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# Consultation on Draft Regulations and Proposals for Schemes for the Transfer of Private Sewers to Water and Sewerage Companies in England and Wales

August 2010



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



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## Chapter 1 – Introduction

1.1 This joint consultation covers England and Wales and presents details of how the UK Government and the Welsh Assembly Government<sup>1</sup> will implement the transfer of private sewers and lateral drains connected to the public sewerage system into the ownership of the statutory water and sewerage companies (WaSCs). This is an opportunity to provide views on the content of the proposed regulations that will bring transfer into effect and of proposals for schemes to be made under the regulations. Draft regulations can be found at Annex C.

1.2 Where this consultation refers to “the Government” it should be read as meaning the UK Government and the Welsh Assembly Government, unless the context indicates otherwise.

### Background

1.3 UK Government announced on 15 December 2008 that transfer would take place from 2011.

1.4 The Welsh Assembly Government’s Strategic Policy Position Statement on Water<sup>2</sup> published in 2009 sets out the Assembly Government’s commitment to pursue the development of Regulations in 2011 to facilitate the transfer of private sewers and lateral drains in Wales.

1.5 These Government commitments followed an extensive review<sup>3</sup> of private sewer ownership which examined the problems their ownership presented.

1.6 Government has worked closely with and continues to work with key partners to prepare for the transfer and to address technical issues surrounding the transfer, such as the treatment of multiple occupancy buildings and property curtilage. Water UK and WaSCs, amongst other key partners are providing input and sharing knowledge on these technical issues, to ensure that the transfer can be undertaken in the most efficient and cost effective way. Government will also work with the Consumer Council for Water to ensure the delivery of an effective customer communications strategy for the transfer.

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<sup>1</sup> The powers of the Welsh Ministers are exercisable in relation to WaSCs whose areas are wholly or mainly in Wales; the Secretary of State’s powers are exercisable in relation to all other WaSCs.

<sup>2</sup> <http://new.wales.gov.uk/topics/environmentcountryside/epq/waterflooding/?skip=1&lang=en>

<sup>3</sup> Further information about the ‘Government Review of Private Sewer Ownership’ to date can be viewed on the Defra website <http://defra.gov.uk/environment/quality/water/industry/sewers/index.htm>

1.7 Sewers, by definition, serve more than one property and drains serve a single property. A lateral drain is the section of pipe work serving a single property which extends beyond the property boundary. Throughout this document the term “sewers” is intended to denote “sewers and lateral drains” unless the context clearly indicates otherwise.

1.8 Private sewers and lateral drains are currently the responsibility of their owners, who are generally the owners and occupiers of the properties they serve. Typically, unless a problem occurs, householders are often unaware that they are in fact responsible for a private sewer or lateral drain or both serving their property, even when it continues beyond their property boundary. Where problems do occur, the costs associated with maintaining and repairing private sewers 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 last four properties and the remaining six properties may decline to pay towards the costs of repair. It is also possible that the blockage has occurred in a property unaffected by the blockage and the owner refuses 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.

1.9 The review of private sewers looked at a range of options to deal with the problems that ownership presented. After careful consideration, Government concluded that transfer provided the most comprehensive solution to these problems and to removing unfair burdens of maintenance and repair from householders.<sup>4</sup>

1.10 Decisions on the process for implementation have been agreed following research, stakeholder engagement and a joint Government consultation on ‘Private Sewers Transfer – Implementation Options’ which was held between July and October 2007.

1.11 Throughout this process respondents have consistently expressed a preference for an automatic overnight transfer of existing private sewers and lateral drains.

### **The Legal Framework for Transfer**

1.12 Transfer can only happen when regulations specifying its scope and timing and providing for schemes of transfer have been approved in Parliament and the

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<sup>4</sup> The Impact Assessments accompanying the July 2007 consultation on implementation options and the December 2008 decision to proceed with transfer can be viewed at:  
<http://www.defra.gov.uk/environment/quality/water/industry/sewers/existing/index.htm>

National Assembly for Wales. Before seeking approval for the regulations, Government is, as it is required to<sup>5</sup>, inviting comments on the proposed approach the regulations will take. This consultation therefore sets out proposals for the regulations and schemes, including the timing of transfer and the process by which it is to be achieved, provision for appeals by those who object to transfer, and outlines the extent of responsibilities following transfer.

## **Pumping stations**

1.13 A decision was made earlier in the review of private sewer ownership to take a different approach to the transfer of private pumping stations. Pumping stations and the sewers draining to them make up a small part of the network as a whole and are used where properties are unable to fully drain by gravity. The transfer of these assets present different kinds of problems to those posed by private sewers. WaSCs have identified health & safety and locational problems with pumping stations that will need to be addressed - many may be on private property such as in back gardens or sheds, presenting access issues when repair work is necessary. There may also be electricity supply problems. For these reasons it would not be as practical to transfer all private pumping stations on an overnight basis. See Chapter 4.

## **The costs of transfer**

1.14 An updated impact assessment (see footnote 4) is provided at **Annex B**.

## **Layout/order of chapters**

1.15 The consultation begins by setting out some of the background on the private sewers review, on transfer and Government's current intentions concerning how to implement transfer.

1.16 Chapter 3 describes how legislation will be used to bring transfer into effect .

1.17 Chapter 4 describes in more detail what exactly the WaSCs will become responsible for following transfer and what they will not.

1.18 Chapter 5 describes proposals for appeals against transfer.

1.19 Chapter 6 describes how things will be different following transfer and identifies ways in which the sewerage sector will be affected by the changes.

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<sup>5</sup> Section 105C of the Water Industry Act 1991 (introduced by section 98 of the Water Act 2003) requires the Secretary of State and Welsh Ministers to consult before making regulations or any scheme under section 105A of the 1991 Act to provide for adoption of private sewers or drains by sewerage undertakers.

1.20 Chapter 7 contains information that private sewer owners should know prior to transfer and how their situation will be affected prior to and following transfer.

