



Department  
for Environment  
Food & Rural Affairs

# Consultation on the guidance to Ofwat for new water and sewerage connections charges

## Summary of responses

December 2016



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Any enquiries regarding this publication should be sent to us at:

Defra's Water Services Team,  
Nobel House,  
17 Smith Square,  
London,  
SW1P 3JR.  
[developerchargingguidance@defra.gsi.gov.uk](mailto:developerchargingguidance@defra.gsi.gov.uk)

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# Introduction

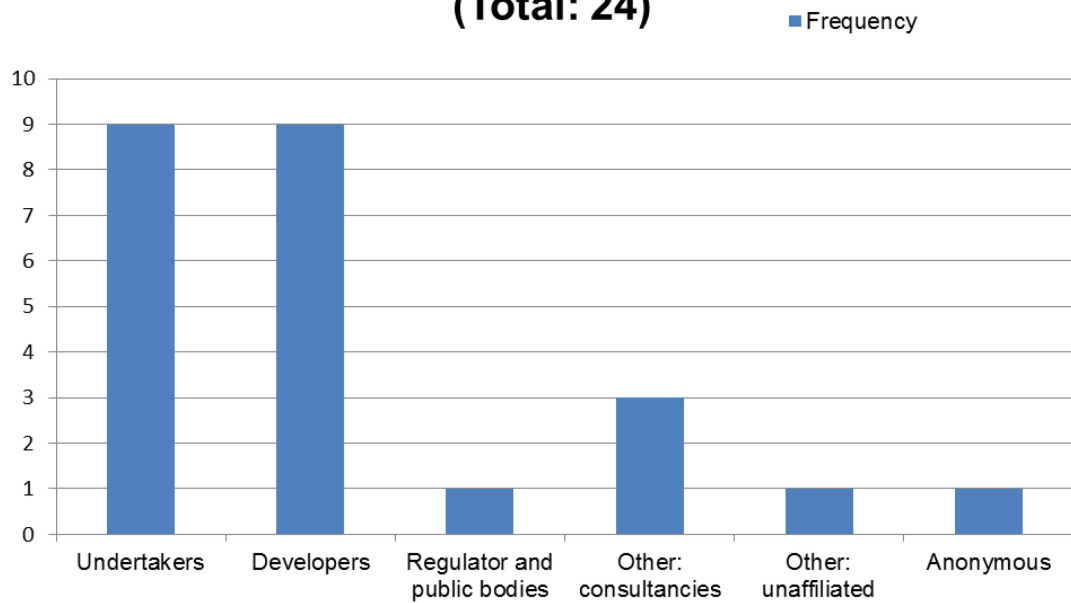
1. The [Water Industry Act 1991](#) provides for Undertakers (water-only companies as well as water-and-sewerage companies) to charge for new connections to the water supply and/or sewerage networks, and for associated work. Since coming into force, the legislation has been interpreted inconsistently by Undertakers. This has impacted upon developers, who comprise: housing developers, new appointees, self-build and Self-Lay providers – as well as existing customers wishing to renew their water or waste water pipework.
2. The [Water Act 2014](#) changes the regime for charging for new connections to improve transparency, stability and competition in the water sector, and to provide greater clarity on charging. The Act includes provisions to remove the existing complex arrangements for new connections charges and also enables Ofwat to set the detail through Charging Rules, which Undertakers must follow when setting their schemes for charges for connections. To ensure the Charging Rules are set in line with the government's policy positions, the Act also places a requirement on government to produce guidance for Ofwat.
3. In January 2016, overarching [Charging Guidance](#) to Ofwat was issued. Further to this, in June 2016, we published our consultation on the [draft guidance](#) to Ofwat for new water and sewerage connections. The purpose of the consultation was to seek views on the proposed guidance for new connections concerning the charges that Water and Sewerage companies (Undertakers) may make to developers. This guidance sits under the high level principles set out in the January Charging Guidance. The consultation applied to England only; however, the consultation was an open one, which invited stakeholders and all other interested parties to respond. It lasted for 6 weeks, beginning on 10 June 2016 and closing on 22 July 2016. It accepted responses to questions through Citizen Space (an online portal), by post and by email. Responses were qualitative in nature.
4. The consultation can be found at the [consultation webpage](#).
5. This summary document provides a high level overview of the main messages from the responses to the consultation. It also outlines the subsequent government response and next steps.

