



Welsh Government

Consultation Document

Statutory Guidance on sewerage undertakers' duty to connect properties to the public sewerage system under the Water Industry Act 1991 Section 101A

Date of issue: 10 December 2013

Action required: Responses by 6 March 2014

Overview

The majority of properties in England and Wales are connected to the public sewerage system, but an estimated 4% of properties depend on independent privately owned and operated systems.

Where these systems are unable to provide a satisfactory, long term solution one option is for the owners to apply for the provision of a public sewer under the first-time sewerage provisions in section 101A of the Water Industry Act 1991.

This draft guidance outlines the options for securing a sustainable sewerage system for properties not connected to the public sewerage system. It provides information to assist householders, occupiers and property owners in deciding if section 101A provides the right solution in their circumstance and sets out the roles and responsibilities of the sewerage undertakers, the environmental regulators (Environment Agency and Natural Resources Wales) and property owners on how section 101A should be applied.

This draft guidance replaces and updates the previous guidance issued by the Department of the Environment and the Welsh Office in 1996. This is to reflect the current legislative and regulatory framework and better assist stakeholders in understanding and applying the section 101A provisions.

We would like to receive any comments or questions on the guidance and views as to whether it is clear and useful.

How to respond

Please submit your comments using the online response form or e-mail them to water@wales.gsi.gov.uk

You may also send your comments to the postal address below.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

Contact details

Paul Harrison
Energy, Water Flood Division
Welsh Government
Cathays Park
Cardiff CF10 3NQ

E-mail: water@wales.gsi.gov.uk

Telephone: 02920 825307

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government 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.

Names or addresses we blank 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 the Welsh Government. 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 we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact 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 we finally decided to reveal the information.

Statutory Guidance on sewerage undertakers' duty to connect properties to the public sewerage system under Section 101A of the Water Industry Act 1991

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1. Introduction

Part IV of the Water Industry Act 1991 (the Act) sets out the law relating to the provision of public sewerage services and the duties of the water and sewerage companies (referred to as “sewerage undertakers”) in delivering this service. Although the majority of properties in England and Wales are connected to the public sewerage system, an estimated 4% of properties depend on independent privately owned and operated systems. In most cases, provided that these are properly installed and adequately maintained, they provide a satisfactory and sustainable solution for the treatment and disposal of sewage. However, in some locations factors such as the number and or size of properties, local soil and water conditions and difficulties of access for maintenance can result in unsatisfactory discharges resulting in an adverse impact on the environment and amenity.

If existing private sewage treatment systems such as septic tanks, cess-pools and package treatment plants cannot provide a satisfactory, long term solution then seeking the provision of a connection to the public sewerage system can be considered. One option is to apply for the provision of a public sewer under the first-time sewerage provisions in section 101A of the Act. Potential applicants may seek advice from Natural Resources Wales before making a decision. Natural Resources Wales’ contact details are at Appendix 5.

This guidance is for parties who may be involved in considering a request for the provision of first-time sewerage to serve properties under section 101A of the Act. This includes:

- Householders, occupiers and property owners and their representatives
- Local Authority environmental health and drainage staff
- Sewerage undertakers
- Environment Agency and Natural Resources Wales
- Ofwat

The guidance outlines the options for securing a sustainable sewerage service for properties not connected to the public sewerage system. It provides information to assist householders, occupiers and property owners in deciding if section 101A provides the right solution in their circumstances. It also sets out the roles and responsibilities of the sewerage undertakers, the environmental regulators (Environment Agency and Natural Resources Wales – referred to in this document as the Regulator) and Ofwat on how section 101A should be applied.

Changes made by the Natural Resources Body for Wales (Functions) Order 2013¹ mean that disputes between sewerage undertakers and owners/occupiers of properties in Wales are determined by Natural

¹ (2013/755)

Resources Wales, and disputes of properties in England are determined by the Environment Agency.

This guidance is not a substitute for the legislation and should be read in conjunction with the Act. It replaces the previous guidance issued by the Department of the Environment and the Welsh Office in 1996. References to “the Minister” in this guidance mean the Welsh Ministers for areas served by sewerage undertakers based wholly or mainly in Wales and the Secretary of State for the Environment for sewerage undertakers based wholly or mainly in England.

1. Background

Private Sewerage Provision

Aim of Section 101A

Section 101A was introduced in 1995 to make easier the provision of first-time connection to mains sewerage of existing premises

To do this, the Act was amended to include section 101A, which came into force in 1996 and replaced an earlier rural sewerage grant scheme.

Section 101A imposes a duty upon sewerage undertakers to provide a public sewer, where certain conditions are met and provides a framework within which to assess whether provision of a public sewer is appropriate in certain circumstances.