1.21 Chapter 8 describes the next steps in readiness for transfer and the finalisation of transfer regulations.

1.22 Chapter 9 describes proposals for newly built sewers to stem the proliferation of a new stock of private sewers. The Flood and Water Management Act 2010 provides that all future sewers will be built to mandatory standards and will be automatically adopted by the WaSCs.

### **How to make your contribution**

Initial responses are invited by 7 October with a view to identifying the main questions and issues which arise. These will be discussed in series of targeted consultation workshops hosted by Defra starting in October and concluding by 18 November by which time any further comments should be submitted. This will allow stakeholders to work through some of the details of transfer and raise any issues of concern. Further details of these events will follow in due course and will be advertised on these pages of the Defra website.

All responses should be sent to both:

Private Sewers Transfer Implementation Team  
Area 2C  
Ergon House  
Horseferry Rd  
London  
SW1P 2AL

Responses can also be sent via e-mail to:

*[privatesewer.consultation@defra.gsi.gov.uk](mailto:privatesewer.consultation@defra.gsi.gov.uk)*

And also to:

Olwen Minney  
Water Policy Branch  
Private Sewers Consultation  
Climate Change & Water Division  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ  
Email address: [water@wales.gsi.gov.uk](mailto:water@wales.gsi.gov.uk)  
Telephone: 029 2082 5420

Consultees in Wales should direct enquiries and requests for a hard copy to the Welsh Assembly Government.

## **Data Protection**

1.23 Any response you send us will be seen in full by Defra and the Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Defra and Welsh Assembly Government staff to help them plan future consultations. Defra and the Welsh Assembly Government may wish to publish responses to this consultation and deposit them in the libraries of the of the House of Commons, House of Lords and the Welsh Assembly Government, National Assembly for Wales.

Defra and the Welsh Assembly Government intend to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including Defra and the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## Chapter 2 – Government approach to implementation

2.1 Previous consultation papers, including the July 2007 consultation<sup>6</sup> detailing and inviting views on implementation options are available electronically at:

<http://www.defra.gov.uk/environment/quality/water/industry/sewers/documents/private-sewer-consultation.pdf>

### When transfer will take place

2.2 Government has decided, subject to Parliamentary and National Assembly for Wales approval of the regulations needed to implement it, that transfer will take place on 1 October 2011.<sup>7</sup> From that date, all gravity sewers and lateral drains that drain to the public sewerage system will be adopted by the WaSCs as part of the public sewerage system. Transfer will require no action by owners of private sewers to make it happen; although they will be able to appeal against transfer should they wish to retain ownership.

2.3 Pumping stations and associated pressurised (or rising) mains will (except where they are, at 1 April 2011, subject to a proposal to make a declaration under s102 of the 1991 Act) transfer to the WaSCs later, on 1 October 2016. See Chapter 4.

2.4 Sewerage undertakers will be required by schemes made under the regulations to use their existing powers under section 102 of the Water Industry Act 1991 to adopt sewers or lateral drains that connect to the public sewerage system on 1 October 2011. These powers enable declarations to be made specifying a date from which the assets specified in the declaration will become “public” assets vested in the undertaker. Notice of a proposal to do so must be given to the owner or owners of the assets specified in the proposed declaration, where it is reasonably possible to identify them.

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<sup>6</sup> Consultation on Private Sewers Transfer – Implementation Options (July 2007)

<sup>7</sup> In the interests of enabling businesses to prepare for new, amended or reduced requirements on them introduced by legislation, the Government has adopted common dates for the commencement of regulations, generally on either 6 April or 1 October each year. The formal process that must be followed by WaSCs means that 1 October 2011 is the earliest date on which transfer could happen following parliamentary consideration of the implementation regulations - before transfer can take place each WaSC is required by s102 of the Water Industry Act to give notice of its proposal to make a declaration of adoption and must allow two months for any appeal to be made before making the declaration.

## **Chapter 3 – How transfer will happen**

3.1 Powers to make transfer happen are already contained in the Water Industry Act 1991, as amended by the Water Act 2003. This enables the Secretary of State or the Welsh Ministers to make schemes for the adoption of sewers and lateral drains by WaSCs. In order to make schemes, Government needs first to get approval from Parliament or the National Assembly for Wales of a set of regulations detailing the arrangements for transfer, including details such as exclusions and transitional arrangements, for example where developments are already underway.

3.2 As an alternative to making schemes themselves, the regulations can require WaSCs to prepare draft schemes and submit them to the Secretary of State (or the Welsh Ministers) for their approval.

3.3 The Government proposes that schemes be made by the Secretary of State and the Welsh Ministers. It is envisaged that such schemes may be as simple as a scheme in each case specifying that all gravity sewers and lateral drains within a sewerage undertaker's area that drain to the public sewerage system will be automatically adopted as part of the public sewerage system on 1 October 2011 and that pumping stations (and associated rising mains) on transferred systems will also transfer and be adopted on 1 October 2016.

3.4 Government intends to bring regulations into force in April 2011. This forms the basis for making of schemes for the transfer which will trigger the requirement for the companies to serve notice on private sewer owners under section 102 of the Water Industry Act 1991 of their intention to adopt. Government envisages that this notice will be in the form of general notification to their customers rather than identifying individual owners.

3.5 Government has taken further powers in the Flood and Water Management Act 2010 to prevent the creation of new private sewers connecting to the public sewerage system following transfer. In future it is proposed that all new sewers and lateral drains connecting to the public system should be automatically adopted by WaSCs (see Chapter 9).

## Chapter 4 – What will transfer?

4.1 Following consultation and work with a wide range of partners, Government has decided that all sewers and lateral drains that drain to the public sewerage system will transfer into the ownership of the sewerage undertakers. This will include sewers and lateral drains draining both residential and commercial premises and, at a later date, all pumping stations necessary to link to those sewers and lateral drains. There will be no criteria relating to condition of sewers in order for them to qualify for transfer. In other words, transfer will occur regardless of the condition of the existing pipe work. All gravity sewers and lateral drains will transfer automatically from the date specified in the transfer regulations. Government's proposals will not apply to pipes on the exterior of premises (downpipes and soil and vent pipes) or under buildings that form part of the building drainage and this will be made clear, as necessary, in the regulations. Transfer will, however, include all ancillaries needed for the operation of the system including manholes, ventilating shafts, inspection chambers, pumps and other machinery or equipment.

