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Llywodraeth Cymru  
Welsh Government

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Welsh Government

## Consultation Document

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

Date of issue: **18 June 2015**

Action required: Responses by **31 July 2015**

## 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 (Section 101A).

This consultation sets out draft guidance which outlines the options for securing a sustainable sewerage system for properties not connected to the public sewerage system. This draft guidance provides information to assist householders, occupiers and property owners in deciding if Section 101A provides the right solution in their circumstance and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

In 2014, the Welsh Government consulted on draft Statutory Guidance on the sewerage undertakers' duty to connect properties to the public sewerage system under Section 101A. As a result of the consultation responses, we made a number of amendments to the Guidance which was subsequently published in July 2014.

Following the publication of the Guidance, concerns were expressed about an amendment that related to clarification around whether permanent caravan and mobile homes should be regarded as 'buildings' for the purpose of considering suitability of premises for connection to a public sewer under Section 101A. Comments were received that the amendment implied an inflexible legal rule that permanent caravans and mobile homes are 'buildings', which was inserted without further consultation.

The Guidance has been amended to leave open the question as to whether permanent caravans, etc. are 'buildings'. We have set out

relevant considerations for the undertaker to take into account when deciding whether to provide a public sewer to premises containing permanent caravans and mobile homes.

The Guidance has also been amended to reflect the decision of the Welsh Ministers to designate the Planning Inspectorate to determine disputes arising from applications under Section 101A.

In light of these amendments, we have taken the decision to reconsult and we welcome your views both on the proposed changes to the guidance, and on any other aspects of it.

## Consultation Questions

1. Do you agree with the proposed approach regarding premises with permanent caravans and mobile homes, in relation to Section 101A applications?
2. Is the new process to designate the Planning Inspectorate as dispute resolution body for application under Section 101A clear?
3. Do you have any additional views on the amended Guidance on sewerage undertakers' duty to provide sewers other than by requisition?

## How to respond

Please submit your comments using the online response form or e-mail them to [water@wales.gsi.gov.uk](mailto: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 alternative language versions of this document are available on request.

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## 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.

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## 1. Introduction

Although the majority of properties in Wales and England are connected to the public sewerage system, an estimated 4% of properties (7% for Wales alone) depend on independent privately owned and operated systems such as septic tanks, cess-pools and package treatment plants. 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 cause unsatisfactory discharges, resulting in an adverse impact on the environment and amenity.

If private sewage treatment systems cannot provide a satisfactory, long term solution for sewage disposal and are causing, or likely to cause, an environmental or amenity problem, then seeking a connection to the public sewerage system could be considered. One option is to apply for a public sewer to be provided under the first-time sewerage provisions in section 101A of the Water Industry Act 1991 (the Act). In addition to contacting the sewerage undertaker and local authority, potential applicants may wish to seek advice from the relevant environmental regulator (for properties in Wales, Natural Resources Wales and in England the Environment Agency – referred to in this document as the Regulator) before making a decision. For contact details see Appendix 1.

Part IV of 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.

This statutory guidance is issued by the Welsh Ministers under section 101A(4) of the Act and applies to sewerage undertakers based wholly or mainly in Wales. In practice this is relevant to the Dŵr Cymru Welsh Water area, which covers most of Wales and some areas of England served by the company (see Figure 1).

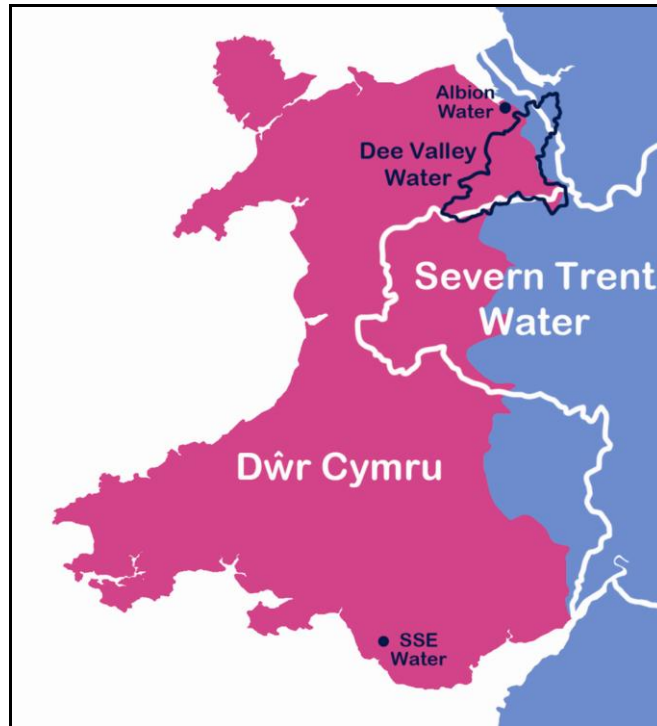


Figure 1

The Guidance is not a substitute for the legislation and should be read in conjunction with the relevant provisions of the Act (see Appendix 2) which it is intended to clarify and supplement. It aims to inform all 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
- The environmental regulators - Natural Resources Wales and the Environment Agency
- Ofwat (The Water Services Regulation Authority)

The Guidance outlines the options for securing a sustainable sewerage service for properties not connected to the public sewerage system. It emphasises the responsibilities of owners of private sewerage treatment systems and the options available to them. In particular, 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 and Ofwat and how section 101A should be applied.

