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The Private Sewer Transfer Regulations

Non-Statutory Guidance on the Water Industry
(Schemes for Adoption of Private Sewers) Regulations 2011

October 2011

Information about this publication and further copies are available from:

Welsh Government
Water Branch
Cathays Park
Cardiff CF10 3NQ
Tel: 02920 825420
Email: water@wales.gsi.gov.uk

This document is also available on the Welsh Government website

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	Page
1. Introduction	2
2. Background	
2.1 What are private sewers, lateral drains and pumping stations?	3
2.2 Welsh Government policy	3
2.3 Welsh Government and UK Government research and consultation	4
2.4 What is transferring and when will it happen?	5
2.5 What benefits has the transfer given?	5
2.6 Who will pay for the transfer and how much will it cost?	6
2.7 Do I need to inform my sewerage company if I have a private sewer or lateral drain?	6
2.8 How will the Welsh Government ensure that there is no further proliferation of the sewerage network?	6
3. Which assets were transferred?	
3.1 The scope and extent of transfer	7
(i) Supplementary transfer scheme	8
(ii) Self contained sewerage systems	8
(iii) Surface water sewers	8
(iv) Example of existing private sewer and drain arrangements	9
(v) Example of future arrangements	10
(vi) Curtilage	11
3.2 Identifying the curtilage – single properties	11
3.3 Identifying the curtilage – multiple property sites	12
3.4 Gravity drains upstream of pumping stations	13
3.5 Cross boundary private sewers and lateral drains	14
3.6 Crown land – application for exemption	15
4. The mechanism for transferring assets and responsibilities post transfer	
4.1 Section 104 agreements and transitional arrangements	16
4.2 Existing contractual responsibilities	17
4.3 Interests in the land	18
4.4 Transitional arrangements – sewer records	18
4.5 Blockages	18
4.6 Interference with a public sewer	19
5. The communication of transfer	
5.1 The process of notification – actions by sewerage undertakers	20
5.2 Communication of a supplementary transfer by the sewerage undertaker	20
5.3 Objections to transfer – appeals to Ofwat	21

1. Introduction

The Water Industry (Schemes for Adoption of Private Sewers) 2011 Regulations (the “Regulations”) came into force on 1 July 2011 and facilitate the transfer of private sewers, lateral drains and pumping stations to Water and Sewerage Companies in Wales and England.

The aim of this document is to provide guidance on:

- matters which are likely to arise from the implementation of the Regulations;
- interpretation of the Regulations; and
- processes which are not susceptible to Regulation.

This guidance is not a substitute for the Regulations and does not have legal force. It should be read in conjunction with the Regulations and accompanying Explanatory Note, Schemes made by the Welsh Ministers for the adoption of private sewers and lateral drains, and relevant parts of the Water Industry Act 1991.

2. Background

2.1 What are private sewers, lateral drains and pumping stations?

The legal meanings of these terms are found in the definitions provided by the Water industry Act 1991 or the Regulations. Without prejudice to those definitions, their general meaning is explained below:

Drains

A drain is a pipe which takes effluent away from a single property.

Sewers

A sewer is a shared drain that serves more than one property.

Private sewers

A private sewer is a sewer which has not been adopted by the sewerage undertaker and is therefore the responsibility of the owners of the properties it serves.

Lateral drains

A lateral drain is the section of a drain which is outside the boundary of the property which it serves, connecting the drain to the public sewerage system.

Pumping Stations

Pumping stations are facilities for pumping sewage and surface water from one place to another.

These definitions include all ancillaries used in the operation of the sewerage system including manholes, ventilating shafts, access chambers, pumps, valves, rising mains, penstocks, telemetry and other machinery or apparatus.

2.2 Welsh Government Policy

2.2.1 The Welsh Government Strategic Policy Position Statement on Water published in 2009 sets out a commitment to pursue the development of Regulations in 2011 to facilitate the transfer of private sewers and lateral drains to the statutory sewerage undertakers in Wales. This followed the UK Government's announcement on 15 December 2008 that transfer would take place from 2011.

2.2.2 This commitment followed an extensive review of private sewer ownership which examined the problems their ownership presented.

2.2.3 Private sewers and lateral drains are currently the responsibility of their owners, who are generally the owners and occupiers of the properties they serve. It has been estimated that up to 50 per cent of properties in Wales are connected to a private sewer. There are no comprehensive records of where private sewers are located or what condition they are in.

2.2.4 Typically, unless a problem occurs, householders are often unaware that they are responsible for a private sewer or lateral drain serving their property, even when it continues beyond their property boundary. Where problems do occur, the costs associated with maintaining and repairing such pipework can be high and are sometimes spread over just a few households, resulting in considerable financial burdens for those responsible for them. Disputes can occur over contributions to repair, for example a sewer may serve and collectively be the responsibility of perhaps ten properties. A particular blockage may only affect the four of these properties and the remaining six may refuse to contribute towards the costs of repair. It is also possible that the blockage has occurred in a property which appears unaffected by the blockage and the owner may refuse to allow access to that property for repair. This disparate ownership, together with a lack of planned maintenance, means that society does not gain the benefit that integrated management of the sewerage system as a whole would bring.

2.3 Welsh Government and UK Government Research and Consultation

2.3.1 In 2003, the Welsh Government and the Department for Environment, Food and Rural Affairs (Defra) undertook a review of private sewers which looked at a range of options to deal with the problems that ownership presented. After careful consideration, the Welsh Government and Defra concluded that transfer provided the most comprehensive solution to these problems and to removing unfair burdens of maintenance and repair from householders.

