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Welsh Government  
Consultation Document

## Implementation of Sustainable Drainage Systems on New Developments

- Part 1 – The consultation proposals
- Part 2 – The proposed approach
- Part 3 – Options for SuDS maintenance and funding options

Date of issue: **19 May 2017**  
Responses by: **11 August 2017**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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**Overview** This consultation seeks your views on the Welsh Government's proposed approach for delivering effective sustainable drainage systems (SuDS) on new developments. Specifically, this is an opportunity to discuss the content of Schedule 3 to the Flood and Water Management Act 2010 (the Act) which has not been commenced. It is also an opportunity to discuss the Regulations and Orders, including the National Standards for SuDS, needed to implement the Act.

**How to respond** Please complete and return the questionnaire at the end of the consultation document.

Alternatively, you can e-mail or send any comments to the address further below.

The closing date for replies is: 11<sup>th</sup> August 2017

**Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**

An on-line version of the consultation document and response form can be found at:  
<http://consultations.gov.wales/consultations>

Further related information as follows is available from:

<http://gov.wales/topics/environmentcountryside>

- Recommended non-statutory National Standards for sustainable drainage in Wales, and
- Sustainable Drainage Systems on New Developments, Analysis of evidence including costs and benefits of SuDS construction and adoption (Environmental Policy Consulting, January 2017)

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**Data protection**      How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

# Implementation of Sustainable Drainage Systems (SuDS) on New Developments

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# PART 1 – Consultation Proposals

## Purpose of the consultation

- 1.1 This consultation seeks your views on the Welsh Government’s proposed approach for delivering effective sustainable drainage systems (SuDS) on new developments. The Impact Assessment at Annex 1 outlines three possible approaches to this for consideration, including our preferred option. We are also seeking your views on:
- Potential changes to the primary legislation (the Flood and Water Management Act 2010), and
  - Secondary legislation and standards needed to implement the Act.
- 1.2 The Water Strategy for Wales sets out our national policy for the delivery of water and sewerage services in Wales and our commitment to look at commencement of Schedule 3 to the Flood and Water Management Act 2010 (the Act).
- 1.3 The key provisions relating to sustainable drainage in Schedule 3 of the Act make the use of sustainable drainage in all new developments mandatory and provide a mechanism for adoption and maintenance. In order to encourage the uptake of SuDS for new developments, we published a set of recommended non-statutory National Standards<sup>1</sup> for sustainable drainage in January 2016. However, local authorities report that their non-mandatory status and the lack of a clear pathway to adoption have limited their effectiveness.
- 1.4 We are therefore considering how best to improve the uptake of effective, multi-purpose SuDS for all new developments. In the Impact Assessment we consider three basic options:
- Make no change
  - Implement Schedule 3
  - Rely on planning
- 1.5 In developing these options, we have considered a variety of alternative approaches, but have concluded that implementing Schedule 3 provides the best means of delivering our policy objectives. However, we recognise that there have been significant changes in the economic and legislative context since 2010.
- 1.6 In particular, the Well-being of Future Generations Act 2015 (the 2015 Act) imposes a duty on the Welsh Government to consider a wide range of goals for policy implementation. We believe that well designed, multi-functional SuDS can provide a wider range of benefits than conventional drainage solutions, for example through the use of green infrastructure contributing to placemaking.

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<sup>1</sup> <http://gov.wales/topics/environmentcountryside/epq/flooding/drainage>

- 1.7 In addition, financial pressures on local authorities and developers have increased and we need to take this into account in implementing our preferred option. Part 3 of the consultation sets out options for SuDS maintenance and the funding options which could support them.
- 1.8 We are therefore also seeking your views on the need for amendments to Schedule 3 of the Act to better reflect implementation in Wales.
- 1.9 In order to implement Schedule 3, we will need to introduce secondary legislation containing details of processes such as applications, approvals, appeals and establishing fee structures. This consultation provides an early opportunity to consider both the legislation and the National Standards for SuDS needed to implement the Act.

## **Where are we now**

- 1.10 Surface water flooding is a serious problem, identified in our National Strategy for Flood and Coastal Erosion Risk Management<sup>2</sup> as a major cause of flooding of homes. The impact on citizens, communities and cost to the Welsh economy is significant. The risk of flooding is on the rise owing to climate change and urbanisation. In particular, local flooding, due to the overloading of volume constrained drainage systems and sewers, is of increasing concern. Under the terms of the Flood and Water Management Act 2010, the Lead Local Flood Authorities are responsible for local flood risk which includes that from surface water.
- 1.11 Surface water runoff can be an important source of diffuse pollution. The potential damage to our groundwater and rivers from polluted surface water runoff increases with each new development.
- 1.12 In addition, uncertainty over the design and adoption of surface water drainage for new developments can hamper development. There are also lost opportunity costs where the drainage design fails to deliver multiple benefits (for example recreation and amenity) beyond simple surface water management.
- 1.13 If commenced, Schedule 3 would require surface water drainage for new developments to comply with mandatory National Standards for SuDS. It also requires surface water drainage systems to be approved by a SuDS Approving Body (SAB) before construction work with drainage implications may begin. Provided National Standards are met, the SAB would be required to adopt and maintain the approved SuDS that service more than one property.
- 1.14 As an interim measure in January 2016 we published our recommended National Standards<sup>3</sup> for the design, construction and operation and maintenance of sustainable drainage on a non-statutory basis.

