

## **Sewerage issues - detail**

### **Introduction**

Water UK is the organisation that represents water companies and authorities of the United Kingdom, which includes the water companies appointed as sewerage undertakers for England and Wales. It is therefore concerned to represent the interests of its members in relation to the carrying out of their sewerage and drainage functions.

The Flood & Water Management Bill, together with the Water Act 2003, give rise to various issues relating to surface water drainage and sewerage. These issues include:

- the transfer of private sewers and works to water companies;
- the universal build standards for new sewers and lateral drains;
- sustainable urban drainage systems; and
- the right of connection to the public sewerage system.

### **Background – the Water Industry Act 1991**

In order to understand these issues, it is necessary to take into account the existing law contained in the Water Industry Act 1991.

The Act as amended contains various definitions:

- “*drain*” – pipeline draining only one property;
- “*lateral drain*” – any part of a drain outside the boundary of the property;
- “*sewer*” – pipeline draining more than one property;

- “*public lateral drain*” and “*public sewer*” – lateral drain or sewer belonging to the sewerage undertaker;
- “*sewerage undertaker*” – the water company appointed by the Secretary of State or Ofwat as the sewerage undertaker for a particular area.

The Water Industry Act 1991 also contains the following provisions of particular relevance to the Flood & Water Management Bill:-

- *Adoption/Vesting Declarations* – section 102 – empowers the sewerage undertaker (SU) to vest in itself any sewer, lateral drain or sewage disposal works;
- *Adoption Agreements* – section 104 – enables SU to enter into an agreement with a person that, if a sewer, lateral drain or sewage disposal works is constructed in accordance with the agreement, the SU will then adopt the works in question;
- *Right of Connection* – section 106 – gives the owners and occupiers of property the right to connect their drains and sewers to a public sewer;
- *Discharges* – section 117(5) – discharges from sewers, drains and outfalls must be consented by the Environment Agency under the Water Resources Act 1991.

For convenience, this paper will use the following abbreviations:-

AB	approving body for SDS (County Council or unitary authority)
EA	Environment Agency
FWMB	Flood & Water Management Bill
HA	highway authority
SDS	sustainable drainage system
SoS	Secretary of State
SU	water company appointed as a sewerage undertaker
UBS	universal build standards for new sewers and laterals
WIA 1991	Water Industry Act 1991 as amended

## **Transfer of Private Sewers to Water Companies/SUs**

### *Water Act 2003*

Although the transfer of private sewers to SUs is governed by the Water Act 2003, there are issues left over from the Act which Water UK believes need to be dealt with through the FWMB.

The Water Act 2003 inserted a new section 105A into the WIA 1991:-

- the SoS may make regulations requiring the making of schemes for the transfer of private sewers, lateral drains and sewage disposal works to SUs;
- the regulations may prescribe the categories of and the circumstances in which sewers, lateral drains and works are to be transferred.

### *DEFRA*

DEFRA has announced that the transfer of private sewers and lateral drains to SUs will take place from April 2011.

### *Issues*

However, section 105A fails to deal with many issues that will arise from the transfer of private sewers, lateral drains and sewage disposal works to SUs, which will necessarily also involve the transfer of pumping stations and sewer outfalls to the aquatic environment.

Problems that will arise include:

- the acquisition of land and easements necessary for securing, operating and obtaining access to sewage disposals works, pumping stations and outfalls;
- the transfer, and the obtaining from the EA, of the consents to discharge effluent to the aquatic environment required by the Water Resources Act 1991;
- the time needed for surveying and mapping the transferred pipelines, as required by section 199 of the WIA 1991.

Water UK believes that these issues need to be dealt with through the medium of the FWMB, and will provide suggested draft amendments for consideration.

## **New Sewers and Lateral Drains – the Universal Build Standard**

### *Introduction*

Further to the requirement that all existing private sewers, lateral drains and sewage disposal works should transfer to the SUs, there would be little advantage in doing this unless all future sewers and lateral drains connecting to the public sewerage system are also transferred to the SUs.

The FWMB proposes addressing this issue by means of qualifications to sections 106 and 104 of the WIA 1991. However, for the reasons given under para 4.7 below, these qualifications would not achieve their objective.

