

Water today, water tomorrow

Ofwat's guidance on appeals concerning the transfer of private sewers, lateral drains and pumping stations in England and Wales

About this document

This document summarises the provisions introduced by the Government for the transfer on 1 October 2011 of existing private sewers and lateral drains into the ownership of the regulated sewerage companies in England and Wales.

It also summarises the provision of an appeal mechanism in relation to that transfer. Ofwat is responsible for considering appeals about the transfer and this document sets out guidance for submitting appeals, and how we will handle such appeals.

We consulted on our proposed guidance from 15 June to 13 July 2011, and have taken account of the responses we received in finalising our guidance. We will publish a summary of the responses separately.

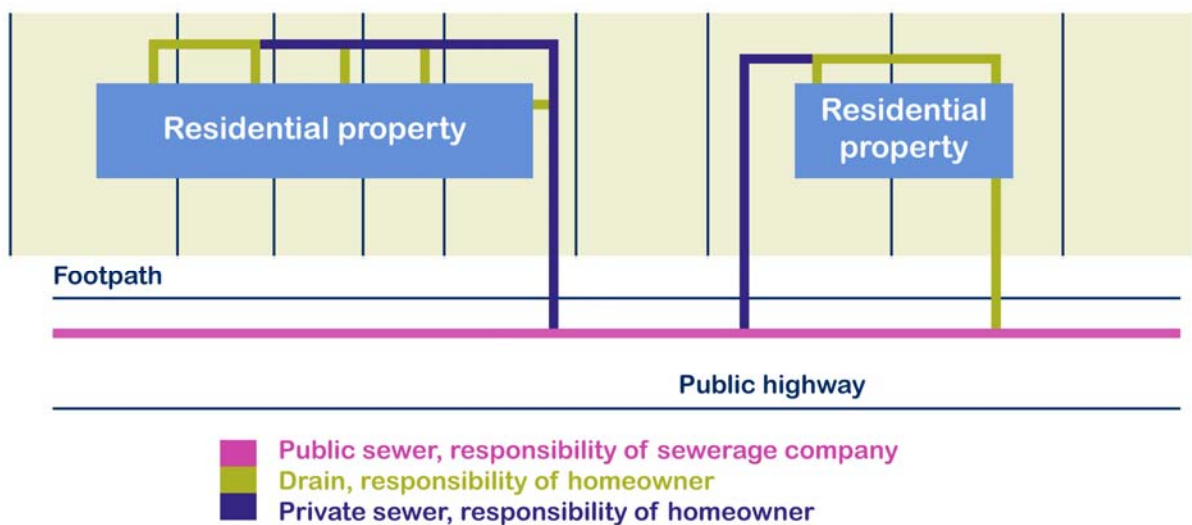
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1. Introduction

At present, property owners are responsible for the pipes that drain from their property into the public sewers. These can include pipes that go beyond the property boundary (lateral drains), and that may also serve other properties (private sewers). Property owners are often unaware that they are responsible for these pipes until a problem occurs.

The diagram below shows an example of some existing drainage arrangements.



Source: Defra.

Following consultation, the Government has decided that most private sewers and lateral drains that connect to the public sewer network should be transferred to the ownership of the regulated sewerage companies in England and Wales. Pumping stations that form part of the sewer or lateral drain will also be transferred.

The diagram below shows an example of future drainage arrangements.



Source: Defra.

On 6 September 2010, the Government issued a [policy statement](#) about its decision to proceed with the transfer of private sewers.

Using its powers under the Water Industry Act 1991 (WIA91), the Government has made the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. These regulations came into effect on 1 July 2011. They provide for schemes to transfer ownership of sewers, lateral drains and pumping stations into the ownership of the regulated sewerage companies in England and Wales. Separate schemes for England and Wales were made on 1 July 2011.

Under the initial scheme, private sewers and lateral drains that were connected to the public sewer before 1 July 2011 will transfer on 1 October 2011. The transfer of private pumping stations will take place later, by 1 October 2016 at the latest. There will be a supplementary scheme to include sewers, lateral drains and pumping stations connected on or after 1 July 2011¹.

The WIA91 requires the regulated sewerage companies to serve notice of the proposal to transfer the sewers and lateral drains on their owners at least two

¹ The supplementary scheme will include sewers, lateral drains and pumping stations connected on or after 1 July 2011 and before provisions for new built sewers under section 42 of the Flood and Water Management Act 2010 are implemented.

months before the date of transfer². They must also publish notice of their proposal at least two months before the date of transfer.

