

# **Consultation on national build standards and automatic adoption of new gravity foul sewers and lateral drains**

**December 2011**

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Any enquiries regarding this document/publication should be sent to us at:  
Sewers Adoption Implementation Team  
Area 2B  
Ergon House  
Horseferry Rd  
London  
SW1P 2AL

Tel: 020 7238 4847

Email: [Sewer.Adoption@defra.gsi.gov.uk](mailto:Sewer.Adoption@defra.gsi.gov.uk)

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## 1 - Introduction

1.1 This consultation covers England and presents details of how the Government proposes to implement the automatic adoption, by the statutory water and sewerage companies, of newly-built gravity foul sewers and lateral drains connected to the public sewerage system. This consultation seeks views on the proposals to make the necessary transition for new sewers: to automatic adoption; use of national build standards required for adoption; on the draft regulations designed to ensure that the adoption process is completed; and invites further contributions to the evidence in the Impact Assessment that supports these proposals. The key questions for the consultation are set out first, before the main detail of the proposals.

1.2 Where the consultation refers to “the Government” it should be read as meaning England only unless the context indicates otherwise. References throughout to ‘sewers’ refer in this context only to gravity foul sewers. WaSC is used in place of a statutory water and sewerage company, as the common acronym.

## 2 - Consultation questions

2.1. Is the adoption process envisaged under Section 42 of the Flood and Water Management Act (2010) clear? Is further guidance required?

2.2. The transitional arrangements that we propose are detailed in Annex A and paragraph 4:14 in this document. We believe that these provide workable arrangements. If you disagree, please provide evidence.

2.3. Is the point at which the first bill is issued to customers, in respect of newly connected properties served by newly built sewers, the appropriate time at which the adoption process is deemed to be completed?

2.4. Are the Secretary of State’s national build standards appropriate, given the linkage to the detailed guidance contained in *Sewers for Adoption 7* (SFA7), as agreed between developers and the water companies?

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2.5. Are the standards in the guidance published in SFA7 by WRc and the water companies appropriate to secure an appropriate standard of construction and maintenance, as the basis for automatic adoption?

2.6. The draft national build standards for gravity foul sewers and lateral drains, and the detailed supporting guidance to be contained within future editions of Sewers for Adoption, do not refer to jetting resilience. However, a minimum resilience threshold for foul sewers and lateral drains to withstand a jetting pressure of 4,000 psi (256 bar) is being considered for the future. In this context:

(a) Do you support the concept of having pipes specified by resilience to jetting pressures for foul sewers and lateral drains in future versions of the national build standard and guidance? Please answer YES or NO

(b) If your answer to Question (a) is YES, do you consider that 4000psi is the correct limit? Please answer YES or NO and support this with further explanation as appropriate

(c) If your answer to Question (a) is YES, and you indicate a preference for 4000psi or above at Question (b), when do you consider that such a standard should be introduced, and what other considerations would you like to see in place. Please support your views with justifications.

2.7 Do you support the evidence we have on costs in the Impact Assessment? Please provide evidence to support your views.

## 3 - Background

3.1 This proposal is the second stage of a package. The first stage was to vest existing private sewers and lateral drains in the WaSCs in England and Wales. This policy has been developed to resolve serious issues resulting from the inconsistent ownership, development and maintenance of the existing private sewer network (see also paragraph 3.5 below). To this end the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, which came into force on 1 July, provided for all existing private sewers and lateral drains, which connected to the public system on 1 July 2011 to transfer to the WaSCs on 1 October 2011. This transfer took place against a background of less than 20% of new sewers and lateral drains being adopted by the WaSCs. The second stage of the package, which is the subject of this consultation, is designed to ensure that all new sewers and lateral drains are built to national build standards and are subject to automatic adoption by the WaSCs. This in turn will avoid the accumulation of a new legacy of private sewers and all the problems which led to the transfer.

3.2 By definition sewers serve more than one property and drains serve a single property. A lateral drain is the section of pipe work serving a single property which extends beyond that property's boundary. Throughout this document the term "private sewers" denotes "private sewers and lateral drains" unless the context indicates otherwise.

3.3 Until 1 October 2011, private sewers that were connected to the public system on 1 July were the responsibility of their owners (generally the owners or occupiers of the properties they serve). Unless a problem occurred, households and other private sewer owners were often unaware of their responsibility for a private sewer especially where it extended beyond their own property boundary. Where problems occur, the private ownership of sewers and lateral drains can lead to a variety of problems. The response tends to be reactive and piecemeal rather than on the basis of planned maintenance. The costs of maintenance and repair may be high and fall to one or just a few individual households or businesses, resulting in considerable financial burdens for them. Disputes between neighbours and landowners may occur over access for and contributions to repair. For example, a sewer may serve and be the shared responsibility of ten properties. A blockage may affect only the last four 'downstream' properties served by the sewer such that the owners of the six remaining 'upstream' properties, even though they contribute to the blockage, may decline to pay towards the costs of repair. Equally a blockage may occur in a property which is not directly affected such that the owner refuses to allow

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access for repairs. Such disparate ownership means that the benefits of integrated, planned management of the sewerage system are not achieved.

