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T/02/RF/SB

18 October 2007

Dear Madam

### **Consultation on Private Sewers Transfer – Implementation Options**

The Home Builders Federation (HBF) is the trade association representing the interests of private house builders in England and Wales. Our members, who include all of the major homebuilders, are responsible for more than 80% of the new homes built every year.

We would therefore ask that Defra take account of the fact that the enclosed response to this consultation includes comments made by HBF members and is therefore representative of the views of numerous organisations not just one.

In terms of how to take this matter forward, HBF would welcome the opportunity to work with Defra and the water and sewerage companies on the implementation of the transfer of private sewers in relation to new developments.

Yours faithfully

**Dave Mitchell**  
Technical Director

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# CONSULTATION RESPONSE



DEFRA Private Sewers Transfer – Implementation Options – July 2007

18 October 2007

## **DEFRA Consultation on Private Sewers Transfer – Implementation Options – July 2007**

### **General Comment**

The HBF welcomes the opportunity to provide a response to the above-mentioned consultation. The transfer will constitute one of the biggest changes to the way our Industry procures, designs and vests private sewers probably since the publication of Sewers for Adoption and we are pleased to see that Defra are keen to engage with our industry.

In the light of this consultation we feel that our experience in dealing with Water and Sewerage Companies (WaSC) over many years, before and since privatisation, enables us to highlight certain issues relating to the way the relationship between our respective industries has evolved. This relationship presents major challenges for both industries.

There are some recurring themes that we feel are of importance to the way this transfer will be implemented which we have described under the following titles:

1. Direction and Leadership
2. Detail appertaining to Principles/Policy
3. Statutory Obligations for WaSC.

### **1. Direction and Leadership**

We see this as a major issue, which Defra needs to address. The consultation makes reference to Sewers for Adoption in Chapter 6: this Guide has for many years been produced and edited as a collaboration between representatives of both WaSC and the HBF, where it is chaired by a nominated person from a WaSC accepted by all parties. Overall, the Guide is well received by our industry but its value is limited because certain WaSC representatives are reluctant to adhere to a single set of criteria for a number of issues and they seek to have their own specifications and details. It is a fact that the chair of the steering group over many editions has struggled to make this Guide comprehensive in its content with the WaSC insisting on their own individual requirements.

Our conclusion is that the chairing of a similar set of people would have to be undertaken by a person from Defra independent of both industries and with sufficient

experience to be able to enforce a single solution and not the WaSC compromise that we have seen with successive editions of Sewers for Adoption. This will also stop the proliferation of individual WaSC policies - an issue that is evident in not only SFA but also in Competition in Water - from our industry's perspective this is an endemic problem within WaSC.

## **2. Detail appertaining to Principles/Policy**

In many areas the HBF is involved with monopoly utility organisations for water, gas, electricity, sewerage etc. The common problem with these organisations is the application of detail around a principle or policy. To say there are "smoke screens" is at times an understatement - the most obscure one-off issue is portrayed as the norm and must be factored into the detail. The need to alleviate all risk at times detracts from the key issue and gains a momentum, which causes delays, which in turn becomes a barrier.

So again an experienced leader will be required to understand the difference between a salient detail and a "once in a life time" issue and to decide on how this detail will be set out in a statutory Code of Practice relating to new build.

## **3. Statutory Obligation for WaSC**

For many years the HBF has wanted some form of statutory obligations placed on WaSC to stop the continuing trend for WaSC to do what they see as important to them rather than to consider the bigger picture. For the transfer to succeed there needs to be a number of statutory obligations placed on WaSC, be it for specifications, transparency of information, cost accountability and levels of service which help our Industry to have an element of certainty in key areas which in turn will drive us all towards the Government's objectives of increasing housing supply. Evidence to date from Competition in Water, Sewers for Adoption and, to a certain extent, sustainable drainage is that voluntary obligations do not work. We would also express our concern that Ofwat seems oblivious of this and does not understand our industry's needs for the water and sewerage sector to be accountable.

So for the transfer to become workable the WaSC will have to commit themselves to a number of statutory obligations. If this does not take place it will place in jeopardy the way in which the process will be managed from planning through to vesting.

## **HBF Response to the Consultation Questions**

We have only replied to those questions that are pertinent to new homes.

It is unclear in the consultation how private sewers will be adopted when they discharge into an unadopted sewer where provisions have been made, or will be made, as part of a Section 104 Agreement for a new development. No doubt the detail appertaining to this will be debated and discussed in the future.

