

# Adoption of Private Sewers - Are you concerned?

June 2011

If draft regulations come into force as planned on 1 July, an estimated 200,000 kilometres of private sewers and private lateral drains will, from 1 October this year, transfer “overnight” from private ownership to that of statutory sewerage and water companies. The transfer will bring about the biggest change in responsibility for sewerage services since 1937, affecting both residential and commercial properties.

This alert is relevant to landowners who may in certain circumstances wish to appeal against the proposals. The timescales for appealing however are very short and landowners will need to be alert to the issues and act swiftly if they think an appeal is necessary.

## Outline of the proposals

Under the proposals private owners will only retain responsibility for that part of the drain that serves only their property and is within the curtilage of their property. The main benefit to private owners will be that responsibility for maintenance passes to the statutory company.

## Who will be impacted by the proposals?

The transfer will impact on a number of different parties including landowners.

### Will you be detrimentally affected?

Whilst there are benefits of these transfers, some parties including landowners may be detrimentally affected by the proposals.

Some possible reasons landowners may have for objecting to the proposed transfers are:

#### 1 Loss of compensated sewer removal

A landowner with another party's drain or private sewer running across their land may currently have private rights to “lift and shift” it, possibly at the cost of the person whose property is served by that drain or private sewer. Following the transfer, whilst it will still be possible to have the pipes moved should the landowner wish, for example, to develop their land, this will only be possible on giving notice to the statutory company. The statutory company will have grounds to refuse if the requirement is unreasonable. In addition, the statutory company can require security before completing the works and is entitled to their expenses for

moving the pipes (these costs to be paid by the landowner).

#### 2 Loss of “ransom” value

There may occasionally be a ransom value for the landowner with the benefit of the drainage right in preventing development if no such “lift and shift” rights exist, and preventing the transfer to the statutory company might therefore be beneficial.

#### 3 Affect on complex infrastructure agreements

Landowners may have complex infrastructure management agreements which may be detrimentally affected by the proposals.

## Appeals against transfer

For those who may be detrimentally affected by the proposals an appeal mechanism to Ofwat (the economic regulator for the water and sewerage industry) will be in place.

Appeals will be able to be made by the **owner** of a sewer or lateral drain or **any other party affected** by the proposals where they consider the transfer would be *seriously detrimental* to their interests.

After hearing an appeal, Ofwat may specify conditions, including the payment of compensation by the statutory company.

## What you need to do now - practical steps

### Appeals

A very short timescale is in place for making appeals. As the transfer regulations stand at present, appeals by owners and other persons affected will need to be made **within 2 months of notice** of the proposed transfer from the statutory companies.

Direct notification of the proposals will be given to sewer/ lateral drain owners and also published in the London Gazette and local/ regional newspapers. For the 1 October transfer date to be met, notification will need to be given on or before 1 August and therefore notifications are likely to start to appear from July.

It will therefore be imperative that landowners and other parties are alert to these issues if they think they may be affected and may wish to appeal. This will be especially true where they may not be the owner of the sewer/ lateral drain and therefore may not receive direct notification of the proposals.

## Assistance and further information

We can assist you in identifying whether and how these proposals will affect you. We can provide assistance on making appeals and representations against transfers.

If you would like further information or assistance in relation to these proposals please contact: Richard Owen, Matthew Sims, Georgie Messent or Joanne Attwood.

### Contact



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