



Water Industry Act 1991

1991 CHAPTER 56

PART IV

SEWERAGE SERVICES

CHAPTER II

PROVISION OF SEWERAGE SERVICES

Adoption etc. of sewers and disposal works

102 Adoption of sewers and disposal works.

- (1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—
- (a) any sewer which is situated within its area or which serves the whole or any part of that area,^{F1} . . .
 - [^{F2}(aa) any lateral drain which communicates or is to communicate with a public sewer which—
 - (i) is so situated or serves the whole or any part of that area; and
 - (ii) is vested in that undertaker; or]
 - (b) any sewage disposal works which are so situated or which serve the whole or any part of that area,
- shall, as from such date as may be specified in the declaration, become vested in the undertaker.
- (2) The owner, or any of the owners, of any sewer [^{F3}, lateral drain] or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer [^{F3}, lateral drain] or works.

Status: Point in time view as at 01/12/2008.

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- (3) A declaration or application under this section may be made with respect to a part only of a sewer.
- (4) A sewerage undertaker which proposes to make a declaration under this section—
- (a) shall give notice of its proposal to the owner or owners of the sewer [F4, lateral drain] or works in question; and
 - (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.
- (5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—
- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
 - (b) whether the sewer [F5 or lateral drain] is constructed under a highway or under land reserved by a planning scheme for a street;
 - (c) the number of buildings which the sewer [F6 or lateral drain] is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
 - (d) the method of construction and state of repair of the sewer [F7, lateral drain] or works; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.
- (6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [F8 or lateral drain] in question shall be entitled to use it, or any sewer [F8 or lateral drain] substituted for it, to the same extent as if the declaration had not been made.
- (7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

Textual Amendments

- F1** Word in s. 102(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with Sch. 3 para. 7)
- F2** S. 102(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F3** Words in s. 102(2) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(b)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F4** Words in s. 102(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(c)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F5** Words in s. 102(5)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(i)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F6** Words in s. 102(5)(c) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(ii)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F7** Words in s. 102(5)(d) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(iii)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

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F8 Words in s. 102(6) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(e)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)

103 Adoption of cross-border sewers etc.

(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under section 102 above with respect to—

(a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker;^{F9} . . .

[^{F10}(aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or]

(b) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under subsection (1) above to another undertaker, no declaration under section 102 above shall be made by the former undertaker until either—

(a) the other undertaker has consented to the declaration; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

[^{F11}(3) Where—

(a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and

(b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking,

a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.]

(4) Where a sewerage undertaker makes a declaration under section 102 above with respect to—

(a) a sewer [^{F12}or lateral drain] which is situated within the area of another sewerage undertaker; or

(b) any sewage disposal works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this section “relevant body” means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers.

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Textual Amendments

- F9** Word in s. 103(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(2)(a)(3), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(i)** (with Sch. 3 para. 7)
- F10** S. 103(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(2)(a)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F11** S. 103(3) substituted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(2)(b)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F12** Words in s. 103(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(2)(c)(3), 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

104 Agreements to adopt sewer, drain or sewage disposal works, at future date

[^{F13}(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
 - (i) any sewer;
 - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
 - (iii) any sewage disposal works; or
- (b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.]

- (2) A person [^{F14}mentioned in paragraph (a) or (b) of subsection (1) above] may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.
- (3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (4) Where—
 - (a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and
 - (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,
 the undertaker may delay its response to the application until a reasonable time after the required information is provided.

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(5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer [F15, lateral drain] or works to which it relates.

(6) F16

[F17(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—

- (a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
- (b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
- (c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
- (d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.]

[F18(7) A sewerage undertaker shall not make an agreement under this section with respect to—

- (a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or
- (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated; or
 - (ii) is vested in another sewerage undertaker,until one of the conditions mentioned in subsection (8) below is satisfied.

(8) The conditions are—

- (a) that other undertaker has consented to the making of the agreement; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.]

Textual Amendments

- F13** S. 104(1) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(a)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F14** Words in s. 104(2) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(b)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F15** Words in s. 104(5) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(c)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F16** S. 104(6) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(d)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(ii)** (with Sch. 3 para. 7)
- F17** S. 104(6A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(e)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F18** S. 104(7)(8) substituted (28.5.2004) for s. 104(7) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(f)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)

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105 Appeals with respect to adoption.