2.3.2 Decisions on how the transfer would be implemented were agreed following research, stakeholder engagement and a joint Government consultation with Defra on 'Private Sewers Transfer – Implementation Options' which was held between July and October 2007.

2.3.3 Throughout this process, the majority of respondents consistently expressed a preference for an automatic overnight transfer of existing private sewers and lateral drains

2.3.4 The Welsh Government and Defra consulted on the proposed Regulations and Schemes for the transfer of private sewers and lateral drains to water and sewerage companies in England and Wales between 26 August and 18 November 2010. As part of the consultation exercise the Welsh Government and Defra held four consultation workshops, two in Wales and two in England, during October and November 2010. The workshops were well attended and provided an opportunity for stakeholders to share practical

experiences and comment on the draft Regulations. They also explored how stakeholders could work together to share information and communicate the implementation of the transfer.

2.3.5 Over one hundred responses to the consultation were received in England and Wales. The Welsh Government worked with Defra to analyse the responses to the consultation and prepare a summary of responses.

2.3.6 The summary of responses and Government response were published on 31 March 2011. The responses to the consultation informed the final drafting of the Regulations.

A copy of these documents can be found at:

<http://wales.gov.uk/consultations/environmentandcountryside/privatesewertransfer/>

2.4 What is transferring and when will it happen?

2.4.1 The Regulations were agreed by the National Assembly for Wales on 21 June 2011 and came into force on 1 July 2011. They facilitate the overnight transfer of responsibility for private sewers and lateral drains to water and sewerage companies in England and Wales on 1 October 2011, pursuant to a Scheme made by the Welsh Ministers for the adoption of sewers and lateral drains on 1 July 2011 (the “Scheme”).

The principal exceptions to the transfer include:

- a) Private surface water sewers that drain directly to watercourses, soakaways or similar devices.
- b) Privately owned sewage treatment works, septic tanks and cesspits;
- c) Private drains within the property boundary;
- d) Crown land which in respect of which the sewerage undertaker has received a written notice of exemption; and
- e) Private sewers and lateral drains owned by railway undertakers

Section 3 provides more detail on the scope of the transfer.

2.5 What benefits has the transfer given?

2.5.1 The benefits that the transfer has given are:

- a) Greater clarity over ownership
- b) More effective management of the sewerage network; and
- c) Removal of the burden of maintenance from householders by spreading the cost across all customers.

2.6 Who will pay for the transfer and how much will it cost?

2.6.1 The cost of the transfer will be met by an increase in the sewerage element of customer bills. It is currently estimated that the increase will be between £3 and £14 per annum. However, as sewerage undertakers are unaware of the exact extent and condition of private sewers until the transfer takes place, the exact cost of the transfer is unclear.

2.7 Do I need to inform my sewerage undertaker if I have a private sewer or lateral drain?

2.7.1 No, you don't need to do anything in order for your pipes to transfer. Any pipes that meet the transfer criteria will transfer automatically. However, it would be helpful if owners of pumping stations were to inform their sewerage undertaker about the existence and location of the asset.

2.8 How will the Welsh Government ensure that there is no further proliferation of the sewerage network?

2.8.1 In February 2011 the Welsh Government published a new Strategic Policy Position Statement on Water which provided an update on the position reflecting key developments in water policy in Wales over the last two years and highlighted areas that will be a priority in the future.

2.8.2 The revised statement included the following commitments:

- The Welsh Government wish to prevent the creation of further private sewers and will work with the UK Government to implement the provisions in the Flood and Water Management Act 2010 which will ensure adoption of all new sewers
- The Welsh Government will ensure new sewers are of an adoptable standard, and we will publish with the UK Government, minimum build standards
- The Welsh Government will work with Dŵr Cymru Welsh Water, local authorities and other stakeholders with an interest to determine levels of service delivered by transferred sewers and identify where action on private sewers is most needed

3. Which assets were transferred?

3.1 The Scope and Extent of Transfer

3.1.1 The aim of transfer is to relieve the owners of private underground drainage of responsibility for its maintenance where that drainage connects to the public sewerage system. Where existing foul, surface water or combined sewers, and any drains of that nature serving individual properties which are outside the curtilage of the property they serve, connect to the public sewerage system then the ownership of and responsibility for their maintenance will normally transfer to the sewerage undertaker for the area.

3.1.2 The terms “sewer” and “lateral drain” are defined in Section 219 Water Industry Act 1991, and these definitions apply in the Regulations and the Scheme. Essentially, however, a sewer is defined as a drain which is shared or used by more than one property. A lateral drain is a one which serves a single property but which lies outside that property’s curtilage (that is beyond its boundary) and therefore within or beneath another property’s curtilage or the street. These definitions include all ancillaries used in the operation of the sewerage system including manholes, ventilating shafts, access chambers, pumps, valves, penstocks, telemetry and other machinery or apparatus.

3.1.3 On 1 October 2011 all privately owned sewers and lateral drains which communicate with (that is drain to) an existing public sewer as at 1 July 2011 became the responsibility of the sewerage undertaker – normally the water and sewerage company for the area. This includes private sewers and lateral drains upstream of pumping stations that have yet to transfer and also private sewers upstream of lengths of sewer or drain that are the subject of an ongoing appeal or which have been excluded from transfer as a result of an appeal. Private sewers and lateral drains which are upstream of lengths of sewer which are on or under land opted-out of transfer by a Crown body, or which are owned by a railway undertaker (and therefore specifically excluded in the transfer regulations) are also transferred.

