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# The private sewers transfer regulations

## Provisional non-statutory guidance on private sewers transfer regulations

June 2011

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Published by the Department for Environment, Food and Rural Affairs

Last revised 28 September 2011

PB 13621

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## Introduction

The Department for Environment, Food and Rural Affairs (Defra) and the Welsh Government consulted on the draft Regulations and Proposals for schemes for the Transfer of Private Sewers and Lateral Drains to Water and Sewerage Companies in England and Wales between 26 August 2010 and 18 November 2010.<sup>1</sup>

The issues raised during consultation have been considered in finalising the resulting regulations, The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, which came into force on 1 July<sup>2</sup>

The aim of this document is to explain and give guidance on issues which are likely to arise from the regulations and where additional clarification as an aid to interpretation would be helpful. It also seeks to deal with those issues or concerns which are not susceptible to regulation.

At the same time it is not intended to repeat what is clear from the Regulations themselves. Nothing in this document will in any way amend or change the effect of the regulations. This provisional guidance is therefore not a substitute for the Statutory Instrument and does not have legal force. It should be read in conjunction with the final Regulations and accompanying Explanatory Note.

Where this guidance refers to “the Government” it should be read as meaning the UK Government, unless the context indicates otherwise.

## Background

In using this guidance, and in particular when considering issues relating to curtilage, it will be helpful to take into consideration the reasons why Government has introduced these Regulations when deciding on what comprises the curtilage in any particular case.

For private sewers, evidence from survey work and consultation indicates that the current situation, in which a large number of customers of sewerage undertakers are disadvantaged by their responsibility for private sewers, is unfair. These customers are not only paying their water and sewerage companies for sewerage services, but are also responsible for the upkeep of the private sewers serving their properties. They are, in effect, paying twice for their sewer service, and in doing so are effectively subsidising all those who are not served by private sewers. This situation is not only unfair, but also results in hardship for individuals. The transfer seeks to address this

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<sup>1</sup> <http://archive.defra.gov.uk/corporate/consult/private-sewers/index.htm> and <http://cymru.gov.uk/consultations/environmentandcountryside/privatesewertransfer/?lang=en&status=closed>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2011/1566/contents/made>

unfairness and to place all property owners who are customers of sewerage undertakers on the same footing.

In the case of lateral drains, individual property owners are currently responsible for an asset serving their property which is in land owned by a third party. This can result in access difficulties and where the lateral runs under a road there can be significant difficulties and costs in repair and maintenance. The transfer will apply to and benefit the majority of customers of sewerage undertakers and will result in the water and sewerage companies' statutory duties to maintain the public sewerage system being extended to all sewers which are connected to the public sewerage system as at 1 July 2011 and to drains outside the property curtilage (lateral drains).

Following consultation Government has therefore decided to transfer private sewers and lateral drains (that part of a drain serving a single property that is outside the property boundary) that connect to the public sewerage system into the ownership of sewerage undertakers. The Government considers transfer to provide the most comprehensive solution to the problems associated with private sewer ownership, including removing unfair burdens of maintenance and repair from householders and providing for better integrated management of the sewerage system.

## **A. Which assets will be transferred?**

### **(i) The Scope and Extent of Transfer**

1. The aim of transfer is to relieve the owners of private underground drainage of responsibility for its maintenance where that drainage connects to the public sewerage system. Where existing foul, surface water or combined sewers, and any drains of that nature serving individual properties which are outside the curtilage of the property they serve, connect to the public sewerage system then the ownership of and responsibility for their maintenance will transfer to the water and sewerage company for the area. Shared drainage pipes are known as "sewers" and drainage serving individual properties which are outside the property boundary as "lateral drains". The terms "sewer" and "lateral drain" are defined in Section 219 Water Industry Act 1991, and these definitions apply in the transfer Regulations. Essentially, however, a sewer is defined as a drain which is shared or used by more than one property. A lateral drain is a one which serves a single property but which lies outside that property's curtilage (that is beyond its boundary) and therefore within or beneath another property's curtilage or the street. These definitions include all ancillaries used in the operation of the sewerage system including manholes, ventilating shafts, access chambers, pumps, valves, penstocks, telemetry and other machinery or apparatus.

