

2018 No. (W.)

WATER INDUSTRY, WALES

**The Sustainable Drainage
(Procedure) (Wales) Regulations
2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision—

- (a) defining “sustainable drainage system” for the purpose of Schedule 3 to the Flood and Water Management Act 2010 (regulation 3);
- (b) providing for fees for applications for approval of drainage systems under that Schedule (Part 2);
- (c) about timing and procedure for determination of applications for approval under that Schedule (Part 3);
- (d) about timing and notification of decisions about adoption of drainage systems (Part 4);
- (e) make provision for determining when a drainage system is to be treated as designed to provide drainage for a single property, and the procedure to follow where the duty to adopt does not apply (Part 5);
- (f) requiring statutory undertakers to give notice before commencing works on public land that might affect drainage systems (Part 6).

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**The Sustainable Drainage
(Procedure) (Wales) Regulations
2018**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 32 and 48(2) of, and paragraphs 4, 11(2)(d) and (5), 13, 17(5), 18(3), 23(7), 24(5) and 28 of Schedule 3 to, the Flood and Water Management Act 2010(1), make the following Regulations.

PART 1

Introduction

Title and commencement

1. The title of this Order is the Sustainable Drainage (Procedure) (Wales) Order 2018 and it comes into force on May 2018.

Interpretation

2. In these Regulations—

“the Act” means the Flood and Water Management Act 2010;

“applicant” means the person making an application;

“application” means—

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

- (a) an application for approval, or
 - (b) an application to vary an approval;
- “application fee” means a fee charged under these Regulations for an application;
- “application for approval” means—
- (a) an application for approval made in accordance with paragraph 9 of Schedule 3, or
 - (b) that part of a combined application made in accordance with paragraph 10 of Schedule 3 that seeks approval;
- “approval” means the approval required under paragraph 7(1) of Schedule 3 for a drainage system⁽¹⁾ for construction work;
- “confirmed proposal” means a proposal to carry out reconstruction work confirmed under regulation 24(4) or (5);
- “construction area” means—
- (a) the area of land identified on a plan accompanying an application for planning permission, or
 - (b) if an application for planning permission has not been made, the area of land on which construction work has commenced or is proposed to be commenced;
- “construction work” means construction work which has drainage implications⁽²⁾;
- “developer” has the meaning given in paragraph 23(2)(b) of Schedule 3;
- “development” has the meaning given in section 55 of the Town and Country Planning Act 1990⁽³⁾;
- “EIA application” has the meaning given in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017;
- “hourly rate for services” means the hourly rate for services provided by officers of an approving body for work done in connection with approval;
- “national standards” means the national standards for sustainable drainage published under paragraph 5 of Schedule 3;

(1) See paragraph 1(1) of Schedule 3 to the Flood and Water Management Act 2010 for the definition of “drainage system”.

(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.

(3) 1990 c. 8.

“reconstruction work” has the meaning given in regulation 24(7);

“remedial work” has the meaning given in regulation 25(3);

“Schedule 1” means Schedule 1 to the Act;

“Schedule 3” means Schedule 3 to the Act;

“statutory undertaker” has the meaning given in regulation 22;

“statutory works” has the meaning given in regulation 23;

“sustainable drainage system” has the meaning given in regulation 3; and

“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(1), or other public holiday in Wales.

Meaning of “sustainable drainage system”

3. For the purpose of paragraph 17(5) of Schedule 3, “sustainable drainage system” means 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(2).

PART 2

Applications

When applications are validly made

4.—(1) An application is validly made if it complies with—

- (a) all requirements imposed under this Part; and
- (b) for an application for approval, all requirements imposed by an approving body(3) under paragraph 9(2) of Schedule 3.

(2) If an approving body rejects an application as not validly made it must, as soon as is practicable—

- (a) notify the applicant of the rejection and the reason(s) for the rejection; and
- (b) refund the application fee.

(1) 1971 c. 80.

(2) 1991 c. 56.

(3) See paragraph 6 of Schedule 3 to the Act for the meaning of “approving body”.

Application for approval

5.—(1) An application for approval must be accompanied by—

- (a) a plan—
 - (i) specifying the construction area and the extent of the drainage system for which approval is sought; and
 - (ii) drawn to an identified scale and showing the direction of North;
- (b) information on how the construction work will comply with national standards;
- (c) a statement on whether or not the application relates to a development that is the subject of an EIA application under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017(1); and
- (d) an application fee where required by the approving body.