4.2 Some WaSCs have suggested that sewers under and upstream of railways, canals and other similar undertakings should be excluded from transfer because of the particular difficulties they present in gaining access to carry out repair works. However, the Government does not consider that there is justification for excluding all such assets from transfer. WaSCs already have public sewers that are affected by such circumstances and are far better placed to negotiate with railway, canal or other undertakings to enable repairs. Additionally, the Water Industry Act 1991 already makes specific provision for dealing with cases of dispute over access to the land of such undertakings. A primary aim of transfer is to relieve private sewer owners of burdens such as the difficulty of accessing their assets for maintenance and repair, of which such circumstances are extreme examples. The proposed regulations do however exclude from transfer sewers that are in the ownership of railway undertakers which, for operational reasons, Government thinks are best left in the ownership of the undertakers currently responsible for them.

### **Pumping stations**

4.3 As identified in the 2007 consultation on implementation options<sup>8</sup>, WaSCs have highlighted that private pumping stations may have health and safety issues that need to be addressed, as well as problems with overflow consents and mechanical and electrical systems. Some may be inaccessible, for instance located in garages and gardens and may take power supplies from existing domestic systems.

4.4 Government has decided that pumping stations should therefore be subject to a separate timetable for transfer. This will allow sewerage undertakers to locate and

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<sup>8</sup> Consultation on Private Sewers Transfer – Implementation Options (July 2007)

carry out assessments of the condition of pumping stations, and if they consider it appropriate, to programme remedial works or, if necessary, replacement before they transfer<sup>9</sup>. Government will therefore provide for the transfer of pumping stations and associated pressurised pipe work (rising mains) to take place after transfer of the gravity pipe system (see Chapter 3). Gravity pipes draining to private pumping stations will transfer first.

4.5 Following the transfer of private gravity drains and sewers, the owners of private pumping stations will remain responsible for the operating costs and maintenance of them until subsequent automatic transfer of pumping stations occurs. It will, as now, be open to the WaSC to choose to adopt a pumping station as part of its public system before the date of automatic transfer should they wish to do so. In either case the cost of any remedial works to pumping stations that sewerage undertakers identify as necessary, or the cost of replacement where this is deemed to be the most satisfactory solution, will be met by the WaSCs themselves. Ultimately all pumping stations will transfer no later than 1 October 2016 (see Chapter 3).

4.6 In assessing the costs of transfer, Ofwat has allowed for interim works to locate and rectify problems with pumping stations that assume that they will transfer to WaSCs in steps over the period 2011-12 to 2015-2016 (See Annex A).

4.7 There are likely to be many types and variants of existing private pumping stations, the majority of which will require some work prior to transfer. Current industry estimates indicate that there might be up to 33,000 sewage pumping stations eligible for transfer. Because of the nature of the transfer of gravity sewers and lateral drains, sewage pumping stations may serve from two houses to an entire housing estate. Where a pumping station serves a single property, it will remain private, but there may be situations where the pressurised rising main at some point becomes a lateral drain and also transfers into WaSC ownership.

4.8 Consequently, there are a range of individual pump sizes, functions, wet wells, valves and valve chambers, operating controls, electricity supplies and voltages, alarm systems and land ownership issues etc. that are covered within the generic term of 'pumping station'. Remedial works to facilitate transfer will need to consider the scope of improvements necessary to bring each pumping station to a transferable state.

### **What does not transfer**

4.9 There are a number of situations where sites under common ownership have their own internal drainage arrangements which would not be regarded as sewers since the site itself comprises a single curtilage. Curtilage is not defined in the Water Industry Act 1991 and the Courts take a view on the circumstances of individual

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<sup>9</sup> Work might involve a funded programme of upgrading and rearrangement, for example, re-siting pumping stations in more accessible positions, rearranging power supplies and connected pipework.

cases where there is any dispute about the status of a particular pipe as a sewer or a drain.

4.10 Sites that Government considers to comprise single curtilages and to which the transfer regulations do not apply include caravan parks, council provided travellers sites, airports, ports, railway stations and some commercial or industrial sites. Government will consider whether to issue guidance on the circumstances and types of site that comprise a single curtilage for the purposes of transfer.

**Question 1:** *Can you suggest an efficient and simple way to identify sites which may be in multiple occupation but comprise a single curtilage?*

### **Surface water sewers draining to water courses**

4.11 Government has decided that only surface water sewers that drain directly to the public sewerage system should be included following consultation and stakeholder engagement.

4.12 Property owners pay sewerage charges that include an element for disposal of surface water. Where surface water does not drain to the public sewerage system arrangements exist for the surface water drainage element of sewerage charges to be discounted. As a result, charge-payers are not disadvantaged in the same way as owners of private sewers draining to the public sewerage system, who not only pay sewerage charges but are also responsible, often without realising, for the maintenance of the private sewer. This is a perceived unfairness that Government seeks to address through transfer.

4.13 Nor do surface water sewers that drain direct to watercourses generally suffer the maintenance problems that are inherent in ownership of foul or combined sewers, which have a greater propensity to block (often through disposal of inappropriate materials into them) than surface water sewers. The implications of blockages in surface water sewers are also less, having much less potential for environmental pollution or problems with public health.

4.14 Overall, Government is not persuaded of the case for transferring surface water sewers. Should evidence become available to suggest a case for transfer in the future, it would be possible for a transfer of these private sewers to be effected by making another set of regulations.

### **Treatment of Crown land**

4.15 Land forming part of the Crown estate commonly enjoys special rights and privileges when legislation is applied that recognises its special status. In some cases legislation requires the Crown's permission to be sought before access is

allowed and in other cases provision is made that powers in legislation simply do not apply to the Crown estate. Some Ministry of Defence land for instance, has restricted access for security reasons, as does some land belonging to the National Offender Management Service.