The provision of a public sewer under section 101A can be a lengthy process. In order to achieve a successful outcome, it is essential that the community should understand the process and be committed to connecting properties to the new sewer. This requires good engagement within the affected community and between the community and the sewerage undertaker.

Disputes between sewerage undertakers and owners/occupiers of properties in Wales, as to whether a duty under section 101A to provide a public sewer exists, are determined by the Planning Inspectorate (PINS), while responsibility for similar disputes relating to properties in England rests with the Environment Agency.

This Guidance replaces earlier Guidance issued by the Department for the Environment and the Welsh Office in 1996 and Guidance issued by the Welsh Government in July 2014.

References to “the Ministers” 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.

## **2. Background**

### **2.1 Aim of Section 101A**

Section 101A was introduced in 1995 by amending the Act “to make easier the provision of first-time connection to mains sewerage of existing premises”<sup>1</sup>. Section 101A came into force in 1996 and replaced an earlier rural sewerage grant scheme.

Section 101A provides a framework within which to assess whether the provision of a public sewer is appropriate in certain circumstances.

Where the conditions in Section 101A outlined in the following paragraph are met, the section provides for an assessment to be carried out by the relevant sewerage undertaker as to whether the provision of a public sewer is the appropriate solution to the identified adverse environmental and amenity effects. This assessment will take into account the comparative practicability, and cost and benefit of alternative solutions.

Section 101A only applies to premises on which there are buildings. It is also a requirement that the drains or sewers used for the drainage for domestic sewerage purposes of the premises do not connect with a public sewer. Additionally, the drainage must give rise to, or be likely to give rise to such adverse effects that the provision of a public sewer is appropriate. The question of appropriateness is to be determined having regard to any guidance issued by the Ministers, and any other relevant considerations.

The term ‘buildings’ is not defined for the purposes of Section 101A, and the word is to carry its ordinary meaning.

### **2.2 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 Appointed Body<sup>2</sup> determines any disputes referred to it in the event that the sewerage undertaker refuses to provide a sewer or refuses to agree a completion date. The Minister has the power to enforce the Appointed Body’s decision. This enforcement duty applies if the sewerage undertaker has accepted, or the Appointed Body has determined under section 101A, that a sewerage undertaker is under a duty to provide a sewer and the time accepted by them, or determined by the Appointed Body for the work to be done has passed.

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<sup>1</sup> Hansard, 28 June 1995, Column 1047

<sup>2</sup> In Wales the Planning Inspectorate, for England the Environment Agency

The Regulator 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.

Where a section 101A sewer has been provided, both the Regulator and the local authority should encourage property owners to connect to the sewer.

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

#### **3.1 Duty of the sewerage undertaker**

Section 101A(1) imposes a duty on a sewerage undertaker to provide a public sewer for domestic sewerage purposes in a particular locality when conditions set out in section 101A(2) are met. These are summarised below:

- that the premises in question, or any of those premises, are premises on which there are buildings<sup>3</sup>;
- 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 under this section by the Ministers and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question are taken into account

The legislation sets out a series of considerations to which a sewerage undertaker must have regard (without prejudice to the requirement to have regard to all relevant considerations and to Guidance). These are:

- 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 arising, or likely to arise, as a result of the premises or the locality in question not being drained by a public sewer; and
- the extent to which it is practicable for adverse effects to be overcome in other ways, and the costs of overcoming them in other ways..

#### **3.2 Guidance**

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

In preparing this revised Guidance, the Minister has consulted Natural Resources Wales, the Environment Agency, Ofwat and other bodies and persons considered appropriate.

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<sup>3</sup> See section 2 for guidance on the interpretation of “buildings”

### 3.3 Mobile homes and fixed caravan sites

As noted above, the question what amounts to a building for the purposes of section 101A is to be determined on the ordinary meaning of the word. In a case where mobile homes and fixed caravans are considered to be buildings, the public sewer provision obligation in section 101A(1) will apply.

Nonetheless, it is recognised that specific factors are in play in relation to mobile homes and fixed caravans.

When deciding whether it is appropriate for a sewer to be provided to premises which are used for mobile homes or fixed caravans, the undertaker should of course have regard to the considerations in section 101A(3) – and set out above – but should also consider the following considerations:

- The permanence and longevity (or otherwise) of the fixed caravans or mobile homes on the premises;
- The likely permanence and longevity (or otherwise) of the premises themselves as a site for fixed caravans or mobile homes;
- The amount of time in a given year that the fixed caravans or mobile homes are occupied.