The notice that the sewerage companies issue includes any pumping stations that form part of the sewer or lateral drain.

Sewerage companies started to serve individual notices on or after 1 July 2011, and published notices in the London Gazette and regional papers at the end of July.

The WIA91 allows appeals concerning the transfer of private sewers and lateral drains. Ofwat is responsible for considering and deciding such appeals³. We will determine appeals in accordance with the legal provisions set out in the WIA91. We will also have regard to guidance issued by the Department for Environment, Food and Rural Affairs (Defra) about the implementation of the regulations.

You can find more information about the legislation and Defra's guidance by following the links in appendix 3 of this document.

This guidance covers the submitting and handling of these appeals, which may be about the transfer of:

- gravity sewers;
- lateral drains; and
- pumping stations.

Where we use the term 'sewer' or 'lateral drain' in this document, this includes pumping stations if they form part of the sewer or lateral drain.

This guidance sets out information on:

- who can appeal;
- the grounds for – and subject of – an appeal;
- how to appeal;
- the issues that we will have regard to when considering appeals, including allegations of serious detriment as a result of the transfer;
- our appeal process; and
- the potential outcomes of appeals.

² Section 105A of the WIA91.

³ Section 105B of the WIA91.

The appeal process is not an opportunity for making further representations about the Government's policy decision for the transfer. We will only consider appeals about specific lateral drains, private sewers or pumping stations.

The companies will incur increased costs as a result of this transfer and the associated responsibility for the additional network of sewers and lateral drains. The costs will vary between companies, and the companies may propose price increases as a result of such increased costs. As the economic regulator, we will carefully scrutinise any proposals for price increases. However, even if an appeal results in a particular lateral drain, private sewer or pumping station not transferring, customers served by that lateral drain, sewer or pumping station will still have to pay any increase in sewerage charges as a result of the general transfer. We will not consider unwillingness to pay increased sewerage charges as grounds for appeal against the transfer.

How can you find out more about how the transfer might affect you?

If you want to understand how a sewerage company's decision to propose transferring a sewer or lateral drain – or its failure to do so – might affect you, you should contact that sewerage company. The company's contact details will be included on its notice proposing transfer. They are also in appendix 1 of this guidance document.

If after contacting the company you need further advice, you can contact the [Consumer Council for Water](#) (CCWater), the independent consumer representative body. CCWater can provide property owners with independent advice and information about the transfer, the appeal process and the criteria for appealing. It cannot, however, submit appeals on your behalf. CCWater's contact details are also in appendix 1.

2. Making an appeal

2.1 Who can appeal?

Under the legislation⁴, you can make an appeal if you:

- own a sewer or lateral drain; or
- you are affected by the proposal of, or failure to propose, transfer of a sewer or lateral drain.

If you own a property, it is likely that you own the drain serving the property and may own, or share ownership, of a sewer connecting to the public sewer. You may find details of your responsibility in the legal documents about your property (for example, in deeds or Land Registry documents). If you are a tenant, you will not own the lateral drain or sewer serving your property.

Even if you do not own a lateral drain or sewer that the sewerage company has proposed to transfer (or has failed to propose to transfer), you may be affected by that decision. For example, the lateral drain or sewer may serve the property you occupy, or may be located in your land.

2.2 What can you appeal about?

Under the legislation⁵ – and provided you qualify as a person who can make an appeal – you can appeal if you are unhappy about the:

- proposal by the sewerage company to transfer a sewer or lateral drain; or
- failure by the sewerage company to propose transfer of a sewer or lateral drain.

2.3 How to make an appeal

If you wish to appeal, then you should submit a completed appeal form to us by email (appealpstransfer@ofwat.gsi.gov.uk), or by post to:

⁴ Section 105B(2) of the WIA91.

⁵ Section 105B(1) of the WIA91.

Markets Business Support (private sewer appeals)

Ofwat

Centre City Tower

7 Hill Street

Birmingham B5 4UA

You will need to complete our appeal form before we can consider your appeal. This will allow us to deal with your appeal efficiently. A copy of the appeal form can be found in appendix 2.

If you do not complete the form in full, or provide the information we have requested, we may return the form to you for completion. Your appeal is likely to be delayed if you fail to provide the information we have requested.

2.4 What are the time limits for making an appeal?

2.4.1 If a sewerage company proposes to transfer a sewer or lateral drain

If you wish to appeal against a sewerage company's proposal to transfer a particular sewer or lateral drain, the legislation⁶ says that you must do this within two months from the date you receive notice from the sewerage company. This is an **absolute** time limit. We will **not** deal with your appeal if you submit it after the end of the two-month period.

