EXPLANATORY MEMORANDUM TO

THE WATER INDUSTRY (SCHEMES FOR ADOPTION OF PRIVATE SEWERS) REGULATIONS 2011

2011 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument requires statutory sewerage undertakers to use their existing voluntary powers to adopt sewerage assets as part of the public sewerage system for which they are responsible, to take ownership of all private sewers and lateral drains (that part of a drain serving a single property which is outside of the property boundary) that connect to the public sewerage system as at 1 July 2011.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Statutory sewerage undertakers currently have a duty under section 94 of the Water Industry Act 1991 to provide, maintain and extend a system of public sewers in their areas. This instrument seeks to implement the coalition Government's decision to utilise for the first time provisions in the Water Industry Act (section 105A) to transfer to sewerage undertakers, the ownership of private sewerage assets that connect to the public sewerage system, and to alleviate the burden of responsibility for maintenance that currently generally falls to the owners of the premises served by them.

5. Territorial Extent and Application

5.1 This instrument applies in England and Wales.

6. European Convention on Human Rights

The Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 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 effectually 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 an extensive system of private sewerage has developed since 1937. Prior to that the Public Health Act 1936 legislated for sewerage undertakers to be responsible for sewers in existence at 1 October 1937 as public assets.

It has been estimated that up to 50% of properties in England and Wales are connected to a private sewer in one form or another. The public sewerage system currently comprises some 323,000km of public sewers. Following transfer water and sewerage companies will in addition have a statutory duty to maintain some 220,000km of former private sewers and lateral drains.

Owners of private sewers are often unaware of their liabilities until a problem arises: repairs can be expensive, recovering the costs from all owners can be very difficult; access for repairs to land owned by others e.g. highways is difficult for private citizens. Local Authorities not infrequently have to intervene. Owners of these sewers subsidise those whose sewers predate 1936 by virtue of paying the same for their sewerage whether their properties are connected direct to the public sewerage system or via a private sewer. Lack of integration of the sewerage network also has implications for the ability of the sewerage undertakers to adapt to increased demand arising from housing growth and climate change.

Support for the proposed transfer of ownership among private sewer owners is widespread. There is concern in the drainage repair industry about future procurement arrangements for repair work following transfer. However, while the market for drainage repair work will change, with work being allocated by sewerage undertakers rather than property owners, the amount of work will remain the same in the short to medium term and business may increase as sewerage undertakers set about the repair and maintenance of transferred assets.

Consolidation

7.2 None.

8. Consultation outcome

8.1 In 2003 the then Government undertook consultation on the problems of private sewer ownership and explored alternative solutions. Responses revealed strong support

for transfer from industry and local authorities. Some 81 per cent of respondents expressed support for transfer of ownership to either local authorities or to sewerage undertakers and 90 per cent of those supporting a change of ownership thought that sewerage undertakers should assume ownership. Alternative management arrangements were considered but dismissed as unviable. Insurance was not considered to be a satisfactory alternative as policy coverage varied and property deeds are often unspecific about ownership of private sewers. The then Government concluded that transfer of ownership offered the only comprehensive solution.

Further research by Defra and a Steering Group of key stakeholders explored customers' views, estimated the costs and bill impacts of transfer and developed implementation options and further questions for consultation in 2007. Members of the group included Ofwat, Water UK, CCWater, Welsh Assembly Government, Communities and Local Government (formerly ODPM), local authority representatives, insurance industry representatives, housebuilding industry representatives, drainage industry representatives and the Environment Agency.

The 2007 consultation paper presented a number of different implementation options ranging from an overnight automatic transfer of all private sewers and laterals to 'on application' options. Each option had different implications for the costs of transfer. 89 per cent of respondents considered automatic overnight transfer to be the most workable solution. Subsequent consultation in 2010 sought views on draft regulations for implementation of this option. The Government's response to and summary of consultation responses was published by Defra on 30 March and is available on Defra's website.

9. Guidance

9.1 Defra is developing informal guidance in association with the water industry and other key its stakeholders as part of a comprehensive communication strategy designed to ensure a consistent, clear and practicable approach is taken to implementation. The communication strategy will aim to make clear to private sewer owners, sewerage undertakers, enforcement bodies, local authorities and other interested parties including drainage contractors and insurance companies, the extent and process of transfer.

10. Impact

10.1 The impact on business, charities or voluntary bodies is largely confined to the private drainage repair industry, which will be affected by a change in the process of procurement for new work. It is expected that the amount of work in maintaining and repairing currently private drainage will remain roughly constant and there may inevitably be a change in the market focus for some private drainage contractors operating in this sector, who may wish to enter into arrangements with WaSCs or their sub-contractors rather than receiving work direct from private owners. Drainage contractors will continue to provide a service to householders in respect of drains serving single properties that are within the property boundary and of entirely independent sewerage systems which will

not transfer. Sewerage undertakers will become responsible for the maintenance of a significantly enlarged system of public sewers but the cost of this will be recoverable through charges to the generality of their sewerage customers.

10.2 The impact on the public sector is limited to the benefit derived by local authorities who will no longer be responsible as owners of private sewers serving their own property stock for the maintenance the sewers and in a reduction in the extent of the private sewerage system over which they will have responsibility for enforcement of repair in the interests of public health.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk..

11. Regulating small business

11.1 The legislation does not apply to small business but representatives of the drainage contracting industry were among the representatives on the Steering Group that helped develop the transfer proposals.

12. Monitoring & review

12.1 Costs and benefits need to be reviewed in the longer term, after 10 years or two Ofwat price reviews. Customer experience will be reviewed after three years to evaluate expected removal of householder burdens. Paragraphs 127 – 134 of the Final Stage Impact Assessment contain further detail of the monitoring and review arrangements that already exist.

12.2 The regulations contain a sunset clause.

13. Contact

Ian Macdonald/Phil Terry at the Defra Tel: 020 7238 5350/5062 or email: ian.macdonald@defra.gsi.gov.uk or phil.terry@defra.gsi.gov.uk can answer any queries regarding the instrument.