(2) If a combined application is made, a separate plan for the purposes of paragraph (1)(a) is not required for the application for approval if the plan accompanying the application for planning permission specifies the extent of the drainage system.

(3) Where a fee is payable, it is not to be treated as paid until the approving body has received cleared funds in respect of the full amount of the fee.

Fees for applications for approval

6.—(1) An approving body may charge a fee for an application for approval determined as follows—

- (a) £350 for each application; and
- (b) an additional amount up to £7,500 calculated by reference to the size of the construction area as follows—
 - (i) £70 for each 0.1 hectare or fraction of a 0.1 of a hectare, for the first 0.5 hectare;
 - (ii) £50 for each 0.1 hectare or fraction of a 0.1 of a hectare, from 0.5 hectare up to and including 1.0 hectare;
 - (iii) £20 for each 0.1 hectare or fraction of a 0.1 of a hectare, from 1.0 hectare up to and including 5.0 hectares; and
 - (iv) £10 for each additional 0.1 hectare or fraction of a 0.1 of a hectare.

(2) The application fee is half the amount determined under this regulation if the applicant is a town or community council.

(1) S.I. 2017/567.

(3) If the applicant is a local authority not mentioned in paragraph (2), the application fee is the full amount determined under this regulation.

Application to vary an approval

7.—(1) An application to vary an approval must be accompanied by—

- (a) a plan specifying—
 - (i) the extent of the approved drainage system, and
 - (ii) any proposed variations to the construction of the drainage system;
- (b) information on how the proposed variation will affect compliance with national standards; and
- (c) an application fee where required by the approving body.

(2) An approving body may charge a fee for an application to vary an approval based on cost recovery, determined by reference to the following criteria—

- (a) the extent of the approved drainage system;
- (b) any proposed variations to the construction of the drainage system;
- (c) the hourly rate for services applicable to a criterion in sub-paragraph (a) or (b);
- (d) the estimated number of hours required to assess an application, determined by reference to a criterion in sub-paragraph (a) or (b).

(3) If an application to vary an approval relates only to the variation of a condition of approval, an approving body may not charge a fee for the application if—

- (a) the application is made within 12 months after the grant of approval; and
- (b) a previous application to vary the approval has not been made within that period.

(4) Paragraph (3) does not apply to a condition mentioned in paragraph 11(2)(a) of Schedule 3.

Resubmitted applications

8.—(1) An approving body may not charge a fee for the resubmission of an application for approval if the application is resubmitted—

- (a) with agreed modifications before the approving body has notified the determination of the application in accordance with paragraph 11(4) of Schedule 3; or
- (b) within 12 months after the relevant time limit for determining the application.

(2) Paragraph (1)(b) only applies if the application that is resubmitted relates to the same drainage system and construction area as specified in the plan that accompanied the application when originally submitted.

(3) In this regulation, “relevant time limit” has the meaning given in regulation 13.

Discounted application fees for alternative proposals

9. If an applicant makes two or more applications at the same time for approval of a drainage system for construction work, each setting out an alternative proposal for construction of a drainage system for that construction work, the total application fee is the sum of—

- (a) the full application fee chargeable for the proposal which attracts the highest application fee; and
- (b) half the application fee chargeable for each alternative proposal.

Application fees for cross-area approvals

10.—(1) An applicant who applies for approval to more than one approving body in relation to a construction area that falls within more than one approving body’s area is required to pay only one application fee.

(2) The application fee is payable to the approving body in whose area the largest part of the construction area falls.

(3) The application fee is the lesser of—

- (a) 150% of the fee that could be charged by an approving body if the whole construction area fell within that approving body’s area; and
- (b) the sum of the application fees chargeable by each approving body, determined by reference to the construction area falling within each approving body’s area.

Refund of application fees

11.—(1) Subject to paragraph (2), if any part of a fee charged for an application is not required to be paid, an approving body must, as soon as is practicable after discovering the error, refund that part of the fee.

(2) An approving body is not required to refund a fee, or any part of a fee, charged for an application if—

- (a) the application—
 - (i) was not required to be made; or
 - (ii) is withdrawn or refused;

- (b) for an application for approval, the construction area as set out at the time of making the application is subsequently modified—
 - (i) pursuant to a condition of approval; or
 - (ii) by agreement before grant of approval.