4.16 Given the number of Crown bodies and different reasons they might have for wishing to restrict access, Government has decided to disapply the transfer of private sewers to Crown land but instead to provide for crown bodies to be able to volunteer sewers on Crown land for adoption where they wish for them to be transferred. This approach has the advantage of not requiring complex definitions of sites to be excluded from transfer to be included in regulations, with the risk that they do not fully cover all circumstances that might become apparent when transfer occurs. Crown bodies will be invited to write to the WaSC within whose area any land in which there are sewers that they wish to be included in transfer, identifying the area of land and providing any details they have of the location of the sewers in question and arrangements for access. It is proposed that this should be done by 1 April 2011 and consideration will be given to arrangements for notification.

**Question 2:** *Do you consider that there are other circumstances that should be excluded from transfer? If so, please provide a reason for your answer.*

## Chapter 5 – Appeals against transfer

5.0 Should owners not want their sewer or lateral drain transferred an appeals procedure will be available.

5.1 Section 105B of the Water Industry Act 1991 makes provision for appeals to Ofwat by an owner of a sewer or lateral drain and any other person affected by a proposal, or failure to make such a proposal, to adopt a sewer or lateral drain.

5.2 The primary grounds on which someone may appeal under Section 105B are that:

- They consider the sewer does not satisfy the criteria established for a particular adoption scheme, or
- They consider the adoption would be seriously detrimental to their interests

5.3 Section 105B also allows for the Secretary of State or Welsh Ministers to make further provision in connection with appeals. However, Government is satisfied that the appeal provisions available under Section 105B are adequate to cover the circumstances of the transfer under the proposed regulations and does not propose to make further provision.

5.4 Those aggrieved at having their sewer or lateral drain adopted will have the right to appeal against the transfer. This will enable owners of private sewers who have made arrangements for the management of all of the sewers on a discrete site, say industrial or commercial sites with comprehensive infrastructure management arrangements in place, to seek to show that transfer is not necessary because comprehensive ongoing maintenance is already provided for.

5.5 Other affected parties will be able to appeal where they consider that the transfer may have a detrimental effect on them. One example may be where a private sewer crosses private land and has the benefit of an easement providing for the sewer to be moved at the cost of the sewer owners should the landowner propose to develop their land.

5.6 In determining appeals, Section 105B provides for Ofwat to be able to specify conditions, including conditions relating to payment of compensation. Government considers this an adequate remedy in cases of appeal because of potential detriment.

5.7 A process for appeal to Ofwat under Section 105 of the 1991 Act against WaSCs' use of their discretionary powers for adoption of private sewers and lateral drains already exists. The 2007 consultation on implementation options<sup>10</sup>

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<sup>10</sup> Consultation on Private Sewers Transfer – Implementation Options (July 2007)

suggested that the existing administrative process for appeals be used for appeals against transfer as well. Grounds for appeals against the proposed transfer are likely in many cases to mirror those arising in appeals against discretionary adoption and Government proposes to adopt the existing administrative process to deal with appeals against transfer rather than establish an entirely separate one.

5.8 Although the grounds of an appeal against transfer may mirror those where a WaSC makes a proposal to adopt under its discretionary powers, the circumstances will differ slightly. Where a WaSC makes a proposal under its discretionary powers the extent of the sewer that is subject to a proposed notice of vesting will be clearly identified in its notice, which it is required to serve on the individual owners of the sewer. A notice served under the private sewers transfer provisions will not identify the precise extent of the sewer in question but will be a generic description of the extent of sewers and lateral drains to be adopted and will be served on all of the sewerage customers of the WaSC.

5.9 Also, currently, third parties have no right of appeal, whereas they will under the transfer arrangements. Ofwat do however already have responsibility for considering third party appeals in respect of the right to have pipes on land moved to enable the landowner to carry out improvements to the land in which the pipe is located.

5.10 The process for handling appeals is ultimately a matter for Ofwat, but currently on receipt of an appeal the parties are invited to make written submissions. After seeking any necessary additional information from the parties, to clarify matters or resolve conflicts on matter of fact, or from others who may have information relevant to the appeal, a draft determination is produced on which the parties are invited to comment. In the light of any comments a final determination is issued to both parties.

**Question 3:** *Are there any further matters that you consider the Secretary of State or Welsh Ministers should require Ofwat to have regard to when determining appeals against transfer? If so, please provide a reason for your answer.*

## Chapter 6 –Responsibilities following transfer

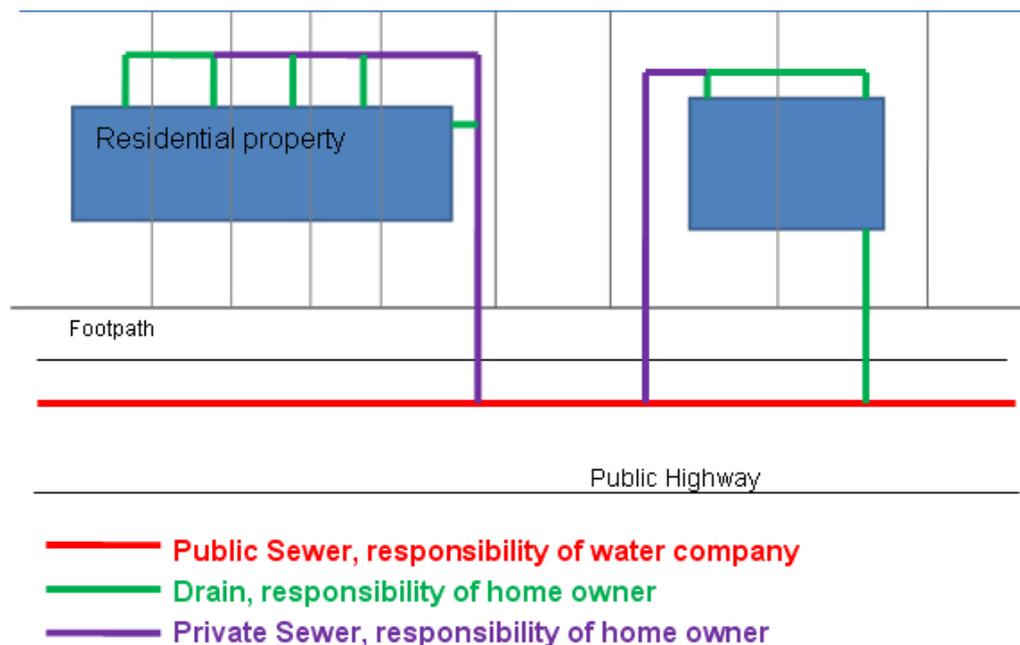
6.1 The transfer of private sewers and lateral drains to the WaSCs in England and Wales will bring about the biggest change in responsibility for sewerage services since 1937.

