in the country and the pinch will be felt.

There are alternatives, depending on the question. Bubblers are dismissed by the NPS as they are *“not considered to be a sustainable or complete solution in the long-term.”*

Of course, the tunnel is not a complete solution, as there would still be discharges—no one disputes that for one minute. The notion of sustainability in the NPS leans heavily on the assumptions about population growth and climate change to which I have already referred. The Cardiff harbour system shows that new options have emerged since the tunnel was first mooted almost a decade ago, including the real-time monitoring of dissolved oxygen levels. I accept that an in-river system is not perfect and would not go as far as the Thames tunnel, but it would cost a fraction of the £4.1 billion price tag now in place. Were it not for the momentum already behind the building of the tunnel and the closed institutional ranks to which I have referred, I think that such a system would be considered, and perhaps it still should be.

The NPS states, somewhat grandly: *‘It is inappropriate to “do nothing”’* about sewage discharges, but we are not *“doing nothing”*; we are more than halving the problem. The phrase is redolent of the so-called politician’s fallacy: *“We must do something; this is something; therefore, let’s get on and do it.”* When civil servants insist once again that the gold-plated option is the only way to meet our obligations under a European directive, we are entitled—obliged, in my view—to be sceptical. When the result could allow a single utility company to profit while the rest of us are hit in the pocket, we can contemplate stronger emotions. The project cries out for proper independent scrutiny, yet the NPS prevents, I fear, any assessment through the planning process of the case for the tunnel.

I have no doubt that there is a problem with sewage discharge in the Thames. More than £1 billion is already being spent to reduce it dramatically, but the Thames tunnel will cost in excess of £4 billion, and the question is whether it represents good value for money.

I am sure that we in this House will return to this issue, but I fear that we will do so on the back of huge increases in water bills for all our constituents, and we will only wish that we had alerted ourselves to the issues now, rather than doing so, as I suspect we will, in many years to come.

## Thames Water Utilities Limited

### Introduction

This paper is submitted by Thames Water Utilities Limited (“**Thames Water**”) in response to the consultation published by the Department for Environment, Food & Rural Affairs (“**Defra**”) on 28 July 2014, titled “Water Industry: Changing the Specified Infrastructure Projects Regulations” (the “**Consultation**”).

Thames Water is a water and sewerage undertaker (an “**Undertaker**”) pursuant to the Water Industry Act 1991 (“**WIA**”) and is the UK’s largest water and wastewater services company, servicing 14million customers in the London and Thames valley areas. Thames Water is also the incumbent undertaker in respect of the Thames Tideway Tunnel, a project which has been specified by the Secretary of State in accordance with paragraph 4(1) of the SIP Regulations.

We would be happy to discuss any aspects of our response with you in further detail and can be contacted at:

Address: The Point, 37 North Wharf Road, London W2 1AF

Copy to: Clearwater Court, Western Road, Reading, RG1 8DB

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## Summary

Thames Water welcomes the opportunity to respond to this Consultation and is fully supportive of the proposed amendment of the specified infrastructure projects regime established by the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (the “**SIP Regulations**”) to allow a licensed infrastructure provider to pursue an appeal to the CMA, in line with the regulatory regime for water and sewerage undertakers. We agree that this amendment is important to ensure that the cost of procuring the Project is kept as low as possible, as infrastructure providers will have the ability to refer matters to the CMA and therefore will not price any additional risk of adverse regulatory determination. The effect of this amendment will be to lower costs to our customers.

TWUL has carefully reviewed the Consultation in the context of the Thames Tideway Tunnel Project and more generally for its application to future projects and has a few comments that it hopes may assist Defra:

- references in paragraphs 3(2)(a)(ii) and (iii) of the draft of the Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2014 (the “**Amending Regulations**”) to “the licence” should be replaced by references to “the project licence”;
- in paragraph 3(2)(a)(iii) of the Amending Regulations insert commas after “provide for the reference by the Authority to” and “and the determination by” so that it reads “[...] by the Authority to, and the determination by, the CMA”; and

in paragraph 3(8) of the Amending Regulations, we suggest that the references to Sections 14(4) and (5), and Sections 14A and 14B of the Water Industry Act 1991 be replaced by references to Sections 17K(5)(a)-(b)(i) and (7), and Sections 17L and 17M respectively, as the latter mirror the text of the former but are in the same Chapter as Section 17HA.

## Consumer Council for Water

I am responding to the consultation on proposed amendments to the SIP Regulations on behalf of the Consumer Council for Water (CCWater), the statutory consumer body charged with representing the interests of water and sewerage consumers throughout England and Wales.

CCWater wishes to see the Regulations that apply to large and complex water or sewerage infrastructure projects, like the Thames Tideway Tunnel, which are delivered through an Infrastructure Provider (IP) designed to minimise water and sewerage customers’ exposure to risk/potential cost escalation.

We, therefore, agree with the proposal to bring Ofwat’s power to include conditions in an IP’s project licence into line with that that exists for a water and sewerage undertaker. This will allow for a reference to the Competition and Markets Authority (CMA) in specified circumstances. This is preferable to an application for a judicial review which could lead to

lengthy and costly legal proceedings. As these costs would be passed directly on to customers we think the CMA route represents a better way of dealing with disputes.

Should a price determination be referred to the CMA then the CMA would engage with key stakeholders (including CCWater) in reviewing Ofwat's decision. This can provide consumers with an assurance that, should a dispute occur, the CMA would arrive at an objective decision taking into account consumers' best interests.

CCWater agrees with the Government's view that this should also help to keep the cost of procuring the IP as low as possible. By reducing the perceived risk this should lead to a lower rate of return being sought by investors and thus reduce the impact on customer bills. In principle, we welcome measures to avoid potential investors' bids being inflated due to 'pricing up' of perceived risk.

The proposed Thames Tideway Tunnel is the first project to be taken forward under the SIP Regulations so will be the first opportunity to test these assumptions. We, therefore, seek assurance that Defra and Ofwat will ensure that the costs associated with the IP are subject to strict controls, and that the interests of Thames Water's customers are appropriately protected.

Yours sincerely

Tony Smith

Chief Executive

## **Competition and Markets Authority**

Dear colleagues

Thank you for the invitation to comment on the above proposals.

We have considered internally and the CMA is content with the proposed amendments. We have no other comments on the consultation.

Please do not hesitate to contact me if you would like to discuss further.

Regards

Steven Preece  
Assistant Director  
Policy, Precedent and Procedure

020 3 738 6464

## Natural England

### **Consultation: Water Industry – Changing the Specified Infrastructure Projects Regulations**

Thank you for your recent correspondence dated 28 July 2014 in respect of the above consultation, seeking the views and comments of Natural England with regards to Changing the Specified Infrastructure projects Regulations.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Thames Water has worked closely with key partners including Natural England to ensure that the Thames Tideway Tunnel does not impact on biodiversity interests and has sought active discussion to conserve and enhance biodiversity, where appropriate as part of the scheme delivery.

Natural England must be consulted by the relevant Planning Authority or developer on planning applications that may impact on nationally protected nature conservation sites, and applications that require an Environmental Impact Assessment.

This consultation is outside the remit of Natural England and therefore we have no substantive comments to make in respect of this consultation document.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

For clarification of any points in this letter, please contact David Hammond on 0300 060 1373. For any new consultations or issues, please contact [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely

**David Hammond**  
**Lead Advisor**  
**Sustainable Development and Regulation**

**For and on behalf of Sussex and Kent Team**