### 3.4 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 Appointed Body for determination. The Appointed Body should notify Ofwat of any dispute referred to it. The Appointed Body must notify the parties of its decision, the reasons for it, and may make recommendations or provide guidance on the drainage of premises or the locality in question. **In Wales the Planning Inspectorate is the Appointed Body.**

Consultation question 1 - Do you agree with the proposed approach regarding premises with permanent caravans and mobile homes, in relation to Section 101A applications?
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### 3.5 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 Appointed Body following a referral. The Welsh Ministers have authorised Ofwat<sup>4</sup> so that, where a dispute arises and the sewerage undertaker is in breach of its duty, Ofwat will be able to take enforcement action in relation to any sewerage undertaker wholly or mainly in Wales.

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<sup>4</sup> Under section 101A(6)(b) of the Act

## **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. Before making a section 101A application, owners and occupiers should consider the relevance of other related provisions outlined in this section, 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 subject to certain conditions. The request can be made by owners and occupiers of properties and by the local authority. Although this has the potential to provide a quicker, guaranteed solution, the sewerage undertaker may require the person(s) making the requisition to enter into binding conditions concerning payments to the undertaker relating to the cost of providing the sewer. 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 application 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)<sup>5</sup> 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 connecting to the sewer.

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.

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<sup>5</sup> 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>

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. Owners and occupiers also have the option of using their own contractors to carry out sewer connection work. 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.

Owners and occupiers should contact their sewerage undertaker to find out the likely advantages of 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. A developer is expected to demonstrate that adequate arrangements will be provided for sewerage; the local planning authority may impose appropriate planning conditions to secure adequate provision or refuse permission if it is not confident that suitable arrangements will be made by the developer. When plans are deposited in accordance with Building Regulations, the local authority<sup>6</sup> 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<sup>7</sup>.

Building inspectors should ensure that cesspits and septic tanks are constructed to the required standard and not damaged in any way 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. Failure to comply with the terms of a permit or exemption is a criminal offence. As the enforcing organisation, for these Regulations, the Regulator has powers to serve notices requiring actions to protect the water environment. For example, a notice could specify work to replace a failing septic tank soakaway.

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<sup>6</sup> or on appeal, a magistrates court.

<sup>7</sup> Building Act 1984, s21

#### **4.5 Local authority powers**

Section 59 of the Building Act 1984 provides local authorities with the power to serve a notice on owners of buildings relating to drainage. The local authority shall serve a 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 where a person is responsible for a statutory nuisance.

## **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 fully consider alternative solutions before making an application. 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 to secure a sewer connection 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

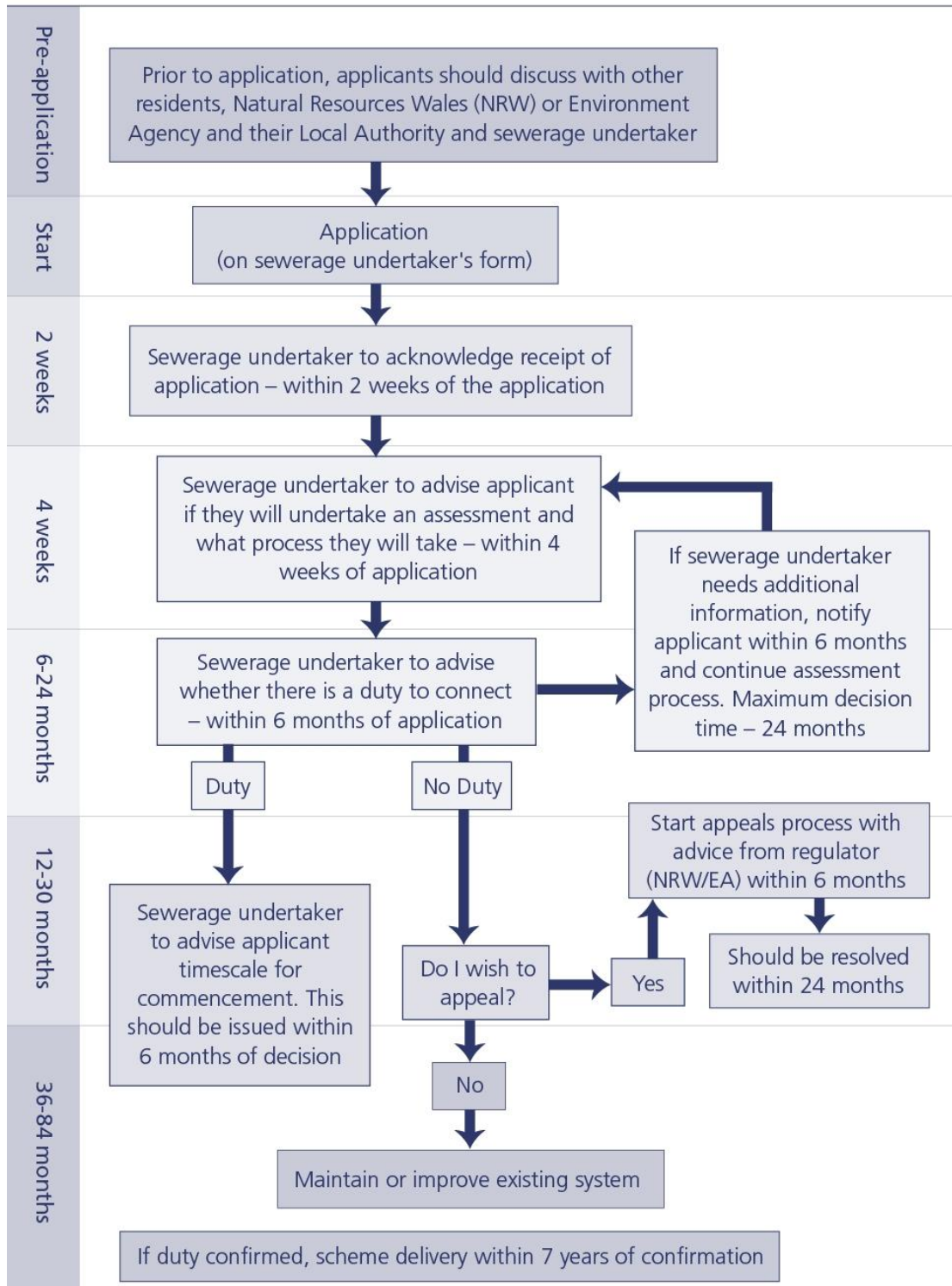
The sewerage undertakers should also publish an application form, along with information about application timescales. See Appendix 4 for a model form.