PART 3

Determination of applications

Duty to consult before determining applications

12.—(1) An approving body, when requesting a response from a person consulted under paragraph 11(3) of Schedule 3 (a “consultee”), must specify a date for response which is within 3 weeks beginning on the first working day after sending the request.

(2) The approving body and consultee may agree a different date for response.

(3) The approving body may disregard a response that is received from a consultee after the specified or agreed date.

Time limits for determining applications

13.—(1) For the purpose of paragraph 11(5) of Schedule 3 an approving body must determine—

- (i) an application that relates to a development that is the subject of an EIA application under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 within the period of 12 weeks beginning on the first working day after it receives a validly-made application, or
- (ii) any other application within the period of 7 weeks beginning on the first working day after it receives a validly-made application.

(2) Before the end of the relevant period specified in paragraph (1), the approving body and applicant may agree a longer time for determining an application.

(3) An approving body is not required to determine an application unless it is validly made.

(4) For the purposes of regulations made under paragraph 25(1)(a) of Schedule 3, an approving body which fails to determine an application within the relevant time limit is taken to have refused the application.

(5) For the purpose of regulation 8(1)(a), an application that is resubmitted with agreed modifications is taken to be received on the date the

application was originally received, whether or not the original application was validly made.

(6) In this regulation—

“relevant time limit” means—

- (a) the relevant period specified in paragraph (1), or
- (b) any longer time agreed under paragraph (2); and

“validly made” in the context of an application means an application that is validly made in accordance with regulation 4.

Inspection fees

14.—(1) If an approving body grants approval subject to a condition that inspections are carried out before the drainage system can be adopted, the approving body may charge a fee (“an inspection fee”) for carrying out the inspections based on cost recovery.

(2) An inspection fee is determined by reference to the following criteria—

- (a) the hourly rate for services;
- (b) the number of hours taken to carry out the inspection.

PART 4

Duty to adopt

Notice of adoption decision

15. A notification under paragraph 23(4)(b) or (5) of Schedule 3 must specify—

- (a) the reasons for the decision; and
- (b) the date of the decision.

Release of non-performance bond where duty to adopt applies

16.—(1) Unless paragraph (3) applies, the approving body must release a non-performance bond within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3.

(2) Paragraph (3) applies if the approving body—

- (a) issued a certificate under paragraph 12(2) of Schedule 3; and
- (b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

(3) The approving body must, within 4 weeks beginning on the first working day after completing the work—

- (a) send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work;
- (b) pay the developer any excess; and
- (c) release the non-performance bond.

Registration and designation where duty to adopt applies

17. Within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3, an approving body must—

- (a) arrange for—
 - (i) the lead local flood authority⁽¹⁾ to include the drainage system in the register maintained under section 21 of the Act; and
 - (ii) a designating authority⁽²⁾ to make a provisional designation under paragraph 7 of Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body; and
- (b) in accordance with regulations made under section 63 of the New Roads and Street Works Act 1991⁽³⁾, give notice of intention to designate under that section any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.

PART 5

Where duty to adopt does not apply

Single property exception

18. For the purpose of paragraph 18(3) of Schedule 3, a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that,

(1) See section 6(9) of the Flood and Water Management Act 2010 for the definition of “lead local flood authority”.

(2) See paragraph 1 of Schedule 1 to the Flood and Water Management Act 2010 for the meaning of “designation authority”.

(3) 1991 c. 22. Section 63(5) was inserted by paragraph 27 of Schedule 3 to the Flood and Water Management Act 2010.

following completion of the construction work, will be owned, managed or controlled by—

- (a) a single person; or
- (b) two or more persons together.

Release of non-performance bond where duty to adopt does not apply

19.—(1) Unless paragraph (3) applies, an approving body must release a non-performance bond within 4 weeks beginning on the first working day after completion of a drainage system that is constructed in accordance with approved proposals.

(2) Paragraph (3) applies if the approving body—

- (a) issued a certificate under paragraph 12(2) of Schedule 3; and
- (b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

(3) The approving body must, within 4 weeks beginning on the first working day after completing the work—

- (a) send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work;
- (b) pay the developer any excess; and
- (c) release the non-performance bond.

(4) In this regulation—

“approved proposals” means proposals approved under paragraph 7(1) of Schedule 3, including any conditions of approval; and

“drainage system” means a drainage system to which the duty to adopt does not apply.

Notification of voluntary adoption

20.—(1) As soon as is practicable after deciding to adopt a drainage system to which the duty to adopt does not apply, an approving body must give a notification under paragraph 24(2) of Schedule 3.