6.2 Following transfer householders and other property owners will no longer be responsible for drains and sewers which drain to the public sewerage system outside of their property curtilage, and any sewers within the curtilage. Where householders might previously have been responsible, either solely or jointly with others served by the pipe, for either a lateral drain and or a sewer in a neighbour's garden or in other land to which they had no rights of access or in the highway, in future only the single drain serving their own property alone will remain the responsibility of the householder/property owner.

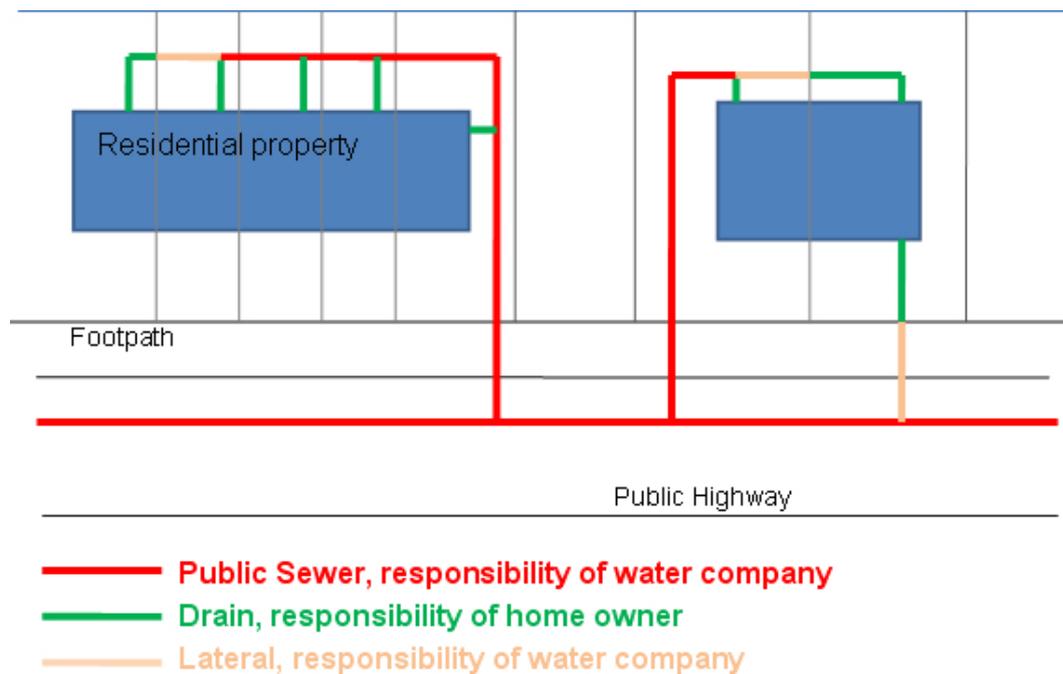
6.3. This will remove from householders in particular a burden they are often ill equipped to deal with and a responsibility which they are commonly unaware of until a problem arises. It will also remove the possibility of disputes about responsibility for dealing with blockages or undertaking works of repair to a sewer in someone else's land who may be unaffected by the problem and unwilling to allow access or to contribute towards the cost.

The effect of transfer on householders' responsibilities is illustrated in the following schematics of typical sewerage arrangements:

### Example of existing arrangements



## Example of future arrangements



6.4 Householders and other property owners whose drains ultimately drain to the public sewerage system will retain responsibility for that part of the drain that serves only their property and is within their property curtilage. Where there is a pumping station on a drain that serves only a single premises and is within the curtilage of the premises that it serves, this will also remain the responsibility of that property owner.

6.5 All lateral drains (that part of a drain serving a single premises that is outside of the property curtilage) will become the responsibility of the WaSC for the area, together with all sewers, whether within or outside of the property curtilage.

6.6 Any wholly private drainage systems that do not ultimately drain to the public sewerage system (those that drain to private treatment facilities, including cess pools and septic tanks), will also remain the responsibility of the owners whose properties they serve. This includes surface water drains and sewers that drain to soakaways or direct to a watercourse without first connecting to a public sewer.

### Impact on the drainage repair industry

6.7 There is currently a large but disparate independent drainage repair sector offering a range of services to householders and other property owners who are responsible for private drains and sewers. They are generally small bore pipe specialists who offer a range of services from blockage investigation and clearance to renovation and renewal of private drains and sewers. Such businesses range in size from micro businesses (firms employing fewer than 5 people) to larger companies offering regional or national coverage.

6.8 Government has always recognised that it is smaller firms in the drainage sector that are most likely to be affected by a transfer of private sewers and lateral drains to the WaSCs and has made considerable efforts to take account of the impact of transfer on them in developing proposals for transfer. There is no one body that represents the majority of drainage contractors in the same way that Water UK represents the majority of the water industry or Consumer Council for Water the customers of WaSCs. However, the Society of British Water and Wastewater Industries and the National Sewerage Association have represented strongly the position of specialist small drainage contractors as members of a steering group during development of the transfer proposals. Government will continue to take into account the impact of transfer proposals on the drainage sector and the views of newer groupings such as the recently established National Association of Drainage Contractors.

6.9 Transfer will significantly alter the drainage repair market, which will move from reactive maintenance initiated by householders to a more integrated, planned maintenance regime over time. However, the same work will still remain to be done and the WaSCs will most likely need to call on the specialist skills of small bore pipe companies. Water UK, the representative body for most WaSCs, has already put what information is available on member companies' likely policies on contracting for work on transferred assets on its website.<sup>11</sup> The market for work on single properties' drains within the curtilage will also remain, along with maintenance and repair work on entirely private systems (those draining to private treatment works, cess pools and septic tanks as well as surface water drainage that does not drain to the public sewerage system).

