

**Frequently Asked Questions in relation to the
Water Industry (Undertakers Wholly or Mainly in
Wales) (Information about Non-owner
Occupiers) Regulations 2014**

1. INTRODUCTION

The Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 came into force on 1 January 2015. The Welsh Government, in discussion with water companies, the Consumer Council for Water and the Residential Landlords Association, developed non-statutory guidance on why regulations were put in place and how to comply with them.

Following ongoing dialogue with organisations in the housing sector, we have recognised that there are 'grey' areas where it is either not immediately clear if the regulations apply, or where full compliance with the regulations could be seen as overly burdensome, or in some cases, potentially detrimental to non-owner occupiers.

This document seeks to set out responses to queries received by the Welsh Government and the water companies, as well as range of scenarios which have been presented by various organisations, and provide clarity around the expectations of the water companies in relation to compliance with the regulations. The document will be published on the Welsh Government website, alongside the non-statutory guidance, and will be available from the water companies and the Consumer Council for Water.

The scenarios are set out under a series of relevant headings: social housing, management agents, and miscellaneous.

2. SOCIAL HOUSING

- a) *Will the report provided to the water companies need to show the required details for all existing tenants as at the first report run date or just new tenancies post 1st January 2015?*

Information should be provided about all existing tenants, as of 1st January 2015, unless this has been previously provided to the water company.

- b) *Will the report need to show the information relating to all occupants that join an existing tenancy who are over the age of 18 or just those that were occupants at the tenancy start date?*

The Regulations require information to be submitted in relation to **each** occupant within 21 days of the occupation commencing. For example, if information has been provided for a group of occupants on 5th January 2015 and an additional occupant aged over 18 moves in on 23rd January 2015, the owner would then have 21 days to inform the water company about this new occupant.

- c) *Does this also extend to any existing household members at the point at which they turn 18 e.g. children reaching adult age after tenancy start date?*

The Regulations require that owners of property submit information about non-owner occupiers over the age of 18 who are in residence as of 1st January 2015. If at any time in the future there is a change in occupation, information about the new occupants should be submitted within 21 days of them occupying the residence. We would not consider a current occupant turning 18 as being a 'change in occupation'. The **only** circumstance where this would be relevant is if the person turning 18 was the sole occupant of the property, in which case we would expect their details to be supplied to the water company.

- d) *We have instances with tenants are under 18 are the sole occupants – I would expect the water company to want to know this otherwise who would pay the water bill.*

If a property has a single occupant, who is under 18, then yes, the water companies would wish to know that. However, there is no legal requirement under these regulations to provide that information.

- e) *We manage properties on behalf of Private Sector landlords. Is the onus on us as the managing agent or is the onus on the Landlord?*

The duty is on the landlord to make sure that you, as their representative, provide the required information within the timescale on their behalf.

- f) *There are further complications surrounding the management of temporary accommodation. We manage a handful of properties secured by the local*

authority under a lease agreement with private landlords. In many instances these landlords wouldn't have details of the occupant. Would the onus fall on Landlord (as it's their property), Local Authority (as they have secured the property on the lease) or the managing agent?

The duty is on the owner of the property (in this case the 'landlord') to ensure that under the lease agreement the required information is supplied to the water company. The submission of information can be done by the landlord themselves, the Local Authority or the managing agent. Provided whoever holds the information is aware of the regulations and submits the information within the given timescales, the duty will have been complied with but the responsibility rests with the landlord to ensure that this has been done.

g) If date of birth is not on file are we to include or exclude these people?

The regulations require the provision of full name of occupiers and date of birth **if available**. This means that if you only have a name for the occupier, this should be provided and the Regulations will have been complied with.

h) If we happen to have garages that have a mains water supply, are we to include these tenancies as well. We don't believe we have but we want to cover all eventually.

Garages do not fall under the definition of residential property and therefore there is no legal requirement to provide such information. However, it would be good practice to provide such information, if available as this would go some way in achieving the overall objective of the Regulations i.e. reducing bad debt/unpaid bills within the water industry.

i) In order to comply with section 4 of the regulations (notifying the tenants that we will be sharing this information) is there any prescribed best practice or any preferred format in which to inform occupants? E.g. would a newsletter article suffice or is a letter required to be sent to all tenants? For your consideration, we could provide an estimate of postal and production costs involved in such actions.