2. On 1 October 2011 all privately owned sewers and lateral drains which communicate with (that is drain to) an existing public sewer as at 1 July 2011 will become the responsibility of the sewerage undertaker – normally the water and sewerage company for the area. This includes private sewers

upstream of pumping stations that have yet to transfer and also private sewers upstream of lengths of sewer or drain that are the subject of an ongoing appeal or which have been excluded from transfer as a result of an appeal. The continued efficient operation of such upstream sewers transferred to a sewerage undertaker will need to be considered in determining relevant appeals. Sewers and lateral drains which are upstream of lengths of sewer which are on or under land opted-out of transfer by a Crown body, or which are owned by a railway undertaker (and therefore specifically excluded in the transfer regulations) are also transferred.

Any private sewer which, immediately before 1 July 2011, communicates with a public sewer will transfer. Where development of a site is incomplete, the judgement as to whether sewers will transfer on 1 October will need to be site specific and depend on circumstances. Sewerage undertakers and Developers are advised to consult on partially constructed sites to reach a common understanding as to what is and what is not transferring. This will ensure that an undertaker does not inadvertently trespass by accessing pipes which it had mistakenly assumed had transferred.

3. Private pumping stations which form part of the drainage arrangements and which are on pipework that transfers on 1 October will transfer later. Such pumping stations will transfer between 1 October 2011 and 1 October 2016, with all pumping stations that have not been transferred before then transferring on 1 October 2016. The Government expects that sewerage undertakers will wish to consider drawing up works programmes to achieve a progressive transfer of pumping stations over this 5 year period. Pipework upstream of a pumping station will transfer on 1 October 2011.

### **Supplementary Transfer Scheme**

4. The transfer regulations provide for the making of a supplementary transfer scheme. This recognises the Government's intention to commence section 42 of the Flood and Water Management Act 2010, which will introduce a requirement for new sewers and lateral drains that connect to the public sewerage system to be automatically adopted as "public" by sewerage undertakers. The date for commencement of this provision has yet to be set and, as a result, sewers and lateral drains connected to the public sewerage system after 1 July 2011 but before section 42 is commenced will remain private for the time being unless they have been the subject of an agreement under s104 of the Water Industry Act 1991 for their adoption by sewerage undertakers as "public" assets. The making of a supplementary transfer scheme upon commencement of section 42 will ensure the automatic adoption by sewerage companies of sewers and lateral drains built in this interim period. This will ensure that there is no legacy of private sewers connected to the public sewerage system as a result of the main transfer taking place ahead of the new arrangements for automatic adoption of newly connected sewers and lateral drains. These arrangements will be the subject of separate consultation.

## **Self Contained Sewerage Systems**

5. Private drains and sewers which are not connected to a public sewer (but which for example drain to a private treatment facility, septic tank or cess pit which does not itself discharge to the public sewerage system) are not affected by the transfer and will remain the responsibility of their current owners. Similarly, private sewers that drain direct to a public treatment works are outside the scope of transfer. Where a treatment facility discharges directly to the public sewerage system the treatment facility and the pipework draining to it will not transfer on 1 October 2011. This is because such discharges do not comprise sewers or lateral drains which are the subject of transfer.