Sewerage companies must:

- serve notice of the proposal to transfer the sewers or lateral drains on the owners of those sewers or drains; and
- publish notice of their proposal,

at least two months before the date of transfer (1 October 2011).

This means that they must serve notice of their proposals to transfer sewers or drains by 1 August 2011.

If the sewerage company serves notice on you as the owner of a property on one date but publishes notice of its proposal on a different date, you may submit an appeal in the two-month period beginning on the later of the two dates.

⁶ Section 105B(4) of the WIA91.

Sewerage companies have also included notice of their intention to transfer pumping stations. They may do this even though the legislation says that pumping stations only have to be transferred by 1 October 2016. So, you may have received notice in 2011 of a sewerage company's proposal to transfer a pumping station in several years' time. In this instance, the two months in which you may submit any appeal still begins from the date you receive the notice. However, where a sewerage company subsequently decides to transfer a pumping station into its ownership on a date prior to 1 October 2016, it should issue a fresh notice of its proposal to transfer the pumping station. A new two-month period for submitting an appeal will commence from the date of the fresh notice.

2.4.2 If a sewerage company fails to propose the transfer of a sewer or lateral drain

If you wish to appeal against a sewerage company's failure to propose to transfer a particular sewer or lateral drain, the transfer scheme sets out that you must do this within three months from the date that the transfer scheme was made (1 July 2011). This means that you must submit any appeal against a company's failure to make a proposal by 30 September 2011. This is an **absolute** time limit. We will **not** deal with your appeal if you submit it after 30 September 2011.

3. What are the grounds for appeal?

3.1 Appeal against proposal to transfer a sewer or lateral drain

You can appeal against the sewerage company's proposal to transfer a specific sewer or lateral drain if you consider that:

- the sewerage company does not have a duty to transfer the sewer or lateral drain; or
- the proposed transfer would cause serious detriment to you (see chapter 4 for an explanation of "serious detriment").

3.2 Appeal against failure to transfer a sewer or lateral drain

Sewerage companies do not have a duty to transfer sewers or lateral drains that:

- are owned by a railway undertaker; or
- lie in Crown land and the relevant authority (as defined by the regulations) has opted out of the scheme for transfer.

They have a duty to transfer into their ownership, by 1 October 2011, other sewers and lateral drains that have been connected to a public sewer before 1 July 2011. Sewerage companies have a duty to transfer pumping stations that form part of a private sewer or lateral drain by 1 October 2016.

You can appeal against the sewerage company's failure to propose transfer of a sewer or lateral drain if you consider that they should have been included in the company's proposal to transfer sewers and lateral drains by 1 October 2011.

4. What issues we will have regard to when deciding appeals?

4.1 Appeal against proposal to transfer a sewer or lateral drain

4.1.1 If the company has no duty to transfer the sewer or lateral drain

If you consider that the sewer or lateral drain is exempt from transfer, you will need to explain why you consider it to be exempt. The transfer will take place unless you are able to produce verifiable supporting evidence clearly demonstrating why it should not.

In deciding an appeal, we will consider your evidence. We will also consider any evidence provided by the other party or parties to the appeal, as well as the facts of the case generally.

4.1.2 Transfer of the sewer or lateral drain would cause you serious detriment

If you appeal because you consider that the proposed transfer of the sewer or lateral drain would cause you serious detriment, you will need to explain fully, with supporting evidence, why you think this would be the case. To demonstrate that the transfer would cause you serious detriment, you would need to show that you would be significantly worse off (financially or otherwise) as a result of the transfer.

To decide an appeal, we will need to consider the balance between benefits to you and others from the transfer and the possible disadvantages the proposed transfer causes you and others.

We will also take into account the potential detriment of not transferring a sewer, to you and other customers that it serves. For example, if a sewer is not transferred, it will still need to be maintained and repaired when necessary. If you appeal against the transfer of a sewer, we would expect you to provide assurances, with supporting evidence, about its continuing availability and future maintenance.

At present, a customer seeking to connect to a private sewer requires the permission of the owner (or owners) of that sewer to do so. But if a sewerage company owns the sewer (including transferred sewers), new customers have a permissive right –

subject to limited conditions – to connect to it⁷. If appropriate, we will take account of this potential benefit to new customers.

It is for you to provide us with sufficient evidence to consider your appeal.

