

2018 No. (W.)

WATER INDUSTRY, WALES

**The Sustainable Drainage
(Approval and Adoption) (Wales)
Order 2018**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the processes for approval and adoption of sustainable drainage systems under Schedule 3 to the Flood and Water Management Act 2010 (c. 29). In particular this Order provides—

- a) when construction work will not be treated as having drainage implications (article 2);
- b) exceptions to the requirement for approval for construction work which has drainage implications (articles 3 and 4); and
- c) the period by which an approving body must make a determination following a request for adoption (article 5).

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**The Sustainable Drainage
(Approval and Adoption) (Wales)
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Made ***
Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in relation to drainage systems in Wales, in exercise of the powers conferred by sections 32 and 48(2) and paragraphs 4, 7(4)(b) and (c) and 23(4)(a) of Schedule 3 to the Flood and Water Management Act 2010⁽¹⁾, make the following Order.

Title, commencement and interpretation

1.—(1) The title of this Order is the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

(2) This Order comes into force on *** May 2018.

(3) In this Order—

“construction work” means construction work which has drainage implications⁽²⁾; and

“Schedule 3” means Schedule 3 to the Flood and Water Management Act 2010.

(1) 2010 c.29. The Welsh Ministers are “the Minister” for the purposes of paragraph 4 to Schedule 3 in relation to drainage systems in Wales.

(2) See paragraph 7(2) of Schedule 3 to the Flood and Water Management Act 2010 which provides (a) construction work means anything done by way of, in connection with or in preparation for the creation of a building or other structure; and (b) construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater.

Construction work not to be treated as having drainage implications

2.—(1) Construction work carried out in the following circumstances is not to be treated as having drainage implications—

- (a) construction work carried out by an internal drainage board in exercise of its functions under the Land Drainage Act 1991(1);
- (b) construction work carried out for the purpose of, or in connection with, the construction of—
 - (i) a road for which the Welsh Ministers are the highway authority, or
 - (ii) a railway by Network Rail.

(2) In this article—

“highway authority” has the meaning given in section 1 of the Highways Act 1980(2);

“internal drainage board” has the meaning given in section 1 of the Land Drainage Act 1991;

“Network Rail” means Network Rail Infrastructure Limited (Company No 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG; and

“railway” has the same meaning as in section 67(1) of the Transport and Works Act 1992(3).

Exceptions to requirement for approval: planning permission not required

3.—(1) Paragraph 7(1) (requirement for approval) of Schedule 3 does not apply to construction work where the construction work does not require planning permission.

(2) The exception in paragraph (1) does not apply where the construction work involves the construction of a building or other structure covering an area of land of 100 metres squared or more.

(3) In this article, “planning permission” means planning permission under the Town and Country Planning Act 1990(4).

Exceptions to requirement for approval: proposed construction work with drainage implications

4.—(1) Subject to paragraph (2), paragraph 7(1) of Schedule 3 does not apply to any construction work in respect of which, before *** May 2018—

(1) 1991 c.59.
(2) 1980 c.66.
(3) 1992 c.42.
(4) 1990 c. 8.

- (a) planning permission was granted or deemed to be granted (whether or not subject to any condition as to a reserved matter); or
- (b) a local planning authority received a valid application for planning permission but by that date had not finally determined it.

(2) The requirement for approval under paragraph 7(1) of Schedule 3 applies to construction work in respect of which planning permission was granted before *** May 2018 if—

- (a) the grant was subject to a condition as to a reserved matter; and
- (b) an application for approval of the reserved matter is not made within the period of 12 months beginning with *** May 2018.

(3) A valid application for planning permission was received before *** May 2018 if it is made before that date and complies with the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(1).

(4) In this article, “reserved matter” has the meaning given in section 92 of the Town and Country Planning Act 1990.

Determining requests for adoption

5.—(1) For the purpose of paragraph 23(4)(a) of Schedule 3, the period within which an approving body(2) for a drainage system must determine a request to adopt the drainage system is—

- (a) 8 weeks beginning on the first working day after it receives the request; or
- (b) any extended period agreed to by the approving body and developer before the end of the period in sub-paragraph (a).

(2) For the purpose of regulations made under paragraph 25(1)(b) (appeals) of Schedule 3, an approving body which fails to determine a request within the period specified in paragraph (1) is taken to have refused the request.

(3) In this article—

“developer” has the meaning given in paragraph 23(2)(b) of Schedule 3;

“working day” means a day which is not a Saturday, Sunday, a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971, or other public holiday in Wales.

(1) S.I. 2012/801.

(2) See paragraph 6 of Schedule 3 to the Flood and Water Management Act 2010 for the meaning of “approving body”.

Name

Cabinet Secretary for Energy, Planning and Rural
Affairs , one of the Welsh Ministers

Date

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