3.1.4 Any private sewer which, immediately before 1 July 2011, communicated with a public sewer will transfer. Pipes which are connected to the public sewer and are not connected to an upstream property do not transfer. Sewerage undertakers and Developers are advised to consult on partially constructed sites to reach a common understanding as to what has and what has not transferred. This will ensure that an undertaker does not inadvertently trespass by accessing pipes which it had mistakenly assumed had transferred.

3.1.5 Private pumping stations which form part of the drainage arrangements and which are on pipework that transfers on 1 October 2011 will transfer later. Such pumping stations will transfer between 1 October 2011 and 1 October 2016, with all pumping stations that have not been transferred before then transferring on 1 October 2016. The Welsh Government expects that sewerage undertakers will wish to consider drawing up works programmes to

achieve a progressive transfer of pumping stations over this 5 year period. Pipework upstream of a pumping station will transfer on 1 October 2011.

(i) Supplementary Transfer Scheme

3.1.6 The Regulations provide for the making of a supplementary transfer scheme. This recognises the Welsh Government's intention to commence Section 42 of the Flood and Water Management Act 2010, which will introduce a requirement for new sewers and lateral drains that connect to the public sewerage system to be automatically adopted as "public" by sewerage undertakers. The date for commencement of this provision has yet to be set and, as a result, sewers and lateral drains connected to the public sewerage system after 1 July 2011 but before Section 42 is commenced will remain private for the time being unless they have been the subject of an agreement under Section 104 of the Water Industry Act 1991 for their adoption by sewerage undertakers as "public" assets. The making of a supplementary transfer scheme upon commencement of Section 42 will ensure the automatic adoption by sewerage companies of private sewers and lateral drains built in this interim period. This will ensure that there is no legacy of private sewers connected to the public sewerage system as a result of the main transfer taking place ahead of the new arrangements for automatic adoption of newly connected private sewers and lateral drains. These arrangements will be the subject of separate consultation.

(ii) Self Contained Sewerage Systems

3.1.7 Private sewers and lateral drains which are not connected to a public sewer (but which for example drain to a private treatment facility, septic tank or cess pit which does not itself discharge to the public sewerage system) are not affected by the transfer and will remain the responsibility of their current owners. Similarly, private sewers that drain direct to a public treatment works are outside the scope of transfer. Where a treatment facility discharges directly to the public sewerage system the treatment facility and the pipework draining to it will not transfer on 1 October 2011. This is because such discharges do not comprise private sewers or lateral drains which are the subject of transfer.

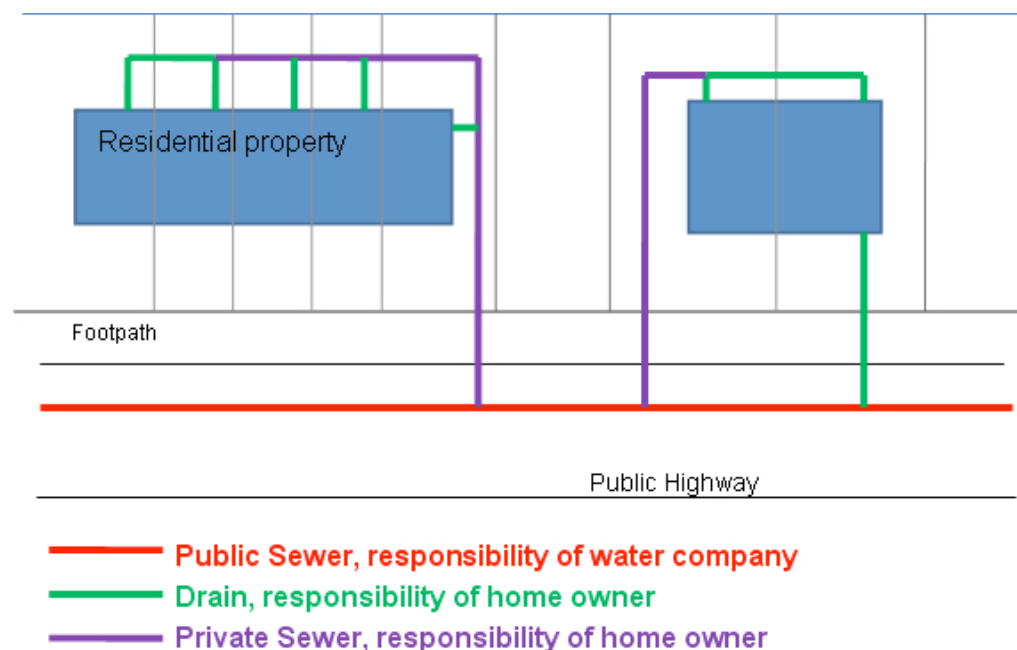
(iii) Surface water sewers

3.1.8 Transfer applies to surface water sewers (including combined systems) which, on 1 July 2011, communicate with a public sewer. In determining what constitutes a surface water sewer it is necessary to consider the engineering practicalities and function of any particular arrangement. Pipes, oversize pipes and underground tanks (on or off-line) built from rigid materials (such as concrete and bricks) and that communicate with the public sewer are obvious examples of engineered structures that would be expected to transfer, but soft engineered (sometimes known as vegetated) features, such as ponds, swales and wetlands do not obviously fall into the same category.