3.4 Disputes have often meant that local authorities are called on to intervene to prevent environmental pollution or public health hazards. Ongoing responsibilities may be difficult to enforce and result in a continuing burden on local authorities. The consequence has been that private sewer ownership leads to a high level of consumer dissatisfaction, the perception that the system is unfair, environmental risks, ambiguity as to responsibilities, and resource implications for local authorities.

3.5 Disparate ownership also results in a lack of integrated management of the overall sewerage system and planned maintenance. The system also led to an unfair subsidy to those occupying properties with sewers which predate 1937 and which were transferred at that time to the then sewerage undertakers (now the WasCs) who remain responsible for repairs and maintenance within normal sewerage charges. However, those with post 1937, unadopted (that is private) sewers not only pay indirectly through their sewerage charges for the upkeep of pre-1937 sewers but are also responsible for the maintenance of their own private sewers. Sewerage charges did not reflect this difference in status and responsibility for maintenance.

3.6 The review of private sewers considered a range of options to deal with these problems. Government concluded that the transfer of ownership and responsibility of private sewers and lateral drains to WaSCs provided the most comprehensive solution to these problems whilst removing unfair or unreasonable burdens from individual householders and businesses. The transfer of existing private sewers was the subject of several consultation exercises, most recently in the autumn of 2010. The results of these consultations have helped to inform the proposals for the automatic adoption by the WaSCs of newly-built private sewers and lateral drains.

3.7 In support of these proposals and in accordance with the requirements of Section 42 of the Flood and Water Management Act (2010), the Secretary of State intends to publish a national build standard for foul sewers and lateral drains. In effect this will make the construction of sewers and lateral drains that connect to the public sewerage network subject to uniform, standards (unless the WaSC and developer agree appropriate alternative standards).

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3.8 Automatic adoption will thus ensure that all new sewers connecting to the public network are constructed to uniform adoptable standards, will ultimately become the responsibility of the WaSCs and ensure high standards of maintenance. A national build standard will guarantee that WaSCs adopt well constructed sewers and in the longer term avoid generating unnecessary costs of repair and upgrading for sewerage charge payers. The combination of automatic adoption and national build standards will improve the sustainability and integrity of the sewerage network and alleviate the burden on customers by making all sewers and lateral drains connected to the sewerage network the responsibility of the WaSCs.

### Legal Framework

3.9 The proposals for automatic adoption will take effect upon Commencement of Section 42 of the Flood and Water Management Act (2010). It is proposed that regulations, which require the approval of Parliament, will, in the event of the failure of an adoption agreement, specify the point at which the adoption process is completed automatically. Views are sought on the approach taken by these regulations before seeking Parliamentary approval.

3.10 It is desirable that Section 42 should be commenced on 1 April 2012, and that, subject to their approval by Parliament, the accompanying regulations should come into force at the same time. The automatic adoption of all new sewers and lateral drains would then come into effect 1 April 2012 such that, from that date, all newly-built gravity sewers and lateral drains draining to the public sewerage system would be adopted by the WaSCs as part of the public sewerage system.

### Costs

3.11 A consultation impact assessment is provided at **Annex C**.

### Layout/order of chapters

3.12 The consultation first sets out the background followed by explanation of the proposals. More detailed information and reference documents are included in the Annexes.

### How to make your contribution

3.13 Responses are invited by **31 January 2012**.



All responses should be sent to:

Sewers Adoption Implementation Team

Area 2B

Ergon House

Horseferry Rd

London

SW1P 2AL

Responses can also be sent via e-mail to:

[Sewer.Adoption@defra.gsi.gov.uk](mailto:Sewer.Adoption@defra.gsi.gov.uk)

## Data Protection

3.14 Any response you send us will be seen in full by Defra staff dealing with the issues which this consultation is about. It may also be seen by other Defra staff to help them plan future consultations. Defra may wish to publish responses to this consultation and deposit them in the libraries of the of the House of Commons and House of Lords.

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

3.16 Names or addresses which are blanked out might still get published later though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including Defra. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information which we have withheld, we will have to decide whether to release it or not.

3.17 If someone has asked for their name and address not to be published, that is an important fact which we would take into account. However, there might sometimes be important

reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before deciding to reveal the information.