- (1) An owner of any sewer [^{F19}, lateral drain] or sewage disposal works may appeal to the [^{F20}Director] if—
 - (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or
 - (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.
- (2) Subject to section 104(4) above, a person constructing or proposing to construct a drain or sewer or any sewage disposal works may appeal to the [^{F20}Director] where a sewerage undertaker—
 - (a) has refused an application under section 104 above;
 - (b) has offered to grant such an application on terms to which that person objects; or
 - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (3) The time for the making of an appeal under subsection (1) above by the owner of any sewer [^{F21}, lateral drain] or sewage disposal works shall be—
 - (a) in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and
 - (b) in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this section, the [^{F20}Director] may—
 - (a) in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
 - (b) in the case of an appeal under subsection (2) above—
 - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;

and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.
- (5) Where the [^{F20}Director] makes a declaration under subsection (4)(a) above, he may, if he thinks fit—
 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that his declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the [^{F20}Director] makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, he may do so on such terms as he considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as he considers appropriate for ensuring that the terms of the agreement are reasonable.

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- (7) The [^{F20}Director], in deciding, on an appeal under this section, whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in section 102(5) above; and for the purposes of this subsection, in its application in relation to an appeal under subsection (2) above, paragraphs (a) to (e) of section 102(5) above shall have effect with the necessary modifications.

Textual Amendments

- F19** Words in s. 105(1) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(5)(a), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F20** Word in s. 105 substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 35(7); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F21** Words in s. 105(3) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(5)(b), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)

[^{F22}105A] Schemes for the adoption of sewers, lateral drains and sewage disposal works

- (1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.
- (2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.
- (3) Each scheme shall relate to—
- the area of a sewerage undertaker, or part or parts of it; or
 - the areas of more than one sewerage undertaker, or part or parts of them.
- (4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—
- fall within the area to which a scheme relates; and
 - satisfy specified criteria.
- (5) The circumstances and the criteria shall each be—
- specified in the regulations; or
 - determined in accordance with the regulations and specified in the scheme.
- (6) In relation to the exercise of those powers pursuant to that duty—
- section 102 above shall have effect—
 - with the omission of subsections (2), (5) and (7);
 - as if in subsection (1) the words “sections 103, 105 and 146(3) below” read “section 105B below”;
 - with the omission of the words “or application” in subsection (3);
 - as if for subsection (4)(a) there were substituted—
 - “(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;

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- (aa) shall publish notice of its proposal in the prescribed manner; and”;
 - (v) as if in subsection (4)(b) “two months” read “two months or, if longer, the period specified by virtue of section 105B(5) below” and “section 105 below” read “section 105B(4) or (5) below, or”; and
 - (vi) as if section 96(3) of the Water Act 2003 did not apply;
 - (b) sections 103 and 105 above shall not apply; and
 - (c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.
- (7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.
- (8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

Textual Amendments

F22 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), ss. 98, 105(3); S.I. 2007/1021, art. 2(b)

[^{F23}105B Adoption schemes: appeals

- (1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—
- (a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker’s duty to do so under section 105A(4) above (the “relevant duty”); or
 - (b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.
- (2) The persons referred to are—
- (a) an owner of a sewer, lateral drain or sewage disposal works;
 - (b) any other person affected by the proposal, or the failure, in question.
- (3) The grounds upon which a person may appeal are—
- (a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;
 - (b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or
 - (c) any other prescribed ground.
- (4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—
- (a) served on the owner of the sewer, lateral drain or sewage disposal works; or
 - (b) published in accordance with section 102(4) above as modified by section 105A(6) above,
- (or, if both occur, within two months after whichever is the later).

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- (5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).
- (6) On the hearing of an appeal under subsection (1) above, the Authority may—
 - (a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or
 - (b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.
- (7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.
- (8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.
- (9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—
 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.
- (11) The Secretary of State may by regulations make further provision in connection with appeals under this section.
- (12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.]

Textual Amendments

F23 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

[^{F24}105C Adoption schemes: supplementary

- (1) The Secretary of State may vary any scheme, or revoke it.
- (2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—
 - (a) each sewerage undertaker which would be affected;
 - (b) the Authority;
 - (c) the Council;

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- (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.]

Textual Amendments

F24 Ss. 105A-105C inserted (1.4.2007) by Water Act 2003 (c. 37), ss. 98, 105(3); S.I. 2007/1021, art. 2(b)

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Changes to legislation:

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