The relevant sewerage undertaker must assess whether the duty under section 101A applies and whether the provision of a public sewer is the appropriate solution to the identified adverse environmental and amenity effects. This assessment should take into account the comparative practicability, and cost and benefit of alternative solutions.

Section 101A only applies to existing premises on which there are buildings discharging domestic sewage from more than one premises not connected to the public sewer. The discharge must be causing or likely to cause an adverse effect on the environment or amenity.

Who does what?

The Act does not specify how householders, occupiers and property owners should apply to a sewerage undertaker for the provision of first-time sewerage. However, the key roles in the process are:

- Householders, occupiers and property owners may request the provision of sewerage services under section 101A of the Act;
- The sewerage undertakers have a duty to consider the request;
- The Regulator (Natural Resources Wales) determines disputes referred to it under section 101A concerning properties in Wales.
- The Welsh Ministers have powers of enforcement where sewerage undertakers have accepted (or the Regulator has determined) that a duty under section 101A exists and the date agreed by the sewerage under (or the date determined by the Regulator) as to when the sewer should be provided has passed. The Welsh Ministers have authorised Ofwat to carry out this enforcement function on their behalf.

The Regulator also has a role in protecting the environment and preventing water pollution. Where pollution is occurring they may take action in line with their published Enforcement and Prosecution policies.

Although there is no statutory role for Local Authorities, in the section 101A determination process, in many cases property owners may approach them for advice, or they may be involved because of environmental health concerns.

It is important that Local Authority officers understand the role of section 101A in solving sewerage problems and the limitations to its application. Section 59 of the Building Act 1984 provides local authorities with the power to serve notice on owners of buildings relating to drainage where existing systems could affect health or be a nuisance.

3. Requirements of Section 101A of the Water Industry Act 1991

3.1 Duty of the sewerage undertaker

Section 101A makes it the duty of the sewerage undertaker to provide a public sewer for domestic sewerage purposes in a particular locality when conditions set out in section 101A are met. These are summarised below:

- that the premises in question, or any of those premises, are premises on which there are buildings;
- that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer;
- that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity; and
- it is considered appropriate, having regard to any guidance issued by the Minister and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.

Section 101A(2) sets out the statutory conditions which are required to be met and can be found in the copy of section 101A of the Act which is attached at Appendix 1.

In addition, when deciding whether it is appropriate to provide a public sewer, the undertaker must have regard to (this) Guidance issued under section 101A by the Minister, all other relevant considerations and a number of statutory considerations. The statutory considerations include:

- the geology of the locality in question or of any other locality;
- the number of premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
- the costs of providing that sewer;
- the nature and extent of adverse effects on the environment or amenity caused, or likely to arise, as a result of the premises or the locality in question not being drained by a public sewer; and
- taking account of the practicality and costs of alternative arrangements other than public sewers.

3.2 Guidance

Section 101A(4) outlines the potential contents of Guidance issued by the Minister to be taken into consideration in determining duty under section 101A. The Guidance may:

- relate to how regard is to be had to the considerations listed above;
- relate to any other matter the Minister considers may be relevant and how regard is to be had to it;

- set out additional considerations to be taken into account in determining if it is appropriate to provide a sewer;
- relate to how such additional considerations are regarded;
- relate to how a sewerage undertaker is to discharge its functions under Section 101A.

The Ministers must consult the Environment Agency, Natural Resources Wales, Ofwat and any other bodies or persons considered appropriate on this guidance before it is issued and arrange for its publication.

3.3 Disputes

Any dispute between a sewerage undertaker and an owner or occupier of premises in its area relating to the provision or timing of first-time sewerage under this section may be referred by either party to the Regulator for determination. Anyone acting on behalf of the owner or occupier of the premises (e.g. local authority) is also able to refer a dispute. The Regulator should notify Ofwat of any dispute referred to it. The Regulator must notify the parties of its decision, the reasons for it, and may make recommendations or provide guidance on the drainage of the premises or the locality in question.

3.4 Enforcement

The sewerage undertaker will be in breach of its duty under section 101A if it has failed to deliver the proposed scheme by the date it has indicated or which has been determined by the Regulator following a referral of a dispute. The Minister has issued a general authorisation to Ofwat to take enforcement action in relation to any sewerage undertaker wholly or mainly in Wales.

4 Links with other statutory provisions

Section 101A is one of a range of statutory provisions relating to the provision of sewerage services and the protection of the environment or amenity. This section outlines other statutory provisions which may be relevant when a potential applicant is considering a first time sewerage scheme.

4.1 Sewer requisition

Sewerage undertakers have a duty to provide a public sewer or lateral drain for domestic purposes under sections 98 to 100 of the Act when requests are received from various organisations/bodies, including owners or occupiers of premises or the relevant local authority. However, the cost of providing the sewer is recoverable from the person(s) making the requisition. In assessing a section 101A request, requisition should not be considered as an alternative means of providing a public sewer by the sewerage undertaker.