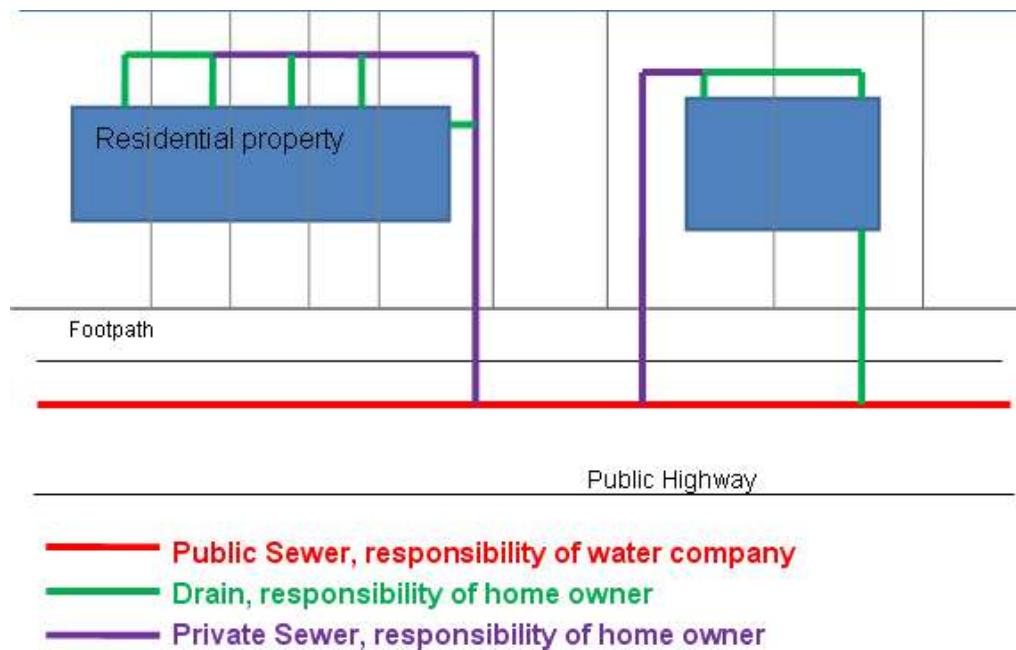
## **Surface water sewers**

6. Transfer will apply to surface water sewers (including combined systems) which, on 1 July 2011, communicate with a public sewer. In determining what constitutes a surface water sewer it is necessary to consider the engineering practicalities and function of any particular arrangement. Pipes, oversized pipes and underground tanks (on or off-line) built from rigid materials (such as concrete and bricks) are obvious examples of engineered structures that would be expected to transfer but features such as ponds, swales and wetlands do not obviously fall into the same category and would not generally be considered to be adoptable sewerage assets.

7. Surface water sewers and drains which drain to a river or outlet other than the public sewer will not transfer. However, where a pond, swale or some other natural (soft engineered) feature acts as a form of retention structure which has an outlet to the public sewer the status is less clear. In such cases, where the outlet from such a feature connects to a public sewer, the outlet pipe would certainly transfer. Whether the entirety of such a system (the pipes draining premises and a soft engineered feature such as a pond or swale as well as an outlet pipe) should transfer may best be judged according to circumstances on the ground.

8. Surface water sewers which discharge directly to a soakaway or a watercourse do not transfer under the Regulations. Where they are part of an existing section 104 agreement, the agreement remains in force for such assets and the sewer may be vested in the water and sewerage company in the normal way.

### Example of existing private sewer and drain arrangements



### Example of future arrangements



9. Private Sewers – By definition a sewer serves more than one property. Following transfer, the sewerage undertakers will take responsibility for the maintenance and repair of all private sewers (for residential development that is intended to include drainage serving more than one house, irrespective of whether the individual houses were in the same ownership,) to the point at which they connect to a public sewer. See diagram above.

10. Lateral drains - All lateral drains that connect to a public sewer will become the responsibility of the sewerage undertaker. Drains serving a



single property and within its curtilage will remain the responsibility of the property owner or occupier.

11. Where the most practicable access point for the transferred lateral is within a short distance inside the curtilage of the property, the Government understands that for operational reasons the sewerage undertaker may wish to consider accepting the responsibility for blockage clearance to that point (for example, the first access chamber within the curtilage). This will avoid difficulties of identifying precisely where, for example, a blockage has occurred in relation to the boundary. The Government accepts that for practical reasons the sewerage undertaker will need to obtain access from the most appropriate access chamber when undertaking any inspection. For the purpose of this guidance, provided the access chamber is outside the building, it would be reasonable for companies to take close proximity to the boundary of the property as an appropriate measure for identifying the extent of responsibility. Curtilage is explored further below.

12. For the avoidance of doubt, sewers/drains which are covered by Section 24 Public Health Act 1936 (i.e. were built before 1937) are already public sewers. Those covered by Combined Drainage orders in the City of London under the 1848 Sewers Act are within the scope of the transfer.

### **Curtilage**

13. The law makes use of the term curtilage but does not lay down an exact definition or mechanism by which to define the ‘curtilage’ of a property. During the Consultation<sup>3</sup> on these regulations the majority of respondents agreed that for the purposes of transfer, it was not practicable to define curtilage in these regulations.

14. Irrespective of the basis for determining curtilage in any individual case, transfer applies to the drainage arrangements of properties as at 1 July 2011. Changes to the drainage arrangements (such as a former drain becoming a sewer or a lateral or sewer becoming a drain) of a property after this date, resulting from a change in the curtilage because of the division of a property or the agglomeration of several properties into one, will not result in automatic change to the status of a sewer or drain as a result of the transfer regulations. A sewer or lateral drain that has been declared to be “public” as a result of the transfer will not revert to being “private” as a result of a subsequent change in circumstance and nor will “private” assets become “public”. After transfer it will, of course, remain open to owners to seek the adoption of “private” sewers or lateral drains through agreement under section 104 of the Water Industry Act 1991 or, where appropriate, under section 102 of that Act

### **(ii) Identifying the curtilage – single properties**

15. For the purposes of transfer, one practical basis for establishing the limits of the curtilage of a property may well be **the land within the boundary of**

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<sup>3</sup> <http://archive.defra.gov.uk/corporate/consult/private-sewers/index.htm>

**that property.** While the best evidence of this area and its boundary will often be the legal boundary, this is not invariably the case. What is attributable to the curtilage of a property may not necessarily reflect ownership. When doubt arises it will be necessary to establish the extent of the curtilage in individual cases.