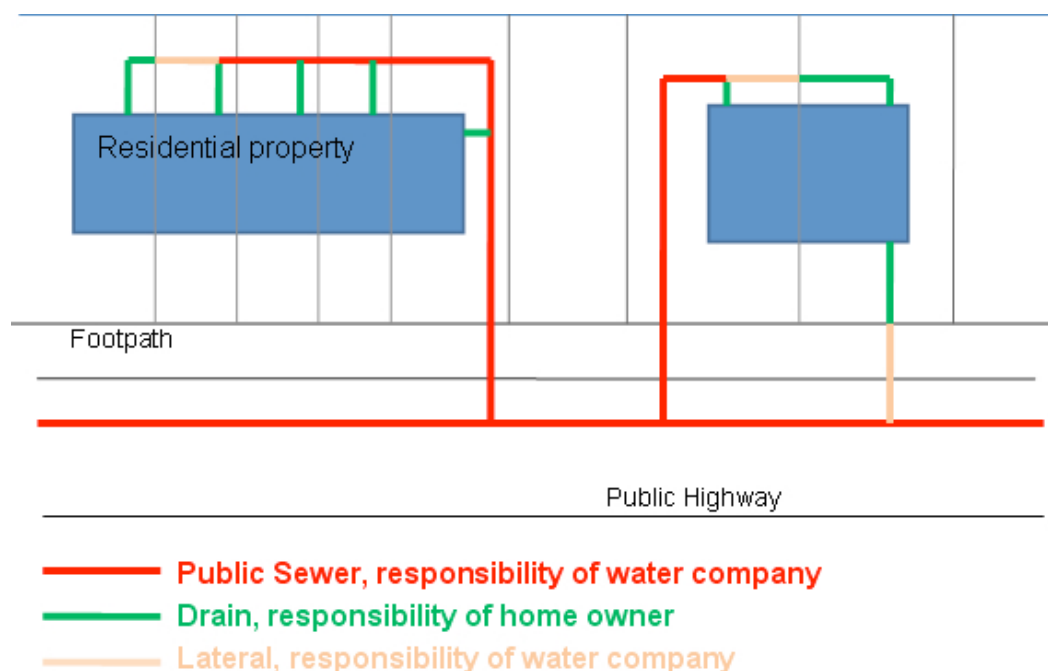
3.1.9 Where a soft engineered feature forms part of a surface water drainage system which has an outlet to the public sewer, it would normally transfer. However, each case should be judged in its circumstances, which need to be taken into account in such cases to determine to what extent the system transfers.

3.1. 10 Surface water sewers and drains which drain to a soakaway, river or outlet other than the public sewer will not transfer. Where they are part of an existing Section 104 agreement, the agreement remains in force for such assets and the sewer may be vested in the water and sewerage company in the normal way.

(iv) Example of existing private sewer and drain arrangements



(v) Example of future arrangements



3.1.11 Private Sewers – Following transfer, the sewerage undertakers will take responsibility for the maintenance and repair of all private sewers (for residential development that is intended to include drainage serving more than one house, irrespective of whether the individual houses were in the same ownership,) to the point at which they connect to a public sewer. See diagram above.

3.1.12 Lateral drains - All lateral drains that connect to a public sewer will become the responsibility of the sewerage undertaker. Drains serving a single property and within its curtilage will remain the responsibility of the property owner or occupier.

3.1.13 Where the most practicable access point for the transferred lateral is within a short distance inside the curtilage of that property, the Welsh Government understands that for operational reasons the sewerage undertaker may wish to consider accepting the responsibility for blockage clearance to that point (for example, the first access chamber within the curtilage). This will avoid difficulties of identifying precisely where, for example, a blockage has occurred in relation to the boundary. We accept that for practical reasons the sewerage undertaker will need to obtain access from the most appropriate access chamber when undertaking any inspection. For the purpose of this guidance, provided the access chamber is outside the building, it would be reasonable for companies to take close proximity to the boundary of the property as an appropriate measure for identifying the extent of responsibility. Curtilage is explored further below.

3.1. 14 Sewers/drains which are covered by Section 20 Public Health Act 1936 (i.e. were built before 1937) are already public sewers.

(vi) Curtilage

3.1.15 The law makes use of the term curtilage but does not lay down an exact definition or mechanism by which to define the ‘curtilage’ of a property. During the Consultation¹ on these Regulations the majority of respondents agreed that for the purposes of transfer, it was not practicable to define curtilage in the Regulations.

3.1.16 Irrespective of the basis for determining curtilage in any individual case, transfer applies to the drainage arrangements of properties as at 1 July 2011. Changes to the drainage arrangements (such as a former drain becoming a sewer or a lateral or sewer becoming a drain) of a property after this date, resulting from a change in the curtilage because of the division of a property or the agglomeration of several properties into one, will not result in automatic change to the status of a sewer or drain as a result of the transfer regulations. A private sewer or lateral drain that has been declared to be “public” as a result of the transfer will not revert to being “private” as a result of a subsequent change in circumstance and nor will “private” assets become “public”. After transfer it will remain open to owners to seek the adoption of “private” sewers or lateral drains through agreement under Section 104 of the Water Industry Act 1991 or, where appropriate, under Section 102 of that Act.

3.2 Identifying the curtilage – single properties

3.2.1 For the purposes of transfer, one practical basis for establishing the limits of the curtilage of a property may well be **the land within the boundary of that property**. While the best evidence of this area and its boundary will often be the legal boundary, this is not invariably the case. What is attributable to the curtilage of a property may not necessarily reflect ownership. When doubt arises it will be necessary to establish the extent of the curtilage in individual cases.