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<sup>2</sup> <http://gov.wales/docs/desh/publications/120412nssummaryen.pdf>

<sup>3</sup> <http://gov.wales/topics/environmentcountryside/epq/flooding/drainage/?lang=en>

1.15 In January 2017 we published the conclusions of a research report<sup>4</sup> by EPC into ‘Sustainable Drainage Systems on New Developments’ (the EPC research) which assessed the overall performance of SuDS, highlighting in particular costs and benefits in Wales.

## **Why changes are needed**

1.16 Our commitment to look at implementing Schedule 3 to the Act needs to be considered in the context of more recent changes and research which inform our policy objectives.

## **Welsh Government Commitments**

1.17 The 2015 Act has strengthened Wales’ approach in sustainable development. The Welsh Government has both a moral and statutory obligation enshrined in our well-being objectives for improving the social, economic, environmental and cultural well-being of Wales. The 2015 Act requires that public bodies in Wales give more thought to the long-term, working better with people and communities and each other to prevent problems before they arise.

1.18 Our well being objectives are central to “Taking Wales Forward”, our programme for government which sets out key priorities for the Welsh Government. We are committed to better managing water in our environment, alongside delivering sustainable management of our natural resources. To help deliver this, public bodies in Wales have a duty under section 6 of the Environment (Wales) Act 2016 to maintain and enhance biodiversity and promote the resilience of eco-systems – meeting this duty is vital to ensure long-term viability and climate change adaption.

1.19 SuDS can be used effectively in both rural and urban areas to support new development, whilst reducing the risk of flooding and pollution. Implementing SuDS which are compliant with National Standards is a key objective for managing flood risk in Wales. The SuDS approach to surface water drainage is not simply an alternative to piped drainage systems. SuDS deliver multiple societal, environmental and economic benefits for the longer-term which far exceed those from using conventional drainage.

**Our policy objective is to deliver effective, multi-purpose SuDS in new developments that will be maintained for the life-time of the developments they serve. To deliver this, it is vital that we enable partnership working between those involved in the design, construction and maintenance of the SuDS.**

## **Findings of report on Sustainable Drainage Systems in New Developments**

1.20 The EPC report had a number of key findings:

- There is broad and widespread support for commencement of Schedule

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<sup>4</sup> Sustainable Drainage Systems on New Developments, Analysis of evidence Including costs and benefits of SuDS construction and adoption, Environmental Policy Consulting, January 2017.

3 to the Act or a similar process that would make good quality SuDS, compliant with National Standards, mandatory on new developments.

- SuDS are already used extensively on new developments in Wales. However, these are variable in quality and performance, and there is currently a preponderance of 'hard' SuDS (largely comprising underground measures and attenuation ponds), with fewer 'landscaped' (vegetated) SuDS that can potentially deliver multiple benefits.
- Capital costs of well designed, good quality landscaped SuDS solutions are always less than those for conventional solutions. In most cases, overall operational and maintenance costs are also lower. On average the use of SuDS could save Wales over £9,000 per new home in capital costs
- The operation and performance of sustainable drainage components at ground level are visible and so are generally simpler and easier to operate, monitor and maintain.

**Our policy objective is to make good quality effective SuDS, compliant with National Standards, mandatory on new developments.**

- A key barrier to greater uptake of good quality, landscaped SuDS is uncertainty around adoption and ongoing operation and maintenance. A variety of adoption and funding arrangements are currently used, and these are arrived at by different means. The approach used needs to be underpinned by a clear but flexible process covering planning, adoption and responsibilities for long-term secure arrangements for maintenance and funding.

**Our policy objective is to provide clarity, certainty and consistency, to establish comprehensive arrangements, around the use of SuDS on new developments and around adoption and funding arrangements for ongoing operation and maintenance.**

- The need to consider how the planning process can be reformed to require that 'drainage' and appropriately designed, approved and adopted SuDS are adequately considered and formally accommodated from the outset of the local development planning process, and at all stages in development proposals.

**Our policy objective is to integrate SuDS more fully in all stages of the local development planning process.**

## **Impact Assessment (IA)**

1.21 A consultation stage Regulatory Impact Assessment is attached at Annex 1 of this consultation. It covers;



- Who the proposals will affect and how,
- the cost, benefits and risks of the different options considered,
- a summary of the evidence base including details of the options considered and the relative merits of each option,
- the rationale for Welsh Government intervention,
- confirmation of the preferred approach (i.e the approach set out in Part 2), and
- specific impact assessments.

1.22 The IA shows the greatest benefit from implementing SuDS is most likely to be achieved from mandatory SuDS, which would be achieved by commencing Schedule 3 of the Act. In summary, the analysis suggests that across the 110,000 new homes planned for Wales by 2021 the use of landscaped SuDS on new developments that are compliant with mandatory National Standards could save Wales nearly £1 billion in capital construction costs and generate benefits of over £20 million per year.

1.23 Both the IA and the EPC research also conclude that commencement of Schedule 3 is necessary but not sufficient on its own to facilitate uptake of good quality SuDS on new developments.

