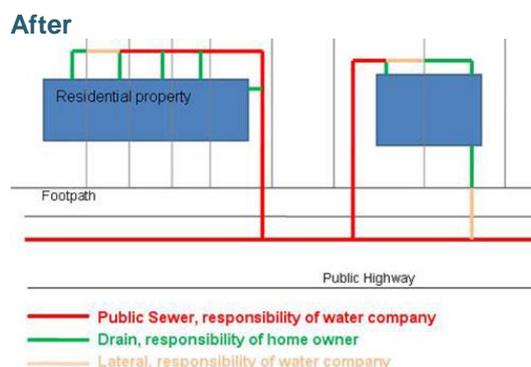


Transfer of private sewers to water and sewerage companies

Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

On 1 October 2011 private sewers and private lateral drains outside the curtilage of the property they serve, and which immediately before 1 July 2011 drained to a public sewer, transferred to the relevant water or sewerage company for the region within which the property was situated. Private pumping stations followed suit, and were transferred by 1 October 2016.

The Department for Environment Food and Rural Affairs (Defra) published diagrams illustrating the responsibility for private sewers and drains before and after 1 October 2011:



Why transfer private sewers?

The Regulations seeks to address the apparent unfairness to customers of paying water and sewerage companies for sewerage services and still being responsible for maintenance of the private sewers serving their properties. The Government felt that such customers were paying twice for their sewer service and in doing so were effectively subsidising all those not served by private sewers. It is also hoped that it will improve the condition of the sewerage infrastructure.

What drains are affected?

Sewers - the pipes that take foul sewage (waste from toilets, bathrooms and kitchens) and surface water (rainwater) away from more than one property.

Lateral drains - the pipes that take foul sewage and surface water away from individual properties and lie outside of the property's boundary.

Broadly, only pipes draining more than one property and those outside of the curtilage of a property that are connected to a public sewer have been transferred.

Pipes that will not have transferred are those leading to cesspits or watercourses, owned by railway operators, those under Crown land where the relevant body has opted out of the transfer and those which are within a single curtilage.

What does outside of the curtilage of the property mean?

The legislation does not define curtilage.

Head Office
 Heathervale House
 2-4 Vale Avenue
 Tunbridge Wells
 Kent TN1 1DJ
 T 01892 510000
 F 01892 540170

Thames Gateway
 Corinthian House
 Galleon Boulevard
 Crossways Business Park
 Dartford
 Kent DA2 6QE
 T 01322 623700
 F 01322 623701

Transfer of private sewers to water and sewerage companies

Continued

Identifying the curtilage – single properties

Defra states that 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 always the case.

Defra cites as an example a farm building occupied for residential purposes. For the purposes of the 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 farmyard or garden.

Identifying the curtilage – multiple property sites

A single curtilage may contain a number of individual properties under common ownership (e.g. a shopping centre or industrial estate) which have common drainage arrangements because of the site's freehold management. Defra states that 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.

What do the Regulations mean in practice?

Access rights

As a result of the transfer, water companies will have statutory powers under the Water Industry Act 1991 to enter private property

to carry out maintenance of the newly acquired drains and sewers.

New extensions and development

Water companies' requirements regarding building close to or over public sewers will now apply to transferred pipes. This may prevent new build or extensions, and will as a minimum mean water companies' consent will be required for building close to or over these sewers.

Existing extensions

Newly transferred sewers which have been built over in the past will not have been approved by the water companies. Severn Trent Services state "...no objections will be raised, providing proper building control consents were obtained and appropriate measures were taken to protect the sewers. Nevertheless property owners need to be aware that water companies have rights to access these sewers should they require maintenance."

Developers

As well as the restrictions on building over or near public sewers referred to above, there are additional implications for developers.

It is no longer possible to connect to the public sewer without an adoption agreement. Any new pipes and drains intended to be connected to the public sewerage system must comply with national mandatory standards of construction and the developer will have to enter into an adoption agreement with the relevant water and sewerage authority before the sewer can be connected. This could lead to

Transfer of private sewers to water and sewerage companies

Continued

delays on new schemes and additional costs for builders.

Easements

Landowners who have granted an easement (right) for a private sewer or lateral drain on their land may also be affected. Often landowners include the flexibility to “lift and shift” existing sewers at the cost of the party with the benefit of the easement should the landowner wish to develop the site. They may also have included rights to build over or close to the sewer or drain. These rights will have been lost. Public sewers cannot be diverted without the consent of the water or sewerage company. It cannot be taken for granted that consent will be given and water and sewerage companies have discretionary powers to charge a landowner for diverting a sewer.

Further information

This information sheet has been prepared to highlight some of the key issues relating to rights of utility companies over third party land. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the law as at March 2019 and may be affected by subsequent changes to the law. For more information, please contact Sarah Easton on 01892 510000 or by email at:

sarah.easton@ts-p.co.uk

© Thomson Snell & Passmore LLP All Rights Reserved