(2) The notification must specify—

- (a) the reason for adoption; and
- (b) the date of adoption.

Registration and designation following voluntary adoption

21. Within 4 weeks beginning on the first working day after giving a notification under paragraph 24(2) of Schedule 3, an approving body must arrange for—

- (a) the lead local flood authority to include the drainage system in the register maintained under section 21 of the Act; and
- (b) a designating authority to make a provisional designation under paragraph 7 of Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body.

PART 6

Works on public land

Meaning of “statutory undertaker”

22. For the purpose of paragraph 28(3)(a) of Schedule 3, “statutory undertaker” means a person entitled under a provision of an enactment listed in regulation 23 to carry out statutory works on public land.

Meaning of “statutory works”

23. For the purpose of paragraph 28(3)(b) of Schedule 3, “statutory works” means works that may be carried out by a person under any of the following provisions—

- (a) section 159 of the Water Industry Act 1991⁽¹⁾ (power to lay, inspect, maintain etc pipes);
- (b) Schedule 4 to the Gas Act 1986⁽²⁾ (power to dig up streets);
- (c) paragraph 10(4) of Schedule 4 to the Electricity Act 1989⁽³⁾ (power to make boreholes).

Giving notice of statutory works and proposals for reconstruction work

24.—(1) Except in an emergency, a statutory undertaker must not commence statutory works that will or may affect the operation of a sustainable drainage system on any public land unless, at least 4 weeks before the statutory works are commenced, it gives notice to the approving body for that drainage system of—

- (a) the proposed statutory works; and
- (b) the proposal to carry out reconstruction work; and

(1) 1991 c. 56.
 (2) 1986 c. 44.
 (3) 1989 c.29.

(2) Notice given under paragraph (1) must expire on the working day before the statutory works are to commence.

(3) If the statutory works are commenced in an emergency, the statutory undertaker must as soon as is practicable after the statutory works are commenced give notice to the approving body—

- (a) the commencement of the statutory works; and
- (b) the proposal to carry out reconstruction work.

(4) Reconstruction work may not be commenced unless the approving body has confirmed the proposal to carry out the reconstruction work.

(5) Unless the approving body has notified the statutory undertaker to the contrary, a proposal to carry out reconstruction work is taken to be confirmed—

- (a) for a proposal notified under paragraph (1)(b), 4 weeks beginning on the first working day after the notice is given;
- (b) for a proposal notified under paragraph (3)(b), 48 hours after the notice is received by the approving body.

(6) The statutory undertaker must as soon as reasonably practical after carrying out reconstruction work notify the approving body of the date the statutory works were completed.

(7) In this regulation, “reconstruction work” means work carried out—

- (a) to reconstruct the sustainable drainage system to the state it was in before the statutory works commenced; or
- (b) to construct a new sustainable drainage system in accordance with the national standards to operate in place of the sustainable drainage system affected by the statutory works.

Requirement to undertake remedial work

25.—(1) If a statutory undertaker fails to carry out reconstruction work in accordance with the confirmed proposal, the approving body may require the undertaker to carry out remedial work within a specified timeframe.

(2) If a statutory undertaker fails to comply with paragraph (1), the approving body may—

- (a) carry out remedial work; and
- (b) recover as a debt from the undertaker any costs incurred in carrying out that work.

(3) In this regulation, “remedial work” means work carried out on a sustainable drainage system—

- (a) to remedy damage caused by statutory works;
and
- (b) to ensure the sustainable drainage system complies with the national standards.

Statutory works to comply with the national standards

26.—(1) Within 12 months after statutory works are completed, the approving body must decide if it is satisfied that the following requirements are met—

- (a) a reconstructed or new sustainable drainage system functions in accordance with the confirmed proposal;
- (b) a new sustainable drainage system, if not constructed in accordance with the confirmed proposal, complies with the national standards; or
- (c) a reconstructed sustainable drainage system, if not constructed in accordance with the confirmed proposal, is reconstructed to the state it was in before the statutory works were commenced.

(2) If an approving body is not satisfied that the requirements in paragraph (1) are met, it may require the statutory undertaker to carry out reconstruction work or remedial work within a specified timeframe.

(3) If a statutory undertaker fails to comply with a requirement under paragraph (2), the approving body may—

- (a) carry out remedial work; and
- (b) recover as a debt from the undertaker any costs incurred in carrying out that work.

Name

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

Date