

EXPLANATORY MEMORANDUM TO
THE WATER SUPPLY & SEWERAGE SERVICES (CUSTOMER SERVICE
STANDARDS) REGULATIONS 2008

2008 No. 594

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. **Description**

2.1 These Regulations revoke the existing *Water Supply and Sewerage Services (Customer Service Standards Regulations 1989* (as amended in 1989, 1993, 1996, 2000 and 2005). The new Regulations provide a revised consolidated text of the revoked Regulations and also introduce the following standards and payments for customers that experience sewer flooding:

- a minimum payment level of £150 for each incident of internal sewer flooding;
- a new standard for customers materially affected by external sewer flooding; and
- external sewer flood payments of 50% of the annual sewerage charge or a minimum payment of £75 and maximum of £500, whichever is the greater.

2.2 In addition, some standards of performance and payments provided by undertakers whose areas are wholly or mainly in England will also apply to undertakers whose areas are wholly or mainly in Wales. This is because the standards and payments provisions made under SI 2000/2301 were never formally adopted by the National Assembly for Wales (although the relevant undertakers applied them on a voluntary basis).

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

3.1 The consolidated Regulations corrects some defective drafting in Regulation 2(3) of *Water Supply & Sewerage Services (Customer Service Standards) (Amendment) Regulations 2000* (SI 2000/2301), that was identified by the JCSI in its 32nd report in the 1999/2000 session.

4. Legislative Background

4.1 Section 38 and 39 of the Water Industry Act 1991 (“the Act”) provides powers for the Secretary of State and Welsh ministers to make regulations setting out customer service standards that must be met by water undertakers. Sections 95 and 96 make similar provisions in relation to sewerage undertakers.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In January 2004 the National Audit Office published a report of an investigation into the sewerage system in England and Wales. This was then followed by a Public Accounts Committee hearing and report in September 2004. These reports recommended that the Water Services Regulation Authority (“Ofwat”) should look closely at the current Regulations and develop guidelines to provide for more uniformity in dealing with customers and consider the level of payments made in sewer flooding cases.

7.2 The Act requires ministers to lay regulations based on the recommendations of Ofwat. Ofwat launched a full public consultation in November 2005 and published its response in the summer of 2006 and subsequently made the recommendations outlined in paragraph 2 above to Defra ministers, which they accepted. Welsh ministers also agreed Ofwat’s proposals and asked Defra to lay a joint statutory instrument to cover England and Wales and to bring standards and payments for undertakers wholly or mainly in Wales into line with those laid under SI 2000/2301.

8. Impact

8.1 A Regulatory Impact Assessment was prepared by Ofwat and is attached to this memorandum.

9. Contact

David S Jones at the Department for Environment, Food and Rural Affairs
Tel: 020 7238 5989 or e-mail: david.s.jones@defra.gsi.gov.uk can answer any queries regarding the instrument.

Partial regulatory impact assessment for the changes proposed in the ‘Dealing with customers affected by sewer flooding and the guaranteed standards scheme’ consultation, November 2005

Purpose and intended effect of the proposals

Sewer flooding

In 2003-04 and 2004-05 there were 4,600 internal sewer flooding incidents and 23,000 external flooding incidents each year on average (including those caused by severe weather). In the research carried out by us in 2004¹, 54% of customers flooded by sewage felt that their water company had not adequately compensated them. The proposals in this paper will help to provide customers who have been affected by sewer flooding with a more comprehensive GSS and a clearer view of what action their company will take to help them following an incident. If the current arrangements under GSS are not changed there is a risk of dissatisfaction amongst customers. This may then lead to more customer complaints (to companies, CCWater or us) and increased financial pressure and stress for customers. This may also lead to a loss of reputation for companies, and potentially CCWater and us.

Other aspects of the GSS

Our proposals will offer protection for customers who contact the water companies with queries or complaints by telephone. The proposals will also improve the clarity of the legislation that has become complicated as a result of amendments. Pre-consultation work provides reassurance that current GSS (except for sewer flooding aspects) is still fit for purpose.

Policy development alternatives

The paper sets out our preferred option for extending the GSS and for developing a set of best practice guidelines for handling sewer flooding. These options are supported by stakeholders and build on what is already in place in the industry, making policies more formal and aligned whilst still retaining sufficient flexibility for local circumstances.

¹ ‘Customer research 2004 – Survey of customers affected by sewer flooding’.

Alternative options are:

Sewer flooding

1. Do nothing, leaving the GSS as it stands and allowing companies to continue with the policies they already have in place. However, we would lose the opportunity to introduce more uniformity to company policies that cover assistance in addition to the GSS. Moreover, the NAO and the PAC specifically recommended that we consider the current arrangements. The general feeling from the industry and other stakeholders is that the current GSS should be reviewed and extended.
2. Revise and extend the GSS to cover the new areas outlined – minimum payments, payments made to cover flooding caused by severe weather and payments made for external flooding – but do not develop guidelines in addition to these changes. Again, this would mean that we miss the opportunity to provide customers with more clarity about what their company can do to help them, both practically and financially.
3. Extend the GSS to include both the proposed extensions and the areas covered by the draft guidelines. This would make the GSS complicated and would mean that companies lose the flexibility to adapt their policies to suit their customer base. It may also act as a disincentive for companies to develop any policies in addition to the GSS that may benefit the customers in their area.

