
What's this document about?
Explains our roles, responsibilities and procedures for applications for first time sewerage and related disputes.
It also explains the roles and responsibilities of owners, occupiers and sewerage undertakers in this process.

Who does it apply to?
This document is designed to help owners and occupiers, sewerage undertaker(s) and Environment Agency staff (Water Quality NTS, external relations and EM teams) understand the procedures involved.

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Introduction

Definitions

The following definitions apply within this document.

<table>
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<th>Term</th>
<th>Definition</th>
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<tr>
<td>Application</td>
<td>Means an application for provision of public sewers, that a member of the public, local authority or other party makes to the sewerage undertaker, under section 101A of the Water Industry Act 1991 (section 101A).</td>
</tr>
<tr>
<td>Dispute</td>
<td>Means a dispute between an owner/occupier of premises in the sewerage undertaker’s area and the sewerage undertaker. Either party may refer the dispute to the Environment Agency to determine under section 101A(7) of the Water Industry Act 1991.</td>
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</tbody>
</table>

Summary of roles

The table below lists what happens during the process and which Environment Agency departments are responsible.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Action requested</th>
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<tbody>
<tr>
<td>Pre-application</td>
<td>An applicant may ask us for information to support the technical case for their application to the sewerage undertaker.</td>
</tr>
</tbody>
</table>
| Application | A sewerage undertaker may formally consult us for information on pollution, risk to water sources, nuisance or other relevant details.  
An applicant may also ask for information, if they did not do so at pre-application stage. |
| Dispute | An owner or occupier or a sewerage undertaker refers a dispute to us to determine. |

<table>
<thead>
<tr>
<th>Lead department</th>
<th>Supporting department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area Planning and Corporate Services Manager</td>
<td>Area Environment Management</td>
</tr>
<tr>
<td>Area Planning and Corporate Services Manager</td>
<td>Area Environment Management</td>
</tr>
<tr>
<td>Surface Water Quality Technical Services team</td>
<td>Head office legal department</td>
</tr>
<tr>
<td>(referred to in this document as ‘SWQ NTS team’)</td>
<td></td>
</tr>
</tbody>
</table>
Environment Agency’s role under section 101A

Duty to provide public sewer

Under section 101A of the Water Industry Act 1991 (‘the Act’), as amended by Schedule 22 to the Environment Act 1995 and section 94 of the Water Act 2003, sewerage undertakers have a duty to provide a public sewer where existing drainage systems are giving rise, or are likely to give rise, to adverse effects on the environment and amenity and the most appropriate way of resolving those effects is by providing a public sewer.

A duty doesn’t arise where there’s an existing public sewer, which should be dealt with by the sewerage undertaker under its existing duties.

Although it’s sometimes referred to as ‘first-time rural sewerage’, the duty under section 101A applies to all locations that meet the assessment criteria and isn’t restricted to rural areas.

Primary role as arbiter

The Environment Agency’s primary role under section 101A is as the arbiter of disputes between an owner/occupier or other interested party, and the sewerage undertaker.

This role requires clearly defined internal procedures, transparency and openness so we can demonstrate to all parties that we are acting as an even-handed arbiter, while not constraining our responsibilities for environmental improvement.

**Important** We must not make or sponsor applications.

Never comment on priorities

We must not compromise our role as the arbiter of disputes.

When a formal application for first time sewerage has been made to the sewerage undertaker, the local area Planning and Corporate Services (PACS) manager will co-ordinate communication and be responsible for supplying information to both the applicant and the sewerage undertaker.

Environment Agency staff must not comment on the relative priority of these applications.

Sewerage undertakers’ procedures

Any party with an interest in drainage, including owners or occupiers and local authorities, may apply to a sewerage undertaker to provide a public sewer under section 101A.

Sewerage undertakers may also undertake assessments and provide first time sewerage schemes themselves.

Each sewerage undertaker is responsible for its own procedures.

We expect these procedures to assist applicants rather than deter them; the information requested by a sewerage undertaker shouldn’t impose an unreasonable burden upon the applicant.

