

# Requisition of a Public Sewer (Sec 98 Water Industry Act 1991)



Under Section 98 of The Water Industry Act 1991 it is the duty of Southern Water to provide a public sewer for domestic purposes if required to do so by certain person(s) (the requisitioner).

The requisitioner will pay for these requisitioned sewers.

Requisitioning a sewer or lateral drain means that Southern Water is responsible for the design and construction, including the acquisition of appropriate easements or rights over the land in which it will be laid. After construction we will be responsible for maintaining the sewers or lateral drains as public apparatus.

Southern Water has no duty to construct private drains other than the lateral drain from the curtilage of the connecting property to the public sewers. This should normally be arranged separately by property owners (see Section 10). A drain is a pipe serving a single property.

Requisitioning is not a speedy option. In addition, the cost to the requisitioner can be considerable if a long sewer is necessary and there are few properties to be connected.

## 1. What can be requisitioned?

Sewers or lateral drains can only be requisitioned for the purposes of draining:

- a) existing buildings or land where it is proposed to erect buildings and
- b) from which it is proposed to remove:
  - i) the contents of lavatories
  - ii) water used for domestic cooking
  - iii) water used for domestic washing
  - iv) surface water from the buildings and land occupied with and appurtenant to them.

## 2. What can not be requisitioned?

Public sewers may not be requisitioned for the following:

- a) the drainage of land on which it is not intended to erect buildings
- b) commercial effluents, including those from laundry businesses and businesses preparing food for consumption off the premises
- c) highway drainage
- d) Land drainage such as ditches, watercourses and subsoil drainage

However, subject to separate negotiations outside the provisions of S98 of the Water Industry Act, we may be willing to:

- a) provide additional capacity within requisitioned sewers for commercial and industrial effluents;

- b) provide additional capacity for highway drainage in surface water sewers requisitioned for domestic purposes. However, we cannot provide public sewers solely for this purpose.

## 3. Who can requisition Sewers?

### 3.1 Developers

It must be emphasised strongly that the requisitioning process is in no way a packaged design and construct service to developers or architects. A developer (being the landowner) can only requisition the provision of a sewer in general terms. The cost, design and routing is solely our decision and at our discretion. Our design routing and programme will of course take into account such matters as points of connection, expected flows and timing of connections as are reasonably necessary to the applicant.

We use our best endeavours to keep costs and timing within reasonable bounds, but off-site public sewers by their nature have cost and time commitments not applicable to the developers own site work, and applicants must accept this.

### 3.2 Owners and occupiers of existing premises

It is also possible for the owners and occupiers of existing premises to promote sewerage schemes and offer them for adoption. Where sewers are to be in highway land or private land it will be necessary to obtain a licence from the Highway Authority and easements from the owners of private land respectively. We advise any persons considering this option to employ a professional technical advisor.

### 3.3 Local Authorities

Local Authorities may also requisition sewers for the drainage of existing properties. Owners and occupiers are advised to contact their Local Authority Environmental Department before requisitioning a sewer or lateral drain themselves.

Southern Water Services Limited will normally enter into an Agreement with only one person or Local Authority acting on behalf of all the requisitioners. The Company will not be involved in any subsidiary agreements with other parties, which the requisitioners may consider entering into.

## 4. How will the requisition progress?

The requisitioning of a public sewer or lateral drains consists of five key stages:

- Stage 1** Initial feasibility and preliminary estimate
- Stage 2** Detailed design, including land negotiations
- Stage 3** Signing of the S98 Agreement
- Stage 4** Construction
- Stage 5** Reconciliation of the final account based on the actual costs of completing the works

## 5. What will it cost?

We will undertake the initial feasibility study and preliminary estimate for a non-returnable fee as per the application form.

You should complete the application form (SR1/S98) in order to provide the necessary information upon which the estimate will be based. Any subsequent requests for additional or alternative routes or revised estimate will be subject to further charges.

The preliminary estimate will cover the following costs:

- Land and compensation (including Easements where applicable)
- Site investigation including Environmental Constraints
- Civil engineering works
- Mechanical and electrical works (only when a pumping station is involved)
- Contingencies (including service diversions where applicable)
- Design
- Contract management and administration

The estimate will be prepared and forwarded to you within 12 weeks of receipt of your cheque and complete application form.

Where the new sewer or lateral drain is to serve offices or industrial premises etc, details must be provided of the likely daily flows or the estimated number of staff occupying the premises.