4.2 Connections and lateral drains

A successful request under section 101A will result in the construction of a public sewer. However, it does not cover the construction of drains serving individual properties and their connection to the sewer. These drains are the responsibility of the property owner or occupier, including that part of the drain that is between the property boundary and the public sewer (known as the lateral drain)² which will be adopted by the sewerage undertaker. Potential applicants must understand the cost implications for themselves of the provision of a section 101A scheme should they decide to proceed. To help inform that decision applicants may wish to contact the sewerage undertaker for an estimate of costs involved in this provision.

These costs may include:

- Fees for the connection of 'on property' drainage and property drainage to the new sewer (the Infrastructure Charge);
- Costs of construction of drainage between property and new sewer;
- Decommissioning existing drainage system – for example emptying septic tank and removal;
- Annual sewerage service charges.

The construction of drains and their connection to the new sewer should be undertaken at the same time as the sewer is being constructed in order to minimise costs and disruption. Sewerage undertakers should encourage this. A connection could be made at a later date under section 106 of the Act, but the cost of construction is likely to be higher.

² Note that in the Dŵr Cymru Welsh Water area, an adoption agreement is required for the lateral drain which must be constructed in accordance with the Welsh Ministers' standards, available at:
<http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/sewers/adoptionarrangements/?lang=en>

Customers should contact their sewerage undertaker to determine the likely advantages in connecting to the sewer at the time it is being constructed.

4.3 Planning and Building Regulations

Section 101A only applies to premises which have a building on them. It is therefore not possible for a developer proposing to build a new property to use it, although once a public sewer has been constructed, a developer may seek a connection under section 106, as for any other public sewer.

Planning authorities should ensure that any proposed development has satisfactory provision for dealing with sewage. When plans are deposited under Building Regulations³, the local authority or the approved inspector may require that foul drainage is connected to the public sewer if it is within one hundred feet (30.48m) of a building or extension, subject to accessibility.

Building inspectors should ensure that cesspits and septic tanks are constructed to the required standard and not damaged in anyway prior to them being commissioned.

4.4 Environmental Permitting Regulations

The Environmental Permitting (England and Wales) Regulations 2010 contain the regulatory provisions relating to the discharge of sewage effluent to surface waters or groundwater. Any discharge of sewage effluent should be the subject of an environmental permit or an exemption. As the enforcing organisation, Natural Resources Wales has powers to serve notices requiring actions to protect the water environment. For example, a notice could specify work to replace a failing septic soakaway.

4.5 Building Act 1984

Section 59 of the Building Act 1984 provides local authorities with the power to serve notice on owners of buildings relating to drainage. The local authority shall serve notice where it appears that there is no satisfactory drainage provision or that the existing system could affect health or be a nuisance. Failure to comply with a notice could result in the local authority carrying out the work and recovering costs. Local Authorities also have powers to serve Abatement Notices under the Environmental Protection Act 1990.

³ Building Act 1984, s21

5. Assessment process

This section identifies the information that should be made available to potential applicants, the technical and economic factors that should be taken into account and target timescales for the process.

5.1 Information for applicants

The assessment of a section 101A request can be a complex and costly process so applicants should also consider alternative solutions. If a request under this section is the most appropriate solution, the application should contain as much relevant information as possible. In order to ensure that applicants understand the process fully, sewerage undertakers should publish information which explains simply:

- The purpose and scope of section 101A
- Alternatives to section 101A and associated costs
- How to make an application
- How an application will be considered
- The application process and timescales
- How disputes are resolved
- Costs and responsibilities for applicants
- Contact details
- Alternative routes to secure a first time sewer

The sewerage undertakers should also publish an application form, along with information about application timescales.

At all stages of the process, the sewerage undertaker and where appropriate the Regulator, should keep applicants informed of progress and that communications comply with their set standards of customer service.

5.2 Indicative timescales for a section 101A application

Initial contact to Sewerage Undertaker

Before the applicant makes a formal request to the sewerage undertaker for a section 101A scheme, it is advisable for them to make initial contact with them as they may hold information which may be relevant to the application.

Following a formal request for a section 101A scheme from an applicant – sewerage undertaker should confirm receipt of application – **within 14 days**.

Following acknowledgement of request, the sewerage undertaker should advise applicants that they will now proceed to undertake an assessment/investigation of the site in question - **4 weeks after initial request**.

The sewerage undertaker should write to the applicant **within 6 months** to advise them whether or not they believe that a duty exists. In some cases, where more time is needed to investigate whether or not a duty exists, the undertaker should provide a **6 monthly update** on progress.

In any event a decision by the sewerage undertaker as to whether or not they consider a duty exists should **not exceed 24 months from the date of application**.