# Responses

## Overview of Respondents and responses

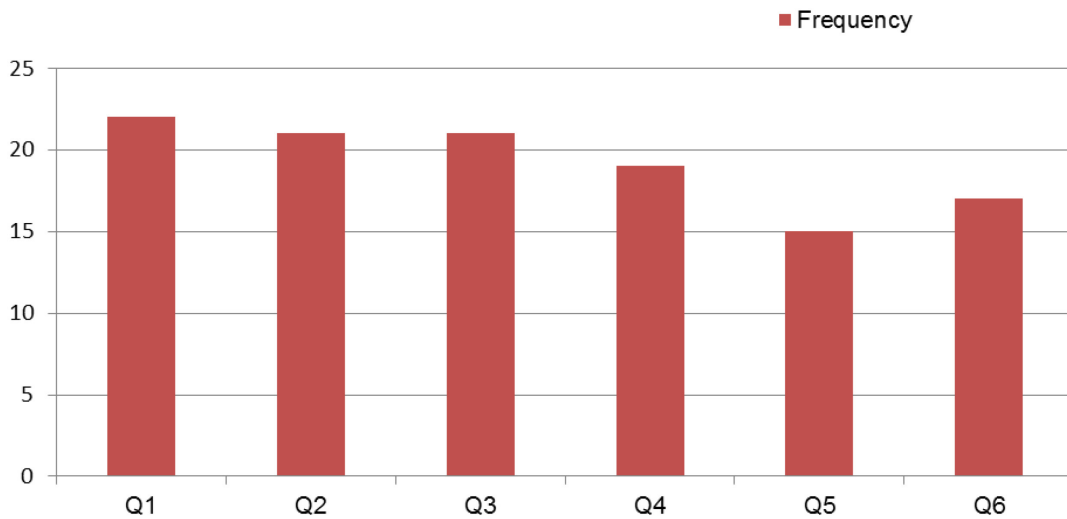
6. There were 24 responses received which were relevant to the consultation. Of these, 9 responses were from Undertakers and 9 responses were from the developer community. Figure 1 shows the breakdown of responses by class of respondent.

**Fig. 1: Classes of Respondents  
(Total: 24)**



7. The total number of question responses received was 115. Figure 2 shows the number of responses to individual questions in the consultation.

**Fig. 2: Total responses per question  
(Total: 115)**



8. All relevant responses were generally supportive of the principles and aims underpinning the draft guidance and stakeholder engagement processes. There were some differences of opinion on the way that the guidance could be applied. Where views expressed in response to the consultation document concerned details more appropriate for Ofwat’s consideration of the Charging Rules, rather than Defra’s guidance, they are generally referred to in this document but are not addressed in detail for reasons of relevance. We understand that Ofwat is also aware of these issues through its own consultation on the draft Charging Rules.
9. Views were also received which, although of relevance to the issue of wider Water industry/developer relationships, are not directly relevant to either the Defra guidance or the Ofwat rules. These are generally referred to in this document but not addressed in detail for reasons of relevance. Given the importance that the government places in housing supply, and the important role that Utilities have to play, such issues have been, and continue to be, discussed within the context of other relevant stakeholder engagement processes.
10. A respondent expressed concern about the order of the draft guidance and the headings under which some of the draft guidance sat. These headings were included in the draft guidance documentation purely to aid the consultation process and will not be included in the Defra guidance which is to be published. The headings are repeated in this document for consistency with the consultation document only and at no point should the order of the guidance indicate priority.

## Summary of responses to questions 1 to 6

**Question 1: “Do you agree that the current balance of contributions between developers and existing billpayers should be maintained? Please provide further comments to support your answer.”**

11. There were 22 responses to this question. All those responding agreed that it was important to ensure a good balance. 15 respondents supported the current balance, 6 did not and 1 did not express a preference.

