

Welsh Government,
Water Branch,
Energy, Water and Flood Division,
Third Floor, South Core,
Welsh Government Offices,
Cathays Park,
Cardiff
CF10 3NQ

Dear Sir/Madam,

Guidance on Connecting Properties to Public Sewers

We are grateful for the opportunity to comment on the Consultation Document relating to 'Statutory Guidance on sewerage undertakers' duty to connect properties to the public sewerage system under the Water Industry Act 1991 Section 101A.'

With regard to the layout of consultation document, it would have made responses clearer and more convenient to reference if paragraphs had been numbered. This may be something that could be considered in the final version of the Guidance.

Having been extensively involved in the drafting of the guidance in 2012, under the auspices of the Environment Agency, we are pleased that some of the comments we made then have been incorporated. In particular we believe that the new guidance improves upon that previously issued in that it provides greater clarity with regards to the s101A process for all parties.

The Guidance provides more realistic timescales for the delivery of s101A schemes, thus managing expectations of applicants and giving target dates for delivery by undertakers and regulators.

It would be beneficial to encourage the provision of information regarding options under s101A on sewerage undertakers' websites and provide links the necessary application forms.

We have set out further comments below on areas of the draft guidance that may benefit from further revision.

1.0 Geographical Application of Guidance

The Guidance needs to make it clear that it applies to all water companies operating within the Wales boundary (e.g. DCWW and STW) and that both companies are expected to conform to it. This does present some potential issues for both Ofwat and the water companies if guidance starts to diverge between WG in Wales and Defra in England.

2.0 Calculation of Costs and Benefits

We still have significant concerns regarding the comparative costs and benefits produced by the water company in relation to the public and private options. Whilst 5.3 – Economic Criteria does make reference to the equitability of both options it might be useful to provide a more comprehensive list of costs that should be considered in both private and public cases. For example:

- Legal Fees
- Project Management fees
- Land compensation arrangements/fees
- Sewer relining fees
- Land Agent's costs
- Design and Contractors Fees

The direct costs quoted in a Water company scheme evaluation can typically account for just 40% of the overall cost. The remainder can include on-costs against the following headings:

- Site Specifics
- Construction Management
- Contractors Risk
- Design
- Contractors Overheads and profit
- Water Company Oncost
- Water Company Recharge.

Where the public options include such factors then it would be helpful if the guidance prompted a look across to similar aspects of the private options and require an explanation where these are not mirrored.

NPV models include a factor for the cost of borrowing. Often, the same factor is used for the both the private and public options yet the cost of borrowing available to a water company may be significantly lower than that available to an individual. This aspect in addition to the omission of comparative oncosts may lead to a significant under valuation of the private option.

3.0 Caravan Sites

One area of concern that has not been addressed however is the exclusion of caravans from the definition of 'buildings' and/or 'premises'. In several locations, the presence of large static caravan parks does provide cause for concern and yet such sites are not generally eligible for inclusion in water company s101A assessments.

The guidance could perhaps be widened to provide a steer that domestic sewage arising from a 'premises' such as a caravan park should be considered within alternative sewerage options for a locality under s101A rather than focusing on a narrower interpretation of a 'building'. This could also address difficulties of interpretation that can arise where a toilet block or amenity block at a caravan site constitutes a 'building' for the purposes of s101A, but the site itself may consist of structures such as tents or touring caravans that are less substantial and less permanent than static caravans.

For instance, if it is clear that a caravan park premises with the necessary planning permissions will generate domestic sewage from its normal activities on a long term basis, then the 'premises' should fall under the consideration of s101A. This would be more desirable than concerning ourselves with the semantics of what is or is not a building but would still reflect the permanent nature of any public sewerage infrastructure that might be installed as a consequence of a duty arising under s101A.

It is perhaps worth noting that a single conventional caravan park could not on its own give rise to a duty under s101A even with such a change as each caravan park would remain a single 'premises'.

4.0 Lateral Drains

We have concerns regarding the inconsistency with which incentives are provided to prospective sewage company customers in order to encourage them to connect to a new sewer. Some Water companies have offered to contribute to the cost of lateral sewers whilst Welsh Water have not. This could lead to an unlevel playing field in adjacent communities within Wales.

S101A(2)(b) states that to be eligible for the provision of a sewer under s101A the relevant premises must not currently be connected, directly or indirectly, to the public sewer. Paragraph 4.1(j) of the current Guidance states that:

“The factors which will not be material to an economic assessment should include:

the income and the ability of the owner or occupier to meet their responsibility to construct and pay for a drain to make a connection from their premises to the proposed public sewer. However, owners or occupiers refusing to connect to a public sewer on the grounds of affordability will remain responsible to provide satisfactory drainage, including connections to a public sewer within 30 metres (100

feet) of the premises, a requirement amongst others which a local authority can impose” (derived from ss21 and 59, Building Act 1984)

Several sewerage undertakers appear to have taken this to mean they don't have a duty to provide a public sewer if the premises is within 30m of an existing sewer, or that when they do provide a sewer they need only do so to within 30m of each 'duty premises'.