6.10 The impact of transfer on the drainage repair industry is assessed in the Small Firm's Impact section of the Impact Assessment accompanying this consultation paper (see Annex B).

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<sup>11</sup> <http://www.water.org.uk/home/policy/positions/private-sewers?s1=drainage&s2=contractors>

## **Chapter 7 – Communication on the transfer**

### **What does transfer mean for householders?**

7.1 Transfer will mean wide-ranging changes to current arrangements for private sewers and lateral drains. Making householders and the relevant parts of the water and drainage sector aware of these changes and the reasons behind them will be a crucial part of the transfer process.

7.2 Effective communication will be important in managing public expectation and ensuring a high level of public understanding. For instance, there will be drainage infrastructure – namely drains within the property curtilage – that will remain private and which will therefore remain the responsibility of property owners following transfer and this will need to be reiterated. Private sewer owners will remain liable for costs associated with the repair and maintenance of private sewers they own right up until the date of transfer itself.

7.3 Following transfer WaSCs will need to provide clarity regarding how they will manage problems with former private sewers and lateral drains when notified. Property owners need to understand who to approach for the purposes of removing blockages and undertaking repairs. Insurance companies and drainage contracting firms also need to be aware of how transfer will affect procedures in order to efficiently manage problems.

7.4 Government recognises the importance of and will establish a communications strategy to ensure that householders and other elements of the water industry are well informed about changes and are clear on their rights and responsibilities.

### **Notification/publicity/how to inform private sewer owners and drainage contractors**

7.5 There are various ways in which information on the changes post-transfer can be communicated to householders and a number of organisations could be involved in the process.

7.6 WaSCs will be required to issue notices to sewer owners of their intention to adopt their private sewers and drains. Before doing so WaSCs might wish to provide customers with general information on transfer and the changed responsibilities that will result when sending water and sewerage bills. This also provides the opportunity for explaining to customers bill increases that will result from transfer to ensure that they are aware of the benefits received in return.

7.7 There is a role for Government in disseminating information. Defra already has pages on its website about the review of private sewers.

<http://www.defra.gov.uk/environment/quality/water/industry/sewers/existing/>

The Welsh Assembly Government also has details about the transfer of private sewers on its website.

<http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/sewersinwales/?lang=en>

Information may be added to the Government's Directgov website.

Many local authorities provide information on their websites about owners' responsibilities for private sewers. Government will work with local authorities in England and Wales to update and explain the new responsibilities following transfer.

7.8 Government will continue to engage with the Consumer Council for Water to ensure Government and WaSCs deliver an effective customer communications strategy for the transfer.

7.9 Government plans to publicise transfer in trade magazines and newspapers such as Drain Trader to try to ensure that all sections of the industry, including harder to reach groups, such as small drainage contractors, are informed.

The WaSCs should consider the need to communicate the timing and new responsibilities that transfer will bring to small drainage contractors operating within their areas. Drainage contractors need to understand how arrangements for blockage clearance and repair will operate following transfer and will want advice on how to obtain work under the new regime.

7.10 WaSCs already produce codes of practice on their use of works powers on private land and guidelines for property owners might also usefully be produced, to clarify rights of access to their land, and of the types of work that can be carried out by WaSCs under limited notice periods. Guidance could be provided either by industry or Government.

## **Chapter 8 – Next Steps and regulatory issues**

8.1 Subject to Parliamentary and the National Assembly for Wales approval, the transfer of private sewers and lateral drains that drain to the public sewerage system will take place on 1 October 2011. From that date all private sewers and lateral drains connected to the public sewerage system will become public sewers, and their maintenance will be the responsibility of the WaSCs. To bring transfer into effect, the Secretary of State and Welsh Ministers will make transfer schemes under which WaSCs will be required to make a declaration of vesting under section 102 of the Water Industry Act 1991 in respect of the sewers and lateral drains which are to transfer. Such declaration is the formal process by which a sewer or lateral drain is adopted as “public” and which legally affirms ownership. Sewerage undertakers appointed to serve new developments under the inset appointment process should also ensure that they have made declarations of vesting in respect of the sewers and lateral drains that they or developers have constructed before transfer takes place.

8.2 Government intends to settle the detail of the regulations in light of responses to this consultation and to lay them in Parliament and the National Assembly for Wales as soon as possible thereafter. Once approved, the regulations are intended to come into force in April 2011 and the actual transfer of gravity sewers and lateral drains will take effect in October 2011. It is proposed that the regulations will require that transfer of all pumping stations and associated pressurised (rising) mains that WaSCs may not have adopted during the interim period take place automatically on 1 October 2016 (see Chapter 4).

### **Preparation for transfer**

8.3 In anticipation of transfer, the water industry will need to ensure that they are fully prepared for the changes the transfer will bring. The transfer will impact particularly on the WaSCs, who will take on responsibility for some 184,000km of private sewers and 36,000km of private lateral drains that connect to public system, and on the drainage repair industry, which will see a shift in the market for its expertise. Rather than undertaking work directly for householders and other owners of private sewers work on transferred sewers and lateral drains, their work will instead arise from contracting directly or sub-contracting for the WaSCs on these formerly private assets.

8.4 WaSCs will need to take a view on the adequacy of resources available to them in readiness for taking on the responsibility for additional maintenance and repair work. The companies, and local authorities, may also wish to satisfy themselves whether, following transfer, there are any local authority staff, formerly engaged primarily on maintenance of private sewers, to whom Transfer of Undertakings Employment Protection would apply.

8.5 It is a matter for the WaSCs, but we understand that it is likely that many will contract out the additional work falling to them as a result of transfer and this will require them to undertake formal procurement exercises to draw up new contracts. In turn, those companies that are successful in contracting for this work will need to ensure the adequacy of their own workforce and will themselves need to consider whether they need to enter into agreements to sub-contract to small bore pipe specialists. Water UK has already placed what information is available to them of their member companies' intentions on their website<sup>12</sup> for the guidance of drainage repair companies.