Timescales for deciding if a duty applies

It should be possible to undertake an initial assessment within 4 weeks of the application to establish if the application relates to:

- premises on which there are buildings, and;
- which are not connected to a public sewer, and;
- there is evidence of actual or potential adverse effects to the environment or amenity.

Where an initial assessment indicates that a duty may exist, the undertaker should carry out a full assessment.

In the event that the undertaker accepts that it has a duty to provide a sewer, or that the Regulator has determined this is the case, the undertaker should set a target date for the commencement of construction. The undertaker should notify the applicants and the Regulator **within 3 months** of the completion of the assessment or the determination.

If, following a full assessment the sewerage undertaker concludes that it does not have a duty to provide a sewer, it should notify the applicant, providing the reason and details of the dispute referral process.

The applicant should refer a dispute to the Regulator **within six months** of the date the undertaker notifies them of its decision⁴. The Regulator may request from the undertaker and the applicant any additional information required to evaluate the dispute and will aim to complete the dispute process **within twelve months** of the receipt of such information.

Whilst there may be some exceptional cases, in general, a scheme should be completed within five to seven years of the application, whether or not it has progressed to dispute stage.

⁴ Reference of a dispute to the Regulator is not limited to six months, but the longer it is left, the more likely it is that there could be changes in circumstances will make any determination increasingly difficult.

5.3 Factors for consideration in an assessment

The assessment of an application should cover both technical and economic factors outlined below. Further details of these are set out in Appendix 2, but they are not exhaustive and may not apply in every case.

In undertaking the assessment, the sewerage undertaker should consult with the local authority, the Regulator and health authorities as appropriate. It should assess applications in a timely manner and keep the applicant informed of progress.

The duty to provide a public sewer will exist where:

- Taking account of the technical and economic factors below, a public sewer is shown to be the most cost effective solution

Technical criteria

The following technical criteria may be considered:

- Risk to water resources such as private or public water supplies
- Risks to the environment, public health and amenity.
- The number of premises which could reasonably be expected to be served by the proposed sewer. This expectation would be influenced by evidence on the likely take-up by owners of unconnected properties in the locality.
- The condition of existing systems and the scope to solve the problem by their remediation or improved maintenance.
- The proximity of any existing public sewer.

An understanding of the local geology and its implications for satisfactory infiltration or transmission to a vulnerable receptor, such as a private water supply or a Site of Special Scientific Interest, is likely to be essential. Information may be available from the British Geological Survey, the Regulator and local building control staff. It may be appropriate for the undertaker to carry out percolation tests. These should follow the process in the Building Regulations Approved Document H2⁵. The number of tests should take account of the size of, and geological variations in, the locality and seasonal variations.

Evidence should be gathered from the Regulator, the local authority, owners and occupiers in the locality and other relevant sources to understand the actual or potential environmental, public health and amenity impacts of the current drainage arrangements. Where additional water quality information is required, this should be discussed and agreed with the Regulator.

The undertaker should carry out a survey of the area to establish the number of potential properties which may connect to a new public sewer. Although the

⁵ Reference for Part H approved doc.

undertaker has no duty with respect to premises which are not likely to cause an environmental or amenity problem, the fact that these may wish to connect to the sewer is relevant.

The existing sewerage provisions should be surveyed, taking into account any possible seasonal variations. The scope for the problem to be resolved in the long term by repair and maintenance should be considered. It is not appropriate to provide a public sewer if the cause of the problem is lack of maintenance of otherwise satisfactory sewerage systems. Guidance on the costs for private sewage treatment systems is available from the Water Research Centre (WRC)⁶.

The proximity of the existing public sewerage system is an important factor which will influence costs. Following the transfer of private sewers, it is possible that the nearest public sewer has not yet been identified and mapped. Undertakers should not, therefore, rely on the statutory sewer map (S199 of the Act) and should ensure that any relevant transferred assets are identified.

Sewerage options

In assessing the sewerage solutions for a locality, the undertaker should consider alternatives to connection to an existing public sewer, such as the provision of a sewer and local treatment plant. Options involving the refurbishment or extension of existing private sewers and treatment systems should also be evaluated.

Economic criteria

An assessment of the economic factors which are relevant to the proposed scheme should be undertaken. This should be proportionate to the scale of the scheme proposed. The assessment should include the capital cost of the sewer and ongoing maintenance costs. Revenue generated from charges to those connecting to the sewer may not be considered.

The costing for the private and public options should be as equitable as possible, for example, legal and project management costs should be factored into the private cost option if they are included within the public scheme costs.

Report

A model determination report template is provided at Appendix 3. This reflects the structure of section 101A and shows the stages in the assessment process and reasons for the undertaker's decision. This will help applicants understand the decision and will assist the resolution of any dispute by the Regulator.