If – as we decide an appeal – we consider that there is evidence that the transfer might cause serious detriment, we will consider how that detriment might be reduced or removed, to allow the proposed transfer.

In deciding an appeal, if we conclude that there is serious detriment from a transfer, we may still decide that it should happen, either because:

- the benefits of the transfer would be greater than the detriment; or
- measures have been identified that would reduce (mitigate) the detriment such that the benefits of the transfer would be greater.

We will not take account of past issues when considering if a proposal to transfer a lateral drain or sewer would cause serious detriment. For example, we are unlikely to take into account whether you had already spent money on the sewer – either to construct or repair it – or whether there are outstanding disputes about the cost of past maintenance. This is because we will only be considering if you would be significantly worse off **after** the transfer.

While we will consider each case on its merits, we think that, in general, the following issues may not be likely to give rise to serious detriment.

- **Reduced development potential of the land.** In general, if there were a sewer on site (private or owned by a sewerage company) and it was close to any proposed construction, it would have to be diverted. Alternatively, the construction would need to be adapted to ensure no damage occurred to the sewer. This would need to take place regardless of whether the sewer was private or owned by the sewerage company, so there may be no serious detriment as a result of the transfer.
- **Land value loss.** In general, alleged land value loss because of the transfer will be considered in the same manner as reduced development potential. The impact of the presence of the sewer itself is unaffected by the transfer and would not be taken into account.

⁷ Section 106 of the WIA91.

We note that a private sewer crossing land could potentially reduce its value and that in some cases land values could increase as a result of the transfer. This is because extending the public sewer network may provide opportunities for a developer to connect to the public sewerage system under the provisions of section 106 of the WIA91.

- **Increased rights of access to private land.** Under the WIA91, water and sewerage companies have legal rights to access private land⁸. The sewer transfer will mean the sewerage companies will have the legal right of access to these sewers. But arrangements to maintain existing private sewers usually provide a right of access to the owner of the sewer. In deciding any appeal that relied on serious detriment from rights of access, we would need to be clear about the extent to which the transfer extended existing rights and what the detrimental effect of the extension was.

Landowners have redress if the companies do not comply with their code of practice for working on private land⁹.

4.2 Appeal against failure to transfer a sewer or lateral drain

If you consider that the sewerage company has a duty to transfer a sewer or lateral drain and has failed to propose to do so, you will need to explain why you consider this to be the case. You will need to provide evidence that a duty to transfer does exist.

We will expect the sewerage companies to have a robust understanding and evidence to support their position that they are not under a duty to transfer the sewer or drain.

In deciding an appeal, we will consider your evidence. We will also consider any evidence provided by the other party or parties to the appeal, as well as the facts of the case generally.

⁸ Section 159 WIA91.

⁹ Section 181 of the WIA91. We investigate complaints about the way in which companies exercise their right to work in private land.

5. The appeal process

5.1 The appeal process steps

Below, we set out the steps we will take when deciding an appeal.

Notice of transfer	The sewerage company serves and publishes notice of its intention to transfer a sewer, lateral drain or pumping station that forms part of the sewer or lateral drain. Or it fails to serve and publish notice of its intent to transfer a sewer, lateral drain or pumping station.
Understanding the transfer, or failure to transfer	If you want to understand more about the effect of the sewerage company's proposed transfer, or failure to transfer, you should contact the company. If you require further advice, you can contact the Consumer Council for Water (CCWater).
Making an appeal	You complete our appeal form and submit it to us, providing any supporting evidence as required. If you are appealing against the transfer, you must make your appeal to us within two months of the notice being received by you or published (whichever is later). If you are appealing about the failure to propose transfer, you must make your appeal by 30 September 2011.
Acknowledgement	We will acknowledge receipt of your appeal within ten working days. We will also copy the appeal form to the sewerage company to let it know that we have received your appeal.
Preliminary assessment of appeal	<p>We will assess the appeal to check:</p> <ul style="list-style-type: none"> • you are entitled to appeal; • why you are appealing; and • the information and evidence you have provided in support of your appeal. <p>If you have not completed our appeal form satisfactorily and provided the information we have asked you to provide with it, we will return the form to you for completion. We will not progress the appeal until we have a completed form and the information we have asked you to provide with it.</p> <p>If you have completed our appeal form and provided the information we asked for alongside it, we will tell you if you are not entitled to appeal or how we are going to progress your appeal.</p>
Information gathering	<p>We may seek additional information and evidence from you, beyond that provided with your appeal form.</p> <p>We will seek information and evidence from the sewerage company.</p> <p>We may need to check information that we receive from the company</p>