16. For example, in the case of a farm building occupied for residential purposes, for the purposes of these regulations it would be appropriate to regard the boundary as the curtilage of the residential farm building and surrounding farmyard and or garden rather than the field boundary of the agricultural land which surrounds the farm.

17. Where there are disputes about the curtilage and whether it relates to the legal boundaries of a property, any determination will continue to rest with the courts or the The Upper Tribunal (Lands Chamber), which is the successor to the Lands Tribunal. The resolution of appeals about whether particular sewers or lateral drains should have been the subject of a notification by a sewerage undertaker of intent to transfer (vest) them will rest with Ofwat.

### **(iii) Identifying the curtilage - Multiple property sites**

18. A single curtilage may contain a number of individual properties under common ownership (such as a shopping mall) or with separate lease or other arrangements (such as some commercial estates) but which have common drainage arrangements by virtue, for example, of the site's freehold management. Such sites should be regarded as having their own internally managed drainage which would not be regarded as private sewers for transfer since the site itself comprises a single curtilage.

19. This means that for sites in common ownership the lateral drains will be adopted up to the curtilage of that site, but that the drains within the curtilage would continue to be the responsibility of the site owner.

Examples of a singly-owned and managed property deemed to be a single property may commonly include –

- A residential building with multiple flats or apartments, either as a conversion or purpose built; - but see paragraph below,
- A caravan site or residential/holiday home park;
- A hotel/boarding house;
- An office or commercial building;
- An industrial, business, retail or science park;
- A school or university campus;
- A hospital or other medical facility;
- A railway station
- An airport or port

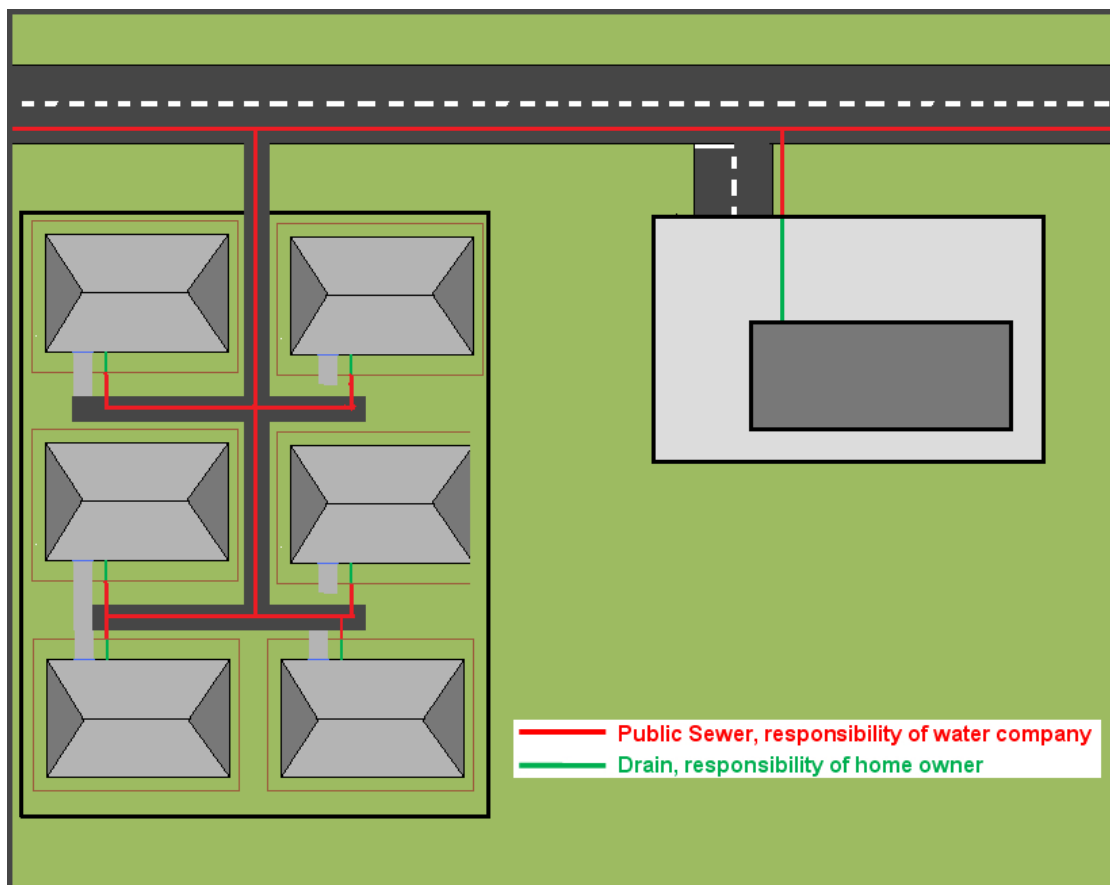
20. Council or housing association residential estates comprising conventional housing should be regarded as consisting of individual

