

Public Sewers - Sewers for Adoption (Sec 102 Water Industry Act 1991)



The adoption of private sewers under Section 102 of the Water Industry Act 1991 is a subject that is often raised by Southern Water Customers. It can be an extremely complex matter and hence these guidance notes have been produced to assist those proposing to offer such sewers for adoption.

Legislation

The law covering the adoption of sewers is set out in the Water Industry Act 1991. **Section 102** deals with the **adoption of existing private sewers and associated apparatus** and, although it can be used to deal with sewers constructed for new development, it is not the most satisfactory means for doing so. **Section 104** deals only with the **adoption of new sewers**.

When a new development is planned, the developer has the opportunity to construct the sewers using approved materials and to a standard which makes them suitable for adoption by Southern Water when construction is complete. An adoption agreement can be entered into under Section 104 of the Water Industry Act 1991 prior to the sewers being built (as described in **Sewers for Adoption*). This is the most desirable arrangement and, if all new developments were covered by such adoption agreements, there would be few, if any, new private sewers on housing estates. However, there are many kilometres of existing private sewers that were built without an adoption agreement in place. Section 102 provides for the adoption of such sewers to be considered.

It is important to draw a distinction between sewers, drains, and lateral drains:

- **Sewers** are pipes carrying sewage from more than one property.
- **Drains** are pipes carrying sewage from only one property to the curtilage of the building or premises.
- **Lateral drains** are those pipes which extend from the curtilage of a single building to the point of connection with an existing public or private sewer.

Southern Water can adopt Lateral Drains constructed after 28 May 2004 and Sewers, but cannot adopt Drains.

Why have the sewers not been adopted?

There are a number of reasons for sewers remaining unadopted but generally they have not been constructed in accordance with established and agreed national standards. It may be that they have been constructed of inappropriate materials or be of inadequate size or in a state of disrepair.

Another consideration is location; sewers situated in back gardens may present problems of rights of access and are potentially difficult and costly to maintain. The developer of an estate may have deliberately chosen to let the sewers and associated apparatus remain in private ownership and constructed them to different standards to those agreed in **Sewers for Adoption*. Similarly, the developer may have failed to achieve the required standard and declined to carry out any further works to effect the necessary improvements. Even recently constructed sewers may not be constructed to the required standards; there are developments on which the agreed standards were ignored so as to provide a cheaper but unadoptable system. Unfortunately prospective purchasers are not always aware of this fact only learning the truth after occupation when they have little or no redress.

Circumstances for adoption

When deciding whether Southern Water would adopt a private sewer we must have regard to all the circumstances of the case. In particular the following points are taken into consideration:

- Whether the sewer is adapted to, or required for, any general system of sewerage which the undertaker has provided, or proposes to provide, for the whole or any part of the area
- Whether the sewer is constructed under a highway or under land reserved by a planning scheme for a street
- The number of buildings which the sewer is intended to serve, and whether (regard being had to the proximity of other buildings or future development) it is likely to be required to serve additional buildings
- The method of construction and state of repair of the sewer
- In a case when an owner objects, whether the making of the proposed declaration under Section 102 of the Act would be seriously detrimental to him/her
- Whether the lateral drain has been constructed in accordance with the building regulations

Once we have adopted a sewer the cost of its operation and maintenance falls on Southern Water. A sewer constructed using inappropriate materials or of inadequate size or with problems of accessibility is likely to require more maintenance and, therefore, cost more to look after than a sewer constructed to the approved specification.

A sewer that was at one time of the required standard but is in a state of disrepair due to age and perhaps neglect could be restored to an acceptable standard. The owners of the sewer, who are usually those whose properties are served by it, would undertake to be responsible for the cost of the necessary repairs following which adoption becomes possible.

A sewer constructed of inferior materials, pipes that are too small or with gradients too flat can seldom be raised to the required standard. The only solution may be to re-lay the sewer. The cost of this may be more than the owners of the sewers are prepared or able to accept.

What is the solution?