	<p>with you and vice versa.</p> <p>We may also need to seek information from another party (for example the owner of the sewer, if you are not the owner, or other users of the sewer).</p> <p>Where we consider it appropriate, we may arrange a meeting with you and the sewerage company to discuss the information provided.</p>
Consider appeal	When we have the information we require, we will consider your appeal.
Issue of draft decision	<p>We will prepare a draft decision to share with both you and the sewerage company.</p> <p>Both you and the sewerage company have the opportunity to comment on the draft decision (usually three weeks).</p>
Comments	We will consider the comments we receive and review our draft decision.
Issue of final decision	<p>We will prepare and issue the final decision to you and the sewerage company.</p> <p>Our decision is binding. We will publish it on our website.</p> <p>Before publication, we will provide you and the sewerage company with an opportunity to ask that certain information be excluded from the published decision.</p>

5.2. Responsibility for private sewers and lateral drains while we are considering an appeal

While we are considering your appeal about the transfer of a private lateral drain or sewer, the lateral drain or sewer will remain the responsibility of its owner.

5.3. Appeal costs

Each party to the appeal (you and the sewerage company) will be responsible for meeting their own costs associated with the appeal.

6. How long will we take to determine your appeal?

We will acknowledge receipt of your appeal within ten working days. Our response will either:

- confirm that we consider you have provided us with the information we have asked for in our appeal form; or
- if you have not provided us with the information we have asked for, ask you to do so before we begin to consider your appeal.

We will let you know the approximate timetable for determining your appeal when we have made a preliminary assessment of the information you have provided. We aim to decide straightforward appeals within three months of receiving your completed appeal form and the information that we asked for alongside it. But this will depend in part on the number of appeals we receive, which we cannot predict.

7. The potential outcome of appeals

7.1 Appeal against proposal to transfer a sewer or lateral drain

If we were to decide that the sewerage company was under a duty to transfer the sewer or lateral drain into its ownership, we would allow the proposal unless we considered that:

- such a transfer would cause you serious detriment; and
- specific measures could not mitigate this detriment sufficiently.

So, in response to an appeal against a sewerage company's proposal to transfer a sewer or lateral drain, we may decide that the transfer should:

- proceed as proposed;
- proceed subject to conditions, specified by us, designed to mitigate the detriment; or
- not proceed (in which case the appeal would be upheld).

If we decide that the transfer should proceed as proposed, our appeal decision will include the date on which the ownership of the sewer or lateral drain will transfer to the sewerage company (otherwise known as making "a declaration of vesting").

Where we are minded to decide that the transfer should proceed subject to conditions, we can only confirm the transfer (by making a declaration of vesting) if the conditions are accepted. We will therefore ask the sewerage company to accept the conditions when we issue our draft decision so that we can include the date of transfer in our final decision.

7.2 Appeal against failure to transfer a sewer or lateral drain

If we decide that the sewerage company is under a duty to transfer the sewer or lateral drain, we will uphold the appeal and transfer ownership to the sewerage company (by making a declaration of vesting).

Alternatively, we may decide that the sewerage company is not under a duty to transfer the sewer or lateral drain, in which case we would not uphold the appeal (and the sewer or lateral drain would not transfer).

7.3 What can you do if you do not agree with our decision?

If you think that in deciding your appeal we have failed in our legal duty, failed to follow the appropriate process, or acted beyond our powers, you may wish to consider applying to the High Court for permission to apply for judicial review.

7.4 Publication of appeal decisions

We will publish all our appeal decisions on our [website](#).

Before publication, we will provide you and the sewerage company with an opportunity to ask that certain information be excluded from the published decision.

Appendix 1: Contact details

Below are the contact details for the sewerage companies.

Company:	Contact:
Anglian Water	www.anglianwater.co.uk/sewerswitchover or telephone 0845 0265232
Dŵr Cymru (Welsh Water)	www.dwrcymru.com , email private.sewer.enquiry@dwrcymru.com or telephone 0800 052 0148 (between 8.00 am and 5.30 pm)
Northumbrian Water	www.nwl.co.uk , or telephone 0845 6017762
Severn Trent Water	www.stwater.co.uk/sewerownership , email customer.relations@severntrent.co.uk or telephone 0845 6007405
Southern Water	www.southernwater.co.uk/privatesewers , or telephone 0845 2700360
South West Water	www.southwestwater.co.uk/privatesewers , or telephone 0800 2300 755
Thames Water	www.thameswater.co.uk/privatesewers , or telephone 0845 0709150
United Utilities	www.unitedutilities.com/privatesewers , or telephone 0845 746 2200
Wessex Water	www.wessexwater.co.uk/privatesewers , or telephone 0845 6005489
Yorkshire Water	www.yorkshirewater.com/sewertransfer , or telephone 0844848 7190

The Consumer Council for Water (CCWater) also has more [information about the transfer](#) of private sewers and drains on its [website](#). You can contact CCWater by telephone on 0845 0392837.