8.6 Whilst this will mean a significant change in the way in which work in the drainage repair industry is secured, the amount of work which needs to be undertaken will remain unchanged in the short to medium term. The Government recognises that as a result of these changes, drainage repair firms will also need time to adjust their business plans in the light of transfer and encourages WaSCs to engage as soon as is practicable with companies operating in their areas to ensure that their intentions for handling their new responsibilities is clearly communicated to potential contractors and sub-contractors.

### **Training for sewerage/drainage operatives**

8.7 A major benefit of transfer is that responsibility for the public and private sewerage system will, for the first time, be fully integrated, allowing the WaSCs to ensure that maintenance and repair work is undertaken as part of wider planned work on the system as a whole rather than purely reactively. This also offers the opportunity to ensure that working practices, standards of materials and workmanship are consistent across the whole of a particular WaSC's system.

8.8 The WaSCs train their own staff and expect contractors' staff to be trained to levels that meet the companies' requirements for quality of work and in the interests of meeting health and safety requirements. In the future it is likely that staff of companies contracting or sub-contracting to undertake work for WaSCs will be expected to have appropriate qualifications.

8.9 Work to develop new skills training to appropriate levels has been undertaken by Energy and Utility Skills, in anticipation of demand for training to a recognised standard becoming a desirable way for small businesses to evidence their competence when sub-contracting for work with the WaSCs.

### **Standards of service**

8.10 One of the primary aims of the transfer of private sewers and lateral drains is to relieve householders of the burden of dealing with problems for which they are often unaware they are currently responsible. One measure of the success of transfer in meeting this aim will be the customer experience following transfer. Ofwat already sets service standards and reports on the WaSCs' achievements in meeting a range of criteria. Following transfer it will be vital that service provision aims to meet these

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<sup>12</sup> <http://www.water.org.uk/home/policy/positions/private-sewers?s1=private&s2=sewers&s3=transfer>

high standards. Ofwat will continue to monitor and report on how all companies are delivering the sewerage service. Ofwat will identify and report to Government on any changes in the level of service provided which relate to the transfer – and consult Government before taking action where necessary to secure an appropriate level of service. Any action would recognise that the companies will have had a very limited amount of time to address any shortcomings

8.11 Government encourages the WaSCs to ensure that they are ready for the challenge that transfer will bring by ensuring that their call centres are adequately staffed and that call centre staff are trained to deal with increased numbers of calls from the public about problems with their sewerage and in identifying problems for which the companies will in future be responsible. Insurers need to ensure that staff are briefed on new procedures for dealing with enquiries regarding work on (currently) private sewers once transfer takes place.

8.12 The water industry's Guaranteed Standards scheme (GSS) provides important safeguards for customers of the WaSCs. These include, in some cases, financial compensation when companies do not meet certain standards of service, including flooding from sewers.

8.13 Following transfer, Government understands that Ofwat intend that GSS protection extend as companies take responsibility for the formerly private sewers and lateral drains. While some companies have suggested that there should not be a GSS liability until a later date, in recognition of the fact that they will have inherited assets of unknown serviceability, Government agrees with Ofwat that it would be entirely against the spirit of the transfer to apply different standards to some customers. While GSS claims may entail some additional financial burden for the companies, Government is confident that Ofwat's approach to setting price limits and the mechanisms in place to mitigate financial risk are appropriate to address the likely level of increased costs.

### **Reporting of pollution incidents and enforcement**

8.14 WaSCs have expressed concern over potential liabilities associated with the newly acquired assets for which they will be responsible. In particular, they have emphasised the increased risk of prosecution for causing water pollution as a result of sewer blockages or failures at pumping stations attributable to these assets.

8.15 The Environment Agency is responsible for the enforcement of legislation relating to water pollution and undertakes this role in accordance with a published Enforcement and Prosecution Policy<sup>13</sup>. This lays out the range of enforcement actions available to the Agency and highlights the importance of taking account of public interest in deciding the appropriate action.

8.16 In addition, in recognition of the special circumstances surrounding the adoption of private sewers, the Agency is developing a temporary enforcement position setting out the considerations it will take into account in applying its

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<sup>13</sup> <http://www.environment-agency.gov.uk/business/regulation/31851.aspx>

Enforcement and Prosecution Policy to incidents of water pollution caused by adopted private sewerage systems. Amongst other considerations these could include whether the sewerage undertaker had:

- Taken timely and appropriate steps to develop an understanding of the risks associated with private sewers which had transferred to them;
- responded promptly to any problem; and
- taken appropriate steps to minimise the impact of any sewer blockage or failure.

### **Claims in negligence**

8.17 WaSCs have expressed concern that they may be liable for claims in negligence for damage caused by sewer flooding resulting from poorly maintained assets that they might inherit through transfer. Government does not consider that it is possible to provide a defence against such claims through the transfer regulations. Nor does Government consider that it is necessary to do so. In practice the courts would take account of the circumstances of any individual case that might be brought before them. Transfer will inevitably bring with it a legacy of some poorly maintained assets, and it is likely that the courts would take into account the fact that the WaSCs would not necessarily know straight away the state of the assets that they take over.

### **Sewer Records**

8.18 Section 199 of the Water Industry Act 1991 requires sewerage undertakers to keep records of all sewers and drains vested in them as “public sewers”. However, the Act makes an exception to this requirement in respect of drains or sewers laid before 1 September 1989, when the privatised WaSCs were created and at which point they inherited the records and responsibilities of the former Water Authorities.

8.19 The exception recognises that to have required the companies to establish the location of all public sewers and drains which they had no reasonable grounds for suspecting the existence of, or about which information was not readily available, would have been a time consuming and expensive exercise the benefits of which would not be justifiable in terms of the cost implications for the companies’ customers generally. The Secretary of State and Welsh Ministers are responsible for the enforcement of the duty to keep records and do however expect the companies to make records of such sewers and drains where they are discovered in the course of their activities.