⁶ The WRC is independent and not regulated by the Welsh Government.

6. Guidance for potential applicants

This section is aimed at those considering making an application under section 101A. It identifies useful sources of information, the options that should be considered in deciding if an application should be made and a standard application form.

6.1 Information for applicants

Residents living in a locality which is not served by a public sewer have a number of options for the long term and sustainable provision of sewage treatment and disposal. In many cases, individual systems such as septic tanks and small sewage treatment plants can, if properly installed and maintained, provide a cost effective solution which protects the local environment and amenity.

However, in some circumstances, as a result of local conditions, the existing systems may be causing, or have the potential to cause, an adverse effect on the environment or amenity. Where this is the case, and multiple premises are involved, the owners or occupiers of the premises may request that the sewerage undertaker provide a public sewer under section 101A of the Water Industry Act 1991.

Potential applicants should consider their options for the provision of sewerage services carefully. Applying for provision of a public sewer does not exempt the applicants from their legal obligations. The application and determination process is not a quick solution, as it can take a number of years for a successful application to deliver a sewer. In addition, applicants may need to fund the connection of their own property to the new sewer. In the interim period there will be on-going costs as a result of the need to maintain existing systems to minimise their impact on the environment or amenity.

In some cases, it will remain the responsibility of the private owners to upgrade or replace their existing treatment systems. Information on non-mains sewerage solutions is available from the Regulator and from British Water⁷.

Further information on a section 101A application is available from individual sewerage undertakers. A map setting out the areas for which undertakers are responsible is attached at Appendix 6. An example application form which identifies the information required for the sewerage undertaker to process an application is attached at Appendix 4.

If the initial assessment of an application indicates that a duty to provide a sewer may exist; the sewerage undertaker should undertake a detailed assessment to identify the properties which could be involved; the practicalities of providing a sewer and the scope for alternative solutions, including the repair or refurbishment of existing facilities. This can take many

⁷ http://www.britishwater.co.uk/publications/publications_and_technical_guides.aspx

months and may involve affected householders in the completion of questionnaires or interviews regarding existing facilities and any adverse impacts on the environment or amenity in the area.

Once the undertaker has completed its assessment, it must notify applicants of its decision. If the assessment identifies that a duty to provide a sewer exists, they must, **within three months**, set a date for the commencement of the scheme. If the assessment does not support the provision of a sewer, they should notify applicants **within three month** and provide details of the mechanism for a referral of a dispute.

6.2. Referral of dispute process

Disputes relating to the duty to provide a sewer or the timing for its completion should be lodged with the Regulator within six months of notification by the undertaker. The Regulator will aim to determine an appeal **within twelve months**. It may request additional information from both parties. It would be reasonable for the Regulator to expect a response within four weeks of making a request. If no additional information is provided within this or an agreed alternative timescale, the Regulator shall determine the dispute on the basis of the available information. Once it has determined the dispute, the Regulator shall provide both the applicant and the undertaker with a full copy of its determination within four weeks.

A determination may contain recommendations, or give guidance in relation to, the drainage of premises or the locality in question. This will include the time by which the undertaker should commence construction.

If the determination of a dispute finds in favour of the owner/occupier, the undertaker must advise them **within three months** of the date by which the scheme will be started. If the applicant is not satisfied with the date proposed this may be the subject of a further referral of timing dispute.

When a dispute is referred to the Regulator, to establish whether or not a duty exists to provide a public sewer, the applicant can also request the Regulator to determine the time by which any such duty of the undertaker should be performed, if this is also in dispute. This saves the applicant from having to raise two separate disputes; one to determine that a duty exists and one to determine the time by which that duty should be performed.

6.3. Applicant's duty to protect the environment and amenity

In order to ensure the protection of the environment and local amenity, applicants must maintain their existing facilities until they connect to the new sewer. Owners must also ensure that their private sewage systems are compliant with the Environmental Permitting (England and Wales) Regulations 2010.

7. Role of Ofwat

The Water Services Regulation Authority (Ofwat) is responsible for regulating the economic performance of the sewerage undertakers in England and Wales.

The Welsh Ministers have authorised Ofwat to carry out enforcement of the undertaker's duty to provide a public sewer for domestic sewerage drainage purposes under section 101A(1) of the Act.

Ofwat has duties under the Act to enable undertakers to finance their functions and to protect customers. Ofwat aims to discharge these duties by setting price controls at five yearly intervals that are no higher than they need to be to allow undertakers to effectively run their businesses. Ofwat also recognises that a balance needs to be struck between the entitlement of applicants for a public sewer under section 101A and the interests of the wider customer base that pay through their bills for its provision. In interpreting the legislation and this guidance and deciding whether or not the section 101A duty arises, Ofwat will expect undertakers to take account of the relative costs and benefits of individual schemes and be able to demonstrate that a reasonable balance has been struck.

