*Draft Regulations laid before Parliament under section 105A of the Water Industry Act 1991, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2011 No. 0000

# WATER INDUSTRY, ENGLAND AND WALES

## The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

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| *Made - - - -* | *** |
| *Coming into force - -* | *1st July 2011* |

These Regulations are made in exercise of the powers conferred by sections 102(4) (as modified by section 105A(6)(a) of the Water Industry Act 1991), 105A and 213(2)(f) of the Water Industry Act 1991(**1**).

The Secretary of State and the Welsh Ministers(**2**) have consulted in accordance with the requirements set out in section 105C(2)(**3**) of that Act.

A draft of these Regulations has been approved by a resolution of each House of Parliament and by the National Assembly for Wales(**4**) in accordance with section 105A(8) of that Act.

Accordingly, the Secretary of State, in relation to any sewerage undertaker whose area is wholly or mainly in England, and the Welsh Ministers, in relation to any sewerage undertaker whose area is wholly or mainly in Wales, make the following Regulations.

(**1**) 1991 c. 56. Section 102(4) was amended by the Water Act 2003 (c. 37), section 96(1)(c), and modified by section 105A(6)(a) of the Water Industry Act 1991; see section 219(1) of that Act for the definition of "prescribed". Section 105A was inserted by the Water Act 2003, section 98. The functions of the Secretary of State under section 105A of the Water Industry Act 1991 were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672 ("the Order") (as amended by section 100(2)(b)(vii) of the Water Act 2003), in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. The functions of the Secretary of State under section 213(2)(f) of the Water Industry Act 1991 were made exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which that section applies were exercisable by that Assembly by virtue of article 2 of, and Schedule 1 to, the Order. The functions conferred on the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**2**) Functions of the Secretary of State under section 105C of the Water Industry Act 1991 were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the Order (as amended by section 100(2)(b)(vii) of the Water Act 2003). The functions conferred on the National Assembly for Wales were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006. Consultation undertaken by the National Assembly for Wales has effect as if carried out by the Welsh Ministers, by virtue of section 162 of, and paragraph 39(3) of Schedule 11 to, the Government of Wales Act 2006.

(**3**) Section 105C was inserted by the Water Act 2003, section 98.

(**4**) The reference in section 105A(8) to each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it included a reference to the National Assembly for Wales, by virtue of section 162 of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.

### Citation, commencement and expiry

**1.**—(1) These Regulations may be cited as the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 and come into force on 1st July 2011.

(2) They cease to have effect at the end of 30th June 2018.

### Interpretation

**2.** In these Regulations—

"the Act" means the Water Industry Act 1991;

"adoptable", in relation to a private sewer or private lateral drain, means a sewer or lateral drain in relation to which a sewerage undertaker must perform the relevant duty;

"declaration" means a declaration of vesting under subsection (1) of section 102(**5**) of the Act (adoption of sewers and disposal works);

"exempt", in relation to a private sewer or private lateral drain, means a sewer or lateral drain which is exempt under regulation 5;

"main scheme" means a scheme under regulation 3;

"private lateral drain" means the whole or part of a lateral drain(**6**) which is not vested in a sewerage undertaker in its capacity as such;

"private sewer" means the whole or part of a foul, combined or surface water private sewer(**7**), but does not include a highway drain or sewer;

"pumping station" means that part of a sewer or lateral drain which is a pumping station used or intended to be used in connection with that sewer or lateral drain, and includes the rising main (the pressurised pipe that connects the pumping station with the rest of the sewer or lateral drain);

"the relevant date" means the date of commencement (in full) of section 42(1) of the Flood and Water Management Act 2010(**8**);

"the relevant duty" means the duty under section 105A(4) of the Act (duty on sewerage undertakers to exercise their powers under section 102 of the Act with a view to making a declaration pursuant to a scheme);

"scheme" means a scheme described in section 105A of the Act (schemes for the adoption of sewers, lateral drains and sewage disposal works);

"the supplementary adoption date" means the date which is the day after the end of the period of 6 months beginning with the relevant date; and

"supplementary scheme" means a scheme under regulation 4.

### Main schemes

**3.**—(1) The Secretary of State must make a scheme (a "main scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in England.

(2) The Welsh Ministers must make a scheme (a "main scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in Wales.

(**5**) Section 102 was amended by the Water Act 2003, section 96(1) and Part 3 of Schedule 9.
(**6**) See section 219(1) of the Water Industry Act 1991 for the definition of "lateral drain", and see also section 219(2)(a) of that Act.
(**7**) See, in section 219(1) of the Water Industry Act 1991, the definitions of "public sewer" and "sewer", and see also section 219(2)(a) of that Act.
(**8**) 2010 c. 29. Section 42(1) inserts section 106B into the Water Industry Act 1991.