3.2.2 For example, in the case of a farm building occupied for residential purposes, for the purposes of these regulations it would be appropriate to regard the boundary as the curtilage of the residential farm building and surrounding farmyard and or garden rather than the field boundary of the agricultural land which surrounds the farm.

3.2.3 Where there are disputes about the curtilage and whether it relates to the legal boundaries of a property, any determination will continue to rest with the courts or the The Upper Tribunal (Lands Chamber), which is the successor to the Lands Tribunal. The resolution of appeals about whether particular private sewers or lateral drains should have been the subject of a notification by a sewerage undertaker of intent to transfer (vest) them will rest with Ofwat.

3.3 Identifying the curtilage - Multiple property sites

3.3.1 A single curtilage may contain a number of individual properties under common ownership (such as a shopping mall) or with separate lease or other arrangements (such as some commercial estates) but which have common drainage arrangements by virtue, for example, of the site's freehold management. Such sites should be regarded as having their own internally managed drainage which would not be regarded as private sewers for transfer since the site itself comprises a single curtilage.

3.3.2 This means that, in general, for sites in common ownership, the lateral drains will be adopted up to the curtilage of that site and the drains within the curtilage would continue to be the responsibility of the site owner.

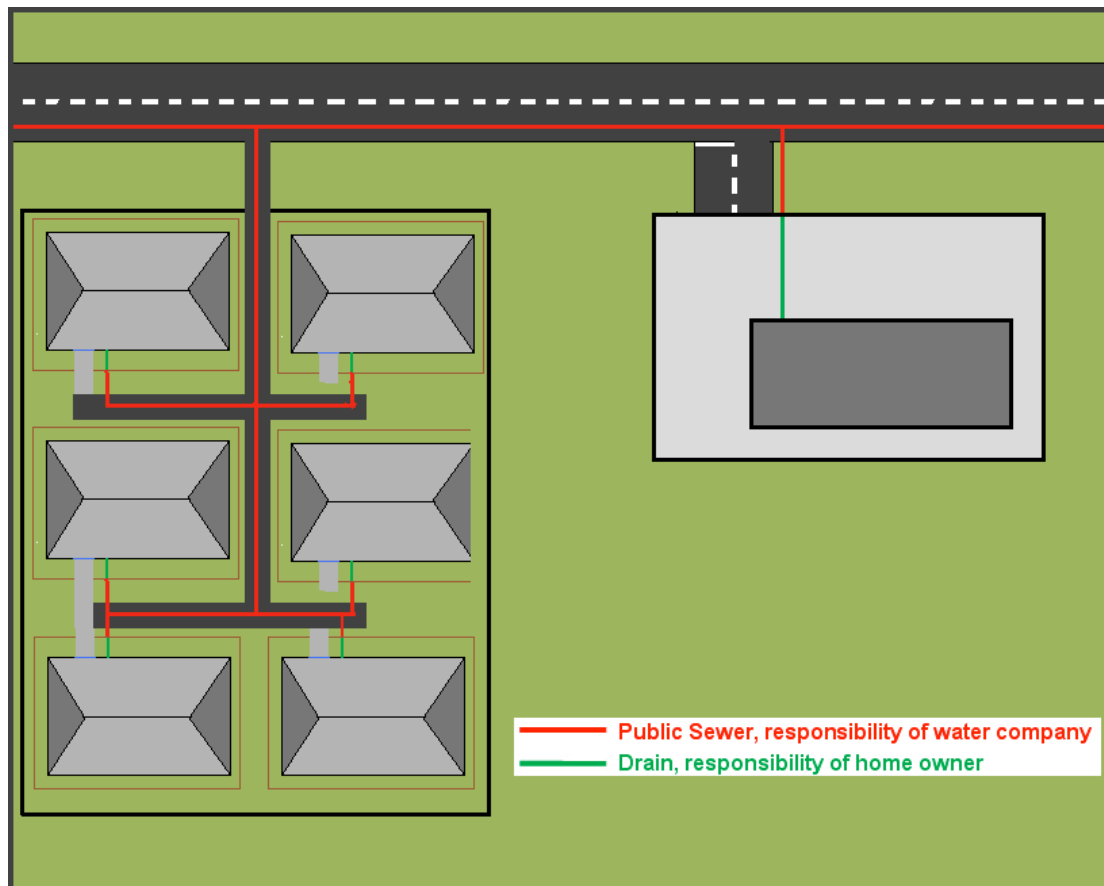
Examples of a singly-owned and managed property deemed to be a single property may commonly include –

- A residential building with multiple flats or apartments, either as a conversion or purpose built; - see paragraph below,
- A caravan site or residential/holiday home park;
- A hotel/boarding house;
- An office or commercial building;
- An industrial, business, retail or science park;
- A school or university campus;
- A hospital or other medical facility;
- A railway station
- An airport or port

3.3.3 Council or housing association residential estates comprising conventional housing should be regarded as consisting of individual properties in the same way as residential estates made up of privately owned individual properties.

3.3.4 Where a development comprises a number of blocks of residential apartments, each block should be regarded as having a curtilage (comprising the land immediately surrounding and obviously attributable to an individual block). A practical point up to which a sewerage undertaker may wish to take responsibility for blockage clearance would need to be determined in individual cases but might comprise an access chamber outside the building but not within the highway or in third party land. Flat owners should not remain responsible for sewers which lie beneath streets. Equally the sewerage undertaker would not become responsible for the internal, communal drainage arrangements within the building. See diagram below.