There are many private sewers that could be made suitable for adoption at reasonable cost. Requests for adoption have been and will be considered sympathetically. The first step is to determine the condition of the pumping station, sewer or lateral drain and/or associated manholes offered for adoption. Carrying out a Close Circuit Television Survey (CCTV) and a physical inspection can do this.

The cost of the survey, site inspection, preparation of sewer location plans and any preliminary cleansing will have to be met by the owners of the apparatus. The anticipated costs of these items will be forwarded to you following the receipt of the fees and drawings detailed below. Following the survey, a schedule of required repairs will be prepared and costed.

If the sewer or lateral drain is defective, you will be required to bring it up to the specified standard, following which we will make a further inspection (again the cost of the inspection(s) will have to be met by the owners of the apparatus).

The standards required are those set out in **Sewers for Adoption – a Design and Construction Guide for Developers*. Copies are available from the Water Research Centre web site at www.wrcplc.co.uk/sfa

There are *sewers where the cost of the necessary repairs will be more than the owners are prepared, or able, to meet. Additionally there will be sewers which were so constructed that remedial works to raise them to the required standard are not possible; re-laying may be the only solution. In these circumstances the sewers are likely to remain unadopted.

This does not mean that serious defects will be left unattended. The local authority in its public health role has powers that it can use to carry out urgent repairs. However, the cost of such repairs would be recovered from the owners of the sewer. Urgent repairs such as repairing sections of sewers in danger of imminent collapse are unlikely by themselves to improve the condition to a standard where adoption is possible.

Adoption procedures

It is sometimes difficult to establish who are the owners of the sewers. If at the time of construction the developer conveyed the sewers to the purchasers of the properties then those purchasers have become the owners of the sewers. This ownership is likely to have been transferred as the properties have changed hands. If the developer did not convey the sewers, they may still be in his ownership. A difficulty arises if he is no longer in business.

The owners of a private sewer may make an application to the sewerage undertaker requesting a declaration for adoption. The receipt of such a request would be the start of the inspection arrangements previously described.

A practical way forward is for the house owners, whether legally the sewer owners or not, to form together and appoint representatives to act on their behalf. If there is a resident's association this is relatively easy. The representatives can then ask Southern Water to make a declaration to adopt a sewer under Section 102 of the Water Industry Act 1991.

Before adopting the sewer, Southern Water must first give notice to the owner(s) of the sewer. Only after two months have elapsed and no objections raised, may we adopt the sewer. Subject to this and any legal formalities (eg transfer of land for pumping station and right to discharge surface water to a watercourse) we will make a declaration of vesting, which completes the adoption.

Your right to appeal

- If Southern Water refuses to adopt your sewer you may appeal to OFWAT.
- Anyone objecting to the proposal may also appeal to OFWAT.

For objection cases, OFWAT will make a decision whether an adoption should proceed. It should be noted that this could be a lengthy process taking up to a year for the decision to be made.

Summary

- Requests for the adoption of existing private sewers or lateral drains will be considered sympathetically
- Southern Water will look to the owners of the apparatus being offered for adoption to provide plans detailing the lengths and levels of the sewers being offered for adoption and to meet the full costs of all inspections and necessary remedial works.
- While Southern Water considers each case for adoption with care, it will not adopt sewers in such a condition that future maintenance will impose an unfair financial burden on its other customers.

Applying for adoption of an existing sewer

When you apply to have a sewer or lateral drain adopted under Section 102, you must complete the attached application form and send it to the address shown together with the following items:

- The application fee, as requested on the application form.
- The parameters used in the sewer or lateral drain design and all calculations
- Material and Workmanship specification used in construction
- Location plan highlighting the sewer(s) or lateral drain(s) to be adopted and “As Constructed” drawings. Sewers and Easements should be coloured as per the requirements of **Sewers for Adoption*
- Complete Sewer connection details
- Transfer of Land, Easement, Wayleaves or other consents information relevant to the adoption
- Any additional supporting case material
- Details of all properties connected to the sewer.
- The developer’s Health & Safety file prepared in accordance with the Construction Design and Management Regulation 1994 (if appropriate)

Your cheque should be made payable to **Southern Water Services Ltd**

Should you require any further information or assistance, please contact:

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