### **Pumping Stations**

***Question 1: Do you think that the transfer of private pumping stations should be done on a 'worst condition first' basis, 'best condition first' basis or should pumping stations serving the highest number of people be transferred first? Please give reasons for your answer.***

***Question 2: Do you think pumping stations should be transferred over a short period (e.g. 10 years) or a longer period (e.g. 30 years)? Please give reasons for your answer.***

### **Private sewers & laterals**

***Question 3: Do you think that the transfer of private sewers and laterals should be done on a 'worst condition first' basis, 'best condition first' basis or should assets serving the highest number of people be transferred first? Please give reasons for your answer.***

***Question 4: Do you think that the phasing of transfer for private sewers and laterals should be performed over a short period (e.g. 10 years) or a longer period (e.g. 30 years)? Alternatively, if you think a different time period is best, please indicate this. Please give reasons for your answer.***

### **Implementation Options**

***Question 5: What might a 'serviceable standard' comprise?***

***Question 6: Do you think that any of the alternatives to an automatic overnight transfer of private sewers and laterals offer a workable solution to the problems caused by these assets? Please give reasons for your answer.***

***The alternatives are:***

***Automatic phased transfer***

***'On application' transfer***

***'On application' transfer, with conditions***

## **Non-household private sewers and laterals**

***Question 7: Should ownership of non-household private sewers (including sewers that serve mixed premises and entirely non-household premises) be transferred to WaSCs? Please give reasons for your answer. If you disagree, please also explain how you would practically identify and exclude such properties.***

Yes, they should be part of the transfer. The main reason is that this will maintain consistency. In some cases private sewers discharge into non-household private sewers and it would be difficult to explain to those homeowners why they will not have the same right to have their private sewers maintained by the WaSC.

***Question 8: Should these owners be able to exclude their systems on request or appeal, particularly where there are no residential properties involved and unlikely to be, and where satisfactory maintenance arrangements are in place?***

Yes, if they so want to. There may be other reasons why they want to retain the ownership of the sewers e.g. for a connection to future development. One caveat to this should be that they must show that no residential properties drain into their sewers.

***Question 9: Should ownership of non-household private lateral drains be transferred to WaSCs? Please give reasons for your answer. If you disagreed, please also explain how you would practically identify and exclude such properties.***

Yes, they should be transferred to WaSC. For practical reasons it would be easier for WaSC to undertake any remedial work in the highway and they are the experts in knowing the best way to maintain sewer assets.

## **Surface water sewers draining to water course**

***Question 10: Do you think that private surface water sewers that drain to watercourses should be included in transfer? Please give reasons for your answer. If you do not think these assets should be included please suggest ways of resolving the perceived problem in excluding them.***

Yes and probably paragraph 6.30 is one of the main reasons why this should take place as well as enabling a better understanding of how these assets are being maintained. With the concerns surrounding climate change a more joined up approach is required for the management of surface water.

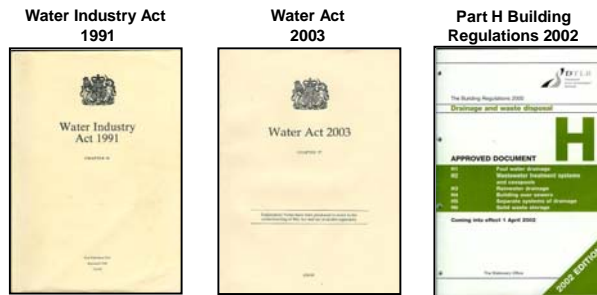
## **Construction of new sewers and drains**

***Question 11: Do you think that a minimum standard for the construction of future sewers and drains is required? Please give reasons for your answer.***

We would suggest that a minimum standard is the wrong way to portray the construction standard. It should be a standard that is "fit for purpose" and not described as a minimum.

At present there is legislation and a vast amount of guidance, which needs joining up. This also needs to take into consideration the funding streams. See below:-

## Legislation



## OFWAT/Funding

Director General Final Determinations  
December 2004 for the  
Price Review & AMP4



<u>Sewerage Service</u>	<u>Capital Expenditure</u>
	(£m)
New development & metering	334
Growth in demand	558
<u>Sub-total</u>	<u>982</u>
1. Capital Contributions	(302)
<u>Net Expenditure</u>	<u>590</u>

*1. Capital Contributions including receipts from infrastructure charges, developer contributions and requisition charges.*

## Guidance

Protocol on Design  
Construction & Adoption  
Of Sewers in England &  
Wales



Making Space  
For Water 2005



Interim  
Code for SuDS  
2004



PPS25



CIRIA Publications  
(Various)



Sewers for Adoption  
6th Edition 2006



The other matter that will need consideration is how SuDS will be maintained and adopted. The transfer will create an opportunity to explore how more rigour can be placed on SuDS or even show it can be supported by legislation. Until this takes place SuDS will only be seen as an aspiration and WaSC will continue to not see it as their responsibility. It is also worth noting that the HBF is being told by some of our members that WaSC require over design of storm sewers even if SuDS are being

used by developers on the grounds that residents might one day invoke their “right to connect” - another example of a “smoke screen” since it is highly unlikely that this would ever happen.