At all stages of the process, the sewerage undertaker and where appropriate the Appointed Body, should ensure applicants are informed of progress and that communications comply with their set standards for customer service.

### **5.2 Indicative timescales for a section 101A application**

The timescales in this section and in Section 6.2 are not statutory and whilst indicative of good practice, are provided for guidance only.

## Indicative timescales for S101A application



Note: The timescales in this flowchart are advisory and reflect expected delivery times. They are not mandatory and failure to meet them neither triggers a duty nor prevents an appeal.

### 5.2.1 Initial contact to Sewerage Undertaker

Before making a formal request to the sewerage undertaker for a section 101A scheme, it is advisable for the applicant to make contact with them, as they could hold information which is 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 the applicant that they will now 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, for example where seasonal infiltration tests are required, the undertaker should provide a **6 monthly update** on progress.

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

### 5.2.2 Timescales for deciding whether 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 that are not connected to a public sewer, and;
- premises where 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 Appointed Body 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 Appointed Body **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 both the reason for the decision and details of the dispute referral process.

The applicant may refer a dispute to the Appointed Body and should do so **within six months** of the date the undertaker notifies them of its decision<sup>8</sup>. The Appointed Body will 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 seven years of the application, whether or not it has progressed to dispute stage.

### **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 3, 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.

If the statutory conditions relating to the premises, their drainage and impacts on the environment and amenity are met<sup>9</sup>, the duty to provide a public sewer is likely to exist where:

- Taking account of the technical and economic factors below, a direct quantitative and qualitative comparison of costs and benefits for provision of a public sewer with the costs and benefits of practical alternatives of overcoming adverse effects on the environment and amenity shows that the provision of a public sewer is the most cost beneficial of the solutions identified.
- Undertakers can demonstrate that a reasonable balance has been 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.

#### **5.3.1 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.

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<sup>8</sup> Referral of a dispute to the Appointed Body 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.

<sup>9</sup> See section 101A(2)

- 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 H2<sup>10</sup>. 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. Any additional water quality information or sampling requirements 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 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.

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 (section 199 of the Act) and should ensure that any relevant transferred assets are identified.

Provided there are at least two properties, other relevant criteria are met, and the most feasible way for those premises to make a connection to the existing sewer is by a new sewer and not individual lateral drains, schemes should not be discounted on the basis of a minimum distance to a sewer.

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<sup>10</sup> <http://www.planningportal.gov.uk/buildingregulations/approveddocuments/parth/>

### **5.3.2 Sewerage options**

In assessing the public 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.

Guidance on the costs for private sewage treatment systems is available from WRc<sup>11</sup>. Local contractors may also be able to provide information on the costs and practicalities of refurbishment or replacement and maintenance.

### **5.3.3 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.

In assessing the costs of replacement or repair of existing private systems, the lifespan for these should be based on the WRc report referenced above.

### **5.3.4 Report**

A model determination report template is provided at Appendix 5. 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 Appointed Body.

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<sup>11</sup> Section 101A – Standard Costs for Private Sewage Treatment Systems.  
<http://www.wrcplc.co.uk/>

## **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**

Owners and occupiers living in a locality which is not served by a public sewer have a number of options for the 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.

In some circumstances, however, 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 Act.