The sewerage undertaker must make it clear to applicants that submitting an application doesn’t imply any financial or contractual commitment for them to connect to the public sewer, if it’s provided.
If an application is successful, householders wishing to connect to the public sewer will usually have to pay:

- the cost of laying a private drain from the building to the point where it connects to the public sewer;
- a one-off fixed infrastructure charge;
- the annual sewerage charges

All these costs are payable to the sewerage undertaker.

However, some sewerage undertakers give incentives to potential customers to connect to the public sewer when it’s first constructed. This duty doesn’t replace the existing arrangements under section 98 of the Water Industry Act 1991, where an interested party can requisition a sewer and pay the costs.

Section 98 can still be used where the criteria to provide a sewer under section 101A are not met.
Applications for first time sewerage

Requesting information to support an application or assessment

Requests from applicants and sewerage undertakers

The sewerage undertaker formally consults us, when assessing an application, for evidence of, for example, pollution and nuisance or risk to water sources.

The applicant may also wish to consult us either before making an application or whilst that application is being assessed by the sewerage undertaker.

Both are likely to request evidence that the existing drainage system is giving rise, or is likely to give rise, to adverse effects on the local environment or amenity.

What happens

Any request for information to support an application or assessment should be made in writing to the Environment Agency’s area office and will be co-ordinated by the Area Planning and Corporate Services Manager. Our local area staff will deal with any discussions on current applications or pre-application requests for environmental information relating to the impact of sewerage discharges.

We respond to these requests in line with our:

- customer charter;
- management system procedures;
- guidance on information requests; and
- charging guidance.

The area PACS manager keeps a written record of information supplied to either party, using a [206_05_SD01_Log of information request](#).

Information provided below, describes what we will provide.
**Information we provide**

We will provide any data we hold on the environmental impact of drainage in the locality including past evidence. The information we provide can include data on our public registers and/or information known by local officers.

The information we provide may include:

- the numbers of known discharges and their quality;
- the chemical and biological quality of the receiving watercourse or groundwater;
- any failure of environmental quality standards or water quality objectives;
- any presence of sewage fungus, sewage debris and gross solids;
- the nature of geology and porosity of subsoil;
- any adverse effect on existing or potential water supplies;
- any adverse effects on any sites of special scientific interest (SSSI) or other designated sites;
- any records of incidents, complaints and completed legal action involving drainage systems in the locality.

This information is subject to any Data Protection Act restrictions where it relates to individuals.

**Information we don’t provide**

We do not normally provide information, beyond current discharge consenting policy, on the likelihood of a consent being granted, including details of consent conditions and limits, to the sewerage undertaker before a section 101A application is determined.

**How sewerage undertakers assess applications**

**Sewerage undertaker’s actions**

The sewerage undertaker, or people working on its behalf:

- assesses the application against the technical and economic criteria specified by section 101A, and the [Ministerial guidance](#), described below;
- decides whether or not it believes it has a duty to provide a public sewer;
- informs the applicant and our local Environment Management team of its decision on an application.

If they refuse an application, the sewerage undertaker should send the following information to the applicant:

- the reason(s) for refusal in full; and
- details of dispute procedures.

If the application is successful and the scheme is to proceed, then the sewerage undertaker should send the applicant a timescale for providing the public sewer and the associated works. This information should be provided promptly and be appropriate for the work required.
Ministerial guidance

Ministerial Guidance sets out the environmental and financial criteria the sewerage undertaker must consider when assessing applications. The Guidance was issued by the Department of the Environment and the Welsh Office on 1 April 1996.

The environmental criteria specified in the Guidance as being relevant to whether a duty exists includes:

- the risk to water sources, such as:
  - where local geology could allow the transmission of sewage effluent to existing or potential water source(s) used for public or private supply;
- pollution and nuisance, for example:
  - risk to public health;
  - organic or visual pollution of streams;
  - odour;
  - adverse effect on amenity or an SSSI;
- practical and engineering aspects, such as:
  - presence of ‘village drains’;
  - evidence of whether remedial work is practicable;
  - housing density;
  - soil porosity;
  - high water table.

