

Committee on Statutory Instruments Draft Report

CS11

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

Procedure: Affirmative

These Regulations provide for the Secretary of State and the Welsh Ministers to make schemes for the adoption by sewerage undertakers in England and Wales of private sewers and private lateral drains under section 102 of the Water Industry Act 1991 (“the Act”).

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have not been made bilingually.

[21.2(ix) - that it is not made or to be made in both English and Welsh].

Merits Scrutiny

Under Standing Orders 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations will directly affect a large proportion of people living in Wales. The Water Industry Act 1991 places statutory sewerage undertakers under a duty to provide, maintain and extend a system of public sewers as to ensure that the area is and continues to be effectively drained. Whilst the 1991 Act provides for the voluntary adoption as part of the public sewerage system of sewers and lateral drains that connect to it, it is not a requirement and as a result an extensive system of private sewers has developed since 1937. It has been estimated that 50% of properties in England and Wales are connected to a private sewer in one form or another and as a result responsibility for those sewers are shared by the owners of the properties that those sewers serve. These Regulations will transfer responsibility for the maintenance of all sewers and lateral drains that drain to the public sewerage system to the Water and Sewerage Companies. This will include sewers and lateral drains draining both residential and commercial premises.
2. These Regulations contain a sunset clause. A sunset clause provides that the law shall cease to have effect after a specific date. Regulation 1(2) states that these Regulations will “cease to have effect at the end of 30th June 2018.” The explanatory memorandum explains why a sunset clause is necessary in this instance. It states that “the regulations that implement the transfer of private sewers will affect

the transfer by requiring water and sewerage companies to use their existing powers under the Water Industry Act 1991 to declare sewerage assets to be vested in them as “public” sewerage assets. They will be required to make declarations in respect of private sewers, laterals and associated pumping stations which are connected to the public sewerage system on a date specified in the regulations. This exercise is a single operation such that, once over the transitional period specified in the regulations they will have no on-going effect.” The explanatory memorandum then confusingly says that “no sunset clause is therefore proposed for these regulations.” This is incorrect and this error has been brought to the attention of the Government lawyers.

[21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly].

Legal Advisers

Committee on Statutory Instruments

May 2011

The Government has responded as follows:

Technical points:

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

These composite regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament in accordance with statutory requirements. It is therefore not considered reasonably practicable for these regulations to be laid in draft, or made, bilingually.

Merits points:

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

I am grateful for the Committee's draft report. As the draft report indicates, the RIA mistakenly states that the Regulations contain no sunset clause. However, the Explanatory Memorandum correctly states that the Regulations do contain a sunset clause. While this error is regrettable, I do not believe any corrective action would be appropriate in relation to these Regulations.