Potential applicants should consider their options for the provision of sewerage services carefully. It is important that they fully appreciate the possible costs of connecting their own property to the new sewer (see Section 4.2).

In addition, applicants must consider the on-going costs of maintaining existing systems in order to comply with the law and to minimise their impact on the environment or amenity until a new sewer is completed (see Section 6.3). The application and determination process is not a quick solution, as it can take some years for a successful application to deliver a sewer.

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 is available from the Regulator<sup>12</sup> and from British Water<sup>13</sup>.

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,

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<sup>12</sup> PPG4 – [http://www.sepa.org.uk/about\\_us/publications/guidance/ppgs.aspx](http://www.sepa.org.uk/about_us/publications/guidance/ppgs.aspx)

<sup>13</sup> [http://www.britishwater.co.uk/publications/publications\\_and\\_technical\\_guides.aspx](http://www.britishwater.co.uk/publications/publications_and_technical_guides.aspx)

including the repair or refurbishment of existing facilities. This can take many 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 should, **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 months** 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 sent to the Appointed Body **within six months** of notification by the undertaker<sup>14</sup>. The Appointed Body may request additional information from both the applicants and the undertaker and will aim to determine a dispute **within twelve months** of the receipt of such information. It would be reasonable for the Appointed Body to expect a response within four weeks of making a request for additional information. If no additional information is provided within this or an agreed alternative timescale, the Appointed Body shall determine the dispute on the basis of the available information. Once it has determined the dispute, the Appointed Body shall provide both parties 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 owners or occupiers 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 to the Appointed Body.

When a dispute is referred to the Appointed Body to establish whether or not a duty exists to provide a public sewer, the applicant can also request the Appointed Body to determine the time by which any such duty of the undertaker should be performed. 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

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<sup>14</sup> 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 that will make any determination increasingly difficult.

compliant with the Environmental Permitting (England and Wales) Regulations 2010. Any discharge of sewage effluent should be the subject of an environmental permit or an exemption. Failure to comply with the terms of a permit or exemption is a criminal offence.

## **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's 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**

### **Contact Details**

#### **Planning Inspectorate (“The appointed body”) contact details:**

[wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)

General enquiries 02920 823866

#### **Natural Resources Wales contact details:**

[enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)

Telephone: 0300 065 3000

Further information on Natural Resources role can be found on their web site. The link to the web site is below:

[www.cyfoethnaturiolcymru.gov.uk](http://www.cyfoethnaturiolcymru.gov.uk) / [www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk)

#### **Environment Agency contact details:**

[enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

Telephone: 03708 505 506

Further information on the Environment Agency’s role in relation to the provision of a public sewer under section 101A of the Water Industry Act 1991 can be found on the GOV.UK web site. The link to the web site is below:

<https://www.gov.uk/disputes-regarding-connection-to-the-public-sewer>

## Appendix 2

### 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) 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.

(7) Any disputes (Subsections (7A) and (7B)) apply where there is a 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,

(7A) The dispute is to be determined by the appropriate person and may be referred to the appropriate person for determination by either of the parties to the dispute.

(7B) If the dispute is between a sewerage undertaker and an owner or occupier of premises in Wales, the NRBW must provide advice in relation to any of the matters mentioned in subsection (7)(a) to (c) if so requested by –

(a) either of the parties to the dispute, or

(b) the appropriate person.

- (7C) Any advice provided by the NRBW under subsection (7B) must be provided to both parties to the dispute and to the appropriate person.
- (8) The appropriate person--
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under subsection (7A) 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 person on any dispute referred to it under subsection (7A) 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 person has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the appropriate person 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 person means -
- (a) The Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;
  - (b) the Welsh Ministers in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales or such person as the Welsh Ministers may from time to time appoint as the appropriate person in relation to such disputes.
- (12) A person may be appointed as the appropriate person under subsection (11)(b) only if the person is independent of the NRBW.
- (13) A person is independent of the NRBW for the purposes of subsection (12) if the person is—
- (a) an individual who is not a member of the NRBW or the NRBW's staff, or
  - (b) a body none of whose members is a member of the NRBW or the NRBW's staff

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 3

### 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 property<sup>15</sup>, 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,

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<sup>15</sup> [www.planningportal.gov.uk/uploads/br/BR\\_PDF\\_ADH\\_2002.pdf](http://www.planningportal.gov.uk/uploads/br/BR_PDF_ADH_2002.pdf) see section H3

- 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.
- there has been or there is a likelihood of a contravention or breach of any Statute, Directive, Code of Practice, Byelaws, or 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 neither affordability to individual residents nor the failure of existing management arrangements are determining factors.

## Appendix 4

### Section 101A First Time Sewerage Application Form

Note:

The Welsh Government considers that the following information should be included in sewerage undertaker's Section 101A application forms.

To be eligible for an application there must be **two or more properties discharging domestic sewage effluent**.

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:

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

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

Domestic:

Non-domestic:

4. 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.
5. 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.
6. 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, Natural Resources Wales, Environment Agency, etc.