properties in the same way as residential estates made up of privately owned individual properties.

21. Some examples of the result of transfer on the drainage arrangements of sites with different ownership arrangements are presented in the diagrams annexed to this guidance:

22. Where a development comprises a number of blocks of residential apartments, each block should be regarded as having a curtilage (comprising the land immediately surrounding and obviously attributable to an individual block). A practical point up to which a sewerage undertaker may wish to take responsibility for blockage clearance would need to be determined in individual cases but might comprise an access chamber outside the building but not within the highway or in third party land. Flat owners should not remain responsible for sewers which lie beneath streets. Equally the WaSC would not become responsible for the internal, communal drainage arrangements within the building. See diagram below.

### Example of blocks of residential apartments



#### (iv) Gravity drains upstream of pumping stations – see paragraph 2

23. The transfer regulations provide for pumping stations to be transferred over the five years to 1 October 2016 following the transfer of gravity pipe work. As the regulations define a pumping station as including the associated

rising main, a sewerage undertaker may adopt the pumping station and associated rising main together. Where a rising main comprises a lateral, in the case of a pumping station within the curtilage of and serving a single property, then the rising main may be treated as adoptable over the five years to 1 October 2016. Gravity lateral drains and sewers upstream of a pumping station which is eligible for transfer will transfer on 1 October 2011 along with other gravity pipe work.

24. The result is that because the regulations define a pumping station to include an associated integral rising main:

- 1) a pumping station and rising main serving one property and within that property's curtilage will not transfer;
- 2) where the rising main is a lateral (outside the curtilage) it will transfer as if it were a pumping station (by 1 October 2016);
- 3) where a pumping station and rising main serve more than one property, both will transfer at the same time and by 1 October 2016)

25. The Government envisages that water and sewerage companies will wish to consider drawing up works programmes to achieve a progressive transfer of pumping stations over the 5 years to 1 October 2016. The current owners will continue to be responsible for the upkeep and maintenance of pumping stations until they are transferred to the sewerage undertaker. This means that whilst the existing maintenance and access arrangements for private pumping stations are not immediately affected by the transfer regulations, sewerage undertakers will become responsible for the gravity pipe work upstream of pumping stations. Where appeals against the transfer of assets arise, the requirement for 'upstream' users of such assets to continue to use them should be taken into account.

26. As a result, where maintenance by the owners of a pumping station that has yet to be transferred is inadequate and causes upstream gravity sewers to surcharge, sewerage undertakers will nonetheless generally be expected to fulfil their statutory duty to cleanse and empty the sewers so as to ensure that they continue to drain the premises they serve. In these circumstances sewerage undertakers may wish to consider the suitability of their powers under section 159 of the Water Industry Act 1991 or, as provided for under section 160 of the Water industry Act 1991, whether to seek to act on behalf of the existing asset holder, utilising the asset holder's existing rights and powers to obtain access to the pumping station and undertake work as necessary. This may be less expensive than the alternatives of bypass pumping or tankering of the waste. In principle, costs incurred by the sewerage undertaker acting by agreement may be recovered from the existing asset holder under agreements as provided for by section 160.

27. In some cases the owners of pumping stations may have entered into maintenance contracts to ensure the operability of their asset. Existing contractual arrangements are ultimately a matter of contract law in individual cases, but there is no requirement in legislation for water and sewerage companies to honour agreements entered in to by the former owners once ownership transfers. See also paragraph 39 (existing contractual arrangements).

28. A progressive transfer of pumping stations, to be completed by 1 October 2016, will allow sewerage undertakers time to locate and assess the pumping stations, and to prioritise and programme any necessary work prior to transfer. It will be for the sewerage undertakers to decide whether to arrange with the owners access to carry out works prior to transferring the pumping station according to the circumstances in individual cases.