### Responses

12. Respondents generally agreed that existing customers should not bear the costs for new developments. At the same time developers should only fund works that are in direct relation to the new connection, and not associated with enhancements to the existing network. One respondent summarised these concerns by stating that new connections should neither cause a price shock to developers nor lead to an increase in costs for customers.
13. A minority of respondents expressed a concern that developers were being overcharged currently under the existing balance of contributions, and that they have been subsidising existing customers. One developer respondent was of the view that infrastructure charges are not being used for their purposes, and that requisition charges and the planning system are being used to impose additional costs on developers. There was some concern that new developments are being used to resolve capacity issues that are not ‘in-consequence’, and that proportionality should therefore be a key principle. One respondent questioned whether the current balance is even known and cited ‘systemic’ overcharging in network reinforcement. Another stated that ‘consequence’ is not an accurate term to use since many Undertakers require companies to fund more than the minimum cost of design.
14. Several other respondents took a differing view and presented the proposition that developer contributions should increase to allow domestic customers to be treated more favourably than now.
15. A particular theme was flexibility in the balance of charges. Whilst some preferred the status quo, others stated that the current balance should allow for greater flexibility, with the Undertaker having greater responsibility for costs whilst being transparent in its decision-making. One respondent stated that the guidance should provide for regular updates to the rules to reflect changing markets. A number recognised that there should be allowance for a rebalancing of charges and it should be ensured that this is fairly applied across industry. One raised a question about whether ‘contributions’ just meant capital assets.

16. Finally, a number of specific points were made in relation to the balance of charges. For example, that the guidance should acknowledge the 'cost offset' which arises from water company savings from reduced cost to serve properties provided from the new network. This is on the basis of retaining the current level of subsidy. In addition, developers who build water efficient homes should have reduced costs. Lastly, water companies should have an obligation to maintain a network that is suited for future demands and events.

## The government response

17. It is the government's position that developers should only fund improvements to the network which are needed as a consequence of a new connection, and are not required to address existing network need or problems. The principles of fairness and customer-focussed charging in the Charging Guidance are there to ensure that a proportionate approach is taken. At the same time, we will still retain the use of the word 'consequence' as it reflects that charges are not just funding new connections, but also improvements needed to the existing network as a result of new connections. In addition, we also understand the need to protect customers from a price shock. Stability is a core principle in the Charging Guidance and we expect Ofwat to reflect this in its Charging Rules.

18. Our guidance provides for rules which give water companies some flexibility for their charging schemes. This should not necessarily compromise the key principles in the guidance, but can enable water companies to take an innovative approach, for example to incentivise water efficient homes. There is also scope for Ofwat to revise its rules where it feels this is appropriate (see [Water Act 2014](#), 144ZA). Finally, as set out in the guidance, it is our expectation that Undertakers maintain resilient networks to ensure a high quality network for future developments. Therefore no amendment is needed to the guidance in respect of the responses received to this question.

19. Contributions include developer contributions from enhancement requisitions, connection charges, grants and contributions; contributions in the form of infrastructure charge receipts for new connections; and others.

## Question 2: "What are your views on the guidance provided under the principle of stable and predictable charges?"

20. There were 21 responses to this question. 18 respondents were supportive of the principles, 2 did not have a clear preference and 1 was against the principles.

## Responses

21. There was overarching support for the draft guidance collated under the heading of stable and predictable charges. Specifically, respondents wished to see consistency across different networks and greater use of up-front tariffs.



22. In the event, however, that a discrepancy arose between estimated and actual charges, Self-Lay providers preferred a timely identification and communication of the risks in cost drivers. Further to this, they expressed a preference for any changes in charging to be subject to pre-defined “exceptional circumstances” only. In the event where overcharging has occurred, mechanisms for calculating rebates were suggested. One respondent expressed an anxiety that Ofwat would have powers to adjust charges in an ad hoc manner at short notice.
23. A number of respondents took the view that the rules should take a more prescriptive approach. Such prescription could, for example, ensure that Undertakers do not undertake separate commercial arrangements outside of regulatory or legislative framework. Developers in particular favoured a degree of standardised application of the connection charging framework. Reservations were raised about zonal charging. One developer had a differing view that— although small works were an exception – blanket standardisation should not come irrespective of costs to developers. Similarly, a Self-Lay provider stated that flexibility could be in the interest of customers.
24. Many Undertakers discussed the importance of transitional arrangements when introducing the new Charging Rules into force. Some respondents were supportive of a phased approach to coincide with the next Price Review. A phased approach, one Undertaker argued, should be used when significant changes such as regional or zonal charging are being implemented, to reduce the risk of unintended consequences.
25. One respondent highlighted the need to consider potential development ‘zones’ which develop holistically (with roughly 10-15 homes annually). These developments are often not in local or neighbourhood plans. There was one suggestion that Ofwat should be consulted as part of the planning process.
26. A suggestion on improved wording was made by a respondent, who suggested phrasing to the following effect: that new and varied appointees can expect the same benefit of stable and predictable charges for connections as developers.