7. 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.
8. 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:

9. 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 1991 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 5 – Model dispute determination report

### ***Section 101A of the Water Industry Act 1991 – Dispute Determination***

#### ***Dispute raised by XXXX against the decision by XXXX regarding the duty to provide a public sewer at XXXX.***

- 1 The Planning Inspectorate Wales (PINS) / The Environment Agency (The Agency) has considered the representations made by both parties in this dispute, namely *<insert name of Applicant>* (the Applicant) and *<insert name of Sewerage Undertaker>* (the Company).

#### **THE DISPUTE**

- 2 On *<insert date of referral>* the Applicant disputed the decision by the Company in respect of the duty to provide a public sewer to be used for the drainage for domestic sewerage purposes from premises at *<insert name of locality>*.

#### **GROUND OF THE DISPUTE**

- 3 Paragraphs to describe grounds of the dispute. (This section should be quite detailed and include the grounds stated in information from the Applicants, information from the Company and information from any third parties).
- 4 PINS / The Agency confirms that the dispute is in respect of the duty to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in the locality of *<insert name of locality>*. This dispute has been referred to PINS / the Agency in accordance with section 101A of the Water Industry Act 1991 (the Act), (section 101A(7)(a)).

#### **DESCRIPTION OF THE AREA**

- 5 Paragraphs to describe the area in which the dispute arises.
- 6 On the basis that there is no dispute between the Applicant or the Company on the area affected by the dispute, PINS / the Agency concludes that for the purposes of this determination, the area of the dispute will include the premises indicated on the map *<map reference number and source>*. This map is attached as Appendix A to this determination document. The *<insert number of premises>* premises are listed below:

*<Add list of premises in the relevant area>*

## PINS/ THE ENVIRONMENT AGENCY'S DETERMINATION

(This is not prescriptive but as much of this information as possible should normally be included in the Determination)

- 7 PINS / The Agency has considered the grounds of the dispute set out in the Applicant's statement and the documentation from the Company *and information from third parties, if provided*. A joint site visit with the Applicant and Company was conducted on *<date of site visit>* by PINS / the Agency and its findings are also taken into consideration.
- 8 The duty to provide a public sewer is provided pursuant to section 101A of the Act which was inserted by paragraph 103 of Schedule 22 to Environment Act 1995. In order to establish a duty on the part of a sewerage undertaker to provide a public sewer, certain conditions must be satisfied, namely:
- a) That the application relates to premises on which there are buildings<sup>16</sup>;
  - b) That drains or sewers used for the drainage for domestic sewage purposes of the premises in question do not connect with the public sewer; and,
  - c) That the drainage of the premises referred to at (a) is likely to give rise to adverse effects to the environment or amenity, and that having regard to the foregoing it is appropriate to provide a public sewer for the drainage for domestic sewage purposes of the premises in question.

These three conditions are examined in detail in paragraphs *<add number>* and *<add number>* below. These are the conditions to be satisfied to establish that there is a duty on the Company to provide a public sewer.

### Qualifying Premises

- 9 This *<has / has not>* been an issue in this dispute. *<A description can be provided, if necessary>*
- 10 PINS / The Agency therefore finds that the requirements of condition (a) in paragraph *<add paragraph number >* above *<are / are not>* satisfied for *<all / add number>* of the *<add number>* premises listed in paragraph *<add paragraph number >* above.

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<sup>16</sup> The condition for buildings to be erected prior to 20 June 1995 was removed from 28 May 2004 under an amendment in the Water Act 2003 so that any buildings now qualify.

## Domestic Sewerage Purposes

- 11 This *<has / has not>* been an issue in this dispute. *<All / some>* of the premises involved in this dispute discharge solely domestic sewage and none are currently connected to a public sewer.
- 12 PINS/ The Agency therefore finds that the requirements of condition (b) in paragraph *<add paragraph number>* above *<are / are not>* satisfied for *<all / add number>* of the *<add number>* premises listed in paragraph *<add paragraph number >* above..

## Effects on the Environment and Amenity

- 13 Condition (c) in paragraph *<add paragraph number>* above first requires the consideration of the existence or otherwise of adverse effects to the environment or amenity.
- 14 Natural Resources Wales/ the Agency has addressed the status of each of the premises included by the Company in its assessment and the nature of the discharge from each. These are dealt with individually below.

Provide explanation for each premises

- 15 Natural Resources Wales / The Agency has addressed the status of premises it considers should have been included by the Company in its assessment and the nature of the discharge from each. These are dealt with individually below.

