

FACT SHEET – PRIVATE DRAINAGE

This FactSheet is designed to help buyer-clients weigh up certain key points when their chosen property has a private drainage system (not served by a public foul sewer system) and to help seller-clients understand the issues that their buyers will be considering. It is for general information. If further detailed advice is required on your property - do please call us for help.

1. General information - septic tanks and private sewage treatment plants.

Your property may have either:

- A cesspool: These are typically encountered with much older properties (pre Victorian), and are rare. They comprise a covered single, supposedly watertight tank or pit, (no overflow / discharge) which needs regular emptying.
- A septic tank. This comprises of two to three underground chambered units. A septic tank can serve either single or multiple properties (usually no more than two to three smaller houses). Often brick lined, with no moving parts, a septic tank rarely requires maintenance unless some part of its structure has been compromised (age or accident). It stores material for sufficient time to allow its natural breakdown underground into two elements:
 - Water - which is usually inert, and which enters the surrounding subsoil either by means of a gravity-fed soakaway system of pipes (known as a 'Drainage Field'); or by means of an overflow pipe often directed into a nearby ditch and then into the surrounding surface water dispersal network. In either event, this 'discharge of wastewater' is potentially regulated by law. More about that below.
 - Solids: these are retained in the tank and break down by natural action, resulting in sludge. Some systems never need emptying - others do - by means of an annual tanker collection.
- A private treatment plant. These are modern septic tanks but treat the sewage to a higher standard before discharge (the better systems boast that the wastewater is pure enough to drink). Electrically powered with pumps and moving parts, they produce a cleaner discharge of water, but the dispersal process is the same. Sludge is collected. These require regular maintenance. They can serve single or multiple properties.

Most old-fashioned systems do not cope easily, if at all, with the demands of increased water discharges from showers, dishwashers and, washing machines, cleaning products and modern chemicals from domestic households. Increasingly tough pro-environment and anti pollution legislation is targeting old facilities to be replaced by better ones less susceptible to causing contamination of the surrounding environment.

2. House buyers - a practical checklist and cost considerations

We strongly recommend that you obtain an expert report on the state and condition of the facility and whether it needs to be renewed or updated to comply with current legislation requirements and that it;

- is in reasonable working order;
- has sufficient capacity to serve your intended household;
- does not cause pollution – in particular any system with an overflow pipe discharging into a nearby ditch and surrounding surface water network should have been updated by 1 January 2020 to either a private sewer treatment plant or updated with a ‘drainage field’ (to drain any effluent into the soil rather than into any water system).
- complies with any relevant planning permission or building regulations approval requirements.

So watch out for additional costs in:

- Engaging an expert or surveyor – to ascertain whether renewal or an update is necessary pursuant to legislation passed in 2015. Sellers are notoriously ill informed as to the specific technicalities in this regard.
- Annual clearing, repairs and ongoing maintenance;
- Upgrading or replacing the system if it does not meet the required statutory standards.

3. Legal aspects - our role

Our role is in relation to the *conveyancing* aspects only. When acting for a buyer our task is to ensure so far as possible that the system serving the property:

- complies in general with the prevailing regulatory requirements. We can only take the Seller’s responses at face value. It is therefore preferable to rely on an expert’s assessment of the specific facility (the current contractor dealing with maintenance / sludge clearance is probably a good starting point).
- where the facility or its soakaway or discharge pipe is on adjoining land, and or used jointly with other properties, that your Property has adequate property rights (known as ‘easements’) to use the facility and a framework for sharing maintenance costs.

4. Regulatory considerations - England only

Registering the facility with the Environment Agency (obtaining an Operator Permit or Licence) is no longer a mandatory requirement but ensuring that your system is exempt from a registration requirement is becoming ever more complicated and it is probably safer to obtain an Operator Licence from the Agency to avoid any potential large fines that can be levied by them for non-compliance or causing contamination. You do not need to obtain a Licence from the Agency provided that;

- Discharge to Ground – The system does not cause pollution to the ground (the system is either a modern treatment plant facility or any water discharge is via an underground ‘drainage field’ within the system). More information is available at;

<https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

- Discharge to Water – The system does not cause pollution of groundwater or surface water (the system must be a modern treatment plant facility). More information is available at;

<https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-a-surface-water>

- Volume Thresholds – The facility must satisfy certain volume threshold conditions. For discharge to ground systems this is set at a maximum of 2 cubic metres per day of sewage effluent (equivalent to 10-12 bedrooms sharing a facility). For discharge to surface water systems (treatment plants) this is set to a maximum is 5 cubic metres per day (equivalent to 39-42 bedrooms sharing a facility). A volume calculator is available at the following web site address to give you a more specific calculation;

<https://www.gov.uk/government/publications/sewage-discharges-calculator-for-domestic-properties>

- General Binding Rules – You as the owner operator must ensure that the facility complies with the Environment Agency’s ‘general *binding rules*’. In brief summary, the Owner Operator must:
 - Comply with the relevant design, manufacturing, construction, operation siting and installation requirements in any guidance issued by the appropriate authority;
 - Only process domestic effluent (i.e.no trade effluent);
 - Ensure maintenance in accordance with the manufacturer’s specification;
 - When the tank or plant ceases to operate, ensure that all works and equipment are appropriately decommissioned, so there is no risk of pollutants entering ground water or surface water, as the case may be;
 - Provide written information to a new Buyer occupier; stating that a small domestic sewage discharge is being carried on the land; describing the sewage treatment plant; and setting out its maintenance requirements. This is most commonly dealt with in the Seller’ Property Information Form.

More information is available at; General Binding Rules – With effect from 02.10.2023

<https://www.gov.uk/government/publications/small-sewage-discharges-in-england-the-general-binding-rules/general-binding-rules-for-small-sewage-discharges-ssds-with-effect-from-2-october-2023>

- Location Conditions – The facility satisfies location conditions (these are conditions within the General Binding Rules that warrant highlighting):
 - Special Protection Zone 1 – Facilities that lie within a ‘Special Protection Zone 1’ require a Licence. (The Environment Agency website has an online tool for determining whether the facility lies within an SPZ1).
 - Designated Sensitive Areas – Facilities that lie within an area designated to be a sensitive area require a Licence. In England, these comprise of such areas that are

designated to be Special Areas of Conservation; Special Protection Areas; Ramsar sites; Sites of Special Scientific Interest; designated bathing waters; shellfish protection water; ancient woodlands; land containing selected protected species and protected habitats; local nature reserves and aquatic sites. (There are similar and extended rules for properties in Wales). Again, the Environment Agency website has an online tool in this regard to assess whether the facility lies within any of these designated areas.

- Environment Agency – The use and operation of private sewer facilities with enough care to ensure that it does not cause pollution to the surrounding environment is a complex issue. We suggest that you direct any questions about the specific facility to the Environment Agency <https://www.gov.uk/government/organisations/environment-agency> (Tel 0370 850 6506). Alternatively, you should discuss any technical issues with your specialist assessor.

5. Legal liabilities: potential liabilities for pollution

If the private drainage system is defective, it could cause contamination problems at the property, or contamination could leak onto neighbouring land or waters. The occupier of the property and or owner of the private system may be liable as a polluter:

- to carry out remediation works under the contaminated land regime.
- to carry out remediation under the Water Resources Act 1991.
- to carry out remediation under the Environmental Liability Directive 2004 regime on environmental liability with regard to the prevention and remediation of environmental damage.
- in the civil law of Nuisance to affected neighbours.

We strongly recommend that you obtain an expert report or survey of the facility together with confirmation as to whether the system needs to be renewed or updated to comply with current legislation requirements. We also suggest that given the technical nature of some of the General Binding Rules that you carefully consider obtaining an Operator Licence from the Environment Agency in any event. Although you will pay a small application fee and an ongoing annual fee to cover the cost of inspections, you will be passing a lot of the responsibility for guarding against contamination on to the Agency and these costs as well as fines could amount to tens and sometimes even hundreds of thousands of pounds.

We hope this FactSheet is helpful to you.