## **The government response**

27. We are pleased that there is support for the draft guidance collated under the heading of stable and predictable charges. The guidance does not support a prescriptive approach to the rules. A less prescriptive approach enables Undertakers to develop charges more suited to their circumstances and to meeting customer needs. We are not prescribing a zonal approach but, as some respondents have noted, do wish to encourage innovation. The principle of stable and predictable charges means that up-front charges should be both realistic and accurate, and that where changes are made this should be managed to ensure there is not a disproportionate impact. There should be clarity about who bears the

risk in these cases. Issues regarding the voluntary approach and levels of service are for Ofwat to consider. We understand Ofwat is also aware of these issues.

28. We are aware of the concerns raised around transitional arrangements. The draft guidance does not preclude any particular decision on this. No one should be disadvantaged in the move to a new regime and Undertakers must have sufficient time to develop their new charging schemes, and to consult on their schemes with their developer customers, including SMEs.
29. The government fully recognises the role that new and varied appointees play in new connections and that they should also benefit from the same stable and predictable charges as developers. This will be reflected in the final version of the Charging Guidance.
30. With regards to planning issues raised, in general these are outside of the scope of the Charging Guidance and Rules.
31. It was noted that there was some concern as to “fairness” being constrained by predictability and stability, because unfair charges could not be liable to change. The government’s view is that competition (outlined in the four overarching principles) acts as a check on undue predictability and stability.
32. It was noted that there was some concern as to Ofwat possessing the powers for *ad hoc* charge-setting. The government response to this is that Ofwat has regulatory duties set out in statute and it is right that Ofwat has the powers needed to fulfil those duties.
33. We are grateful for the helpful drafting suggestions from respondents with respect to the correct terminology for Self-Lay providers, and to make clearer that new and varied appointees can expect the same benefit of stable and predictable charges as developers. The guidance has been amended accordingly.

### **Question 3: “What are your views on the guidance provided under the principle of transparent and customer focused charging?”**

34. There were 21 responses to this question. 15 respondents offered support, 4 did not have a clear preference and 1 was against the principle.

### **Responses**

35. There was wide support for the draft guidance collated under the heading of transparent and customer focussed charging. Many Undertakers saw this as an opportunity to encourage efficiency and innovation, although some developers raised concerns about the impact of sustainable solutions.
36. A number of developers proposed that Ofwat should be more prescriptive in information made available to them on costs, and on the need for accessibility. This

included being provided with information on non-contestable services in a timely manner. One raised the importance of a prescriptive list of recoverable costs, while a Self-Lay provider stated that Defra should give a stronger steer to Ofwat to ensure common charging approaches, more standardised terminology and availability of financial and volume data. One new appointee proposed there should be a duty on incumbent water companies to provide non-contestable charging information and services to competitors without delay. Another emphasised that the rules should minimise the administrative burden and lead to a single set off arrangement. They suggested a rule that prescribes how allowable charges are offset by a single transferrable charge and, moreover, a rule requiring Undertakers to provide a Development Impact Report detailing and justifying what reinforcement has been determined as necessary.

37. Planning was also raised. One respondent suggested there should be partnerships between local planning authorities, water companies and developers to ensure reinforcement and replacement works can be done in advance. Another stated the need to recognise small site value, since Local Plans do not identify the majority of small sites and infill which deliver homes quickly.

38. One respondent requested a clarification that new and varied appointees can expect same benefit of comprehensive descriptions of charges for connections as developers. Another proposed that the guidance should mandate Charging Rules that require Undertakers' charging schemes to treat Self-Lay providers and new appointees on the same basis as incumbent Undertakers own business.

39. In terms of wording, respondents suggested moving the discussion on cost reflectivity into the section on fairness and also requested further detail on what was meant by "sufficient flexibility" for a "bespoke" approach. Some questioned if there was a hierarchy of principles with some taking precedence over others.