### **(v) Cross boundary private sewers and lateral drains**

29. Under section 103 of the Water Industry Act 1991, private sewers are adoptable by the sewerage undertaker within whose area they are situated. The requirements of section 103 for notification of and consent from a neighbouring sewerage undertaker, where adoption of cross-border sewers is proposed, are disapplied by section 105A for the purposes of transfer. Lateral drains are the responsibility of the sewerage undertaker within whose area they connect to a public sewer. In the case of sewers that cross companies' areas of appointment Government would not expect transfer to result in a change to existing billing arrangements. Although the ownership of any particular sewer may not vest in the sewerage undertaker that is currently billing customers for sewerage services it would be reasonable for the neighbouring sewerage undertakers to enter into an operational agreement concerning the maintenance of the sewers that reflects the existing billing arrangements.

### **(vi) Crown Land – Application for exemption**

30. Crown land is land in which there is a Crown interest. Duchy interests are specifically excluded from the application of the regulations by the provisions of the Water Industry Act 1991. No Duchy land or Her Majesty's private lands are the subject of the transfer arrangements.

31. Crown land includes;

- Land belonging to Her Majesty in right of the Crown, which includes the Government department having the management of that land;
- Land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department.
- Land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, managed by the Crown Estate Commissioners.

32. There is no specific exemption from transfer for private sewers and lateral drains in Crown land. The above guidance on identifying the relevant curtilage (Section ii) in multiple property sites applies as in any other area.

33. Managers of Crown land were invited by Government to 'opt out' from transfer sites where access is necessarily restricted (for instance, Ministry of Defence secure sites) by notifying the relevant sewerage undertaker of land that they wished to be exempted from transfer to the sewerage undertakers.

34. Where notification has not been received, those private sewers and lateral drains that connect to the public sewerage system and are situated on or under Crown land will become the responsibility of the sewerage undertaker, as would be the case for privately owned properties.

## **B: The mechanism for transferring assets and responsibilities post transfer (see also paragraph 52-56)**

35. All sewers and laterals connected to the public system on 1 July 2011 will qualify for transfer to the sewerage undertakers on 1 October 2011. The mechanism for this process is as follows:

- on or soon after the coming into force of the transfer regulations on 1 July, the sewerage undertakers will serve notice on the owners of all private sewers and lateral drains of the forthcoming declaration of vesting on 1 October 2011. Private sewer owners or others with an interest (for example where a private sewer crosses other property but is not used by that property) will also need to be advised of their right of appeal against vesting, which must be lodged with Ofwat within two months of notice being served, or published in the press, whichever is the later;

- on 1 October private sewers and lateral drains will transfer to the sewerage undertakers, unless there is an appeal outstanding against the proposal to make a declaration of vesting under section 102 of the Water Industry Act 1991 in accordance with the transfer regulations. In such cases the assets will transfer (or not, as the case may be) when Ofwat determine the appeal.

### **(i) Section 104 agreements and transitional arrangements**

36. Under Section 104 of the Water Industry Act 1991, a developer may enter a voluntary agreement with a sewerage undertaker for the adoption of sewers serving a development.

- where a Section 104 agreement is in place in respect to sewers which are connected to the public sewerage system on 1 July, the sewers will transfer automatically on 1 October and the agreement therefore has no ongoing purpose. It will cease to have effect in so far as it relates to sewers and lateral drains that are the subject of the transfer regulations.

- where such an agreement also covers assets that are not eligible for transfer, for instance surface water sewers draining direct to a watercourse, the agreement continues in force in respect of those assets, including any provisions for a bond or surety in respect of the works covered by the provisions of the agreement that are yet to be concluded.

- existing Section 104 agreements in respect of sewerage which has not been constructed or connected to the public system by 1 July 2011 will remain valid until construction work is completed.

- where not already adopted under a section 104 agreement, sewers completed between 1 July 2011 and the date of commencement of section 42

of the Flood and Water Management Act 2010 will be transferred by a supplementary transfer as provided for by the transfer regulations.

- sewers constructed and connected after the commencement of section 42 will be subject to new build arrangements, except where exempted under the terms of transitional arrangements that are proposed for inclusion in the commencement Order. These will provide for existing approvals (i.e. where Building Regulations or other approvals exist) to be deemed to satisfy the requirements for construction to “approved” standards.

## **(ii) Existing contractual responsibilities**

39. For assets (i.e. pumping stations) which are not transferred immediately, the regulations do not impact on existing contractual obligations. The rights and responsibilities under contract which apply to non-transferred assets will remain.