Example of blocks of residential apartments



3.4 Gravity drains upstream of pumping stations

3.4.1 The transfer Regulations provide for pumping stations to be transferred over the five years to 1 October 2016 following the transfer of gravity pipe work. As the Regulations define a pumping station as including the associated rising main, a sewerage undertaker may adopt the pumping station and associated rising main together. Where a rising main comprises a lateral, in the case of a pumping station within the curtilage of and serving a single property, then the rising main may be treated as adoptable over the five years to 1 October 2016. Gravity lateral drains and sewers upstream of a pumping station which is eligible for transfer will transfer on 1 October 2011 along with other gravity pipe work.

3.4.2 The result is that because the Regulations define a pumping station to include an associated integral rising main:

- 1) a pumping station and rising main serving one property and within that property's curtilage will not transfer;
- 2) where the rising main is a lateral (outside the curtilage) it will transfer as if it were a pumping station (by 1 October 2016);
- 3) where a pumping station and rising main serve more than one property, both will transfer at the same time and by 1 October 2016)

3.4.3 The Welsh Government envisages that water and sewerage companies will wish to consider drawing up works programmes to achieve a progressive transfer of pumping stations over the 5 years to 1 October 2016. The current owners will continue to be responsible for the upkeep and maintenance of pumping stations until they are transferred to the sewerage undertaker. This means that whilst the existing maintenance and access arrangements for private pumping stations are not immediately affected by the transfer regulations, sewerage undertakers will become responsible for the gravity pipe work upstream of pumping stations. Where appeals against the transfer of assets arise, the requirement for 'upstream' users of such assets to continue to use them should be taken into account.

3.4.4 As a result, where maintenance by the owners of a pumping station that has yet to be transferred is inadequate and causes upstream gravity sewers to surcharge, sewerage undertakers will nonetheless generally be expected to fulfil their statutory duty to cleanse and empty the sewers so as to ensure that they continue to drain the premises they serve. In these circumstances sewerage undertakers may wish to consider the suitability of their powers under Section 159 of the Water Industry Act 1991 or, as provided for under Section 160 of the Water Industry Act 1991, whether to seek to act on behalf of the existing asset holder, utilising the asset holder's existing rights and powers to obtain access to the pumping station and undertake work as necessary. This may be less expensive than the alternatives of bypass pumping or tankering of the waste. In principle, costs incurred by the sewerage undertaker acting by agreement may be recovered from the existing asset holder under agreements as provided for by Section 160.

3.4.5 In some cases the owners of pumping stations may have entered into maintenance contracts to ensure the operability of their asset. Existing contractual arrangements are ultimately a matter of contract law in individual cases, but there is no requirement in legislation for water and sewerage companies to honour agreements entered in to by the former owners once ownership transfers. See also paragraph 4.2 (existing contractual arrangements).

3.4.6 A progressive transfer of pumping stations, to be completed by 1 October 2016, will allow sewerage undertakers time to locate and assess the pumping stations, and to prioritise and programme any necessary work prior to transfer. It will be for the sewerage undertakers to decide whether to arrange with the owners access to carry out works prior to transferring the pumping station according to the circumstances in individual cases.

3.5 Cross boundary private sewers and lateral drains

3.5.1 Under the Regulations, private sewers are adoptable by the sewerage undertaker within whose area they are situated. Lateral drains are the responsibility of the sewerage undertaker which has adopted the public sewer with which the drain communicates. In the case of sewers that cross companies' areas of appointment we would not expect transfer to result in a change to existing billing arrangements. Although the ownership of any

particular sewer may not vest in the sewerage undertaker that is currently billing customers for sewerage services it would be reasonable for the neighbouring sewerage undertakers to enter into an operational agreement concerning the maintenance of the sewers that reflects the existing billing arrangements.

3.6 Crown land – Application for exemption

3.6.1 Crown land is land in which there is a Crown interest. Crown (and Duchy) interests in Her Majesty's private capacity are specifically excluded from the application of the regulations by the provisions of the Water Industry Act 1991. No Duchy land or Her Majesty's private lands are the subject of the transfer arrangements.

3.6.2 Crown land includes;

- Land belonging to Her Majesty in right of the Crown, which includes the Government department having the management of that land;
- Land belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department.
- Land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, managed by the Crown Estate Commissioners.

3.6.3 There is no specific exemption from transfer for private sewers and lateral drains in Crown land. The above guidance on identifying the relevant curtilage (Section ii) in multiple property sites applies as in any other area.

3.6.4 Managers of Crown land were invited by Government to 'opt out' from transfer sites where access is necessarily restricted (for instance, Ministry of Defence secure sites) by notifying the relevant sewerage undertaker of land that they wished to be exempted from transfer to the sewerage undertakers.

3.6.5 Where notification has not been received, those private sewers and lateral drains that connect to the public sewerage system and are situated on or under Crown land will become the responsibility of the sewerage undertaker, as would be the case for privately owned properties.

4. The mechanism for transferring assets and responsibilities post transfer

All private sewers and lateral drains connected to the public system on 1 July 2011 qualified for transfer to the sewerage undertakers on 1 October 2011. The basic mechanism for this process is as follows:

- On or soon after the coming into force of the Regulations on 1 July, the sewerage undertakers served notice on the owners of all private sewers and lateral drains of the forthcoming declaration of vesting on 1 October 2011. Private sewer owners or others with an interest (for example where a private sewer crosses other property but is not used by that property) have been advised of their right of appeal against vesting, which had to be lodged with Ofwat within two months of notice being served, or published in the press, whichever is the later;
- Sewerage undertakers made a vesting declaration to take effect on 1 October 2011, unless an appeal is outstanding;.
- On 1 October 2011, private sewers and lateral drains transferred to the sewerage undertakers, unless there is an appeal outstanding under section 105B of the Water Industry Act 1991 against the proposal to make a declaration of vesting under Section 102 of the Water Industry Act 1991 in accordance with the Regulations. In such cases the assets will transfer (or not, as the case may be) when Ofwat determine the appeal.

