



Intelligent Transport
Planning Solutions





TRANSFER OF PRIVATE FOUL AND SURFACE WATER DRAINS INTO THE OWNERSHIP OF WATER AND SEWERAGE COMPANIES

What this means for property owners and developers

Summary

The government is proposing a major change to the existing legal arrangements for the repair and maintenance of private foul and surface water drains and sewers. This change will affect only drains and sewers which drain into a public sewer. The change will apply to both residential and commercial property. There has been a lengthy consultation, and the proposals are sensible.

The current arrangement is that whoever is the owner (or joint owners) of a drain or sewer has the responsibility for its maintenance and repair, whether it is in their land or other land. The new arrangement will be that all private drains and sewers outside the curtilage of a particular property will be the responsibility of the water and sewerage company. There will of course be a few exceptions.

The government has proposed that this change will take effect in England and Wales

on 1st October 2011, although this time scale depends upon certain procedures happening first.

Problems with current arrangements

- **Uncertainty of responsibility.** Disputes can occur over contributions to the repair. For example a sewer may serve and collectively be the responsibility of perhaps 10 properties, and a particular blockage or problem may affect only the last 4 properties, and the remaining 6 properties may decline to pay towards the costs of repair.
- **The costs associated with maintaining and repairing private sewers.** These can be high, and if spread over a few households can result in considerable financial burdens for those responsible for them.
- **Uncertainty over access rights.** When a blockage has occurred in a property which is unaffected by the blockage, it may be unclear whether the owner is obliged to allow access to that property for repair.

Advantages of new arrangements

- Simplification and clarity of responsibility. The drain or sewer within an individual property is the responsibility of the owner of that property. The sewer or drain from the property boundary to the public sewer is the responsibility of the water and sewerage company.
- The cost of maintenance and repair of any private sewer will be spread equitably across everyone in the district covered by the particular water and sewerage company, although of course everyone's bills will be that much higher.
- The company will have statutory rights of access to carry out repairs.

Legal framework for transfer

Land owners will not have to do anything to effect the transfer of ownership, although they will be entitled to appeal against transfer if they wish to retain ownership. All private drains and sewers (apart from the exceptions) will be transferred regardless of their physical condition. General notices will be sent to all property owners by the water and sewerage companies.

Exceptions to transfer

- Private drains within the curtilage of a particular property, serving only that property.
- Sites under common ownership which have their own internal drainage arrangements and which will be regarded as a single curtilage. This potentially would include such sites as caravan parks, airports, ports and some commercial or industrial sites. The exact position about this exception is unclear, and regulations are awaited.
- Surface water drains which drain into a water course and not into a public sewer
- Foul drains which drain from a septic tank into a soakaway or a watercourse and not into a public sewer.
- Sewers owned by railway undertakers, and by the Crown.

An appeals procedure is available for owners who do not want their sewer or drain to transfer to the water and sewerage companies. The primary grounds for appeal are:-

- (a) the sewer does not satisfy the criteria established for the adoption scheme.

- (b) the owner considers that the adoption would be seriously detrimental to their interests. One example where this might be argued in theory is if there is an existing "lift and shift" clause which would be lost as a result of the transfer, but this is unlikely to be a problem in practice because there is a general statutory right to divert a public sewer where it is reasonable to do so in order for development to take place. Another example might be if an owner of an industrial estate or business park considers that there are already in place properly drafted provisions for the estate drains and sewers. Any appeal must be made quickly after receipt of the notification.

Implications

- Following transfer, water and sewerage companies will need to provide clarity about how they will manage problems with former private sewers and drains when notified.
- Property owners will need to know who they can approach in order to get blockages removed and repairs undertaken.

- Insurance companies and drainage contracting firms need to be aware of how the transfer will affect procedures, in order for them to manage problems efficiently, particularly during the transition period.
- All newly built sewers and drains, outside the curtilage of a particular property, will need to be adopted by the water and sewerage company. There will be mandatory design and build standards, but there could be problems if those standards are not achieved by builders.

For further information, please contact Quentin Butler, Partner in the Property Department at Martineau on 0800 763 1484 or quentin.butler@martineau-uk.com

This Bulletin aims to update you on legal issues of concern or interest. It is not a substitute for taking specialist advice in individual cases.





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