

**Defra and the Welsh Assembly Government's response to their joint consultation on transfer of privately owned drains and sewers has led to disappointment in the water and drainage industries, Marie-Claire Kidd writes.**

The document says the Government will make a number of changes to the draft regulations, but details just one, regarding Crown lands. Defra goes on to say issues will be clarified in guidance, but it was unable to give a publication date for the final regulations and guidance.

Defra's draft regulations proposed excluding Crown lands from transfer, but after some affected bodies said they would prefer to be included with an option to opt out, the regulations will be changed. 'The overall result should be the same but this will reduce the administrative burden for both Crown bodies and the WaSCs,' says Defra.

However, WaSCs and drainage contractors have yet to receive clarity on their concerns. David Strang, legal and policy advisor to WaterUK, says: 'It's extraordinary that we are still in this position when this has been under discussion for a decade. It's not satisfactory that they've left it to the very last moment. It's disappointing.'

The Government says guidance will clarify issues including the potential for an individual or a minority of owners to block transfer of a drainage system and the thorny issue of curtilage.

Water UK is lobbying for a clear definition of curtilage but, following consultation, Defra concluded any attempt to define it in the regulations would be flawed.

Sites the Government considers to comprise single curtilages include caravan parks, council traveller sites, airports, ports and railway stations. They will not be subject to the new regulations.

In its consultation response, the Government acknowledged that park home and caravan park residents may not be able or willing to pay for repairs. It did not, however, propose any changes to the draft regulations regarding this.

There were also concerns over former public sector housing sites, not only because some would be considered Crown property, but also because they could be interpreted as having a single curtilage. The government says they will be adequately dealt with, adding that further clarification will be provided in guidance.

Defra went on to acknowledge the concern that nothing would enable a council to step in where there was an immediate problem with a transferred sewer following transfer. It responded by saying councils' powers to issue notices for private sewers would remain following transfer.

'Local authorities' powers have never been applicable to the public sewerage system, in respect of the maintenance of which sewerage undertakers have statutory duties and operate to statutory minimum standards of service in addition to reporting standards set by the industry economic regulator, Ofwat,' it says.

Chartered Institute of Environmental Health president Stephen Battersby, who leads the institute's training on drains, says case law indicates that, if premises are prejudicial to health as the result of flooding by sewage, although sewers cannot be in such a state as to be prejudicial to health, the premises can, and the WaSC could be liable for existence of the statutory nuisance.

He adds: 'It's reasonable [for Environmental Health Practitioners] to have concerns.'

While transfer will have benefits in that time won't be wasted disputing the relative responsibilities, it shouldn't be taken, as Defra sometimes does, that the water and sewerage undertakers will also act promptly to deal with a problem.

'In my view there should at least be an agreed code or memorandum of understanding that will enable local authorities to step in to deal with a problem that isn't dealt with adequately by the WaSC, and recharge the WaSC.'

Defra also acknowledged councils will need to know of sewers that have not been transferred, for example where there is an appeal, so existing legal provisions can be used to secure maintenance. It has yet to respond to this concern.

Its consultation raised issues about the need for special provision for managing difficulties caused by pitch fibre pipes, at least until these sewers can be replaced. But again it failed to respond.

Sam Warren of UKDP, which works with councils on private shared drainage cases, says this could cause massive problems for WaSCs. 'We don't think it's been fully considered,' she says. 'The nature of pitch fibre pipe work is there are nearly always multiple points of damage within drainage runs, which could lead to big costs for WaSCs attempting piecemeal repairs without a planned approach. It's also inconvenient and confusing for the homeowners if their expectations aren't managed'.

Drainage contractors lobbying for business protection have also been disappointed. Defra says: 'The way in which WaSCs contract for maintenance and repair work following transfer is largely a matter for them. However, the Government has raised with WaterUK the concerns of the drainage contractors and will consider whether encouragement could be offered to WaSCs on procurement in its guidance.'

Speaking for WaSCs, David Strang of WaterUK says: 'It's very difficult to make sense of the comments at this stage because we need to know what's going to be in the regulations and whether they have given much guidance, or guidance that's so bland that it doesn't actually help you.'

Guidance issued in relation to Bribery act was later withdrawn after repeated complaints that it did not do its job, he says.

He expects further, unknown changes in the final regulations. 'For WaSCs, until you can see what's proposed it would be foolhardy to draft communication strategies, for example,' he says. 'It leaves us waiting impatiently for the final regulations.'

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