## **4 - The proposals**

### **The origin of the proposals**

4.1 The proposals implement provisions contained in Section 42 of the Flood and Water Management Act 2010 (the 2010 Act). This section explains the provisions and how those provisions are intended to work for the future adoption of new build sewers and lateral drains. Since Section 42 is already enacted, comments are not sought on its provisions. However the Commencement Order which will bring it into force contains important transitional provisions for which this background provides useful context and on which comments are sought. The relevant provisions of the 2010 Act are set out and explained below as background information rather than for comment, given that they already legislated.

### **Flood and Water Management Act 2010 - provisions for national build standard/automatic adoption and how (Section 104 process)**

4.2 Automatic adoption and the national build standard will be delivered by the changes to primary legislation made by the 2010 Act, which received Royal Assent on 8 April 2010.

4.3 Once in force the 2010 Act will amend the right to connect new sewers to the public sewerage network as provided for in Section 106 of the Water Industry Act (1991). Section 42 of the 2010 Act delivers automatic adoption by making the right to connect new sewers dependent upon meeting certain conditions. It also provides for the Secretary of State to publish standards. Specifically, it makes it a condition for anyone wanting to connect a new sewer to the public network, must first enter into an adoption agreement with a WaSC, as provided for in Section 104 of the Water Industry Act (1991).

4.4 Details to be included in conditions of adoption agreements (for example concerning the arrangements for bonding) will be for the decision of the parties to the agreement. However, Section 42 of the 2010 Act provides for two conditions to be met by the contents of the agreements in order to ensure both that adoption takes place and that build standards are met.

4.5 First, the adoption agreements must contain a commitment from those building sewers to build to agreed standards. National build standards will be published by the Secretary of State and will be the default standard for all new sewers connecting to the public network following the commencement of Section 42 of 2010 Act. There will also be an option for those building sewers to seek the agreement of WaSCs to construct new sewers to different standards, where appropriate. This measure is intended to avoid stifling the development of innovative techniques in the construction of new sewers, which might otherwise be precluded by a default build standard.

4.6 Secondly, the agreements must contain terms which bind the WaSC to adopt the new sewer. These terms will ensure the adoption of the newly built sewer, whether or not the other terms of the agreement, such as the meeting of agreed construction standards, are met by whoever has built the new sewer. This means that even if the new sewer does not actually meet the standards described in the agreement, it must nevertheless be adopted as a public sewer. However, the bonding arrangements contained in an adoption agreement will protect WaSCs against non-compliance with the standards specified in the adoption agreement. In this event, WaSCs would be able to rectify defects using the bonding arrangements in the adoption agreement.

4.7 With regard to the second condition, the agreement must incorporate or accord with the national build standards or depart from them only by the express consent of the parties to the agreement. It must also include provision for completion of the adoption process to occur automatically in the light of specified events and comply with any regulations which the Secretary of State might make concerning this provision. None of this applies to drainage systems required to be approved under Section 32 and Schedule 3 of the 2010 Act (i.e. SuDS) or in any other circumstances specified in regulations.

4.8 Where the right to connect (under Section 106(1)) is exercised in consideration of satisfying conditions 1 and 2 a WaSC may not refuse connection. Where a defect in relation to standards (for example in construction) is identified it is for the WaSC to rely on bonding arrangements in order to ensure that any remedial work is funded.

4.9 A developer may appeal to Ofwat in respect of any matter concerning the necessary Section 104 agreement.

4.10 The Government's objective to address the various problems outlined in paragraphs 3.3 to 3.5 above has in part been achieved by the transfer of existing private sewers and lateral drains under the Water Industry (Schemes for Adoption) Regulations 2011. The current consultation contains proposals designed to prevent the future recurrence of the same problems by providing that new sewers and lateral drains are built to a minimum standard and adopted by a sewerage undertaker.

## **The objectives of the proposals**

4.12 The proposals are intended to provide:

- **Transitional arrangements** between existing and proposed new arrangements for national build standards and adoption of sewers and lateral drains;
- **Automatic adoption** of new sewers and lateral drains following construction, for them to be built to a minimum national standard deemed to satisfy the requirements of section 42 of the 2010 Act and ensure automatic adoption of new-build sewers;
- **Regulations** which ensure completion of the adoption process.

## **Transitional Arrangements - the Section 42 Commencement Order**

4.13 Section 42 will be brought into effect by a Commencement Order at which time its provisions will have immediate effect. There will be some circumstances in which existing approvals under Building Regulations (2010) would have to be replaced overnight or otherwise incur a delay in the development process whilst approvals were reviewed to reflect the new national build standard. This could be unreasonable on grounds of the delay incurred and the resources already committed to the design and approval purposes. It is therefore proposed that such cases should be exempted from those elements of Section 42 which require new build standards. Annex A contains details of the transitional arrangements proposed for the situations which may arise.

## Arrangements for existing Section 104 Agreements

4.14 We also propose that in those cases where a) there is an existing Section 104 agreement at the time of the commencement of Section 42; and b) construction has started within 12 months of commencement, the terms of the existing Section 104 agreement will stand and the standards will remain as agreed at the time.