In some cases, it can be a complex technical issue to identify the best means of draining a site. In these circumstances, we may wish to employ consulting engineers in order to carry out the feasibility study and provide a reasonably accurate estimate. If this situation arises, you will be provided with an estimate of the necessary fees and will be asked to provide an undertaking to meet these costs.

Where an off-site pumping station is needed, it will be necessary to negotiate an option to purchase the site and its access before route confirmation for the estimate is possible. This could take longer.

Southern Water is responsible for selecting the route, outfall arrangements and specification for the requisitioned public sewer. If existing downstream public sewers need to be improved in order for them to accept the proposed flows from your site, then the necessary improvements to those existing public sewers will also form part of the works to be completed under the Requisition Agreement.

### Important notes to bear in mind

A Court of Appeal decision in 1999 (*British Waterways Board v Severn Trent Water Ltd*) held that there was no authority for a sewerage undertaker to discharge matter from its sewers into a watercourse as such a discharge is not made in pursuance of any statutory powers. Consequently the duty to comply with a sewer requisition (including upsizing works) to a watercourse, ditch, river etc does not arise as any such discharge would have to be sanctioned by the riparian owner(s) of the ditch, watercourse etc who are under no obligation to agree to the proposal.

Notwithstanding the above, Southern Water will attempt to assist development by negotiating with the riparian owners to allow the discharge. However, as you can imagine, this can be a protracted business and one in which Southern Water has no more influence than the developer or, for that matter, any private individual.

Southern Water's powers of entry do not extend to certain land (eg Crown Land, Network Rail, British Waterways). The cost of acquiring easements through such land will be included in the cost of the requisition. Again, no contract will be let until such rights are granted.

The request for a preliminary estimate does not commit the applicants to requisition the sewer or lateral drain.

Upon receipt of the preliminary estimate you may wish to proceed to the detailed design and formal requisition process. In this scenario a deposit equivalent to the cost of undertaking the design (as outlined in the preliminary estimate) will be required. As a guide, this is typically equivalent to 10% of the capital cost.

## 6. How long does it take?

The time taken to complete the requisition depends entirely on the complexity of the scheme. Under the 1991 Water Industry Act, the requisitioned public sewer must be available for use within six months of

- The day on which the financial conditions are met or
- The day on which the places of connection are agreed or determined.

Whichever is the greater. This period may be extended by agreement or, where there is a dispute, by an arbitrator.

In certain circumstances, it may not be possible to complete the requisitioned public sewer within the six-month period. This may be because

- Major construction works are required and it is not physically possible to complete the requisitioned public sewer within the six month period
- Works are required in land in the ownership of undertakings protected by the Act (eg British Waterways Board, Network Rail etc) and agreement is required with them prior to our entry upon their land
- Land, not in the ownership of the requisitioner, needs to be purchased for elements such as pumping stations.

In such cases, our extended programme will be stated in our formal offer letter.

## 7. How are requisitions paid for?

Sections 99 and 100 of the Water Industry Act 1991, set out the financial conditions for a sewer requisition and allow two options for payment:

### 7.1 The Undertaking

The requisitioner must undertake to meet the Annual Relevant Deficits on the sewer for twelve years and must provide reasonable security (see Section 8) to guarantee that undertaking.

The undertaking will be required in the form of a legal Agreement with one applicant as Requisitioner and, if necessary, a further party as Surety. Southern Water legal costs are invoiced separately, payable on completion of the Agreement, and are not included in the requisition costs quoted herein.

The Agreement specifies the period within which the sewer is to be provided. This period depends on the circumstances of each case but may be more than the statutory six months from signing the Agreement, as permitted on S101(2) of the Act.

Annual Relevant Deficits are sums of money calculated as follows:

- a) The annual cost of a loan for the amount required to provide the sewer is calculated. This annual cost assumes that the capital and interest are repayable in twelve equal instalments, and includes administrative, design, construction, supervision, compensation costs, all necessary new public sewers and pumping stations, etc. This cost is initially estimated, but is finally calculated on the actual final out-turn expenditure.
- b) The 12 Annual Relevant Deficits are calculated by deducting, from the above, annual wastewater charges received by Southern Water in respect of premises drained by the requisitioned sewer.

For larger developments, these charges will be received over a period of time as houses are built and occupied, and may not result in large deductions in early years. The estimate will allow for such growth, but final figures will depend on factors such as house sale rates.