## **The government response**

40. The government fully recognises that transparency and consistent approaches underpin customer focused charging. It also agrees that there is significant opportunity to encourage innovative and sustainable solutions, which are suited to local circumstances and meeting customer needs. This is why we reference the need for 'sufficient flexibility' to allow for a 'bespoke approach'. Although some respondents raised a concern about charging schemes that may benefit more sustainable water usage, it remains a key government policy to encourage sustainable solutions for water supply and drainage to encourage the long-term resilience of the water sector. Therefore, the government wants to see the Water Companies and the developer community working together to consider the potential for charging schemes which include, but not necessarily mandate, incentives for use of sustainable solutions.

41. With regards to availability of information, we do not propose to mandate Ofwat to make data available. However, the guidance places a strong emphasis on fair competition and Ofwat's rules should take this into account. The economic regulator should ensure that Undertakers describe in full the services they are offering to developers. It was noted that there was concern as to the hierarchy of principles: that the principle of transparency and customer focused charging may supervene others. The government's position is that all principles carry equal weight. Headings were for ease of reference at the consultation stage. They will not remain part of the Charging Guidance.
42. Self-Lay providers and new and varied appointees were concerned by the government's terminology in the draft guidance. It is recognised that Self-Lay providers and new appointees are also developer customers and the published guidance will reflect this. With regards to mandating charging schemes that do not discriminate, this is addressed through the fairness principle. We understand that Ofwat is considering making amendments to the proposed rules following its own consultation process.
43. Some respondents cited the planning process as posing an obstacle for development. The planning system is outside the scope of this consultation but we recognise that Undertakers need to work closely with Local Planning Authorities and should be taking a strategic view on proposed developments. Regarding concerns for smaller developments, we recognise the difficulty in anticipating where smaller development may take place. However, it is a manifesto commitment to see a doubling of the number of self and custom builders by 2020, and Utilities have a role to play in enabling SMEs to help deliver the new housing that the country needs.

#### **Question 4: "What are your views on the guidance provided under the principle of fairness?"**

44. There were 19 responses to this question. 16 respondents were supportive of the principle, 1 did not have a clear preference and 2 were against.

#### **Responses**

45. There was strong support for the draft guidance under the heading of fairness. Undertakers noted the need for flexibility to deliver investment ahead of need. A number wished to better understand how the process of timely investment should interact with the planning system, one respondent in particular stating that they wanted clarity on whether they could charge for investment ahead of need.
46. Some developers expressed the view that Undertakers should be more proactive in developing plans around Planning Authorities' plans. They also commented that it should be mandatory for Undertakers to work together to ensure timely investment ahead of need. One developer said that Water companies should be more

responsive in investing or upgrading in infrastructure on sites not in Neighbourhood Plans, such as custom and self-build. Another respondent believed that area wide infrastructure is a public good and, as such, articulated that its costs must be distributed across a wider customer base. Some suggestion was made that the water sector should be more like the energy sector, and that Ofwat should work more closely with Ofgem in competition issues.

47. Regarding the structure of the guidance, one Self-Lay provider proposed that the fairness heading should include 'competition provision fairness'; so that companies ensure necessary separation between arrangements for 'contestable' and 'non-contestable' works. Another stated that the guidance should be more explicit that the rules don't distort or inhibit competition.

## **The government response**

48. We welcome the view that water companies should engage more closely with the planning system, and at an early stage. Where there are no competition concerns, we agree that Undertakers should work together and we would also welcome an initiative to encourage this on other issues of concern, such as on integrated planning for long-term resilience.

49. One question was raised about distributing costs across a wider customer base. This stems from concerns about developers being over-charged. However we believe that principles such as transparency and fairness should remove any concerns about overcharging. The guidance makes clear that developers are not required to pay for investment to address existing problems.

50. In the final version of the guidance there will be no headings sub-dividing the guidance thereby alleviating any concerns about hierarchy and relative importance. However, the suggested wording to the effect that the Charging Rules should not distort or inhibit competition is a helpful one and the guidance is amended accordingly.

## **Question 5: "What are your views on the guidance provided under the principle of environmental protection and sustainable growth?"**

51. There were 17 responses to this question. 13 respondents offered support, 1 did not have a clear preference and 3 were against the principle.

## **Responses**

52. Many respondents were supportive of the draft guidance under the heading of environmental protection and sustainable growth. Undertakers made the case that water efficiency and innovative solutions should be incentivised. This is an area that they would like to have more detail on, while retaining flexibility of approach. One

respondent suggested that Undertakers should have innovation teams in place to share best practice, which could be partly funded by the end user.