Other aspects of the GSS

1. Do nothing, leaving the GSS as it stands and allowing companies to continue with the policies they already have in place. However, we would lose the opportunity to update the legislation taking into account that more customers prefer to contact their water supplier by telephone rather than in writing. We would also remain open to criticism from the Joint Committee on Statutory Instruments (JCSI) about the unclear drafting of the statutory instrument, which has occurred as a result of later amendments.
2. Revise the GSS to allow queries and complaints from customers by telephone, but make no amendments to consolidate the legislation in any other way. This would mean that we miss the opportunity to make the legislation clearer and better drafted.
3. Amend and consolidate the legislation to improve the drafting but not add queries and complaints made by telephone to section 3. If we do not add these queries and complaints into the legislation we will miss the opportunity to offer protection to a growing number of customers who contact their water company by telephone.

Benefits of the proposed changes

There are both tangible and intangible benefits for customers and companies of the extending the GSS and developing a set of guidelines.

Benefits for customers include:

- entitlement to a GSS payment to recognise the service failure for all sewer flooding incidents including external flooding and those incidents caused by severe weather;
- a minimum guaranteed payment regardless of the charges a customer pays for sewerage services;
- firmer policies in place to help them clean up following sewer flooding;
- clear policies in place for claiming extra compensation from their company in certain circumstances;
- entitlement to a GSS payment to recognise the service failure if a company doesn't respond to a telephone query or complaint within ten working days;
- clearer legislation which is easier to understand, which also allows customers to feel satisfied that there are no loopholes in the legislation; and
- an intangible benefit of feeling satisfied with the actions that their company has taken to help them.

Benefits for companies include:

- the ambiguity in the current GSS will be removed and companies will have a better understanding of when they need to make a GSS payment;
- their policies for dealing with customers affected by sewer flooding in addition to the GSS will be more in line with the rest of the industry if they follow guidelines; and
- customers will be more satisfied with the help and compensation available following a sewer flooding incident, which may lead to reduced complaints and less time spent by staff resolving claims for compensation that are not covered by a set of guidelines.

Benefits for CCWater include:

- improved clarity in the GSS legislation and company policies making it easier for CCWater to advise customers of their rights.

Costs

Sewer flooding

Across the industry, over the last two years an average of £462,500 each year has been paid in GSS for sewer flooding incidents. In addition to this an average of £595,000 has been paid in enhanced GSS (EGSS) payments and £440,000 in customer charter payments each year. EGSS payments follow the general criteria of the GSS but may be higher payments or have slightly improved criteria and customer charter payments are paid for circumstances not covered by the GSS, for example replacement of damaged goods or external flooding.

The table at the end of this section estimates the additional costs of the proposals set out in the consultation. Even with the additional information about recent payments that we collected from companies we have needed to make a number of assumptions. More data and analysis would be needed to improve this assessment. We would need to ask the industry to collect more detailed information and undertake company-specific analysis as policies differ across the industry.

Other aspects of the GSS

Across the industry in the last year almost 143,000 written complaints were received. Of these around 450 or 0.3% were not dealt with within ten working days. There were around 880,000 telephone complaints. Assuming a similar proportion to written complaints were not dealt with within ten working days, 0.3%, then there would have been almost 2,650 cases where a GSS payment would be made under our proposal to allow queries and complaints by telephone to attract a GSS payment.

A payment of £20 for this would equate to around an extra £53,000 across the industry in the last year. However some companies already make payments for telephone queries and complaints which were not responded to within 10 working days. It is also reasonable to assume that high proportions of telephone complaints are dealt with at the time of the call. Therefore this is likely to overestimate the impact.

Our proposal to amend and consolidate the legislation does not change the legal meaning or status. As a result there should be no cost impact on water companies.

In conclusion

At an industry level in 2004-05, £3.1 million was paid to customers in GSS, enhanced GSS and goodwill payments. The estimated additional costs of our proposals are £1.08 million together representing an overall increase of 33%. In terms of sewer flooding, £1.5 million was paid in GSS, enhanced GSS and customer charter payments. The estimated additional costs of our proposals for sewer flooding are £1.03 million representing an increase of 48%.

Whilst this increase in costs would be borne by all customers, and not just those who would benefit from an extension of current policies, it is small when compared to other industry costs. The anticipated costs of GSS and other compensation payments are considered when we set prices.

Proposal	Estimate of current practice	Additional payment
Pay a minimum of £150 per internal flooding incident ²	GSS and enhanced GSS £462,500+ £595,000	Of the 3,400 domestic flooding incidents we assume 50% of these receive the minimum payment of £150. Assume this is on average £50 more than their actual bill. $\frac{3,400}{2} \times £50 = £85,000$
Pay for all internal flooding incidents regardless of severe weather (this is the most expensive of the three options presented).		Typically there are around 1,000 incidents each year that can be classed as severe weather. Some companies already include these so the number of incidents is reduced by 1/3 to account for this $1,000 \times \frac{2}{3} \times £160 = £105,600$
Pay for external flooding incidents	Know that around 2,000 payments per year are already made.	23,000 incidents per year. Average payment of £80 (half internal average). Assume that material claims are made for around half of incidents. $\frac{23,000 - 2,000}{2} \times £80 = £840,000$

² Current average bill is around £150. We don't know the actual distributions of bills around the average. Current average payment is £140 we estimate this would increase to £160 with minimum payment of £150.