In cases where an undertaker has accepted that the section 101A duty to provide a public sewer has arisen it should be able to demonstrate to Ofwat that, while observing the guidance on timing in section 5, its plans for delivering the scheme take account of both the funding assumptions at the previous price review and the relative priority of other schemes in their environmental improvement programme, including other section 101A schemes.

Appendix 1

Water Industry Act 1991

Section 101A - Further duty to provide sewers

(1) Without prejudice to section 98 above, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in subsection (2) below are satisfied.

(2) The conditions mentioned in subsection (1) above are--

- (a) that the premises in question, or any of those premises, are premises on which there are buildings;
- (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
- (c) that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this section by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.

(3) Without prejudice to the generality of subsection (2)(c) above, regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this section--

- (a) the geology of the locality in question or of any other locality;
- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
- (c) the costs of providing that sewer;
- (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and
- (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Secretary of State under this section may--

- (a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;

- (b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
- (c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;
- (d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;
- (e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to discharge its functions under this section.

(5) Before issuing guidance under this section the Secretary of State shall consult--

- (a) the Environment Agency if the guidance applies to premises in England;
- (a) the NRBW, if the guidance applies to premises in Wales
- (b) [the Authority]; and
- (c) such other bodies or persons as he considers appropriate;

and the Secretary of State shall arrange for any guidance issued by him under this section to be published in such manner as he considers appropriate.

(6) Subject to the following provisions of this section, the duty of a sewerage undertaker by virtue of subsection (1) above shall be enforceable under section 18 above--

- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by [the Authority].

(7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to--

- (a) whether the undertaker is under a duty by virtue of subsection (1) above to provide a public sewer to be used for any such drainage of those premises as is mentioned in that subsection;
- (b) the domestic sewerage purposes for which any such sewer should be provided; or
- (c) the time by which any such duty of the undertaker should be performed,

shall be determined by the appropriate agency, and may be referred to the appropriate agency for determination by either of the parties to the dispute.

(8) The appropriate agency--

(a) shall notify the parties of the reasons for its decision on any dispute referred to it under subsection (7) above; and

(b) may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.

(9) The decision of the appropriate agency on any dispute referred to it under subsection (7) above shall be final.

(10) A sewerage undertaker shall only be taken to be in breach of its duty under subsection (1) above where, and to the extent that, it has accepted, or the appropriate agency has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the appropriate agency under this section, as the time by which the duty is to that extent to be performed has passed.

(11) In this section the appropriate agency means -

(a) The Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;

(b) the NRBW, in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales.

Note that:

Under the transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

In practice this means that references to the Secretary of State in this section mean the Secretary of State for sewerage undertakers based wholly or mainly in England and Welsh Ministers for sewerage undertakers based wholly or mainly in Wales.

Appendix 2

Water Industry Act 1991

Section 101A - Statutory considerations

The statutory considerations are outlined in section 5, Assessment Process. The following paragraphs give **additional** guidance on the application of the considerations for sewerage undertakers.

a. Geology of locality

The geological situation must be established in sufficient detail to come to a reasoned decision about the cost and practicability of the various alternatives to be considered.

Examples of situations in which geology may play an important part in decision-making are where the geology is such that:

- effluent leaks are more likely to affect groundwater;
- certain technical solutions may be less practicable or more expensive than normal;
- the cost of providing sewers may be less practicable or more expensive than normal; or
- it renders any particular method of effluent disposal ineffective or inefficient.

Consideration must be given to the impact on existing or potential users of water as a result of the local geological formations allowing the transmission, directly or indirectly, by infiltration, percolation, or by surface run-off, of polluting matter/sewage effluent from the existing drainage systems. In this context, it should be noted that problems may affect areas beyond the locality in question. A sewerage undertaker may also have regard to costs due to the geology of areas beyond the locality in question.

b. Number of premises expected to be drained by sewer

The total number of premises which might reasonably be expected to be drained by means of the sewer must be determined by a survey of:

- premises with a known existing environmental or amenity problem;
- premises which are likely to have an environmental or amenity problem;
- other premises (unlikely to give rise to an environmental or amenity problem in the future) within the locality that could be served.

In estimating the number of other premises that are likely to connect to the sewer within the expected lifetime of the sewer, it is reasonable to take account of the results of the surveys and connection rates for similar delivered schemes and any other relevant information on residents' views.

Where willingness to connect surveys state a connection costs, this should be set in the context with the cost of the private option.