The legislation does not comment on a minimum distance from a sewer in which to exclude an application under s101A. It would appear there are no statutory grounds to reject the application without a full assessment being undertaken for properties within 30m of a sewer.

Limiting the provision of a sewer to within 30m of each property boundary may increase the risk that connection rates will be low because of the length of new sewer that householders will have to pay for in order to connect. Some of this may be relatively expensive to construct because it will be in public highways.

It would be helpful for the revised guidance to comment on public sewers taking account of practicality of connection and the legislative duty to consider applications where properties are within 30m of an existing sewer.

5.0 Non duty dwellings

Part b of Appendix 2 refers 'other premises (unlikely to give rise to an environmental or amenity problem in the future) within the locality that could be served'. This potentially elevates the cost of provision of the public sewer but the guidance does not suggest how this may be equitably reflected in the overall private cost, for example, the cost of maintenance and emptying systems over the NVP period could be included for those residents that indicate intention to connect public sewer.

6.0 Consistency of design standards and inclusion of surface water.

WRc Sewers for Adoption 7th edition states the minimum flow rate from dwellings should be no less than 4000l per dwelling per day whereas 450l is assumed for cess pools. It would be useful to provide guidance on the consistency of design standards.

Section c of Appendix 2 refers to consideration of surface water drainage to the public sewer. This may elevate the cost of the public sewer but the guidance does not comment on an equitable assessment of the private option. A solution could be to include the cost of a surface water soakaway serving a dwelling as part of the private sewerage option if the public sewer is designed with capacity to accept surface water.

7.0 Economic assessment – valuation of benefits

It would be useful for the guidance to provide a clear steer on assessing costs and benefits.

In Wales, the Company's assessment methodology includes an economic test that monetises the environmental and amenity benefits and compares with the cost of overcoming adverse effects by provision of public or private sewerage. This implies a do nothing option, thus allowing adverse effects on environment and amenity from existing private systems to continue long term.

NRW's position when determining a dispute is that once an adverse effect on the environment or amenity is established due to domestic effluent arising from buildings in a locality then the purpose of s101A is to identify the most appropriate way to overcome those adverse effects.

Our interpretation of the extant Guidance is that the costs and benefits of each option should be considered on the basis of determining the most cost effective solution. Conclusions of duty should only be drawn from a direct quantitative and qualitative comparison of costs and benefits for provision of public sewer with the costs and benefits of practical alternatives of overcoming adverse effects on the environment and amenity. NRW believes a duty is placed on the Undertaker where this economic test reveals the most cost effective solution to be a public sewer.

The Company's monetisation of benefits methodology has informed a number of reviews of 101A assessments resulting in a reversal of previous acceptance of duty. The proposed guidance may not reduce the potential for disputes to be referred to the Regulator on this basis.

8.0 Referral of disputes

The timescales for determination, including appeals by applicants, can create problems and lead to protracted determination periods and duplication of resources by the organisations involved. For example, we have recently been dealing with an appeal that was received approximately five years after the original water company determination of 'no duty'. In that five year period additional development has taken place therefore requiring a complete reassessment of the locality at a cost to DCWW, NRW and the wider Welsh public. We would therefore suggest that a time limit be placed on the period during which an appeal can be lodged.

Perhaps consideration could be given to applicants being required to pay an application fee for their initial and/or subsequent repeat applications.

9.0 Timing determinations in duty disputes

6.2 suggests that an applicant may wish to raise a timing dispute at the same time as a duty. This may raise false expectations for the applicant and also lead to projected determinations. Additional requests for information would need to be raised during the determination and may create a sense of pre-determination of duty. On balance it would be better if the guidance only stated that timing of a scheme shall be provided by the undertaker within 3 months of a determination of duty.

10.0 Applicants duty to protect the environment and amenity

6.3 refers to owners of private sewage systems maintaining compliance with the Environmental Permitting Regulations 2010. Where private systems are compliant with the Regs they cannot, by definition, be eligible for a s101A scheme as they will be non-polluting properties.

An alternative form of words could say that we expect owners to take all reasonable measures reduce the impact of the system on the environment or enforcement may be necessary.

11.0 Role of Ofwat

Section 7 explains that Ofwat have been authorised to undertake the enforcement role, but the 3rd and 4th paragraphs imply a second review process over that of the Regulator's determination of a dispute. Ofwat's role is to sign off general principles of costing and prioritisation and would not usually look at individual schemes in detail. It will not be their role to determine if a duty arises, but merely to impose the necessary sanctions when the water company fails to deliver a duty

Clarity is required over the jurisdiction of the delegated enforcement to Ofwat. Does this apply to Severn Trent in Wales? The Water Companies need to be aware of the differences in guidance either side of the border.

We hope that the above comments are self-explanatory and assist in the production of the final Guidance. If you require further details please contact Christopher Hall on 02920 466280 or at Christopher.hall@cyfoethnaturiolcymru.gov.uk .

Natural Resources Wales

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