1.24 **We are therefore proposing that the implementation of SuDS on new developments is met through a combined approach:**

- **We propose to consider if changes to Schedule 3 to the Act are needed to align provisions more closely with our policy objectives.**
- **We will then make arrangements to commence Schedule 3 to the Act, which will make mandatory the requirement for SuDS on new developments. We are therefore also taking this opportunity to discuss key aspects of Regulations and Orders, including mandatory National Standards for SuDS, needed to implement the Act.**

1.25 It is also our intention to discuss integrating SuDS more fully with local development planning at all stages. There will be an opportunity to do this as part of the Welsh Government's review of planning guidance for TAN15 which is expected later this year.

We have based our proposals on the evidence outlined in our Impact Assessment.

**Question 1:** Do you agree with our proposals? Please include an explanation with your reply.

**Question 2:** Do you have any additional evidence that may alter the recommendations of the consultation stage Regulatory Impact Assessment? Please include an explanation with your reply.

## **Legislative Framework**

- 1.26 Under section 108 of, and paragraph 19 of Schedule 7 to, the Government of Wales Act 2006 the National Assembly for Wales has competence to legislate in relation to Water supply, water resources management, water quality, flood risk management and competence to represent water and sewerage consumers. SuDS, which deal with surface water drainage for the purposes of flood risk management, falls within the scope of this competence. This position is maintained by the Wales Act 2017 as set out in the new section 108A (legislative competence).
- 1.27 This consultation deals with surface water drainage in Wales only. This differs from all other aspects of sewerage and drainage which are provided by sewerage undertakers under the Water Industry Act 1991 (WIA). Under the WIA, Welsh Ministers are responsible for the regulation of water and sewerage undertakers who operate wholly or mainly in Wales and the Secretary of State has responsibility for water and sewerage companies operating wholly or mainly in England. As a result, for drainage services provided by the water and sewerage undertakers, those parts of Wales served by Severn Trent Water are regulated by the Secretary of State and those parts of England served by Dŵr Cymru Welsh Water are the responsibility of Welsh Ministers.
- 1.28 Schedule 3 of the Flood and Water Management Act 2010 uses the term “Minister” to denote both Welsh Ministers and the Secretary of State. The term “Minister” is used in this document to denote the Welsh Ministers.

## **Timing**

- 1.29 Proposals for mandatory approval and adoption will take effect upon commencement of Section 32 of the Flood and Water Management Act 2010. As this is an opportunity to discuss the content of Schedule 3 to the Act we shall review the timeframe for commencement in the round with consultation responses.
- 1.30 The detail of any changes we might propose to Schedule 3 to take forward this policy will be the subject of future consultation. Regulations and Orders, and mandatory National Standards for SuDS needed to implement the Act and which would require the approval of the National Assembly for Wales will also be part of this future consultation.

## **Role of the SuDS Advisory Group**

- 1.31 In order to inform us as we developed our policy we established a SuDS Advisory Group. The Group includes representatives of key stakeholders who

have an interest in the planning, design, construction and operation and maintenance of sustainable drainage for new developments. A full list of the organisations and sectors represented on the Group is at Annex 4.

1.32 The Group had a significant role in contributing to the EPC research study and report and providing technical and expert advice which has informed our stated policy objectives and proposed approach.

1.33 We would like to thank members of the Group for the expert advice and guidance that they have provided to inform the EPC research and as we have developed these option proposals.

## **PART 2 – The Proposed Approach**

**We propose to consider the need to make changes to Schedule 3 of the Act to align provisions more closely with our stated policy objectives.**

**After which, it is our intention to move forward with arrangements for commencing Schedule 3 to the Act, with or without amendments, which will make mandatory the requirement for SuDS on new developments. We therefore also want to discuss key aspects of Regulations and Orders, including mandatory National Standards for SuDS, made under the Act.**

- 2.1 This is an opportunity to discuss the proposed approach. The detailed content of any legislative changes taken forward and regulations and orders made under the Act will be the subject of future consultation.
- 2.2 A copy of existing provisions as set out in Schedule 3 to the Act, which has not commenced, is attached at Annex 2.

### **The main provisions of Schedule 3 to the Act**

- 2.3 We propose to implement the main provisions of Schedule 3 to the Act, as set out below:
  - make unitary authorities in Wales the responsible SuDS approving body **(the SAB)** to approve new drainage systems before construction can commence.
  - require the SAB where appropriate, to adopt drainage systems serving multiple properties, making it responsible for ensuring a surface water drainage system adopted by the SAB is maintained in accordance with the mandatory National Standards.
  - amend the Water Industry Act 1991 to make the right to connect surface water to public sewers conditional on the drainage system being approved by the SAB as meeting the mandatory National Standards.
  - require Ministers to make secondary legislation providing for a right of appeal against approval and adoption decisions by the SAB; enforcement of the requirement for approval; and for approval fees
  - enable secondary legislation to be made relating to various matters concerning approval and adoption.
- 2.4 A flow chart of the SuDS approval process with SAB input is attached at Annex 3.