Provide explanation for each additional premises if relevant

- 16 Natural Resources Wales / The Agency considers that there *<are / are not any>* adverse environmental and amenity effects arising from the existing private sewerage systems serving premises in the assessment area.
- 17 PINS / The Agency takes the view that the general duty upon the Company under section 101A of the Act is to provide public domestic sewerage facilities for premises in a particular locality subject to the conditions and qualifications set out. PINS / The Agency has therefore considered the question of the 'particular locality' in this case. There is neither a definition in the Act nor any assistance in Ministerial Guidance. PINS / The Agency therefore considers all the individual factors of the case in question in coming to a conclusion on what constitutes the particular locality. Topography, physical proximity of buildings and premises, the existence or otherwise of barriers between

premises, the nature of the area and other matters may all be relevant in this question in this particular case. PINS / The Agency has assessed the dispute application and has determined that the following premises form a locality: *<add premises number and names or refer back to original list of premises if same>*.

- 18 At this point any further information about other premises excluded from the assessment, results of percolation tests etc can be added.
- 19 PINS / the Agency then considered, in view of the Regulator's finding that adverse environmental or amenity effects were arising in the assessment area, whether the provision of a public sewer was appropriate. All relevant considerations were taken into account particularly the specific matters in section 101A(3) of the Act. . The Company provided a technical and economic assessment which formed part of the consideration. *<Delete if no existing or likely adverse environmental or amenity effects identified>*

### **Technical and Economic Assessment**

- 20 Condition c) in paragraph *<add paragraph number>* above provides that, if all other conditions are satisfied, consideration must be given as to whether provision of a public sewer is the appropriate solution. Condition c) therefore encompasses both a technical and economic assessment. Section 101A(3) of the Act sets out the following considerations which should be regarded in making a decision:
- (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.
- 21 Natural Resources Wales / the Agency has considered all of the criteria in section 101A(3) of the Act and has had regard to the Guidance from the Welsh Ministers issued in 2015. The following paragraphs of that guidance (shown in bold) are considered to be the most relevant in this case.

## Technical Assessment

- 22 Paragraphs which restate the relevant paragraphs from the Guidance supported by evidence from Applicants, Company and site visit
- 23 Natural Resources Wales / The Agency therefore *<accepts / does not accept>*, having regard to the evidence provided by both parties and from the joint site visit as identified in paragraphs *<add paragraph numbers>*, that the drainage of the premises in the locality of *<name of dispute area>* is giving and is likely to give rise to adverse effects on the environment or amenity. This paragraph should also refer to the effects on the environment and amenity section
- 24 Natural Resources Wales / The Agency has addressed whether the adverse effects to the environment and amenity can be overcome practicably in the long term by repair, proper maintenance or reconstruction of the existing systems. *<delete if no adverse effects identified as arising or likely to arise>*

Paragraphs to explain whether the adverse effects to the environment and amenity can, or cannot, be overcome by the long term repair, proper maintenance or reconstruction of the existing system

- 25 Natural Resources Wales / The Agency finds that there are *<number of premises>* premises whose existing private sewerage systems are giving rise, or likely to give rise, to adverse environmental or amenity effects that cannot be overcome practicably by maintenance or repair in the particular locality. Those premises are:

*<Add list of premises giving rise to, or likely to give rise to adverse effects that can not be overcome by maintenance, repair or reconstruction>*

## Economic Assessment

- 26 Paragraphs to outline the costs, as provided by the Company. This should include information on total costs, NPV costs, environmental cost benefit, any revisions to costs, options not considered practical (e.g. consents would not be issued, septic tanks unsuitable), information on anything queried etc.

Paragraphs to discuss findings of this assessment including whether we agree with the number of premises assessed by the Company and any effects this would have on costs and our assessment of the costs provided by the Company and/or applicant.

This section should also include discussion of any changes in the options or any alternative options considered in the course of the dispute.

This section is not required if no adverse effects have been identified as arising or likely to arise from existing private sewerage systems or we have concluded that all such effects in the relevant locality can be overcome through repair and maintenance of existing systems.

### Other Considerations

- 27 Wider discussion of our findings and other aspects we have considered (e.g. sustainability, tanker movements, cesspools policy, practicability).

### DECISION

- 28 Paragraphs summarising our conclusions on key points and how we have balanced and weighted those considerations in our determination.
- 29 PINS / The Agency has considered the submissions of the parties and, in particular, the options considered by the Company. PINS / the Agency has had regard to all the considerations outlined in section 101A(3) of the Act and the Guidance issued by the Welsh Ministers. PINS/ The Agency finds that, in this case, the most appropriate solution to alleviate the adverse environmental and amenity effects is *<describe solution, for which premises and include reference to map if needed>*.
- 30 Accordingly, PINS / the Agency having regard to the Ministerial Guidance and all relevant considerations in this particular case, including, in particular, technical factors, finds that the provision of *<a public sewer / describe private solution>* is not considered to be the appropriate solution.
- 31 For the reasons set out above PINS / the Agency therefore finds that the duty to provide a public sewer *<does / does not>* apply to the premises in *<name of dispute area>* and that the Company *<is / is not>* under a duty to provide a public sewer.
- 32 PINS/ The Agency therefore determines the dispute in favour of *<the Company / the Applicant>*.
- 33 **<Where the dispute is found in favour of the Applicant include:** PINS / the Agency recommends that the Company should inform the Applicant, PINS and Natural Resources Wales / the Agency, **within a period of three months**, of when the scheme will be carried out>.
- 34 Add any further recommendations e.g. for interim measures to be undertaken by either party, or for future assessments undertaken by the Company.