The Data Protection Act (DPA) requires the data controller to "ensure so far as is practicable" that the data subject is informed that their information will be passed on. Advice received from the Information Commissioner's Office stated that they would expect the individual to be informed **prior** to the disclosure of their information or at very least at the same time as the disclosure, rather than after the event, unless it is impossible to do so, in which case it should be as soon as possible thereafter. We cannot provide legal advice on what would constitute best practice but the ICO provide a guide which should help - <https://ico.org.uk/for-organisations/guide-to-data-protection/>. In time, an ideal approach could be for a statement to be included in tenancy agreements to the effect that their information will be passed to the water company.

- j) *We are also concerned about the formatting of the report in terms of how the information is structured on the page. If landlords supply information using different formats this may prove difficult to collate. Should we expect a pro-forma or are we to decide the formatting ourselves?*

Both Welsh Water & Dee Valley Water have confirmed that they would be happy to provide a pro-forma upon request. Alternatively, information can be submitted via the landlord portal at www.landlordtap.com and there are organisations who offer a similar service of collating and submitting information on behalf of landlords.

- k) *Getting the occupancy details from Leaseholders who rent their properties out to others. We even have Leaseholders not tell us when they sell their Properties.*

If the leaseholder is registered as the leaseholder on Land Registry and is letting the property to a third party, both Welsh Water & Dee Valley Water would consider the leaseholder to be the owner of the property for the purposes of these Regulations. They would therefore expect the leaseholder to provide the occupants' information.

- l) *The data is as good as our tenant profiling and is dependant on tenants telling us who occupy the property. What does 'occupy' mean? What commitment to living in the property is required to call somebody an occupier? E.g. what if a tenant puts up a sofa surfing friend for a few weeks.*

We would consider the occupier to be those as detailed in any housing association agreement / tenancy (i.e. the tenant). Therefore, if the owner (i.e. Housing Association) provides the information about those detailed in the agreement / tenancy then we would consider that they have complied with their duty. Using the example provided, a friend sofa-surfing for four weeks would presumably not be included on a tenancy agreement and could therefore be considered to be just visiting so there would be no requirement to provide their information to the water company.

- m) *Many RSLs manage shared supported living accommodation for people with learning disabilities whereby several tenants are issued assured tenancy agreements for the exclusive use of one bedroom within the property and shared use of communal areas. All of them have a tenancy responsibility for paying their share of utility bills. In most of these cases, tenants receive intensive housing management services from domiciliary care staff to manage the payment of bills - in fact, it is common practice for the names of the domiciliary care agencies to be registered as the bill payer and not the tenants. Would the RSLs be required to provide the details of all tenants who are living at each supported living property where tenants have an assured tenancy?*

The objective of the Regulations is to reduce the amount of unpaid bills by improving information provided to water companies. In cases such as these,

where an arrangement is already in place for water bills to be received and paid at the property, there would seem little merit in expecting the RSL to provide information about tenants who are never going to be the named bill payer due to the nature of the support that they require. In these cases, it would seem reasonable to continue with current practice and provide the name of the care agency.

3. MANAGEMENT AGENTS

- a) *Part of the service we provide to our customers is to notify the relevant water / sewerage company when a landlord or tenant takes responsibility for a property. We have been offering this service for over 10 years and have made several thousand notification on behalf of our customers who have property in the areas of the UK that you cover. What I'd like to establish is if our customers need to provide you with details of properties and tenants even though we will have already done this on their behalf?*

The new regulations allow for property owners / landlords to make arrangements for a third party to provide the information to the relevant water company on their behalf. Therefore, provided your service provides the information set out in the regulations, your customers can continue to use this service and be compliant with the regulations. To clarify, the Welsh Government has produced the Regulations which introduce the legal requirement to provide non-owner occupier information to water companies but we will not be receiving or holding any of the data.