### **Sustainable Drainage**

- 2.5 Paragraph 2 of Schedule 3 to the Act defines sustainable drainage as managing rainwater with the aim of:

- Reducing damage from flooding
- Improving water quality
- Protecting and improving the environment
- Protecting health and safety, and
- Ensuring the stability and durability of drainage systems

We want to be sure that this definition remains appropriate for Wales, so we are seeking your views on any changes which may be needed.

**Question 3:** Do you agree with the existing definition for sustainable drainage? If not, please give suggestions for any changes with your reasons.

## National Standards for SuDS

- 2.6 Paragraph 5 of Schedule 3 to the Act requires new developments to be served by a drainage system that meets mandatory National Standards. We believe mandatory National Standards are critical for ensuring good quality SuDS on new developments which will stand the test of time.
- 2.7 We want to hear about your experience of implementing the current recommended non-statutory National Standards for SuDS which we published in January 2016. Specifically we want to know whether, in your view, the standards support delivery of SuDS which are both sustainable and affordable.
- 2.8 Our current National Standards include a set of principles for sustainable drainage, which underpin the standards. These include matters such as amenity and biodiversity benefits, long term safety and reliability and affordability. We would like your views on these principles.
- 2.9 We wish to clarify the need for applicants to establish the maintenance requirements and associated costs of their proposed drainage system and to identify how this will be funded. We therefore propose to include in the Principles section of the National Standards the following addition:

*“In addition, a maintenance plan should be developed and the means of funding it for its design life identified and agreed.”*

Drainage for surface water runoff should be sustainable and affordable.

**Question 4:** In your experience do the National Standards, which we published in January 2016, deliver this?  
Please give reasons.

**Question 5:** Do you agree with the principles for sustainable drainage contained in the recommended non-statutory National Standards?  
If not, please give additional or alternative suggestions.

**Question 6:** Do you agree with the need for applicants to establish the maintenance requirements of their proposed drainage system and to identify how this will be funded at an early stage?  
Please give reasons for your response.  
Is the proposed addition to the Principles adequate?

## **The SuDS approving body (the SAB)**

- 2.10 Paragraph 6 (1) and (2) of Schedule 3 to the Act places responsibility for approving SuDS on unitary authorities. In Wales all local authorities are unitary.
- 2.11 We believe that partnership working between local authorities is vital to delivering effective and successful SuDs for the longer term. We are seeking views on how this can be achieved.
- 2.12 Local authorities in Wales already work together to deliver a number of services, such as education. We are seeking your views on the need to encourage or facilitate joint delivery of the SAB duty by local authorities..
- 2.13 Under paragraph 6 (3) the Welsh Ministers may appoint an alternative body as the approving body in all areas or in one or more specified areas. We want to hear your views as to what, if any, alternative body, instead of a local authority, should be appointed to approve and undertake adoption of SuDS.

**Question 7:** Do you agree with our view on the need for local authorities to work in partnership to exercise and discharge the SAB function?  
Please provide suggestions on how this can be achieved?

**Question 8:** What, if any, alternative body should be appointed to approve and undertake adoption of SuDS? Please give reasons.

## **SuDS approval**

### **What would require SAB approval**

- 2.14 Under paragraph 7 of Schedule 3 to the Act, most types of construction work with drainage implications would require SAB approval. Schedule 3 specifies that construction work means the creation of buildings or other structures that cover land and which will affect the ability of that land to absorb rainwater.
- 2.15 Under paragraph 7 (4)(a) of Schedule 3 to the Act the Welsh Ministers may make orders about a specified class of work which is to be or not to be treated as construction work.
- 2.16 We propose that, with the exception of single dwellings, all construction work requiring planning permission which has drainage implications should need approval. For example, construction of two houses or a factory would require planning permission and has drainage implications and therefore needs

approval. Planning applications with no drainage implications would not need SAB approval.

2.17 Some types of construction work do not require planning permission (permitted development), although they can have significant drainage implications. We propose that construction work which does not require planning permission but involves the construction of a building or other structure covering an area of land of 100 square metres or more should require SAB approval. This would allow the vast majority of construction utilising permitted development rights to continue, but significant construction work with drainage implications may require SAB approval.

### **What would not require SAB approval**

2.18 Paragraph 7 (3) of Schedule 3 of the Act exempts from the need for SAB approval, work which requires development consent under Section 31 of the Planning Act 2008 (nationally significant infrastructure projects). Decisions on nationally significant infrastructure projects are made by the Secretary of State<sup>5</sup>.

2.19 Under paragraph 7 (4)(b) of Schedule 3 to the Act the Welsh Ministers may make orders about the type of work which is to be or not to be treated as having drainage implications in specified circumstances.

2.20 We propose exemptions would be needed for three other types of development from the requirement for SAB approval:

- Trunk roads and motorways managed by the Welsh Government in Wales.
- Construction work carried out by Natural Resources Wales as the internal drainage board in exercise of its functions under the Land Drainage Act 1991.
- Construction of a railway.

**Question 9:** Do you agree with our proposals about what should require SAB approval and what we propose to exempt? Please give reasons.