The HBF believes that it is important that a standard is not just restricted to construction, it must go beyond that and be made statutory considering procurement, planning, design, maintenance and adoption. A holistic standard for sewers is long overdue.

***Question 12: Do you think developers should be required to provide a significant security bond to guarantee the adequate design and construction of new sewers? If your answer is ‘no’ please explain why and suggest an alternative incentive. If your answer is ‘yes’, at what level should the bond be set, would a 100% bond be appropriate?***

Since the introduction of SFA the security bond has been 10% of the total cost of the sewer construction and in many cases the large developers have had waivers for this security bond. In practice this security bond is nearer 20% as the WaSC estimates of the sewer construction costs are highly inflated compared with the developers’ estimates. That said, to date the security bond has only been called in on a few occasions to cover the rectification of the sewers to enable them to reach an adoptable standard when a developer has gone into liquidation.

When SFA 6<sup>th</sup> Edition was being compiled there was a concerted effort by some WaSC to raise the 10% to 100%. WaSC claimed that they had incurred losses because the 10% security bond did not cover their costs on sites when a developer went into liquidation. On the basis that this did seem an issue for WaSC the HBF asked for statistical evidence that this was the case. After three months no such statistical evidence was produced to support the bond being increased to 100% and we would suggest that this is another one of the “smoke screens” put forward by WaSC. The security bond figure remained at 10%.

In relation to the security bond, the issue is more whether it will be retained under its present criteria or will the transfer mean that when residents occupy homes on new developments their sewers and the sewers in the highway will be adopted at the time of the connection. This is no different from what takes place at present with water, gas and electricity.

As an alternative to a security bond we would suggest an incentivised option (similar to what happens in Scotland) where developers are paid on a plot basis when the sewers are vested by the WaSC, a radical idea, but one with some merit. The logic surrounding this suggestion is that today we have a large amount of unadopted sewers constructed under Section 104 Agreements. The motivation for WaSC to get them vested is reasonably low because if they are maintained by the developer the WaSC obtains revenue from the new home owner yet the developer looks after any maintenance issues up to adoption. If developers were paid to get the sewers vested we are sure that developers will apply themselves to progress the adoption and vesting.

There is another reason in that a developer fully funds the sewers from design to vesting even paying for the WaSC to approve design and inspect the construction. Funds are even provided to the WaSC through sewerage infrastructure charges, although it is not apparent where these monies are utilised in the sewer network. On

completion of the sewer construction the WaSC obtains a financial benefit when the home owners use a metered water supply to apportion sewerage tariffs where they do not incur any costs up to vesting as the developer is liable for any maintenance costs.

After the sewers are vested the WaSC obtains revenue in perpetuity and the sewer has a possible life span of 80 years so the WaSC incurs nominal costs in maintaining the sewers. In essence, the precedent has been set for this in water where an asset payment is paid to a developer when they construct a water main. Again, in electricity and telecommunications a similar arrangement takes place. If this is expanded further these monies could also be used by the WaSC if they undertook remedial works where a developer's sewer did not reach an adoptable standard. Such an arrangement would also not require the WaSC to call in the security bond.

We would concede that the above is a major departure from what has happened since 1936. Yet so is the transfer of private sewers and there is no reason why such a recommendation could not be implemented. It may constitute some "blue sky" thinking however it does seem somewhat perverse that a developer PLC "gifts" an asset to a WaSC who receives revenue in perpetuity which contributes to their profitability at no risk to them.

To conclude, we would state that if the maintenance and adoption procedures remain the same as SFA 6<sup>th</sup> Edition the security bond value of 10% has no need to change. However if sewers are adopted when houses are occupied and vested after a year there may be a need to look at the security bond requirement.

***Question 13: If you do think that a minimum standard is required, how do you think that it could be made mandatory under current legislation? Does the power available to WaSCs under section 106 (4) (b) to refuse connection to a public sewer if the 'mode of construction or condition of the drain or sewer does not satisfy the standards reasonably required by the undertaker' provide sufficient sanction?***

We would reiterate the need to alter the classification of the standard from a minimum to "fit for purpose".

How this would work under current legislation might need looking at by solicitors. It is also dependant on the detail of how the adoption and vesting will take place as we set out in question 12.

In relation to Section 106, we would suggest that it would be advantageous not to use this section of the Water Industry Act as in essence the "right to connect" needs to be read in conjunction with Section 94 and the duty of WaSC to **effectually** provide sewers.

