

Private sewers – information note for small drainage contractors

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The following is an information note on the proposed transfer of private sewers for small drainage contractors.

Background

The government's decision on private sewers goes back to a review which began in 2001, on the extent and problems associated with private sewers and drains, particularly with regard to ownership and maintenance.

The findings were presented in Defra's first consultation in July 2003. Transfer of ownership to water and sewerage companies was the strategic option favoured by respondents to this consultation.

In its response, the government suggested that "transferring ownership to water and sewerage companies represented the only comprehensive solution to the problems caused by exiting private sewers and laterals...[drains]".

The transfer of private sewers to the water companies was then authorised by an Act of Parliament through Section 98 of the Water Act 2003, which modified the Water Industry Act 1991 to the following effect:

- the Secretary of State (SoS) may make regulations requiring the preparation for his approval of schemes for the transfer to water companies of specified private sewers, lateral drains and sewage disposal works;
- before making regulations or approving schemes, the SoS must consult affected water companies, Ofwat, Consumer Council for Water and other appropriate persons;
- regulations made by the SoS are subject to the affirmative resolution procedure, that is they require the approval of both Houses of Parliament; and
- any duties imposed on water companies by regulations and schemes are required to be enforced by the SoS under section 18 of the Act.

Defra issued a subsequent consultation on the implementation options in July 2007, essentially around the scope and form of transfer.

This followed the Ministerial statement by Ian Pearson in February 2007 that "Householders will no longer bear responsibility for private sewers" and that "private sewers and lateral drains... are to be transferred into the ownership of the nine statutory water and sewerage companies in England".

On 15 December 2008 the Environment Secretary Hilary Benn in a statement to the House, said:

"Approximately 200,000km of privately owned sewers and lateral drains in England will be transferred to water and sewerage companies from 2011".

The Minister Huw Irranca-Davies provided a written statement the same day, as well as bringing simplification and clarity to owners, local authorities and the water and sewerage companies. He added that "transfer will also significantly help address a lack of integrated management of the sewerage network as a whole, and provide much greater efficiency of effort and expenditure at a time when climate change and housing growth may impose greater demands on urban drainage systems".

Latest position

April 2011 was the earliest date that Defra anticipated the transfers would take place, which was subject to the drafting and subsequent consultation on regulations by summer 2009 and the placing of those regulations before Parliament in autumn 2009 with their coming into force in early 2010.

The regulations have not yet been published for consultation. Therefore the original timescale is now in doubt.

Water UK believes the regulations are not now planned to go before Parliament until February 2010. This may mean that transfer is delayed to later in 2011.

While Parliamentary approval of the regulations should not take long, there may be other pressing legislation that the whips and business managers may want brought to the House, especially in the run-up to an election (expected in May 2010).

The regulations could therefore 'miss' the current session of Parliament altogether. If so, and there is a change of government, the new Ministers may want to review the proposed transfer. (The Conservatives are proposing an early White Paper on water, so if elected they may want to await the outcome of consultation on this before deciding whether to continue with the proposed transfers).

The regulations will also encompass all new sewers constructed by developers, thus eliminating the creation of new private sewers. These were expected to come into force one year before, i.e. April 2010, but this would not be possible now.

Implications for water companies and drainage contractors

The delayed timing and uncertainty around the scope, form and date of transfer means it is difficult for water companies to plan both their procurement strategies for the maintenance and repair of transferred sewers and also the messages to put out to private drainage contractors and to customers about the proposed transfer.

The procurement arrangements decided on by the 10 water and sewerage companies in England and Wales are likely to vary. However most are likely to want to use their main (Tier 1) framework contractors for this work and for these contractors to employ additional resources, most likely the existing experienced small drainage contractors, to carry out the additional work.

One alternative could be for a number of small drainage contractors to get together and form a "cooperative" and to bid directly for the work.

Whatever the final decision on scope, form and timing, the number of drainage jobs will be the same after the transfers as there are at present (there may even be more), but they will be carried out in different ways.

Drains within the curtilage of the property will not transfer. There will therefore continue to be private drain clearance work, paid for by the individual property owner.

Timescales

Water and sewerage companies believe that the procurement process will take in total around 18 months (75 weeks) from the date that the regulations setting out the schemes are confirmed.

Once the draft regulations have been published they will be subject to consultation for 13 weeks. From the date the regulations setting the transfer date and any procurement constraints are confirmed by government, it will typically take eight weeks for companies to confirm their procurement plans.

It will then typically take a further eight weeks to prepare a brief and an [OJEU](#) (the Official Journal of the European Union) notice. So if the Regulations for transfer were published tomorrow it will still be 29 weeks before small drainage contractors are likely to be involved in the procurement process.

The OJEU notice and its response period would then run for 12 weeks. It is during this 12 week period that small drainage contractors should expect engagement from the water and sewerage companies.

Water company details

To provide an idea of water company strategies going forward, the table below gives an early indication of their likely procurement arrangements for:

- Blockage clearance
- Minor repairs
- CCTV and other inspections

The table also gives email contact details of the companies' procurement departments or person responsible.

[Procurement arrangements following the transfer of private sewers and lateral drains](#)

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