40. Where pipe work upstream of a pumping station transfers to a sewerage undertaker, the existing contract for the maintenance of the pumping station is not affected. It may well be that the most practicable outcome will be to assign the sewerage undertaker as the agent of the current parties to carry out the maintenance in the most cost efficient way. It will be for sewerage undertakers to consider whether the most practicable approach is to act as an agent for the current parties.

41. In respect of gravity private sewers that transfer on 1 October, and become the responsibility of the sewerage undertakers, sewerage undertakers and local authorities may wish to satisfy themselves whether, following transfer, there are any local authority staff engaged primarily on maintenance of private sewers, to whom Transfer of Undertakings, Employment Protection would apply.

42. Where works are underway for the repair or replacement of private sewers that have been put in hand as a claim under an insurance policy, the works should be concluded as a contractual agreement that had been actioned prior to the transfer taking effect. The water and sewerage companies recognise that, in the great majority of situations, they will have every incentive to allow insurers, in the period after 1 October 2011, to continue work on a sewer where that work was started before the transfer date. They wish therefore to adopt a positive approach to this scenario. Nonetheless, in order to regularise the situation, the industry would ask insurers who find themselves in this position, to notify the relevant sewerage company of any such works, so giving the sewerage company the opportunity to comment. Assuming that matters such as compliance with the standards such as those required for work that is subject to the Building Regulations, safe working practices and public liability insurance have been dealt with adequately, as we would expect where contractors have been appointed by reputable insurers, the water and sewerage companies are unlikely to raise any objection to the works continuing.



### **(iii) Interests in the land**

43. The Government has consulted the Land Registry on issues of land registration arising from the transfer of private sewers and holds the following opinion.

44. Sewerage undertakers do not need to register their interest in the sewers and lateral drains where they run through unregistered land, and cannot register the transfer to them of the sewers and lateral drains where they are in registered land. However, where land providing access to a pumping station is acquired, then registration would need to be considered.

45. It would be open to sewerage undertakers to apply to enter an agreed notice in respect of their interest in the sewers and lateral drains running through registered land and the public's right to use them. However, this would mean that the noted rights then ceased to be "overriding interests", and so might be at risk in the event that the notice came off the register of title and this was followed by a sale of the land.

### **(iv) Transitional arrangements- sewer records**

46. It is likely that any records of private sewers, lateral drains and pumping stations which will be transferred to the sewerage undertaker will be held by owners, local authorities and maintenance contractors. In order to ensure the effective transfer of assets with the minimum risk of disruption, it would be in the interests of those with relevant information to pass it to the sewerage undertaker, together with any information on maintenance contracts. This will help to ensure that sewerage undertakers are in the best position to respond to any future problems that may arise on the assets in question and reduce any uncertainty about responsibility for their ongoing maintenance.

47. Where a problem arises on a sewer or drain and a local authority is considering whether to use its statutory powers to secure rectification of blockages or other defects on private sewers, it will be necessary to contact the sewerage undertaker to find out whether the sewer/drain has been transferred. Although not on a sewer record, the sewerage undertaker will be able to tell whether or not the property in question is one to which they provide sewerage services and thus whether or not the sewer or lateral drain in question would have been transferred to them.

### **(v) Blockages in lateral drains**

48. Where an occupier becomes aware of a blockage, it may not be apparent whether the blockage is within the private drain for which he is responsible or in the public sewer/lateral drain which is the responsibility of the WaSC. The occupier is only able to commission work within the private drain. The occupier has no authority to commission any work within the public sewer/lateral drain without first contacting the WaSC for confirmation on how

to proceed. In order to ensure that blockages in drains and laterals are dealt with promptly, it would be in the interests of sewerage companies, drainage contractors and insurers to work together to develop operational arrangements which ensure that the level of service for property owners is not adversely affected by uncertainty over responsibility.

## **(vi) Interference with a public sewer**

49. Once vested in (owned by) a sewerage undertaker, anyone interfering with a “public sewer” or “public lateral drain” without consent may be liable to prosecution.

50. For developments that are connected to the public sewerage system at 1 July 2011, but where final surfacing works have yet to be completed, sewerage undertakers will need to ensure that agreements are in place with developers, either as part of an agreement to adopt new drainage under section 104 of the Water Industry Act 1991 or as a separate agreement or Memorandum of Understanding, that accommodates construction practices such as ironwork adjustments necessary as part of final road surfacing works and external works.

51. It is recognised that in some cases NHBC and developers’ warranty arrangements may apply. In such circumstances, sewerage undertakers may wish to consider whether the terms of any warranty allow them to call on it.