The regulations come into force from 1st January 2015. If your customers have already, through your service, provided the required occupier information for all of their properties to the water company then it will not need to be provided again. If at any time after 1st January, there is a change in occupancy your customers will have 21 days to arrange for you to provide the required information about the new occupiers to the relevant water company.

- b) *Would the regulations apply in the following circumstance: water company supplies water to a farm / estate and invoices the owner of the farm / estate, who pays the water company. The farm / estate subsequently pipes water from the mains supply to a separate property, which is metered by the farm / estate and the tenant recharged for the water they use.*

In this case, the Regulations would not apply – the mains supply goes to a property which is occupied by the owner and is paid for by the owner. If the supply pipe to the second property has not been adopted by the water company, they would not be responsible for reading that meter and are not responsible for the billing of that property. The Regulations would only kick in if the pipework to the let property were adopted by the water company and that supply billed separately.

- c) *Would the regulations apply in a case where employees water bills are paid for by their employer?*

If the employees are living in property that they don't own, the owner of the property would have a duty to inform the water company of the occupiers details under the new regulations and would render them jointly and severally liable for charges if they fail to comply. However, assuming that the employer is the owner of the property, if they are already paying the water charges anyway then they have arguably already accepted liability for the charges and

the water company would only pursue them for failure to provide information, if they ceased to pay charges.

d) Who is responsible for supplying information under the regulations in the case of a large dwelling which is sub-divided into self-contained flats but with the owner paying the bill and the tenant then paying the owner for their share?

If the flats are rented from the owner then the regulations do apply. However, if the owner of the property has already effectively taken liability for the water charges anyway, I believe that the water company would only pursue them for failure to provide information if they ceased to pay charges. If the owner wished to change the arrangement in future and wanted the tenants to have a direct relationship with the water company, then they would have to provide information of all occupiers to ensure they did not become liable for charges.

e) Most managing agents, as part of their management service, already inform water companies (together with the local council and utility companies) with details of names, addresses and dates at change of occupier, i.e. tenancy changeovers. The regulations refer to the obligation falling on landlords not their agents but as water companies already have the information as explained, will this present format of imparting information be sufficient to comply with the regulations?

We are fully aware that there are many agents who offer a comprehensive service to their clients including the provision of information to water companies and other organisations. The duty set out in section 144B of the Water Industry Act 1991 (as amended by section 45 of the Flood and Water Management Act 2010) on which the regulations are based allows for property owners to make arrangements for a third party to provide the information to the relevant water company on their behalf. Therefore, as long as agents are providing the information set out in the Regulations, clients can continue to use this service and be fully compliant.

If owners / landlords have already, through a third party agent, provided the required occupier information for all of their properties to the water company then it will not need to be provided again. If at any time after 1st January 2015 there is a change in occupation, your clients will have 21 days to arrange for you to provide the required information about the new occupiers to the relevant water company.

4. MISCELLANEOUS

a) How are the Welsh Government or the water companies going to ascertain who the landlords are to police compliance?

Going forward, it will be the responsibility of the water companies to take action where they believe the regulations have not been complied with. In the short term, this will mean identifying properties on their system with no identified bill payer and carrying out a Land Registry search to identify the owner of the property. In the longer term, new proposals to introduce a mandatory registration scheme for landlords in the private rented sector which are coming out of Part 1 of the Housing (Wales) Act 2014, will aid identification of properties which fall under the Regulations.

*b) What happens in localities where the Water Authority does not operate sewerage? If a landlord chose not to pass on the details via the Landlord TAP portal, would they have to inform **both** companies directly?*

Although Dee Valley Water is a water only company, they bill for sewerage services in their area on behalf of Dŵr Cymru Welsh Water so landlords with properties in Dee Valley Water's area would only have to provide information to Dee Valley.

The only exception to this is where the customer is a Trade Effluent customer, in which case Dŵr Cymru Welsh Water would bill the Trade Effluent element directly. However, it is unlikely that there would be any Trade Effluent customers that can fall under these Regulations as they refer to residential premises only.