8.20 Government recognises that similar issues arise in respect of transferred sewers and lateral drains. It has been estimated that the cost of carrying out a full exercise to map and survey private sewers and drains would be around £1 billion. Even if companies were required to map transferred assets this would not, in the Government’s view, be a cost proportionate or practicable exercise. This is particularly so when, following transfer, all sewers and lateral drains that drain to the public sewerage system will become vested in the WaSCs. In the event of a

problem on a sewer or lateral drain of one of their customers, there will no longer be any need to establish whether the problem arises on a private sewer or lateral drain in order to establish responsibility for resolving it.

8.21 Some records of private sewerage systems will be available, either from the owners, developers or local authorities. Where these are available the Secretary of State and Welsh Ministers will expect the WaSCs to take the opportunity to update their records accordingly. Similarly, the companies will be expected to update their records whenever the location of a drain or sewer becomes apparent because of work undertaken on the drain or sewer in question.

8.22 Government does not at this stage consider that it is imperative to provide a similar exception before transfer takes place, to that provided for pre 1989 sewers and drains. The Government will however look at options to amend primary legislation when a suitable legislative opportunity arises. An obvious parallel for amendment would be the exemption currently provided by section 199 for sewers laid before 1 September 1989 but including a requirement that mapping should be undertaken when the undertaker has reasonable grounds for knowing of the existence of a private sewer or lateral drain connecting with their system. In the meantime, should the question of enforcement arise, the Secretary of State and Welsh Ministers can use their discretion when considering whether there is sufficient justification to require that investigation and mapping be undertaken in any individual case.

**Question 4:** *Are there any transitional arrangements not covered in this document you would expect to see and why?*

**Question 5:** *How would you expect to see them covered in the proposed regulations?*

## **Chapter 9 – New sewers and lateral drains following transfer**

### **Proposals for automatic adoption/build standard and why**

9.1 Alongside plans to transfer private sewers and lateral drains connecting to the public sewerage network, Government is proposing to make the adoption of such new sewers by the WaSCs compulsory. In support of this Government plans to introduce a mandatory build standard for gravity foul sewers and lateral drains that will make the construction of new sewers and lateral drains connecting to the public network subject to national standards unless the WaSC and developer agree otherwise.

9.2 The rationale for imposing mandatory adoption and the new build standard concerns the need to stem the proliferation of new private sewers which would replicate the same problems in the future. Mandatory adoption will ensure that all new sewers connecting to the public network will ultimately become the responsibility of the WaSCs, ensuring their continued maintenance. Imposing national sewer standards will guarantee that WaSCs acquire appropriate quality assets when adopting new sewers, enabling them to avoid passing on unnecessary costs of repair and upgrading to bill-payers. The combination of mandatory adoption and mandatory sewer standards will improve the sustainability and integrity of the sewerage network as a whole and alleviate customer burden by making all sewers and lateral drains connected to the sewerage network public.

### **Flood and Water Management Act 2010 - provisions for build standard/adoption and how (s104 process)**

9.3 Mandatory adoption and the mandatory build standard will be delivered by the changes to primary legislation made by the Flood and Water Management Act 2010, which received Royal Assent on 8 April 2010.

9.4 Once it comes into force the 2010 Act will amend the right to connect new sewers to the public sewerage network, provided for in section 106 of the Water Industry Act 1991. Section 42 of the 2010 Act delivers mandatory adoption and the mandatory build standard by making the right to connect new sewers dependent upon meeting certain conditions. Specifically, it makes it a condition for anyone wanting to connect a newly built sewer to the public network that they first enter into an adoption agreement, as permitted under section 104 of the Water Industry Act 1991, with a WaSC.

9.5 Details to be included in conditions of adoption agreements concerning e.g. bonds, will largely be left to be decided by the parties concerned. However, there

will be two constraints on the contents of the agreements which will ensure both that adoption takes place and that mandatory build standards are met.

9.6 Firstly, the adoption agreements must contain a commitment from those building sewers to build them to agreed standards, with the mandatory build standards as a default standard. National mandatory standards will be published by the Secretary of State and Welsh Ministers and will be the default standard for all new sewers connecting to the public network following the coming into force of the Flood and Water Management Act 2010. There will also be an option for those building sewers to seek the agreement of WaSCs to construct new sewers to different standards, where appropriate. This measure is intended to avoid stifling the development of innovative techniques in the construction of new sewers, which might otherwise be precluded by a mandatory build standard.

9.7 Secondly, the agreements must contain terms which bind the WaSC to adopt the new sewer. These terms will ensure the adoption of the newly built sewer, whether or not the other terms of the agreement, such as the meeting of agreed construction standards, are met by whoever has built the new sewer. This means that even if the new sewer does not actually meet the standards described in the agreement, it must nevertheless still be adopted as a public sewer.

9.8 WaSCs will then be able to make use of the other features of the adoption agreements, concerning bonds or other financial sureties, to improve, repair or conduct any work on the sewer necessary to bring it up to acceptable standards.

9.9 The details of how and when the vesting of the new sewer in the WaSC must be agreed and subsequently take place will be determined by regulations to be published by the Secretary of State and Welsh Ministers.

9.10 Requiring adoption ensures that all new sewers are eventually integrated into the public sewerage network as the responsibility of the WaSCs, and that new private sewers are not created.

## List of Consultation Questions

### Chapter 4 - What will transfer

**Question 1:** Can you suggest an efficient and simple way to identify sites which may be in multiple occupation but comprise a single curtilage?

**Question 2:** Do you consider that there are other circumstances that should be excluded from transfer? If so, please provide a reason for your answer.

### Chapter 5 – Appeals against transfer

**Question 3:** Are there any further matters that you consider the Secretary of State or the Welsh Ministers should require Ofwat to have regard to when determining appeals against transfer? If so, please provide a reason for your answer.

### Chapter 8 – Next steps and regulatory issues

**Question 4:** Are there any transitional arrangements not covered in this document you would expect to see and why?

**Question 5:** How would you expect to see them covered in the proposed Regulations?