A copy of this decision has been sent to both the Applicant(s) and the Company.

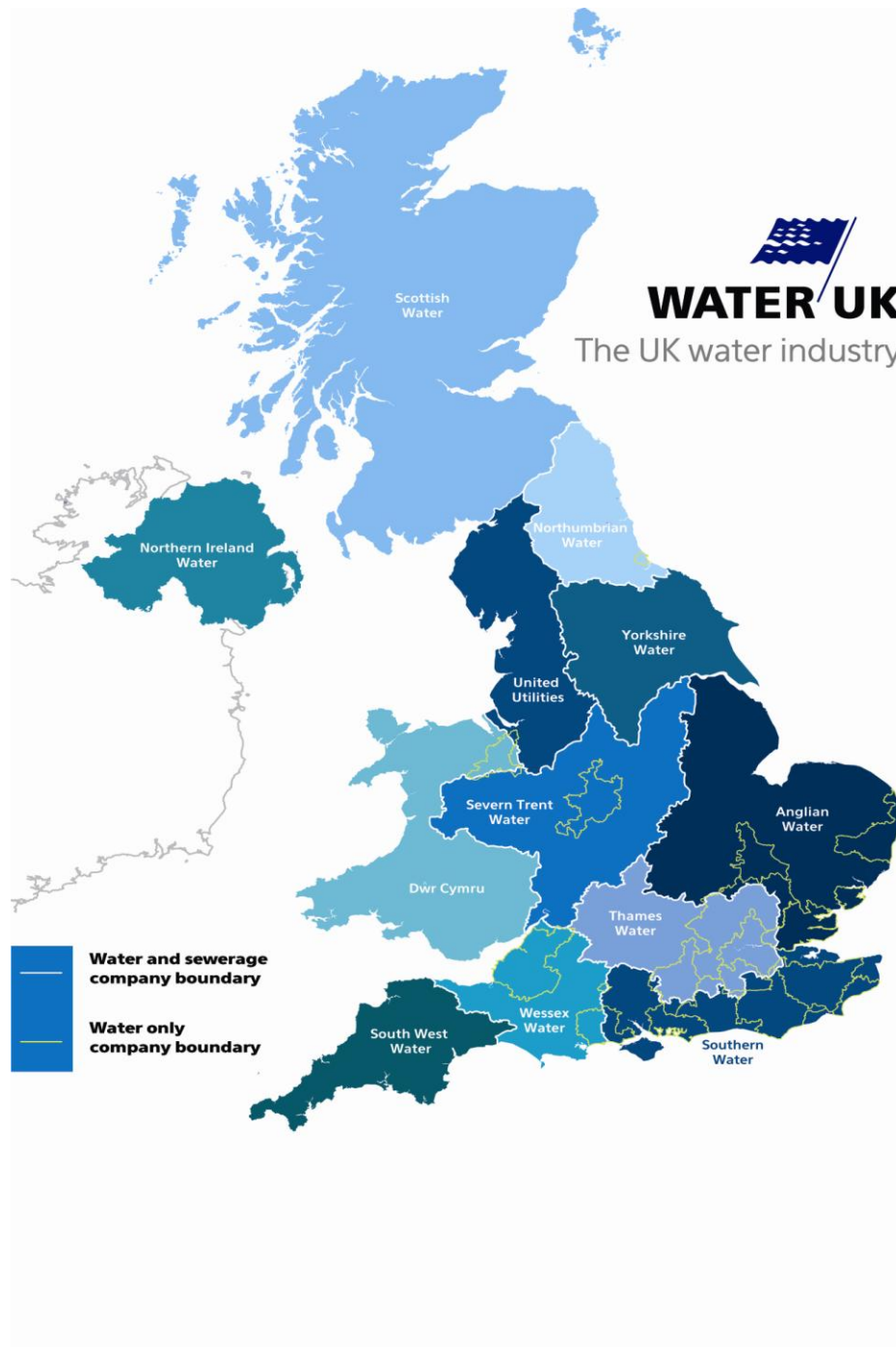
**<name of dispute project manager>  
<job title>**

**<date in full>**

**Appendix A – Map <Map of affected area would be inserted here>**

## Appendix 6

### Water companies in the UK



Map Courtesy of Water UK

**Consultation  
Response  
Form**

Your name:

Organisation (if applicable):

Email / telephone number:

Your address:

**Question 1:** Do you agree with the proposed approach regarding premises with permanent caravans and mobile homes, in relation to Section 101A applications?

**Question 2:** Is the new process to designate the Planning Inspectorate as dispute resolution body for application under Section 101A clear?

**Question 3:** Do you have any additional views on the amended Guidance on sewerage undertakers' duty to provide sewers other than by requisition?

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: