

Developer Services

Developers Guide to Sewer Requisition (S98 – S101)

May 2018

It's part of our
Blueprint for Yorkshire



General

The purpose of this document is to provide developers with a guide for requisitioning a public sewer in the Yorkshire Water area under Sections 98 to 101 of the Water Industry Act 1991 and explains Yorkshire Water's statutory duties.

Whilst every attempt has been made to address the full range of practical and legal issues covered by the process, there may always be practical site conditions which are not detailed in this guide.

We are happy to meet with you at the outset of the process, prior to submission of a complete application, to ensure our requirements are clear and any issues with a site can be discussed at an early stage.

Requisitionable Flows

A public sewer may only be requisitioned for 'domestic purposes', i.e. the removal of flows from the contents of lavatories, water used for cooking and washing and for the removal of surface water from premises. 'Domestic purposes' does not include the removal of water used for a laundry businesses or for a business preparing food or drink for consumption otherwise than on the premises.

A public sewer cannot be requisitioned to serve solely trade effluent or highway drainage flows. However, additional capacity can be provided in a public sewer, requisitioned for 'domestic purposes', for trade effluent or highway drainage flows provided that the full cost of providing additional capacity is covered by the applicant.

People / Bodies Capable of Applying for a Requisition

The person or body requisitioning a public sewer must serve notice on Yorkshire Water to commence the requisitioning process. This must be done by writing, in the first instance, to Yorkshire Water Services Limited.

A public sewer by definition must serve, or be intended to serve, more than one premise, on which there are, or will be, buildings when proposals made by any person for the erection of any building are carried out. Where the requisitioner is applying for a lateral drain then a single premise will be served but the drain must terminate at the boundary of that premise.

The following persons or bodies relevant to Yorkshire may requisition:

- the owner of any premises in the area
- the occupier of any premises in the area
- a local authority within whose area the whole or part is situated
- the commission for the new town within whose area the whole or part is situated
- the development corporation for the new town within whose area the whole or part is situated
- the urban development corporation within whose area the whole or part is situated

Sewer Requisition

Costs

The financial calculations for a sewer requisition are described in Sections 99, 100 and 100A of the Water Industry Act 1991 and are called the 'relevant deficit' and the 'discounted aggregate deficit' methods.

The financial conditions require the requisitioner to agree to pay to Yorkshire Water the shortfall (if any) between the additional income generated from the use of the new public sewer and the financing costs of a loan equivalent to the cost of laying the new public sewer. The requisitioner may pay the shortfall in one of two ways, either:

- **by paying the shortfall**, i.e. the '**relevant deficit**', being the difference between income and borrowing costs as described above (if any) every year for each of the twelve years following the provision of the relevant public sewer. The income received will depend on the rate at which the development and occupation of the site takes place together with any changes in our sewerage charges.

The interest rate for the annual repayment charge is set by the Director General of Water Services (DG). This interest rate will vary throughout the twelve year period and it is this varying interest rate that will be used to determine the annual repayment charge and income.

It is necessary to enter into an Agreement with Yorkshire Water to guarantee that the relevant deficits will be paid in each of the twelve years. This requires a deposit to be made as security. The deposit will be reduced each year in line with the annual repayment charge and annual income.

The deposit is reviewed annually and repayments are made if appropriate. Any deposit left at the end of the twelve year period will be returned to you. There is a possibility that the deposit may be insufficient to guarantee payment of the relevant deficits over the whole of the twelve year period. If this were to occur, we will require a further deposit to be made.

OR

- **by paying to Yorkshire Water** following the provision of the relevant public sewer a single amount known as the '**discounted aggregate deficit**'. The 'discounted aggregate deficit' is an amount equal to the anticipated annual shortfalls as above, but discounted to a net present value. The discounting is done in accordance with a factor and other provisions determined by OFWAT. The main benefit of this method is that payments are finalised in a few months instead of over a twelve year period.

With the 'discounted aggregate deficit' method, the future income is estimated using current rates inflated in accordance with OFWAT guidelines. Both the interest rate and the discount rate are set and reviewed bi-annually by OFWAT.

It is necessary to enter into an Agreement with Yorkshire Water to guarantee that the 'discounted aggregate deficit' will be paid when the final project costs are known. This requires a deposit to be made as security, which can be used to offset the final payment. Any residual balance will be refunded with interest.

With both methods of financing the sewer requisition, the actual costs that are incurred by Yorkshire Water in providing the requisitioned public sewer are used in the calculations to determine the final costs the applicant have to pay.

In addition to the above methods of financing the works you may alternatively provide security by means of an indemnity from an Approved Surety who will be required to enter into the requisition agreement to provide payment, in the event of a default by you, of the deficit between the annual borrowing cost for providing the requisitionable element of the works and the income to be received from the occupied development (in the case of the 'relevant deficit' method), or the discounted aggregate of the twelve year estimated relevant deficits (in the case of the 'discounted aggregate deficit' method), and any other payments that are due to us under the terms of the requisition agreement.

Alternatives to Requisitioning

Alternatively, you could construct the sewers yourself provided that you obtain the necessary rights to do so from any landowners or Highway Authorities along the route. Any arrangements you make with landowners will constitute private business between the landowners and yourself. You should expect landowners to request payment in return for granting you the rights to construct sewers in their land. Highway Authorities often impose restrictions on working in the road and will apply rules under the New Roads and Street Works Act 1991. You will have to engage a contractor whose workforce are trained and qualified under that Act.

If you wish to offer the constructed sewer for adoption by Yorkshire Water, under Section 104 of the Water Industry Act 1991, you will need to ensure that it is constructed in accordance with the current version of 'Sewers for Adoption - a Design and Construction Guide for Developers' (easements with off-site landowners containing standard rights and covenants will also need to be concluded).

Actions Leading to a Requisition Agreement

Enquiries for public sewer requisitions will be progressed by the Sewerage Technical Team within the Developer Services department of Yorkshire Water.

Before commencing any work on your application certain basic details must first be established and an advance payment must be paid to cover Yorkshire Water's costs of the Feasibility Study prior to the signing of the Formal Agreement. Please refer to our latest Fees Document on our website for the current value of the advance payment required. Please note, the value of this payment will increase in proportion to the anticipated scale of the project.

On completion of the Feasibility Study, if you choose to take no further action, Yorkshire Water would invoice you for our reasonable costs over and above the monies already paid in feasibility. If there are any monies to be returned from the feasibility money, these will be refunded.

If the Offer of Terms is accepted, you will be asked to enter into a Sewer Requisition Agreement with Yorkshire Water. You will have the opportunity to pay by either the 'relevant deficit' method or the 'discounted aggregate deficit' method.

A Sewer Requisition Agreement will be drafted by Yorkshire Water's legal department, the completion of which will form the contract between Yorkshire Water and yourself. Yorkshire Water's legal fees for the preparation of the legal agreement will be due when the Agreement is signed.

Downstream Improvements

Yorkshire Water is responsible for selecting the route, outfall arrangements and specification for the requisitioned public sewer. If existing downstream public sewers need to be improved in order for them to accept the proposed flows from your site, then the necessary improvements to those existing public sewers will also form part of the requisitioned works.

If the receiving public sewer was constructed under a Requisition Agreement during the previous twelve years and was oversized by Yorkshire Water to provide additional capacity for your current site, then the cost which Yorkshire Water incurred in providing that earlier additional capacity will also be included in the calculations of the cost of your sewer requisition.

Where reinforcement of the existing network is necessary to provide additional capacity to serve the proposed development then when calculating the level of income due to Yorkshire Water, then the Sewerage Infrastructure Charges due from each of the properties served by the requisitioned sewer are also taken into account, in accordance with OFWAT guidelines.

Discharges to Watercourses and Canals

Sewerage Undertakers do not have the right to discharge surface water to open bodies of water without the Riparian Landowner's permission. Consequently, it will be necessary to negotiate a Deed of Grant of Easement for this type of discharge. This is likely to affect the estimate and programme for the requisitioned works because contracts will not be let until such time as appropriate Rights in Perpetuity have been obtained.

Design and Construction

Once a public sewer has been requisitioned, Yorkshire Water is responsible for its provision in accordance with the Water Industry Act 1991. This means that legal and administrative arrangements for its design and construction must comply with the Act. Any arrangements or negotiations with Highway Authorities, other utilities, landowners and other customers are also our responsibility. For these reasons, Yorkshire Water retain control of the design and construction of the requisition project.

The requisitioned public sewers will be constructed using our statutory powers. This may involve the serving of notice to enter the land through which the requisitioned public sewer is to be laid, in accordance with the provisions of Section 159 of the Water Industry Act 1991.

Time Periods

Under the Water Industry Act 1991, the requisitioned public sewer must be available for use within six months of:

- the day on which the financial conditions are met; or
- the day on which the places of connection are agreed or determined

whichever is the latter. This period may be extended by agreement, or where there is a dispute, by the DG. In certain circumstances, it may not be possible to complete the requisitioned public sewer within the six month period:

- major construction works are required in which case it may not be physically possible to complete the requisitioned public sewer within the six month period;
- works are required in land in the ownership of undertakings protected under the Act. Such undertakings include British Waterways Board, Network Rail etc. and agreement is required with them prior to our entry upon their land;
- land, not in the ownership of the requisitioner, needs to be purchased for elements such as pumping stations.

If you wish, Yorkshire Water will discuss the programme with you so that you are fully satisfied before completing the Requisition Agreement.

Final Costs

Yorkshire Water will do their best to tell you, as soon as possible, of any significant changes to the estimate of final costs quoted in the Requisition Agreement.

The final annual shortfall payment of the 'discounted aggregate deficit' will be recalculated, usually within six months of the completion of the works in accordance with OFWAT guidelines and Yorkshire Water will then raise a final invoice (or a final refund). On receipt of the final payment (or refund) the surety will be released or the cash bond refunded with interest at the rate determined by OFWAT.

Under certain circumstances, the final recalculation may take place after six months. This may be due to:

- the owners of affected businesses along the route of the requisitioned public sewer have up to six years in which to lodge a claim for losses incurred as a result of the sewer construction works
- the owners of land through which the requisitioned public sewer passes can claim compensation. Negotiations can, however, sometimes take several years to resolve
- the final account with the contractor will not be settled until repairs to any faulty workmanship have been completed
- other service utilities may delay sending in their bills for any diversions of their pipes or cables
- there is usually a minimum three year warranty period on any reinstatement work for highway surfaces.

Yorkshire Water will do its utmost to resolve all issues within a reasonable time following completion of the scheme.

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