4.1 Section 104 agreements and transitional arrangements

4.1.1 Under Section 104 of the Water Industry Act 1991, a developer may enter a voluntary agreement with a sewerage undertaker for the adoption of sewers serving a development.

- where a Section 104 agreement is in place in respect to private sewers which are connected to the public sewerage system on 1 July 2011, the private sewers transferred automatically on 1 October (or the date specified in the agreement, if earlier) and the agreement therefore has no ongoing purpose. It will cease to have effect in so far as it relates to private sewers and lateral drains that are the subject of the transfer Regulations.
- where such an agreement also covers assets that are not eligible for transfer, for instance surface water sewers draining direct to a watercourse, the agreement continues in force in respect of those assets, including any provisions for a bond or surety in respect of the works covered by the provisions of the agreement that are yet to be concluded.

- Existing Section 104 agreements in respect of sewerage which has not been constructed or connected to the public system by 1 July 2011 will remain valid until construction work is completed.
- Where not already adopted under a Section 104 agreement, private sewers completed between 1 July 2011 and the date of commencement of Section 42 of the Flood and Water Management Act 2010 will be transferred by a supplementary transfer as provided for by the transfer Regulations.
- Private sewers constructed and connected after the commencement of Section 42 will be subject to new build arrangements, except where exempt under the terms of transitional arrangements that are proposed for inclusion in the commencement Order. These will provide for existing approvals (i.e. where Building Regulations or other approvals exist) to be deemed to satisfy the requirements for construction to “approved” standards.

4.2 Existing contractual responsibilities

4.2.1 For assets (i.e. pumping stations) which are not transferred immediately, the Regulations do not impact on existing contractual obligations. The rights and responsibilities under contract which apply to non-transferred assets will remain.

4.2.2 In respect of gravity private sewers that transfer on 1 October 2011, and become the responsibility of the sewerage undertakers, sewerage undertakers and local authorities may wish to satisfy themselves whether, following transfer, there are any local authority staff engaged primarily on maintenance of private sewers, to whom Transfer of Undertakings, Employment Protection would apply.

4.2.3 Where works are underway for the repair or replacement of private sewers that have been put in hand as a claim under an insurance policy, the works should be concluded as a contractual agreement that had been actioned prior to the transfer taking effect. Sewerage undertakers recognise that, in the great majority of situations, they will have every incentive to allow insurers, in the period after 1 October 2011, to continue work on a sewer where that work was started before the transfer date. They wish therefore to adopt a positive approach to this scenario. Nonetheless, in order to regularise the situation, insurers are asked to notify the relevant sewerage undertaker of any such works, so giving the sewerage company the opportunity to comment. Sewerage undertakers are unlikely to raise any objection to the works continuing if matters such as compliance with relevant standards, for example Building Regulations (where applicable), safe working practices and public liability insurance have been dealt with adequately. .

4.3 Interests in the land

4.3.1 We have consulted the Land Registry on issues of land registration arising from the transfer of private sewers who hold the following opinion:

4.3.2 Sewerage undertakers do not need to register their interest in the sewers and lateral drains where they run through unregistered land, and cannot register the transfer to them of the sewers and lateral drains where they are in registered land. However, where land providing access to a pumping station is acquired, then registration would need to be considered.

4.3.3 It would be open to sewerage undertakers to apply to enter an agreed notice in respect of their interest in the sewers and lateral drains running through registered land and the public's right to use them. However, this would mean that the noted rights then ceased to be "overriding interests", and so might be at risk in the event that the notice came off the register of title and this was followed by a sale of the land.

4.4 Transitional arrangements- sewer records

4.4.1 It is likely that any records of private sewers, lateral drains and pumping stations which will be transferred to the sewerage undertaker will be held by owners, local authorities and maintenance contractors. In order to ensure the effective transfer of assets with the minimum risk of disruption, it would be in the interests of those with relevant information to pass it to the sewerage undertaker, together with any information on maintenance contracts. This will help to ensure that sewerage undertakers are in the best position to respond to any future problems that may arise on the assets in question and reduce any uncertainty about responsibility for their ongoing maintenance.

4.4.2 Where a problem arises on a private sewer or lateral drain and a local authority is considering whether to use its statutory powers to secure rectification of blockages or other defects on private sewers, it will be necessary to contact the sewerage undertaker to find out whether the sewer/drain has been transferred. Although not on a sewer record, the sewerage undertaker will be able to tell whether or not the property in question is one to which they provide sewerage services and thus whether or not the private sewer or lateral drain in question would have been transferred to them.

4.5 Blockages

4.5.1 Where an occupier becomes aware of a blockage, it may not be apparent whether the blockage is within the private drain for which he is responsible or in the public sewer or lateral drain which is now the responsibility of the sewerage undertaker. The occupier is only able to commission work within the private drain. The occupier has no authority to commission any work within the public sewer/lateral drain without first

contacting the sewerage undertaker for confirmation on how to proceed. In order to ensure that blockages in drains and laterals are dealt with promptly, it would be in the interests of sewerage companies, drainage contractors and insurers to work together to develop operational arrangements which ensure that the level of service for property owners is not adversely affected by uncertainty over responsibility.