53. There was some concern among developers that environmental and sustainability considerations could take precedence over an existing charging regime. Another stated that a lack of clarity creates significant inefficiencies that are not sustainable given the urgent need for additional housing. One respondent raised a concern about extant failures and the fact that developers should not provide the finance to rectify these.

## **The government response**

54. We welcome the push for innovation and the desire to ensure a more sustainable approach. We would welcome further exchange of best practice between water companies on this. Maintaining a healthy environment is a government priority and therefore we would encourage further initiatives to ensure environmental protection. The detail of this is for Ofwat to develop through its rules.
55. Regarding the comment on extant failures, we should point out that this guidance concerns new connections. There is no expectation on developers that they should address existing constraints within the network.

## **Question 6: “If you have any additional comments about the Charging Guidance on new connections please provide them here.”**

56. 17 respondents had further comments to add.

## **Responses**

57. Particular concerns were raised by a variety of respondents with regards to the short timeframe for implementation. There were worries that this might limit the ability of firms to cope with unforeseen circumstances. Suggestions were made to extend the timetable by an additional year, to coincide it with the Price Review, or to phase in any significant changes.
58. Developers preferred Ofwat to take a more active approach than currently. For example, that Ofwat should approve company connection charges and that it should set out performance service levels that Undertakers need to meet, such as timescales for providing information. One respondent had a particular concern that customer bills should remain affordable and the general customer base should not bear the costs of development.
59. Concerns were additionally raised about use of the planning system to secure funding for foul sewer network reinforcement that is not ‘in-consequence’, through planning conditions. It was suggested Defra should work with DCLG to develop specific guidance for Undertakers on the interface with planning. One respondent

wanted clarity on how pre-existing shortfalls in capacity are identified, stating there is potential for double billing.

60. New appointees expressed their surprise that they were not explicitly referenced in the draft guidance, despite a significant need for a 'level playing field for competition'. A Self-Lay provider asked for specific recognition in the document of 'costs offset' (funded by revenue derived from future usage of the water main). They proposed that the wording in the guidance be adjusted that developers bear the 'on-site' costs, as this should not be the case.
61. Some specific points of clarification were raised as well as some drafting points: a Self-Lay provider commented that the Charging Guidance should use "self-lay provider" rather than "self-lay organisation". A developer asked whether the reference to transportation costs which do not fall within the scope referred to incorporated "bulk transportation", mains or trunk mains
62. One respondent expressed that costs associated with the siting and installation of firefighting hydrants in new developments should fall to the developer.

## **The government response**

63. Regarding the timetable, we have noted the concerns. The question of timing is a matter for Ofwat. Ofwat has been consulting separately on whether the new Charging Rules should take effect from April 2018 rather than April 2017, as previously proposed. We welcome that Undertakers have started the necessary preparatory work and want to see them consulting with their local developer customers on their own Charging Schemes at the earliest opportunity. Ofwat proposes to publish the Charging Rules as soon as possible to allow for a long lead-in period.
64. The issue of Ofwat's role in approving connection charges is not directly relevant to the guidance. We understand that Ofwat is aware of the issue through its own consultation process. Outside the scope of the guidance consultation process, Defra has met with Ofwat to consider service levels and to explore the interaction this has with our work on developer charges. As economic Regulator, Ofwat always aims to ensure that customers are appropriately protected.
65. Planning conditions are not within the remit of the Charging Rules, as defined by the 2014 Water Act. Where a developer feels they have been treated unreasonably they should resolve this through the planning system. However, the government is aware that the issue of pre-commencement conditions is of significant interest to development and DCLG has consulted separately on this matter.
66. Regarding costs, we have made clear that developers should only be expected to pay for the costs in consequence of a development. The reference to transportation in the introductory text to the draft guidance merely refers to the provision of water

services to customers and that these are out of scope of this particular part of the Charging Regime.

67. We recognise the need to identify new appointees more explicitly in the document and will also refer to 'self-lay providers'. The issue of recognising 'costs offset' is also for Ofwat to consider when drawing up its rules.

68. The siting and installation of fire hydrants are broadly the duties of the Undertaker, as outlined in Sections 57 and 58 of the [Water Industry Act 1991](#). This is not relevant to this consultation.

## Next steps

69. Having reviewed the responses to the consultation, we will make the necessary amendments to the Charging Guidance. The guidance will be published on GOV.UK.