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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Implementation of Sustainable Drainage Systems on New Developments

Part 1 – Summary of responses and Welsh Government response
Part 2 – Draft Statutory Instruments and Draft National Standards
for Sustainable drainage for consultation

Date of issue: **16 November 2017**
Responses by: **15 February 2018**

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

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| Overview | <p>This consultation seeks your views on the draft statutory instruments and National Standards for sustainable drainage. In addition this document gives a summary of responses and the Welsh Government response to our consultation published on 19 May to 11 August 2017 which sought views on the approach for delivering effective sustainable drainage systems (SuDS) on new developments.</p> |
| How to respond | <p>Please complete and return the questionnaire at the end of the consultation document.</p> <p>Alternatively, you can e-mail or send any comments to the address further below.</p> <p>The closing date for replies is: 15th February 2018</p> |
| Further information and related documents | <p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>An on-line version of the consultation document and response form can be found at:</p> <p>http://consultations.gov.wales/consultations</p> <p>Further related information as follows is available from:</p> <p>http://gov.wales/topics/environmentcountryside</p> <ul style="list-style-type: none"> • 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 on New Developments

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PART 1 – Summary of responses and Welsh Government response

Introduction

Purpose of consultation

- 1.1 On 19 May 2017, the Welsh Government published a Consultation on the Implementation of Sustainable Drainage Systems on New Developments.

The full text of the consultation is available at:

<https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments>

This consultation sought views on the Welsh Government's proposed approach for delivering effective sustainable drainage systems (SuDS) on new developments. Specifically, this was 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 was also an opportunity to discuss the Regulations and Orders, including the National Standards for the Implementation of Sustainable Drainage (the SuDS Standards), needed to implement Schedule 3 of the Act.

Consultation period and distribution

- 1.2 The consultation ran for 12 weeks from 19 May to 11 August 2017 it was widely distributed and also published on the Welsh Government website.

In addition, extensive pre-consultation discussions were held both directly with a number of key stakeholders and as part of the development of the Welsh Government's Water Strategy, published in May 2015.

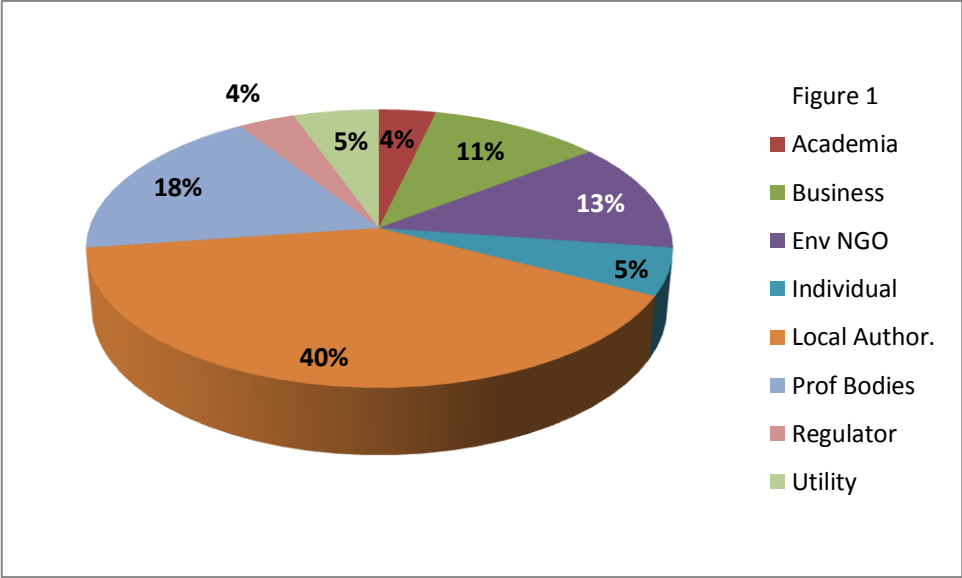
Responses

- 1.3 Fifty four responses were received from a range of sectors set out in Figure 1 (below), including multiple replies from individual local authorities.