If there are two or more participants in a requisition these Annual Relevant Deficits may be apportioned in any manner agreed between them.

All participants must agree the method of apportionment and notify us of this at the time of requesting their estimate. (We will not normally be a party to that agreement).

## 7.2 The Lump Sum Payment

This will be exactly as is stated. A single payment, paid as the requisition Agreement is signed, to cover all our costs.

In essence it will be an amount equal to the sum of the relevant deficits, for each of the 12 years following the provision of the sewer.

## 8. What security is needed?

Under the Water Industry Act, undertakers are entitled to ask for security before installing the new sewer or lateral drain. This is usually provided in the form of cash. However, a bond or insurance policy is equally acceptable.

It is important to note that there may be additional costs for the requisitioner in the administration of a bond or insurance policy.

Public Authorities are exempt by Statute from a requirement for security.

## 9. What other charges will be involved?

In addition to the cost of the requisition, Southern Water levies an infrastructure charge for each building when it becomes newly connected to the public sewerage system. Our annual wastewater charges also become payable upon connection. Separate leaflets explaining these charges can be obtained on request from our Customer Call Centre by telephoning **0845 278 0845**.

## 10. Where will the sewers be located?

Generally speaking requisitioned sewers will be located in the highway or dedicated open space to which each owner or occupier of premises can connect without the need to lay drains or private sewers over adjacent private land.

We will not normally lay a public sewer in private land, unless it is impracticable to lay a sewer in the public highway or dedicated public open space or unless a pumping station would otherwise be required. In such rare cases, a legal easement must be entered into between the landowner and Southern Water.

Public sewers will not normally be laid in rear gardens, unless exceptional provision is made for access for heavy excavating machinery in perpetuity, and many other operational concerns can also be satisfied completely.

## 11. What are the rights of connection?

Requisitioners should be aware that once a public sewer has been laid the owners or occupiers of any premises have a right under law to connect to it whether or not they have participated in a requisition.

It is clearly to the advantage of private requisitioners to negotiate the participation of as many neighbours as possible.

Cases have been known where failure to gain participation by all residents to a sewer requisition has led to a feeling of resentment by those who have had to carry the full burden of the cost of the scheme.

Again, residents are recommended to discuss proposals with their Local Council Environmental Officer before requisitioning.

## 12. What are the alternatives to requisitioning?

Developers have the option of constructing sewers or lateral drains themselves, to Southern Water's standards, and offering them for adoption under either S102 or S104 of the Water Industry Act 1991. The charges made by us will be those for checking the technical adequacy of the sewers, inspection fees and legal fees in preparation of the Agreement. However, the developer must provide the sewers at his cost and these have to be built to the standards set out in the *Sewers for Adoption (6th Edition)* document.

For those considering this option we advise entering into a S104 Agreement. We will check design and construction as the work progresses and the risk of constructing an unacceptable sewer or lateral drain is therefore minimised.

Where it is necessary to lay sewers across third party land, we strongly advise developers to negotiate an easement with the owner and occupier to permit construction of the sewer themselves rather than requisitioning. However, we must be consulted on the terms of the easement if the proposed sewer or lateral drain is to be subject of an adoption.

### **Special note regarding private drains and sewers**

Applicants are responsible for connecting private drains between their buildings and the lateral drain if one is provided via the requisition. It is regretted that we cannot carry out such works as part of the requisition.

Requisitioners should employ their own contractor to lay connecting drains to the sewer or lateral drain. They should obtain all necessary licenses and Building Regulation consents and must serve a sewer connection notice on us under Section 106 of the Water Industry Act 1991. The application form and guidance notes can be obtained from the website [www.southernwater.co.uk](http://www.southernwater.co.uk).

Connection work in public highways must be carried out at the point of connection, to the satisfaction of Southern Water Services Limited and throughout its length to the requirements of the Building Regulations and Building Control who will inspect the construction, and in accordance with the detailed permission of the Highway Authority especially for road reinstatement.

Draining neighboring buildings through a simple pipeline (i.e. a private sewer) can often reduce the cost of private drainage. If applicants have agreements of this nature they should inform us at the time of requesting an estimate. We also recommend contacting the local district or Borough Council's Environmental Health and/or Building Control Officers at the earliest possible stage in order to establish the Council's policy in respect of the number of house connections permitted to be made onto a single private sewer.

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

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