### **Applications for SAB approval**

2.21 Pre-application discussions, with an emphasis on partnership working to bring together those involved in the process at the earliest stage of site development is critical to achieving successful implementation of effective SuDS. Developers need to be encouraged to have pre-application discussions with the local authority as SAB, local planning authority, lead local flood authority and with other interested parties such as statutory consultees. This would enable the drainage opportunities and constraints for the site to be established and a plan for the development to be prepared identifying the best

<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/>

SuDS options. In turn this will help to prevent delays to approval and reduce costs in the longer term.

2.22 Paragraph 8 of Schedule 3 of the Act provides two routes for applications for approval:

- Direct to the SAB (known as free-standing application) where:
  - it is not a development as defined in the Planning Acts, or
  - planning permission is not required, e.g. permitted development, or
  - the developer chooses to apply for drainage approval and planning permission separately.
- Via the Local Planning Authority (LPA) (known as combined application):
  - where planning permission is required, the application may be combined with an application for planning permission and submitted to the Local Planning Authority (LPA). The application would be forwarded to the SAB by the LPA, and the SAB's decision would be communicated to the applicant by the LPA.

Under the Act, the LPA must consider SuDS approval of a development proposal separately from the planning approval process.

### **Approval subject to conditions**

2.23 Paragraph 11(2) of Schedule 3 to the Act gives the SAB powers to grant approval subject to conditions. In particular conditions could relate to modifications of proposed drainage plan, payment of a non-performance bond, inspections during and after construction and associated fees and/or the payment of a fee in relation to work done by the SAB in connection with its approval and adoption duties.

The SAB *must* either:

- grant approval so long as it is satisfied that the drainage system if constructed as proposed will comply with National Standards for Sustainable Drainage, or
- refuse it, if not satisfied.

2.24 Under paragraph 11 (4) of Schedule 3 to the Act the SAB must notify the applicant, or in the case of a combined application, the planning authority, of the outcome as soon as reasonably practicable after determining the application.

2.25 Under paragraph 11 (5) of Schedule 3 to the Act the Welsh Ministers may make regulations about determination of applications for approval, this includes timing, procedure and the consequences of failure to comply with them. It is our intention to make regulations on these matters.



## Timeframe for approval

- 2.26 We are proposing to include in regulations set time limits for when the SAB must determine applications for approval (whether freestanding or combined applications). In doing this we want to ensure that the limits do not cause delays to development.
- 2.27 We suggest that where an Environmental Impact Assessment<sup>6</sup> is required, the SAB must determine an application for approval within 12 weeks and for other applications within 7 weeks. Both of these limits are at least one week less than those under the planning system. To ensure flexibility we propose that in all cases the SAB and applicant should be able to agree to extend the timeframe provided the specified timescales have not expired
- 2.28 Should the SAB fail to meet these timescales, we propose that the application will be deemed to have been undetermined. We also propose that in these circumstances the applicant should have a right to appeal to an independent tribunal.
- 2.29 In the event that an application is refused, we propose to include in regulations a requirement on the SAB to provide the reasons for refusal. We also propose that the applicant should have a right to appeal to an independent tribunal.

**Question 10:** Do you agree with our proposed set time limits for when the SAB must determine applications for approval? If not, please provide alternatives and give reasons.

## Statutory Consultees

- 2.30 Paragraph 11(3) of Schedule 3 of the Act requires the SAB to consult with specified bodies where an application may impact upon that consultee.

The consultees are:

- any sewerage undertaker, with whose public sewer the drainage system is proposed to communicate,
- Natural Resources Wales, if the drainage system directly or indirectly involves the discharge of water into a watercourse,
- The relevant highway authority for a road which the approving body thinks may be affected,
- Glandŵr Cymru (the Canal and Rivers Trust), if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them.

- 2.31 The Act included reference to internal drainage boards as consultees where the discharge could affect an ordinary watercourse within the board's district.

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<sup>6</sup> Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

In Wales all Internal drainage boards currently operate under the remit of Natural Resources Wales.

- 2.32 We would advise the SAB and statutory consultees to build good working relationships, which we regard as critical for successfully delivering effective SuDS.
- 2.33 Under paragraph 11 (5) of Schedule 3 to the Act, we propose to include in regulations the requirement for the SAB to give statutory consultees 21 days in which to respond to the application so as not to hold up the approval process. It is our intention that this would apply regardless of whether the application is a freestanding or combined application.
- 2.34 We suggest that where no response is received, then this may be considered a nil return. To provide flexibility we propose that in all cases, the consultee and the SAB should be able to agree in writing to extend the timeframe.
- 2.35 We suggest it should be left open to consultees to choose to submit standing advice which would enable them to focus on cases requiring special attention. We do not propose to include a duty for the SAB to take account of the responses from statutory consultees, as this is implicit in the duty to consult. Under paragraph 11 (4)(b) of Schedule 3 to the Act the SAB must notify any person consulted of the outcome of the application.

**Question 11:** Do you agree with our proposal to set time limits for the SAB to give statutory consultees 21 days in which to respond? If not, Please give reasons.

