

# DBULLETIN

## Transfer of private sewers to sewerage companies

Under the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 (Regulations), subject to a limited number of exceptions, any private sewers which were connected to the public sewerage system prior to 1 July 2011 will be automatically transferred to the regulated sewerage companies on 1 October 2011.

For the Regulations in full please click here:

<http://www.legislation.gov.uk/ukxi/2011/1566/made/data.pdf>

### What is covered?

For the purposes of the Regulations, a “sewer” is a sewer or drain which drains more than one property or building into the public sewer network. A “lateral drain” is that part of the private sewer or drain which runs from the boundary of the “curtilage” of an individual property over other property and then into the public sewer network.

Certain private sewers will be excepted and these will include those connecting to cesspits and septic tanks; those owned by railway companies; and those that are within a single curtilage.

The transfer will be in three stages. Private sewers and lateral drains which ‘communicate’ with a public sewer before 1 July 2011 will be transferred to the regulated sewerage companies on 1 October 2011.

A supplemental scheme will cover private sewers and lateral drains which will communicate with the public sewerage system on or after 1 July 2011. These will remain as private drains (unless they are the subject of, and adopted in accordance with a Section 104 Agreement). These will be transferred when Section 42(1) of the Flood and Water Management Act 2010 (FWMA) comes fully into force.

The third stage is the automatic adoption of all new sewers and lateral drains which are intended to connect into the public sewerage system. Once section 42(1) comes into force there will be a requirement to enter into an adoption agreement before construction of any sewer or lateral drain which is intended to connect into the public sewer.

Water companies will also have a right of access to any sewers or lateral drains situated on private property and the transfer of ownership will impact on the ability to build over sewers and lateral drains. Consent will now be required from the relevant water company rather than just from the owner of the land. The transfer of private sewers and private lateral drains to public ownership will override any agreements concerning ownership and/or maintenance which may currently be in place.

Costs incurred by the regulated sewerage companies in relation to the newly adopted sewers and drains will be recovered through water rates which are consequently expected to rise.

### Appeals

Before the transfer takes place the regulated sewerage companies must either serve notice of their proposals for adoption on the affected property owners directly or publish the notice in local newspapers. The transfer is automatic unless the property owner appeals within two

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months of service of the notice. This time period is absolute and late appeals will not be permitted.

## **Impact upon Section 104 Agreements**

When Section 42(1) of the FWMA comes into force a person wishing to connect a newly built private sewer or lateral drain into the public sewerage system cannot do so unless they enter into a Section 104 Agreement.

Where a Section 104 Agreement is in place in respect of a private sewer or lateral drain which is covered by the main scheme (i.e. communicated with the public sewerage system before 1 July 2011), its adoption will have occurred on the date of vesting specified in that agreement or on 1 October 2011, whichever is earlier. The Section 104 Agreement is then treated as terminated except in relation to any provisions which allow the regulated sewerage company to benefit from security for the costs of any works it carries out before the vesting date. Similar provisions will apply in relation to the supplementary scheme.

Pending applications for the adoption of private sewers and lateral drains which fall under the

main scheme will be treated as withdrawn as they will have been transferred on 1 October 2011. Any appeals against a refusal to enter into an adoption agreement which were pending at 1 July 2011 will be discontinued. Similar provisions will apply in relation to the supplementary scheme.

For further information about this and other procurement related matters please contact:

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