***Question 14: If you think that a minimum standard is required to provide the construction of future (sub-standard) private sewers and drains, do you agree that a consistent build standard in England and Wales is the best way to achieve this? Please give reasons for your answer and, if you disagree, do you think that either of the existing documents might be suitable? Please give reasons for your answer.***

Yes, to a "fit for purpose" standard is the best way forward. Our response to Question 12 addresses the issue of how.



It is worth noting that at present private sewers around the plots are built to Part H of the Building Regulations. To apply a standard for all sewers as required in SfA for private sewers would seem inappropriate and a “belt and braces” attitude. This standard needs to be “fit for purpose” and an amalgamation of the existing legislation and Guidance. Taking the example of pipe material - three of the WaSC in SfA will not allow plastic pipes (although the other seven do). If that was to be replicated for the private sewers around the plots it would be totally inappropriate and we would expect the manufacturers of plastic pipes to object.

The standard needs to cover procurement to vesting and be an amalgamation of all the existing documentation. It should not be for WaSC to require SfA standards for the private sewers.

***Question 15: Do you anticipate any additional costs (financial or administrative) being incurred if a consistent standard for the construction of future sewers and drains was introduced in England and Wales and, if so, who would incur these costs?***

It is difficult to answer this question without having the detail available to assess what additional costs may occur, or how the WaSC will seek to accommodate this new obligation of adopting private sewers within the curtilage of a house. Our experience to date is that a “gold-plated” approach will be adopted by WaSC to minimise any future costs to them.

If some assumptions are made and the requirements of the Protocol are applied to foul private sewers there will be no foul sewers in the back garden and each house will have a foul lateral drain. The cost will be exceedingly high for the house building industry and would be against the Government’s sustainability agenda. The reason for this is as set out below:-

### **1. Housing Layouts – PPS3**

Under PPS3 developments densities are higher and on many sites there is no front garden. In a lot of instances the houses are designed just off the footpath. To design foul laterals to service sites like this will involve placing laterals through the foundation of the plot and manholes at the front or back of the property. This will mean additional measures to preclude any movement in the foundations causing damage to the pipes, which will result in additional costs. An added disadvantage would be that any remedial work would involve working within the property, rather than at present where work of this nature takes place in the front or back garden.

### **2. Number of Connections**

If each property has a foul lateral drain it will mean there will be many connections onto the foul sewer directly from the plots, all of which will involve extra excavations and as it is in the proposed adopted highway all the trenches will have to be backfilled with stone. At present we have one connection for 10 plots but with the Protocol there will be 10 connections for 10 plots. This will mean substantially more expense for the developer and will create more sub-soil, which will either have to be accommodated on site, or moved elsewhere (to a land fill site?). Then there will be the extra stone require to backfill the trenches in the highway. In quantitative terms introducing foul laterals for 200,000 new homes per year will require an extra 1.25 million m<sup>3</sup> of stone brought to site and sub soil to be disposed of. This in turn could result in 250,000

more lorry movements per year. Regardless of the cost, such a change in foul sewer design is against what developers are being asked to do by the Code for Sustainable Homes and also the Land Fill Directive.

We would accept that HBF endorsed the Protocol, which at the time was addressing certain principles. However PPS3 development layouts have changed in the last five years and the Government's aspiration to create sustainable communities will constitute a challenge to the industry in applying the detail of the Protocol to these types of designs.

In relation to a combination of SFA and Part H where the private sewers are designed and constructed as new the only real cost increase will be to the developer in the fees and surety costs. However if there are major changes to present practices we are certain that developers will incur cost increases.

### **Pilots**

***Question 16: Do you think that pilots should be run to test methods of implementing transfer? Please give reasons for your answer and if you answer is yes, how you would select statistically representative pilot areas?***

The most important issue for our industry is not so much a need for pilot schemes but an understanding of what detail will be forthcoming to facilitate the transfer of private sewers for new developments. With a change of this magnitude it will really be the case that the "devil will be in the detail" for our members.

### **Additional General Issues**

A. In the consultation reference is made to a review of the Protocol undertaken by Atkins in 2005 at a seminar on private sewers. Unfortunately the HBF was not present at this seminar (the invitation was not forwarded to our new office address). That said, as we have detailed above we do not agree with the views expressed in paragraph 6.41.

B. The HBF would also draw to the attention of Defra that it would be worth further investigation of the legislation between 1936 and 1973 as it appears that there might be a legal argument that private sewers might be the responsibility of the WaSC. In which case the legacy issues that WaSC actually need to address are those arising since 1973, which in turn would reduce the financial burden being placed on the existing customer-base if they are in fact legally liable for private sewers up to 1973 under public health legislation.

Our members have in the past complained that WaSC are sometimes reluctant to declare their legal obligations or accept what we believe to be their responsibilities.

**D F Mitchell**  
**Technical Director**