A local authority may use its statutory powers to require connection to a sewer. Section 21 of the Building Act 1984 gives a local authority the power to require a connection of a new building or extension within 30 metres of a sewer. Section 59 of that Act gives a local authority the power to require that satisfactory provision is made for the drainage of a building in certain circumstances. The sewerage undertaker should seek to understand the position of the local authority in order to take this into account, this could be achieved by providing updates to the local authority at key stages of the process.

c. The costs of providing the sewer

The costs of providing mains sewerage should take account of the investment and maintenance costs over the expected lifetime of the sewer. Revenue that would be generated from charges payable as a result of construction of any public sewer should not be included in this calculation.

The legislation on public sewers allows the owner of a property that is connected to such a sewer to drain surface water to that sewer unless a separate surface water system is available. When costing a scheme, local conditions should be taken into account and the risk of such connections being made considered. In doing so, it should be noted that building regulations provide a hierarchy for the disposal of surface water from a property⁸, which requires that disposal to a soakaway or directly to a watercourse is considered before any connection to a foul sewer may be made.

d. Risks to environment, public health and amenity

The undertaker must assess the likely current and future adverse environmental, public health or amenity effects of the existing systems in order to:

- evaluate what must be done to reach the stage where there is no longer an actual or threatened environmental or amenity problem

Having gathered evidence from the relevant sources, it should be reviewed to establish if it indicates:

- that untreated or partially treated sewage effluent is entering or is likely to enter controlled waters (such as ditch, stream or river).
- that effluent ponding or flooding occurs or is likely as a result of the ground conditions at the locations of any soakaways;
- that groundwater is affected, or is likely to be affected,

⁸ Reference Building Regulations Part H, Section 3

- a risk that flooding could affect the private drainage systems and render them ineffective;
- that the local groundwater level is consistently rising and will render the private drainage systems ineffective;
- the density of development or proliferation of drainage systems are overloading subsoil soakage or receiving watercourses, leading to problems of ponding, localised flooding and/or watercourse pollution.

To fully assess the nature and extent of any adverse effects it should be established if:

- the presence of any pollution, ponded water or floodwaters caused by the private drainage systems is causing or could cause:
 - - a risk to public health;
 - a risk to the health of livestock;
 - visual and/or odour nuisance;
 - adverse impacts to any habitat or wildlife, including aquatic life or organisms in any watercourse or coastal waters;
 - land to become unusable.
- that there has been or there is a likelihood of a contravention or breach of any Statute, Directive, Code of Practice, Byelaws, water quality objectives,
- the impacts are affecting areas of special significance such as a Site of Special Scientific Interest (SSSI) or public open space

e. Practicality and cost of alternative drainage arrangements

In assessing a proposed scheme, the costs and effectiveness of private sewerage arrangements should be considered. These should include capital, maintenance and operational costs over a period that is equal to the expected lifetime of a public sewer. Sewerage undertakers should consider if existing systems could be made sufficiently effective to prevent adverse effects on the environment or amenity by proper maintenance and repairs. The age, design and location of such systems will need to be taken into account in doing so.

In addition, legal costs and practical difficulties such as those associated with acquiring wayleaves or land for private sewerage systems should be considered. Private systems include cesspools, septic tanks with soakaways and individual or shared package treatment plants.

It should be noted that affordability to individual residents is not a determining factor.

Appendix 3

Model Section 101A First Time Sewerage Application Form

Note 1 – To be eligible for an application there must be **two or more domestic properties**.

Note 2 - Before completing this form please read the Guidance Notes for making a section 101A Application

1. Name and address of person who is co-ordinating the application:

2. How many properties are requesting the provision of a Public Sewer?
Please list in Appendix A

Domestic

Non-domestic

3. A duty to provide a sewer does not arise if the application is only for one building.

4. Number of Dwellings known to have defective drainage? **Please state defects in Appendix A**

Domestic

Non-domestic

5. Are there other householders in the locality that:

- you have discussed the matter with
- have expressed a willingness to connect to a public sewer if made available
- are aware of the costs involved in connecting private drains to a new public sewer.

6. Reason for requesting the provision of a public sewer:

Please specify why you believe the provision of a public sewer is necessary e.g. Health, amenity, environmental, etc. Describe the nature and extent of existing, or potential, environment or amenity problems caused by the existing drainage arrangements.

7. Please supply and itemise below, any supporting material that you are supplying with this application including any involvement by public bodies, such as Environmental Health Officers, Environment Agency, etc

8. Existing drainage arrangements

Please describe, in brief, the existing drainage arrangements of the properties represented in the application. Sketch plans showing the properties and drainage arrangements should also be enclosed.

9. Remedial work

Has any remedial work, or the possibility of carrying out remedial work, on the existing drainage provisions, been considered/undertaken as a means of rectifying the environmental/amenity problems prior to this application?

If "Yes", please describe remedial work considered, and when was it considered:

If remedial work was undertaken, what was undertaken and when:

If remedial work was not undertaken, please state the reasons:

Please list below any other information which is relevant to your application

I agree to represent the applicant(s) and request that all communications be directed to me.