### *Water Industry Act 1991*

Section 106 of the WIA 1991 gives the owners and occupiers of property, and the owners of private sewers draining property, the right to connect their drains and sewers to a public sewer.

Section 104 of the WIA 1991 empowers SUs to enter into agreements with persons constructing sewers, lateral drains and sewage disposal works to the effect that, if the person constructs those works in accordance with the agreement, then the SU will adopt those works.

### *Flood and Water Management Bill*

Clause 41 of the FWMB, in relation to new sewers and lateral drains which are to be connected to the public sewerage system, would qualify sections 106 and 104 of the WIA 1991 by means of a new section 106B

The new section 106B would provide that a person may only connect new sewers and lateral drains to a public sewer if he first:

- (a) enters into an agreement with the SU under section 104; and
- (b) that agreement includes provisions that:
  - (i) the new sewers and lateral drains will be constructed in accordance with the universal build standards to be prescribed by the SoS, and
  - (ii) the SU will adopt those sewers and lateral drains in accordance with section 102 of the WIA 1991.

However, section 106B(7) would then provide that a SU cannot refuse connection:

- (a) under section 106(4), that is on the grounds that –
  - (i) the sewer or drain does not satisfy standards reasonably required by the SU, or
  - (ii) the making of the connection would be prejudicial to the public sewerage system; or
- (b) on the grounds that the section 104 agreement has not been complied with,

thus negating the whole purpose of having a section 104 agreement!

Water UK therefore believes that the proposed subsection (7) needs to be deleted.

## **New Sewers and Lateral Drains – the Universal Build Standards and the Building Regulations 2000**

### *Introduction*

Another problem arising from the way in which the FWMB introduces UBSs for sewers and lateral drains is that the Bill fails to reconcile the responsibilities of the SUs for the UBSs and the responsibilities of local authorities and approved inspectors for administering the Building Regulations 2000.

### *Building Regulations 2000*

The Building Regulations are made under the Building Act 1984. They require building works to be carried out in accordance with Schedule 1 to the Regulations.

Part H of Schedule 1 contains provisions relating to drainage and waste disposal, including –

- Para H(1) – foul water drainage – requirement for adequate drainage of foul water to a public sewer; and

- Para H(3) – rainwater drainage – requirement for adequate drainage of rainwater to a soakaway, watercourse or sewer.

The Regulations are administered and enforceable by local authorities, often through private sector “appointed inspectors” approved by the local authority.

### *Flood & Water Management Bill*

However, the FWMB fails to reconcile the requirements of the Building Regulations and their enforcement by local authorities and appointed inspectors with the UBS requirements and their administration by the SUs. Water UK therefore believes that additions to the Bill are required to deal with this issue.

## **Sustainable Drainage Systems and Inter-connections with Public Sewerage Systems**

### *Introduction*

A key provision of the FWMB will be the introduction of a legal framework for sustainable drainage systems (- formerly referred to as SUDS viz sustainable urban drainage systems). Relevant provisions are contained in Schedule 3 to the Bill. Clearly these provisions are to be welcomed in principle. However, as considered below, Water UK is concerned that there is to be an unrestricted right to connect approved SDSs to the public sewerage system.

### *Definition*

An SDS is defined as any structure (other than a public sewer or natural watercourse) designed for the drainage of rainwater and aimed at attenuating flows, thus reducing flooding and associated problems. Ministers may refine this definition and its application by means of secondary legislation.

### *Approval*

Crucially para 7 of Schedule 3 to FWMB would provide that a person may not construct a SDS unless:

- it conforms with national standards prescribed by the SoS; and
- it has been approved by the Approving Body, that is the County Council or unitary authority for the area.

### *Consultations*

- Under para 11 of Schedule 3, before determining an application for approval, the AB would be required to consult:-
- the SU, if the SDS may be connected to the public sewerage system;
- the EA, if the SDS may discharge to a watercourse;
- the HA, if the SDS may affect a road,

although the AB would not be under any obligation to take account of any objections or views of the SU, EA or HA.

### *Highways*

It has also to be noted that para 15(3) of Schedule 3 to the FWMB would add a new subsection (5A) to section 115 of the WIA 1991. This would provide that a SU must accept drainage from highways via a SDS to a public sewer.