In addition, feedback gathered at a workshop organised by the Institution of Civil Engineers (ICE), the Chartered Institute of Water and Environmental Management (CIWEM) and the Landscape Institute held on 21 September has been taken into account. Two responses were received after the deadline and have been included. A full list of respondents by sector information is included in **Annex A**.

In total 23 questions were asked, with provision for additional comments to support each response. Most respondents provided direct answers to the questions, with many supporting these with additional comments.

Figure 1 – Responses received by sector



Welsh Government response

- 1.4 The Welsh Government is pleased with the overall positive support for the proposals in this consultation. In response we are now consulting on the draft statutory instruments and statutory National Standards for Sustainable Drainage (SuDS Standards) which are needed to commence Schedule 3 of the Act.
- 1.5 We recognise that introducing the requirements of Schedule 3 involves significant changes for local authorities, sewerage undertakers and developers. We propose to work closely with these sectors during the consultation period to ensure their introduction neither hampers development nor overburdens local authorities.
- 1.6 We have noted all the responses to the consultation and many of these have been taken in to account in the draft Statutory Instruments and the accompanying SuDS Standards. Where we have done so, we have identified our response in the appropriate “Responses to individual questions” section of this document.
- 1.7 The Welsh Government is grateful to those who supported the development of the initial consultation and to all who responded to it. We propose to continue our dialogue with stakeholders throughout this further consultation and seek your support and co-operation in implementing Schedule 3 over the coming years.

Overview

- 1.8 All responses are considered in this summary. There was strong support for the proposals from most of those who responded, although home builders expressed a number of concerns. Most welcomed the implementation of Schedule 3 as helping to provide clarity for planners, developers and all involved in surface water management from new developments. Allocating the SuDS Approving Body (the SAB) duties to local authorities was supported by most, although a small number suggested alternatives. Most responses from local authorities expressed reservations over the impact on them in terms of a shortage of suitably experienced staff and funding and impacts on the planning and highways adoption processes.
- 1.9 The answers to Questions 1-23 are summarised below, along with examples of some of the individual comments received and each is followed by a Government response. Some of the questions and the related answers provided information that has been used in developing the draft Statutory Instruments, and the SuDS Standards which are the subject of this further consultation. We received a number of comments on the impact assessment, challenging some of the assumptions made in its development, in particular

the impact on local authorities. Very little new evidence was offered. All of these comments have been reviewed and will be taken into account in the final document which will accompany the Statutory Instruments.

- 1.10 The majority of the responses were from local authorities, including the Welsh Local Government Association. Many emphasised the links to our specifically Welsh legislative context and in particular the delivery of the Well-being of Future Generations (Wales) Act 2015.
- 1.11 Those with experience of the planning system and the current interim SuDS Standards reported they were not being used, due to their voluntary status and they needed statutory status to be effective. At best, most current schemes have a piped drainage system with an “end of pipe” pond or wetland, falling well short of the aspirations of the SuDS Standards.
- 1.12 There was a consensus over the need for maintenance plans to be provided by developers. There was a range of views on proposals for exemptions and our question over the definition of SuDS. There was general agreement with our proposals over approval timescales, consultation periods and fees. We have taken into account all the comments relating to these in drafting the Statutory Instruments. This consultation provides a further opportunity to review and comment on these.
- 1.13 We received a number of views over ongoing maintenance options, although none of the responses provided specific evidence on costs. We propose to work closely with developers and local authorities during this current consultation to further develop maintenance options.