I agree, that for the purposes of the Water Industry Act 2003 and the Data Protection Act 1998, the information provided in this form and in any accompanying documents, may be held on a computer and processed by *the sewerage undertaker* and its servants and agents for all purposes connected with the Company's statutory water and sewerage undertakings.

Name

Signature

Date

Appendix A

Name of Applicants	Address and Post Code of Applicants	Type of Existing Sewerage Facility (e.g. Septic Tank etc)	Type of Defect	Signature of Applicants(s)

Appendix 4

Natural Resources Wales contact details:

Email contact details:

General Enquiries enquiries@naturalresourceswales.gov.uk

Telephone contact details

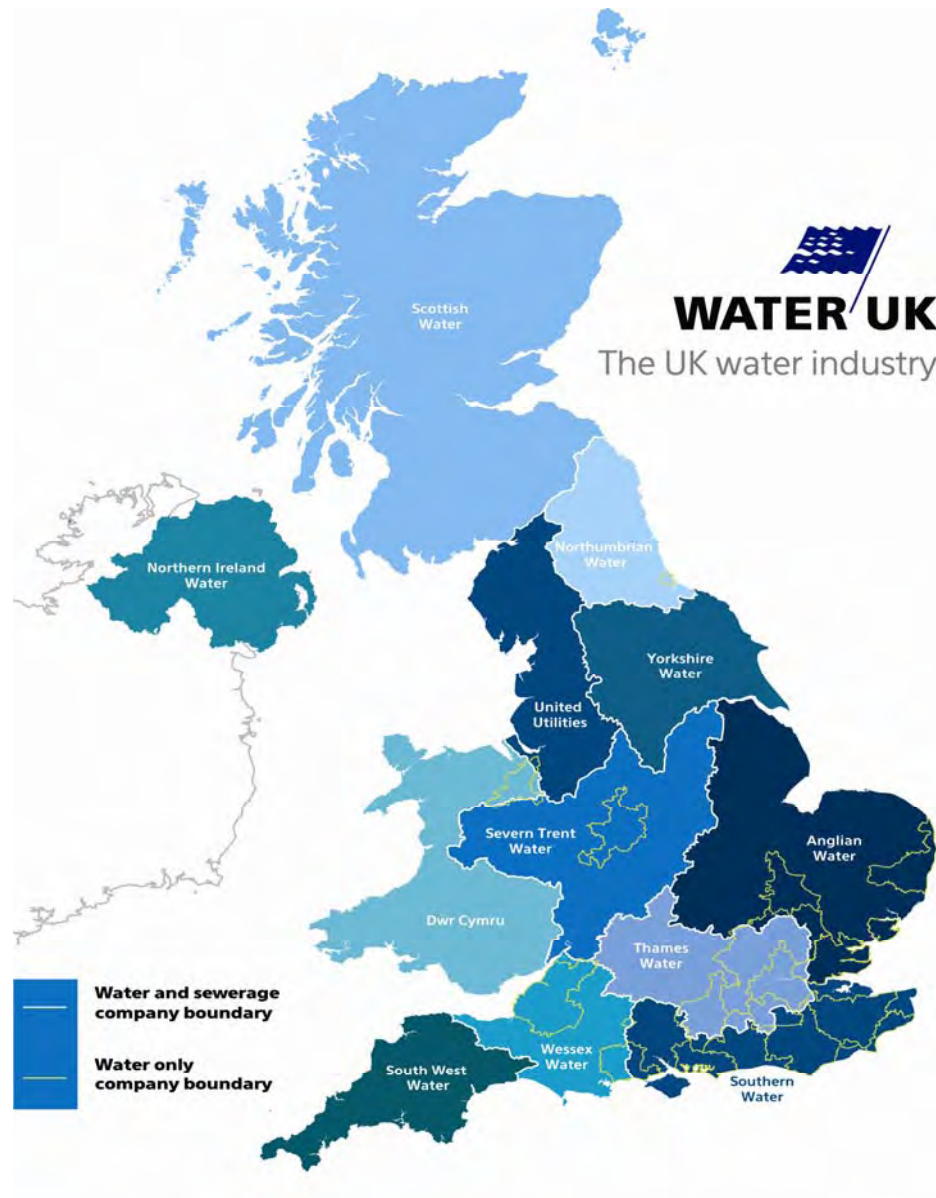
General enquiries: 0300 065 3000 (Mon-Fri, 8am - 6pm)

Further information on Natural Resources role in relation to the provision of a public sewer under section 101A of the Water Industry Act 1991 can be found on their web site. The link to the web site is below:

www.cyfoethnaturiolcymru.gov.uk / www.naturalresourceswales.gov.uk

Appendix 6

Water companies in the UK



Map Courtesy of Water UK