### *Connections*

All this gives rise to concerns that an AB may authorise the connection of a SDS to a public sewer:

- even though the public sewer lacks capacity to accept drainage from the SDS with the consequential danger of overflows, flooding and pollution; and
- even though – taking into account that discharges from public sewers to the aquatic environment need to be consented by the EA under the Water Resources Act 1991 – any resulting discharge from a public sewer to the aquatic environment may cause the SU to be in breach of the WRA 1991.

Water UK therefore believes that SUs need to be given the right:

- to object to the drainage of highways to SDS which in turn drain to public sewers; and
- to object to the connection of SDSs to the public sewerage system,

subject nevertheless to a right of appeal to the SoS.

### *Adoption*

Para 16 of Schedule 3 to FWMB would then require the AB to adopt the SDS, if it has been constructed in accordance with the approval given by the AB. And para 21 would provide that, on adoption, the AB would become responsible for the SDS.

However, it is of concern that the AB:-

- is not put under an express duty to maintain the SDS; and
- is not provided with any express means of funding the maintenance of SDSs.

In order to avoid the deterioration and abandonment of SDSs, Water UK believes that SDSs need to be placed under an express duty to maintain SDSs, and to be provided with the means of funding such maintenance.

## **Sustainable Drainage Systems & Individual Rights of Connection to the Public Sewerage System.**

### *Introduction*

In addition to the issues considered under para. 6 above, the provisions of the FWMB relating to individual rights of connection to SDSs which drain to public sewers are also of concern.

## *Floods & Water Management Bill*

Para 15 of Schedule 3 to the FWMB would insert a new section 106A into the WIA 1991.

Section 106A would qualify section 106 which contains the right to connect drains and sewers to public sewers:

- (a) a person may drain surface water from premises via a SDS approved by an AB and thus to a public sewer, where the approval of the AB includes the right to connect the SDS to a public sewer;
- (b) in such circumstances, the SU may not refuse such indirect connection of the property to the public sewer under either –
  - (i) section 106(4), that is on the grounds that
    - the construction of the drain or sewer does not satisfy standards reasonably required by the SU, or
    - the connection would be prejudicial to the sewerage system,

[thus contradicting the underlying purpose of the proposed section 106B as considered under para 4 above] or

- (ii) on the grounds that the SDS drains water from:
  - more than one set of premises or sewer, or
  - from land that is neither property or a sewer,

[thus for the first time ever requiring SUs to accept drainage of water from undeveloped land, that is land drainage]

### *Issues*

Water UK therefore believes that this proposed section 106A should be modified for the purpose of ensuring that:

- (a) all future sewers and lateral drains draining via a SDS to a public sewerage system should constitute part of the SDS, and as such be subject to the approval of and adoption by the AB; and

- (b) the drainage of undeveloped land to public sewers is excluded so far as possible.

## **General Right of Connection to Public Sewers**

### *Introduction*

Further to the issues considered under para.s 6 and 7 above, Water UK believes that account also needs to be taken of the Pitt Review's recommendation that the general right to connect drains and sewers to the public sewerage system needs to be ended. This we agree is essential in order to reduce the overloading of public sewers, and the flooding and pollution that result. Unfortunately (contrary to the Government's contention) this recommendation would not be given effect by the FWMB as currently drawn.

### *Section 106 of Water Industry Act 1991*

In the circumstances, Water UK believes that section 106 needs to be amended along the following lines.

When a person seeks to connect a private sewer or drain to a public sewer, the SU may refuse permission, or grant permission subject to conditions, taking into account:

- whether the connection may cause or exacerbate overloading of and flooding from the public sewerage system; and
- the availability, or the feasibility of providing and using, an alternative method of drainage (such as a SDS), taking into account costs and benefits.

with disputes determinable by Ofwat.

Additionally, no connection should be allowed from a private surface water sewer or lateral drain carrying surface water to a public foul sewer or public combined sewer either directly or indirectly via a sustainable drainage system.

## **Draft Amendments**

Water UK will provide for consideration suggested draft amendments to the FWMB reflecting the concerns expressed in this paper.

## **Conclusion**

Water UK hopes that this outline and comments will be of assistance. We shall of course be pleased to discuss these issues with you further.

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Water UK represents all water and wastewater service suppliers at national and European level. The water industry has invested £85 billion since privatisation in 1989-90.