Whether a duty to provide a public sewer arises will also depend upon the likely **comparative** costs and benefits of the alternative public and private options. In the course of an assessment or determination of a dispute these will be assessed for the various options to be considered, including improved operation and maintenance of the existing non-mains drainage systems.
How the Environment Agency determines disputes

Referring disputes to the Environment Agency

What happens
After the sewerage undertaker makes a decision on an application, the owners or occupiers of the premises or the sewerage undertaker can refer any dispute to the Environment Agency for determination. There is no time limit within which a dispute must be referred to us.

The following process assumes the owner or occupier is referring the dispute. This is the norm.

The Environment Agency’s national Surface Water Quality Technical Services Team (SWQ NTS team) carry out the determination of disputes in line with the Non-financial scheme of delegation (NFSoD).

<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>An owner or an occupier may initiate a dispute by letter or telephone. The request is passed immediately to our SWQ NTS team.</td>
</tr>
<tr>
<td>2</td>
<td>The SWQ NTS team starts an audit trail immediately on receiving a dispute.</td>
</tr>
</tbody>
</table>
| 3     | The owner or occupier may not be fully aware of either:  
  ▪ the criteria needed to demonstrate that a sewerage undertaker has a duty;  
  ▪ or the procedures involved.  
  The SWQ NTS team sends the owner or occupier:  
  ▪ a standard letter of acknowledgement;  
  ▪ an applicant’s information note; and  
  ▪ a referral form for them to complete. |
| 4     | If there are several owners or occupiers wishing to refer a dispute to us, they should appoint a single member of the group to act as a point of contact.  
  Alternatively, once an owner or occupier has raised a dispute with us, they can appoint an agent to act on their behalf, such as a local authority. A local authority may also refer a dispute to us on its own behalf.  
  The owner(s), occupier(s) or their agent should complete the referral form and return it to the SWQ NTS team |
| 5     | The SWQ NTS team will send a written acknowledgement of the returned formal referral form to the Applicant within 10 working days. |
| 6     | The SWQ NTS team explain the dispute process to the Applicant and request relevant information from the sewerage undertaker and the owner or occupier.  
  The SWQ NTS team will tell the Area Manager, Planning and Corporate Services Manager and Environment Management Team Leader that they have received a dispute. |
| 7     | The SWQ NTS team may also consult area staff for clarification of factual details related to the dispute.  
  **Note:** Area staff are not part of the decision-making process. |
The SWQ NTS team will record and send copies of the following to both parties in the dispute:

- any requests for information made to the Environment Agency area teams or other third parties;
- all the information provided by either party to the dispute.

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**How the Environment Agency determines disputes**

**Three heads of dispute**

The Environment Agency acts as the arbiter on three points:

- whether the undertaker has a duty to provide a public sewer under s101A(1);
- the domestic sewerage purposes for which any such sewer should be provided;
- the time by which a sewerage undertaker will carry out a duty to provide a public sewer, if the duty is accepted but:
  - no timescale is given;
  - the timescale that is given is considered unreasonable; or
  - the scheme slips behind schedule.

In some circumstances, the grounds on which a dispute is referred to us are unclear. The Welsh Minister or Secretary of State in England have enforcement powers if sewerage undertakers fail to properly discharge their duties under s101A.

**Objective determination**

We determine disputes objectively, by:

- considering the evidence provided;
- referring to the legislation; and
- having regard to the Ministerial guidance and all other relevant considerations.

**Examples:**

- Approved Document H2, issued as guidance to the requirements of the Building Regulations 2000 by the Office of Deputy Prime Minister;
- DETR (03/99)/WO (10/99) Circular, Planning Requirements in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development;
- and our [Operational instruction on the use of cesspools](#).

**Procedures**

The procedure for determining a dispute is not prescribed in the legislation. As there are no statutory requirements, we have developed the procedures in this instruction. We've modelled these on Planning Inspectorate procedures.
Conditions under section 101A(2)  
When we are asked to determine a dispute, the conditions set out in section 101A(2) of the Act require that:

- there are buildings on the premises (the condition for premises to be substantially completed by 20 June 1995 was removed by the Water Act 2003 and the only requirement now is that the premises in question must have buildings on them);
- the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question don’t connect with a public sewer, either directly or via any other drain or sewer;
- the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate to provide a public sewer.

Disputes on timescales  
When a dispute over timescales is referred to it, we will determine that dispute based on technical factors, such as engineering and environmental aspects and other relevant criteria, including the availability of funding.