52. When a local authority receives applications for approval of a development proposal that would involve building over an existing public sewer, this is notified to the sewerage undertaker. The sewerage undertaker may seek agreements with the person proposing to build over a public sewer both to protect the sewer and access to it for maintenance and to protect the building by ensuring the construction does not cause damage to the sewer and cause leaks which might undermine the structure. Transfer will mean that property owners proposing to construct extensions will need to consider the drainage arrangements for their property to take into account the existence of a newly transferred public sewer or lateral drain. Discussions are currently underway between the water and sewerage companies, industry, developers, and building control interests with a view to establishing a streamlined process for approval of building over (or close to) small, shallow sewers, which represent the majority of transferred sewers.

## **C: The communication of transfer**

### **(i) The process of notification - actions by sewerage undertakers (see also paragraph 34)**

53. Under Section 102(4) of the Water Industry Act 1991, each sewerage undertaker must give notice of its proposal that private sewers and lateral drains should transfer to it.

54. For the purpose of these regulations the notice will be in the form of a notification to each **owner**, taking the form of a generic description of the extent of private sewers and lateral drains to be adopted rather than the precise identification of the individual private sewers and lateral drains in question. This notification will be by post, **using appropriate databases to ensure that all relevant properties are covered.**

55. In addition to giving notice to the owners as outlined above, a sewerage undertaker must also publish notice of its proposal. This notice must be published in the London Gazette and in sufficient local or regional newspapers to cover the whole of the sewerage undertaker's area.

56. Publication of the proposal in this manner is intended to provide adequate notice to all affected persons, including servient landowners (that is the owners of land through which a pipe runs), who will be deemed to be aware of the proposal. Government has also notified relevant significant representative bodies directly.

57. Unlike the generic notification of transfer to owners of gravity sewers and lateral drains, in order to satisfy the requirements of section 102 of the Water Industry Act 1991, notification to owners of the proposed transfer of pumping stations, which is required to take place between 1 October 2011 and 1 October 2016, will need to be by individual service of notice once a date for the vesting of the pumping station in question is decided and where this is before 1 October 2016.

### **(ii) Communication of a supplementary transfer by the sewerage undertaker**

58. In addition, following the main scheme, sewerage undertakers should have a record of new connections by virtue of the requirement for notification of intention to connect with a public sewer under section 106 of the Water Industry Act 1991 and new applications for agreements to adopt new sewers and lateral drains under section 104 of the Act. They should also have records of those properties that have been billed for the first time during the relevant period. These records will allow the sewerage undertakers to identify who should receive notice of the supplementary transfer scheme.

### **(iii) Objections to transfer- appeals to Ofwat**

59. Any queries regarding what is going to be transferred should be directed to the appropriate sewerage undertaker or the sewerage undertaker named in the notice. CCWater will also be able to offer advice on the extent of the transfer. It should be noted that private sewers are not included on the sewer records held by sewerage undertakers and they will not necessarily be able to advise on the precise characteristics or extent of systems to be transferred in individual cases. Appeals against the proposed transfer of a private sewer (including pumping stations) or lateral drain by the owner or other party affected by the transfer or the failure to transfer should be directed to Ofwat. Ofwat will publish guidance on appeals which can be found on [www.ofwat.gov.uk](http://www.ofwat.gov.uk).

60. The Water Industry Act 1991 contains provisions governing appeals against adoption schemes. An appeal can be made to Ofwat, in relation to a sewerage undertaker's proposal to make a declaration to adopt a private sewer or lateral drain, or in relation to the failure of a sewerage company to make a proposal to adopt. Such an appeal may be made by both an owner of a private sewer or lateral drain; or any other person affected by the proposal or failure.

61. The grounds for appeal are that the relevant private sewer or lateral drain is not one where the sewerage company has a duty to adopt, or that adoption would be seriously detrimental to the interest of the appellant. Similarly an appeal may be lodged on the grounds that the sewerage company has a duty to adopt but has failed to propose to do so.

62. An appeal against a company's proposal to declare a sewer, lateral drain or pumping station must be made within two months of the service of the notice of the proposal on the owner, or two months after publication of the notice if later. An appeal against failure to propose to adopt must be made within three months of the date of the transfer scheme.

#### **An appeal must be lodged with Ofwat, within the time limit.**

Further information on the scope of and process for the implementation of the transfer of private sewers and lateral drains is available from various sources including the websites of Defra, water and sewerage companies, CCWater and Ofwat.