## New Build standards

4.15 Section 42 of the 2010 Act provides that the Secretary of State must publish standards appropriate to the adoption of newly built gravity sewers. Under Section 42 the adoption agreements required must include or refer to standards of construction, which must be complied with as part of the adoption process. Such standards may be varied with the agreement of both developer and WaSC but an adoption agreement must contain standards such that it is clear how they relate to the national build standards.

4.16 The national build standards for gravity foul sewers and lateral drains will cover all aspects of design, layout, construction, operation and maintenance. Such requirements, applied uniformly by the WaSCs, will simplify the process of constructing foul sewers and laterals to an adoptable standard and satisfy developers' desire for consistency. It should be noted that the proposed build standards do not necessarily represent standards that are higher or lower than Sewers for Adoption but rather standards which are consistent and universally applicable.

4.17 Views are invited on the national build standards (at Annex B) which are essentially generic in content. In support of the national build standards appropriate, more detailed guidance has been adopted which is consistent with that currently contained in '*Sewers for Adoption*'. It is intended that this detailed guidance should become part of all future *Sewers for Adoption* publications. *Sewers for Adoption* is copyrighted to Water UK and WRc. It is understood that the 7<sup>th</sup> edition of *Sewers for Adoption*, containing the draft guidance to support the Secretary of State's national build standards for gravity sewers and lateral drains, has been the subject of consultation by Water UK and WRc with a focussed group of stakeholders. Both the Secretary of State's national build standards and the supporting detailed guidance have been drawn up by a consortium of water and construction industry experts under the editorial guidance of Defra and represent a sound benchmark for the construction of gravity sewers for

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the use of developers and WaSCs in adoption agreements. This consultation does not address *Sewers for Adoption, 7<sup>th</sup> Edition*, itself. If you wish to comment on that document please do so direct to WRc/Water UK. Any such views expressed through this consultation will be passed to those parties for consideration.

4.18 The entirety of the document *Sewers for Adoption 7* is intended ultimately to cover not only detailed guidance for gravity foul water sewers but also with standards for surface water sewers. However it is important to note that, for the purposes of new-build standards and automatic adoption, only those parts of SFA7 which are appropriate to foul water gravity sewerage are relevant in relation to s42.

4.19 By contrast with *Sewers for Adoption 6* which caters only for connection at a distance of 2.5 metres from the property, the revised *Sewers for Adoption 7* (SFA7) provides universal build standards covering connections for gravity sewers right up to the property and better reflects current building practices whilst providing a clear set of practical and sustainable standards.

4.20 In conjunction with the national build standard, a refined (slimmer) version of the guidance has been developed for the use of developers when planning, designing and constructing gravity sewers for small developments only. This shorter version omits the elements of the longer version which are inappropriate to small scale development and the businesses that usually develop them. This will be beneficial to smaller businesses and developers who can work to a single simplified set of standards which provide consistency. The option remains for developers to seek agreement from the WaSC to deviate from the national build standards to alternative, locally suitable standards depending on the site or area.

4.21 In terms of the future versions of new build standards to be employed in adoption agreements, there is an outstanding issue to be resolved relating to jetting resilience standards. There are several options as to the standard which should be used and views are invited as to what this should be and the justification for the choice of a given jetting resilience standard.

## The “Adoption” regulations

4.22 It is also proposed to make regulations which define the point at which adoption of new build sewers and lateral drains will be completed automatically if the process of adoption has not otherwise occurred under a s104 agreement. The regulations would apply in relation to an agreement made under s104 of the Water Industry Act 1991 pursuant to the condition specified in s106B(2) of that Act which relates to the requirement to enter into an agreement before construction (as amended by s42). The draft regulations are at Annex D.

4.23 In the past many s104 agreements have been made but not followed through such that, whilst all the conditions for adoption have been met, none of the benefits have ensued. It is the intention that in future such circumstances should not arise. It is therefore proposed that the adoption process should be completed automatically, if not otherwise achieved, upon the WaSC’s first demand for payment of charges for sewerage services from the occupier of the premises in question. In this way the proposed regulations ensure that the adoption process will be completed automatically rather than depending solely on execution of a s104 agreement.

4.24 If necessary, WaSCs will be able to make use of the other features of the adoption agreements, for example bonds or other financial sureties, to improve, repair or conduct any work on the sewer necessary to bring it up to acceptable standards.

4.25 The details of how and when the vesting of the new sewer in the WaSC must be agreed and subsequently take place will be determined by regulations to be published by the Secretary of State and Welsh Ministers.

4.26 The automatic adoption process is designed to ensure that all new sewers are eventually integrated into the public sewerage network as the responsibility of the WaSCs, and that additional new private sewers are not created.