## **Fees for SAB determination of drainage applications**

- 2.36 Paragraphs 11(2) (d) and 13 of Schedule 3 to the Act provide for the SAB to charge a fee based on cost recovery for all applications for approval. The approval fee is not intended to cover the costs incurred by statutory consultees in providing input nor any pre-application discussions.
- 2.37 Under paragraph 13 the Welsh Ministers may make regulations about fees for applications for approval.
- 2.38 We propose that the fee must be submitted at the same time as the application for drainage approval.
- 2.39 We have considered whether it would be appropriate to set a national fee structure for approving applications in a similar way to fees for planning applications. Given that this will be a new regime and to achieve consistency, we suggest that the approval fee should be set nationally by the Welsh Ministers. We also propose that the national fee should be subject to annual reporting, undertaken by Local Authorities.

2.40 We suggest that nationally set fees for this initial period are charged on the basis of a set amount for each application plus an additional amount determined by the size of the construction area as follows.

**£350 for each application plus [up to a maximum limit of £7,500]:**

<b>For every 0.1 ha up to 0.5 ha<sup>7</sup></b>	<b>£70</b>
<b>For every 0.1 ha between 0.5 ha and 1 ha</b>	<b>£50</b>
<b>For every 0.1 ha between 1 ha and 5 ha</b>	<b>£20</b>
<b>For every 0.1 ha above 5 ha</b>	<b>£10</b>

These figures are based on evidence in the Impact Assessment and discussions with the SuDS Advisory Group and take account of SAB administration and officer time.

2.41 Under the planning system, community councils benefit from either free or reduced rate planning fees. We propose to provide similar arrangements for SAB fees.

**Question 12:** Do you agree with our proposal to set a national fee?  
If not, please give your reasons.

**Question 13:** Do you agree with our proposal for the rate of fees?  
If not, please give reasons and offer alternatives.

**Question 14:** Do you agree with our proposal for future fees to be set subject to annual reporting undertaken by Local Authorities to allow the SABs to provide information on real costs? Please give reasons.

## Other fees

2.42 The SAB may charge for pre-application discussion, if they wish, under powers given to them in Section 93 of the Local Government Act 2003<sup>8</sup>.

2.43 We propose that provision for fees should also be made in regulations under paragraph 13 of Schedule 3 to the Act by the Welsh Ministers for:

- applications to vary approval, for applications that are resubmitted to the SAB, but that these should be discounted where two or more applications setting out alternative proposals are submitted together.
- applications that require approval of more than one SAB because the construction area spans more than one SAB area to ensure the costs for each SAB are recovered.
- SAB inspection of the drainage system, where this is undertaken at any stage in the SuDS construction process.

<sup>7</sup> Any fraction of 0.1 hectare of site area should be corrected upward to the nearest 0.1 hectare.

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2003/26/section/93>

- circumstances under which application fees must be refunded. So that application fees are refunded in the case of invalid applications or if the SAB fails to determine the application within the prescribed timescales.

Similar arrangements exist for planning applications made under the planning system.

**Question 15:** Do you agree with our proposals for the SAB to charge for these activities? If not, please give your reasons.

## SuDS adoption

2.44 Paragraph 17 of Schedule 3 to the Act requires the SAB to adopt drainage systems which satisfy the following three conditions:

- Condition 1 is that the drainage system was constructed in pursuance of approval,
- Condition 2 is that the drainage system was constructed and functions in accordance with approval, and
- Condition 3 is that the drainage system is a sustainable drainage system.

2.45 Paragraph 23 of Schedule 3 to the Act enables the SAB to adopt on its own initiative or at the request of the developer. It is our intention to make provision under paragraph 23 (4)(a) to require the SAB to determine requests within 8 weeks unless a longer time period is agreed between the SAB and developer. Should the SAB fail to meet this timescale, the duty to make a decision and to notify the applicant of that decision remains. In these circumstances, we propose that the application will be deemed to have been refused. This will allow an applicant to bring an appeal if they wish.

2.46 Where the SAB adopts on its own initiative, it must notify the developer of its decision as soon as is reasonably practicable.

2.47 It is our intention to make provision in regulations so that the notice of adoption decision must include the reason for the decision and the date of the decision

**Question 16:** Do you agree with our suggestion that the SAB should determine a request for adoption within 8 weeks? If not, please give reasons.

## Definition of SuDS for adoption

2.48 We propose in respect of condition 3 to define a sustainable drainage system in regulations made by the Welsh Ministers as those parts of a drainage system that are not vested in a sewerage undertaker pursuant to an agreement under section 104 of the Water Industry Act 1991. This should have the effect of providing certainty and clarity as to which parts of a

drainage system are adoptable by the SAB and which parts are adoptable by the water and sewerage undertaker.

**Question 17:** Do you agree with the proposed definition of “sustainable drainage system” for the purposes of the SAB duty to adopt? If not please provide an alternative definition.

### Exceptions to adoption duty

- 2.49 Paragraphs 18 and 19 of Schedule 3 to the Act exclude single-property drainage systems and any part of a drainage system which is a publicly maintained road from the SAB’s adoption duty.
- 2.50 Highways authorities<sup>9</sup> are already responsible for the drainage and maintenance of publically maintained roads. The SAB would be exempt from adopting any part of a SuDS which the highway authority would already be responsible for maintaining, i.e. swales alongside roads and permeable surfacing. The highways authority must act in accordance with the approved drainage design, including the maintenance regime, in compliance with the National Standards.
- 2.51 The SAB have a duty to adopt any SuDS in or alongside private roads. If the road became a publically maintained, then the highway authority will become responsible for maintenance.
- 2.52 A sewerage undertaker must accept any surface water from a publicly maintained road which is in accordance with drainage approved by the SAB as a result of Paragraph 16(3) of Schedule 3 to the Act, which amends Section 115 of the Water Industry Act 1991<sup>10</sup>. The intention of these provisions is to encourage highway authorities to adopt drainage serving publicly maintained roads, even with third party connections.