4.6 Interference with a public sewer

4.6.1 Once vested in (owned by) a sewerage undertaker, anyone interfering with a “public sewer” or “public lateral drain” without consent may be liable to prosecution.

4.6.2 For developments that are connected to the public sewerage system at 1 July 2011, but where final road surfacing works have yet to be completed, sewerage undertakers will need to ensure that agreements are in place with developers, either as part of an agreement to adopt new drainage under Section 104 of the Water Industry Act 1991 or as a separate agreement or Memorandum of Understanding, that accommodates construction practices such as ironwork adjustments necessary as part of final road surfacing works and external works.

4.6.3 It is recognised that in some cases the National House Builders Council (NHBC) and developers’ warranty arrangements may apply. In such circumstances, sewerage undertakers may wish to consider whether the terms of any warranty allow them to call on it.

4.6.4 When a local authority receives applications for approval of a development proposal that would involve building over an existing public sewer, this is notified to the sewerage undertaker. This enables sewerage undertakers to seek agreements with the person proposing to build over a public sewer both to protect the sewer and provide access to it for maintenance and to protect the building by ensuring the construction does not cause damage to the sewer and cause leaks which might undermine the structure. Transfer will mean that property owners proposing to construct extensions will need to consider the drainage arrangements for their property to take into account the existence of a newly transferred public sewer or lateral drain. Discussions are ongoing between the sewerage undertakers, industry, developers, and building control interests with a view to establishing a streamlined process for approval of building over (or close to) small, shallow sewers, which represent the majority of transferred sewers.

5. The communication of transfer

5.1 The process of notification - actions by sewerage undertakers

5.1.1 Under Section 102(4) of the Water Industry Act 1991, each sewerage undertaker gave notice of its proposal that private sewers and lateral drains should transfer to it.

5.1.2 For the purpose of these Regulations the notice was in the form of a notification to each **owner**, taking the form of a generic description of the extent of private sewers and lateral drains to be adopted rather than the precise identification of the individual private sewers and lateral drains in question. This notification was sent by post, **using appropriate databases to ensure that all relevant properties are covered.**

5.1.3 In addition to giving notice to the owners as outlined above, a sewerage undertaker must also publish notice of its proposal. This notice was published in the London Gazette and in sufficient local or regional newspapers to cover the whole of the sewerage undertaker's area.

5.1.4 Publication of the proposal in this manner is intended to provide adequate notice to all affected persons, including servient landowners (that is the owners of land through which a pipe runs), who will be deemed to be aware of the proposal. The Welsh Government has also notified relevant significant representative bodies directly.

5.1.5 Unlike the generic notification of transfer to owners of gravity sewers and lateral drains, in order to satisfy the requirements of Section 102 of the Water Industry Act 1991, notification to owners of the proposed transfer of pumping stations, which is required to take place between 1 October 2011 and 1 October 2016, will need to be by individual service of notice once a date for the vesting of the pumping station in question is decided and where this is before 1 October 2016.

5.2 Communication of a supplementary transfer by the sewerage undertaker

5.2.1 In addition, following the main scheme, sewerage undertakers should have a record of new connections by virtue of the requirement for notification of intention to connect with a public sewer under Section 106 of the Water Industry Act 1991 and new applications for agreements to adopt new sewers and lateral drains under Section 104 of the Act. They should also have records of those properties that have been billed for the first time during the relevant period. These records will allow the sewerage undertakers to identify who should receive notice of the supplementary transfer scheme.

5.3 Objections to transfer- appeals to Ofwat

5.3.1 Any queries regarding what is going to be transferred should be directed to the appropriate sewerage undertaker or the sewerage undertaker named in the notice. The Consumer Council for Water (CCWater) will also be able to offer advice on the extent of the transfer. It should be noted that private sewers are not included on the sewer records held by sewerage undertakers and they will not necessarily be able to advise on the precise characteristics or extent of systems to be transferred in individual cases. Appeals against the proposed transfer of a private sewer (including pumping stations) or lateral drain by the owner or other party affected by the transfer or the failure to transfer should have been directed to the Water Services Regulation Authority (“Ofwat”) by the end of the appeal period, 30 September 2011. Ofwat have published guidance on appeals which can be found at www.ofwat.gov.uk.

5.3.2 The Water Industry Act 1991 contains provisions governing appeals against adoption schemes. An appeal can be made to Ofwat, in relation to a sewerage undertaker’s proposal to make a declaration to adopt a private sewer or lateral drain, or in relation to the failure of a sewerage company to make a proposal to adopt. Such an appeal may be made by both an owner of a private sewer or lateral drain; or any other person affected by the proposal or failure.

5.3.3 The grounds for appeal are that the relevant private sewer or lateral drain is not one where the sewerage company has a duty to adopt, or that adoption would be seriously detrimental to the interest of the appellant. Similarly an appeal may be lodged on the grounds that the sewerage company has a duty to adopt but has failed to propose to do so.

5.3.4 An appeal against a company’s proposal to declare a private sewer, lateral drain or pumping station must be made within two months of the service of the notice of the proposal on the owner, or two months after publication of the notice if later. An appeal against failure to propose to adopt must be made within three months of the date of the transfer scheme.

An appeal must be lodged with Ofwat, within the time limit.

5.3.5 Further information on the scope of and process for the implementation of the transfer of private sewers and lateral drains is available from various sources including the websites of the Welsh Government, Defra, water and sewerage companies, Water UK, CCWater and Ofwat.