Appendix 2: Appeal form

Please send this form to:
Markets Business Support
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA



Or email to:
appealpstransfer@ofwat.gsi.gov.uk

Appeal under Section 105B of the Water Industry Act 1991
Transfer of Private Sewers

Please complete this form if you wish to make an appeal in respect of:

- the proposal by the sewerage company to transfer a lateral drain or sewer; or
- the failure by the sewerage company to transfer a lateral drain or sewer.

Where the term 'sewer' or 'lateral drain' is used in this form, this includes pumping stations if they form part of the sewer or lateral drain. Please state clearly in section B whether a pumping station forms part of the sewer or lateral drain you are appealing about.

You can find more information about how to make an appeal and the process we will follow to decide your appeal in our guidance document.

It may delay your appeal if you do not complete this form in full.

Section A				
Details about you				
Name				
Address (including postcode)				
Telephone number				
Email address				
Section B				
Details about the lateral drain or sewer that you are appealing about				
Are you appealing about a lateral drain or sewer?	Lateral drain	Yes/no	sewer	Yes/no
Does a pumping station form part of the lateral drain or sewer?	Lateral drain	Yes/no	sewer	Yes/no
Location of the lateral	(Please describe and provide postcode or OS grid)			

drain or sewer	reference, and a plan showing its location)
Who currently owns the lateral drain or sewer?	(Please provide name and full address. Where there is more than one owner, please provide details for all owners)
Details of properties served by the lateral drain or sewer (where known)	(Please provide address/es)
Section C	
Why are you appealing?	
<ul style="list-style-type: none"> You are unhappy that the sewerage company has proposed the transfer of a lateral drain or sewer 	Please go to section D
<ul style="list-style-type: none"> You are unhappy that the sewerage company has failed to propose the transfer of a lateral drain or sewer 	Please go to section E
Section D – Appeal against proposal for transfer	
Please provide a copy of the notice proposing transfer you have received and answer the following questions	
Why do you consider that the lateral drain or sewer should not be transferred?	
(a) There is no duty to transfer this lateral drain or sewer under the scheme?	Yes/no
If you have answered yes, please set out your reasons for believing it to be outside the published scheme for transfer:	
(b) Do you believe the transfer of the sewer would cause you serious detriment?	Yes/no
If yes, please explain how the transfer would cause you serious detriment and provide evidence (for example, private easement document held by you as the landowner)	
If the transfer happened, how could the serious detriment be reduced (mitigated) by the sewerage company?	

If the transfer did not happen, how would you ensure the sewer remains available for use and is maintained? Please provide supporting evidence (for example existing legal agreement providing for use, access and maintenance)	
Please now go to section F below	
Section E – Appeal against failure by sewerage company to transfer	
Please answer the following questions	
Please give the information you have confirming that the lateral drain or sewer has not been transferred, with supporting evidence (for example, a confirmation letter from the company)	
Please advise why you believe that the lateral drain or sewer should be transferred	
Please now go to section F below	
Section F	
It is important that your sewerage company is aware that you have appealed to Ofwat about the transfer. Please confirm that you are content for us to forward a copy of your appeal form to the company.	
I confirm that I am content for you to copy this appeal form to the sewerage company.	
Name of company	
Signed (unless by email)	
Name	
Date	

[If you are completing a paper copy of this form, you may need to attach additional sheets to provide full details.]

Appendix 3: Relevant legislation

Using its [powers](#) under the WIA91, the Government has made regulations and schemes for sewerage companies to transfer private sewers, lateral drains and pumping stations into their ownership.

The [regulations](#) set out the requirements for sewerage companies for the transfer.

Defra has published provisional [guidance](#) on the implementation of the transfer regulations.

The [schemes](#) to transfer ownership of sewers, lateral drains and pumping stations into the ownership of the regulated sewerage companies in [England](#) and [Wales](#) were made on 1 July 2011.

Our guidance on appeals concerning the transfer of private sewers, lateral drains and pumping stations in England and Wales is based on the [appeal provisions](#) that are set out in the WIA91.



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