**Question 18:** Do you agree with the listed exceptions to the SAB duty to adopt? If not please provide an explanation.

### Voluntary adoption

2.53 Under paragraph 21 of Schedule 3 to the Act, the SAB may voluntarily adopt a sustainable drainage system, as defined by the Minister, where it is not under a duty to do so. This provides flexibility for the SAB to choose to adopt a sustainable drainage system in particular circumstances as it determines appropriate. This may for instance include:

- Existing sustainable drainage system which may or may not have been built to National Standards, and

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<sup>9</sup> A highway authority is a name given to a body responsible for the administration of public roads. All the local authorities in Wales are highways authorities for the their local road network within their areas.

<sup>10</sup> Para 16(3) of Schedule 3 to the Act

- A sustainable drainage system serving a single property.

The process for voluntary adoption is outlined in paragraph 24 of Schedule 3 to the Act.

## Non-performance bond

2.54 The SAB may require a non-performance bond as a condition of approval. This will give the SAB assurance that the SuDS will be built in line with the National Standards and will ensure that subsequent purchasers acquire properties with appropriate drainage. Under paragraph 12(2) of Schedule 3 to the Act, the bond may only be drawn down if the SAB certifies that the drainage system:

- Has not been constructed according to the approved proposals, or;
- it is unlikely to be completed.

2.55 The value of the non-performance bond can be set at any amount not exceeding the best estimate of the overall cost of the works.

2.56 Paragraph 12(6) of Schedule 3 of the Act enables Welsh Ministers to issue guidance on how to calculate the maximum value of the non-performance bond and we are considering whether developers and SABs would find such guidance helpful.

2.57 Irrespective of any duty on the SAB to adopt the drainage system, where the developer completes the work in accordance with the approval, the non-performance bond must be returned to the developer.

2.58 We propose that provision regarding the subsequent release of non-performance bonds should be made in regulations.

- We suggest that the SAB should return the bond within 28 days of giving notice of decision to adopt the drainage system, and
- if the drainage system is not built as approved and it is necessary for the SAB to use the non-performance bond, we propose that any remaining amount must be returned to the developer within 28 days of completion of the work the SAB views as necessary to make the system operate in compliance with National Standards.

**Question 19:** We have not proposed guidance on the levels of non-performance bonds. Do you think guidance for calculating the amount required for a non-performance is necessary? Please provide reasons.

## Enforcement

2.59 Paragraph 14 of Schedule 3 to the Act requires the Welsh Ministers to make orders for enforcement of the requirement for approval. Our proposals for secondary legislation will be the subject of a future consultation.

## **Appeals**

2.60 Paragraph 25 of Schedule 3 to the Act requires the Welsh Ministers to make regulations providing for a right of appeal against SAB decisions for approval and the about the duty to adopt. Our proposals for secondary legislation will be the subject of a future consultation.

## **PART 3: Options for SuDS maintenance and the funding options which could support them**

### **Maintenance arrangements: an overview**

- 3.1 The EPC report highlighted the need for commencement of Schedule 3 to be accompanied by a clear and flexible process covering responsibilities for long-term maintenance, supported by a continuous and sustainable income stream to ensure security of funding.
- 3.2 It recommended that to realise the full benefits of SuDS, new models of funding may be required. That these should be informed by a fuller understanding of who benefits from the SuDS, so that incentives for treating SuDS as assets rather than liabilities may be realised. To ensure SuDS features are successfully maintained for the life time of the development this change in approach is vital.
- 3.3 The report concluded there are real and significant long-term benefits associated with the use of landscaped SuDS. The benefits of the SuDS approach are significantly higher than the benefits of comparable conventional drainage. In particular, wider social benefits related to health, amenity and environmental benefits, including flood risk reduction and water quality, are more significant.
- 3.4 Moreover, there is strong evidence to indicate the overall operational and maintenance costs of well designed, good quality, landscaped SuDS are in most cases lower than those for conventional solutions. This is in addition to findings that capital costs of SuDS are always less than those for conventional solutions so that on average the use of SuDS could save Wales over £9,000 per new home in capital costs.
- 3.5 We believe working in the broadest possible partnership offers the greatest potential to maximise benefits and lever necessary funding. We suggest developers are best placed to negotiate with the SAB and the community to agree the most effective and sustainable funded maintenance options tailored for the site to be put in place.
- 3.6 We propose comprehensive arrangements would be achieved by making provisions for maintenance arrangements which require:
  - the developer to submit a maintenance plan which should be attached to the SAB application for approval,
  - that the plan must provide for the SuDS to be maintained according to the National Standards for the life-time of the development,
  - that it will be for the developer to negotiate and agree with the SAB and communities the maintenance options and their funding in the plan, and for the developer to implement the plan.