Correspondence  
Any correspondence received by any Area teams or other head office teams relating to disputes will be acknowledged without commenting on the dispute. The area will then forward it to the SWQ NTS team handling the dispute.

Overriding approach  
We work to prevent pollution in all locations, irrespective of whether a successful section 101A application has been made or not.

While local Environment Management teams should take any current section 101A application or dispute into account, this shouldn’t stop them from taking enforcement action where pollution could be mitigated or prevented relatively simply or cheaply.

If an application under section 101A is unsuccessful, whether following a dispute or otherwise, we will use our powers in accordance with our Enforcement and Prosecution Policy.

Owners or occupiers shouldn’t be in any better or worse position than they would have been, if no application or dispute had been submitted.

Information supporting a dispute referral  
Actions  
The table below describes the actions that the SWQ NTS team take to gather information in order to determine a dispute.

<table>
<thead>
<tr>
<th>Step</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>On receipt of a completed referral form, send a request to the sewerage undertaker and the owner/occupier for relevant information.</td>
</tr>
<tr>
<td>2</td>
<td>Check that the sewerage undertaker’s assessment has considered all practicable sewerage and sewage treatment options, both private and public. This must include any provision of public package sewage treatment works.</td>
</tr>
<tr>
<td>3</td>
<td>The SWQ NTS team may write to the sewerage undertaker to ask it</td>
</tr>
</tbody>
</table>
to carry out a reassessment of the original application, including consideration of additional information and/or further public or private sewerage options.

The SWQ NTS team may also request additional information that may help determine the dispute or to resolve any questions about the information provided.

If, following two requests, the information isn’t provided, the SWQ NTS team will inform both parties of any significant assumptions that it intends to make in determining the dispute as a consequence.

4 The SWQ NTS team may request information from an independent source, copying the request and any information subsequently received to both parties, subject to any Data Protection Act restrictions.

However wherever possible, the SWQ NTS team will gather all the information needed to determine a dispute from the dispute parties only.

5 Members of the SWQ NTS team may make an informal site visit to:

- familiarise themselves with the locality;
- verify statements in the submissions;
- satisfy themselves on points that may have arisen from these statements;
- seek clarification or information on any other matter.

The SWQ NTS team will notify both parties of the date of the site visit.

During the site visit discussions will be limited to clarifying factual matters and there will be no discussion of the merits of the dispute.

Before undertaking a site visit members of the SWQ NTS team must carry out the following generic risk assessments:

- **Driving on business**
- **Fieldwork**
- **Inspecting sewage treatment works (including package treatment plants)**
- **Water – working in or near**
- **Confined spaces**
Determination outcome

What the Environment Agency may determine

We may make a determination in favour of the sewerage undertaker or of the owner or occupier.

Our decision is final and not subject to appeal.

On determining a dispute, we may make recommendations or give guidance. Where a dispute is determined in favour of the Applicant, the recommendations may include a timescale within which the sewerage undertaker should notify the Applicant of when it will provide the public sewer.

Any decision we take under section 101A is subject to judicial review proceedings by either party to the dispute.

The proceedings must be brought within three months of our decision.

No enforcement powers

We have no enforcement powers under section 101A.

The enforcement of the duty under section 101A is a matter for the Welsh Ministers or Secretary of State in England. They are responsible for enforcing breaches of statutory duty by sewerage undertakers under section 18 of the Water Industry Act 1991.

Discussions before determination

All dispute determinations must be discussed between the SWQ NTS team and head office legal staff. The SWQ NTS team must not send out any decision document until it is approved by our legal department.

If the referral raises exceptional questions on any points, we may decide to refer the matter to an internal expert for a hearing of the parties to the dispute.

Sending out the decision

When we have determined the dispute, the SWQ NTS team will send a copy of the decision to the:

- applicant;
- sewerage undertaker; and
- relevant Area Environment Management team and Area Manager

Related documents

Links

- 206_05_SD01_Planning_and_Corporate_Services:_log_of_information_request_(section_101A,_Water_Industry_Act_1991)

Product Code

G|EH|O|0|3|1|0|BSAR-|E-|E