(3) The making of a main scheme is the circumstance giving rise to the relevant duty pursuant to that scheme.

(4) Paragraphs (5) to (7) specify criteria relevant to the performance of that duty.

(5) Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private sewer—

(a) which is situated within the area of that undertaker; and

(b) which, immediately before 1st July 2011, communicates with a public sewer(**9**).

(6) Each sewerage undertaker must perform the relevant duty pursuant to a main scheme in relation to any private lateral drain which, immediately before 1st July 2011, communicates with a public sewer which is vested in that undertaker.

(7) The relevant duty pursuant to a main scheme is not owed in relation to any private sewer or private lateral drain—

(a) which is exempt; or

(b) which is, immediately before 1st July 2011, the subject of a declaration.

(8) Each main scheme must provide that any declaration which is made pursuant to that scheme in relation to a private sewer or private lateral drain—

(a) must specify 1st October 2011 as the date of vesting of that sewer or lateral drain (except any part of that sewer or lateral drain which is a pumping station), and

(b) must specify a date no later than 1st October 2016 as the date of vesting of any pumping station which forms part of that sewer or lateral drain,

except where it is not possible, in respect of a particular sewer or lateral drain, to make a declaration specifying such a date because a proposal to make a declaration in respect of that sewer or lateral drain is subject to an outstanding appeal under section 105B(**10**) of the Act (adoption schemes: appeals).

(9) Any number of declarations may be made pursuant to a main scheme.

**Supplementary schemes**

**4.**—(1) On or as soon as reasonably practicable after the relevant date, the Secretary of State must make a scheme (a "supplementary scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in England.

(2) On or as soon as reasonably practicable after the relevant date, the Welsh Ministers must make a scheme (a "supplementary scheme") for the adoption of private sewers and private lateral drains by every sewerage undertaker whose area is wholly or mainly in Wales.

(3) The making of a supplementary scheme is the circumstance giving rise to the relevant duty pursuant to that scheme.

(4) Paragraphs (5) to (7) specify criteria relevant to the performance of that duty.

(5) Each sewerage undertaker must perform the relevant duty pursuant to a supplementary scheme in relation to any private sewer—

(a) which is situated within the area of that undertaker;

(b) which, immediately before the relevant date, communicates with a public sewer; and

(c) in relation to which the relevant duty is not owed pursuant to a main scheme.

(**9**) See section 219(1) of the Water Industry Act 1991 for the definition of "public sewer".
(**10**) Section 105B was inserted by the Water Act 2003, section 98.

(6) Each sewerage undertaker must perform the relevant duty pursuant to a supplementary scheme in relation to any private lateral drain—

(a) which, immediately before the relevant date, communicates with a public sewer which is vested in that undertaker; and

(b) in relation to which the relevant duty is not owed pursuant to a main scheme.

(7) The relevant duty pursuant to a supplementary scheme is not owed in relation to any private sewer or private lateral drain—

(a) which is exempt; or

(b) which is, immediately before the relevant date, the subject of a declaration**.**

(8) Each supplementary scheme must provide that any declaration which is made pursuant to that scheme in relation to a private sewer or private lateral drain—

(a) must specify the supplementary adoption date as the date of vesting of that sewer or lateral drain (except any part of that sewer or lateral drain which is a pumping station), and

(b) must specify a date no later than 1st October 2016 as the date of vesting of any pumping station which forms part of that sewer or lateral drain,

except where it is not possible, in respect of a particular sewer or lateral drain, to make a declaration specifying such a date because a proposal to make a declaration in respect of that sewer or lateral drain is subject to an outstanding appeal under section 105B of the Act.

(9) Any number of declarations may be made pursuant to a supplementary scheme.

**Exempt private sewers and exempt private lateral drains**

**5.**—(1) A private sewer or private lateral drain is exempt for the purposes of a main scheme or a supplementary scheme if that sewer or lateral drain is owned by a railway undertaker(**11**).

(2) A private sewer or private lateral drain is exempt for the purposes of a main scheme if—

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before 1st July 2011 from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

(3) A private sewer or private lateral drain is exempt for the purposes of a supplementary scheme if—

(a) that sewer or lateral drain is situated on or under Crown land; and

(b) the sewerage undertaker within whose area that sewer or lateral drain is situated has received notice in writing before the relevant date from the appropriate authority in relation to that land that that sewer or lateral drain should be exempt.

(4) In this regulation "Crown land" means land an interest in which—

(a) belongs to Her Majesty in right of the Crown; or

(b) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.

(5) In this regulation "the appropriate authority" means—

(a) in the case of land which belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having management of the land in question;

(**11**) See section 219(1) of the Water Industry Act 1991 for the definition of "railway undertakers".