3.7 To be effective we suggest the maintenance plan should:

- Clearly identify who will be responsible for undertaking the maintenance.
- Ensure funding for maintenance is fair for householders and premises occupiers.

3.8 Under paragraph 22 of Schedule 3 to the Act, ultimate responsibility would remain with the SAB for ensuring a SuDS which has been approved by the SAB is maintained in accordance with the National Standards.

**Question 20:** Do you agree that a maintenance plan should be submitted by the developer with the SAB application?  
Will these proposed arrangements deliver effectively maintained sustainable drainage? Please give reasons.

### **Potential maintenance options**

3.9 In practical terms a suite of maintenance options will need to be available. We propose allowing developers to ensure that at least one option is available to them in every case which would enable them to provide sustainable funded maintenance.

### **Service management companies**

3.10 Maintenance Companies are often set up to manage public spaces on new developments. Maintenance of sustainable drainage systems could be part of their remit.

3.11 Under this option, householders and occupiers would pay for sustainable drainage systems maintenance as part of the annual service charge or equivalent outdoor space service charges that they pay to cover a range of services. Developers will need to ensure that any requirement to pay service charges is binding.

3.12 Another potential funding path is a commuted sum paid by the developer to the Maintenance Company. Any commuted sums would need to be consistent with the need for the site to be viable overall. It may be feasible to combine a commuted with an ongoing service charge.

3.13 Charitable Trusts, including not for profit community enterprises, could also serve as Maintenance Companies.

### **Water and sewerage companies**

3.14 Water and Sewerage Companies already have duties and can make charges relating to water services and there is an association between their current activities and any new arrangements relating to managing surface water from properties.

- 3.15 Water and Sewerage Companies may construct, maintain and operate drainage systems which relieve the public sewer. This includes sustainable drainage systems. The legal basis is set out in section 114A of the Water Industry Act 1991 (as amended by the Water Act 2014).
- 3.16 If a company and a developer agreed, the developer could build (or contribute towards the construction of) a sustainable drainage system that the Company would subsequently own. The sustainable drainage system would be included within a Water and Sewerage Company's ordinary charging scheme, and maintenance costs would be funded through the surface water drainage element of household water bills. These charges would be regulated by Ofwat.
- 3.17 Alternatively a Water and Sewerage Company could offer its services as a Service Management Company (see above). In this instance it would not be exercising its statutory function, its charge payers would not pay for those services. Instead the beneficiaries of the service would pay a direct charge and the amount would not be regulated by Ofwat.

### **Local government**

- 3.18 Some local authorities may wish to take on responsibility for the maintenance of sustainable drainage systems as part of their wider public open space and amenity management function and/or where the sustainable drainage system provides advantages for the wider community.
- 3.19 Under this option, local authorities would need to charge to fund their activities in maintaining sustainable drainage systems.
- 3.20 Section 106 of the Town and Country Planning Act 1990 provides a mechanism by which SuDS can be transferred into the management and maintenance responsibilities of local authorities upon payment of a commuted sum and / or payment by householders of SuDS maintenance annual service charge.
- 3.21 Under this option local authorities may wish to work in partnership, or through a regional SAB, to set up an arms length management company that can trade and to which local authorities would delegate SuDS maintenance. Alternatively, local authorities could sub-contract work to a privately operated management company.

### **Private Individuals: property owners or occupiers**

- 3.22 It is reasonable to expect the owners/occupiers of properties drained by sustainable drainage systems that do not also drain other properties to maintain their own drainage system.
- 3.23 Where these systems are simple, with minimal or no proprietary products, easy to maintain and serving only small numbers of properties, the owners of

those properties could also agree to maintain the sustainable drainage systems collectively.

- 3.24 The developer would need to provide the owner or owners with full instructions on the maintenance of the sustainable drainage systems including repair and replacement requirements.

**Question 21:** What other maintenance options could be viable? Please give examples of their use?

### **Ensuring that maintenance costs are reasonable**

- 3.25 We intend to ensure that the costs of maintaining SuDS do not increase household bills, or when paid upfront, the costs of a new home when compared with conventional drainage.
- 3.26 The evidence we have indicates that SuDS are generally cheaper to build, and maintaining them is also on average less costly (or need be no more expensive) than the cost of maintaining conventional drainage at present.
- 3.27 Owfat, the economic regulator for the water industry, has been given powers to require Water and sewerage Companies to reflect in their charges schemes where measures have been put in place to reduce the volume of surface water entering the public sewer or the rate at which it does so (Section 143B Water Industry Act 1991 (as amended by Section 16 Water Act 2014)). This means that we expect to see reductions in the surface water drainage element of household water bills for those households where SuDS are managing their surface water run-off.
- 3.28 Taking a flexible and open approach to how SuDS maintenance will be funded will enable developers and communities to find the best solution to long term funded maintenance for each site. This approach will also ensure arrangements will be transparent, good value and acceptable to homebuyers and future occupiers.

**Question 22:** Do you agree the proposed approach would avoid increases in maintenance costs for householders and developers? Please give reasons.

**Question 23:** What evidence do you have of expected maintenance costs?