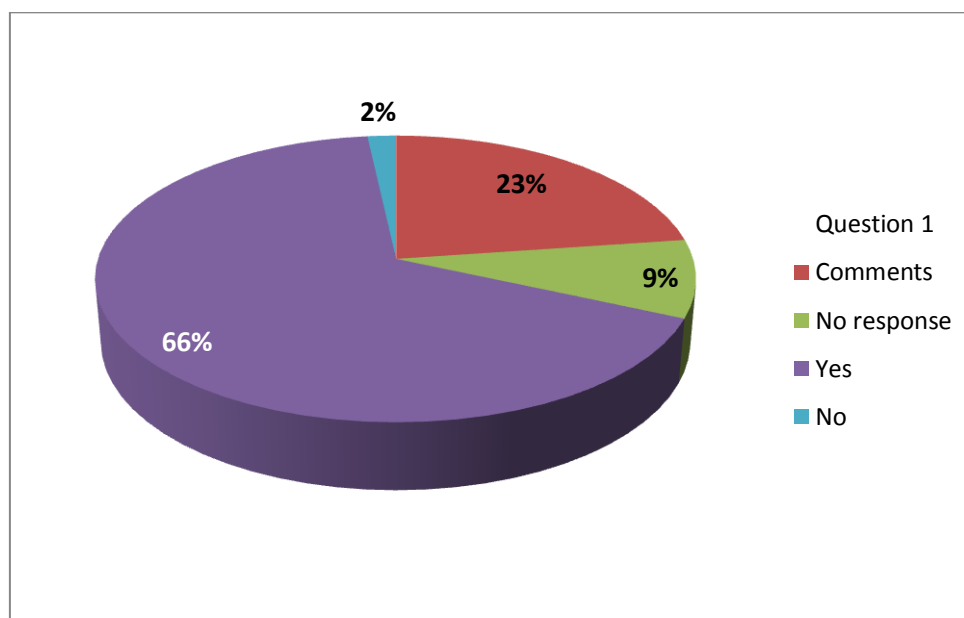
Responses to individual questions

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

2.1 We proposed to implement a requirement for SuDS on new developments through a combined approach:

- We proposed 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 also took the opportunity to discuss key aspects of Regulations and Orders, including mandatory SuDS Standards, needed to implement the Act.

Figure 2 – Responses to Question 1



Summary of responses

2.2 The majority of those responding to the consultation answered this question and agreed with our proposals. Those providing additional comments supported the need for regulation and a number expressed the view that implementation had already been delayed for too long.

2.3 Most responses to this question either supported Schedule 3 unchanged or did not comment on the need for any change. One comment from a sewerage undertaker expressed concern over the loss of control over connections to their network implicit in Schedule 3. Developers' representatives stated that the right to connect under the provisions of S106 WIA 1991 must be retained. A number of responses addressed links to the planning system. These included questions about the status of sites which have planning approval and

the potential for delays if changes are needed for the planning process. They also expressed the view that the planning process is not adequate to deliver good quality SuDS, citing cases where SuDS policies had been removed from Local Development Plans on examination. Clarification of the proposed relationship between planning and SAB approval was also requested.

- 2.4 Several responses identified an inconsistency with part of our concurrent consultation on Sustainable Management of Natural Resources, which includes a proposal (40) to amend Schedule 3 to allow the sewerage undertaker retain overall control over connections to their public network. Local authorities are concerned that such an amendment could hamper progress.
- 2.5 Developers were strongly opposed to the establishment of the SAB and expressed the view that only the sewerage utility should be involved in surface water drainage.
- 2.6 Additional points raised in relation to this question included the scope of its application in rural areas, the possibility of phased implementation and boundary issues. Several responses to this question included comments about the Regulatory Impact Assessment, which we have included under Question 2.
- 2.7 One response suggested that the benefits for improved water resources management should be further emphasised.
- 2.8 Responses included the following comments:
- “The delay in implementing Schedule 3 of the Act has hindered efficient management of surface water run-off and flood risk, going against duties placed on Local Authorities as Lead Local Flood Authorities and principles of sustainable development and WFG Act.”* Local Government
- “ at present the lack of mandatory standards and questions over the ability to adopt SW management systems is affecting both developers and the Authority and preventing good SW systems being incorporated into new development, more often than not ‘end of pipe’ systems are being created which cannot really be considered as multifunctional SuDS”* Local Authority
- “ agree with the proposals and believe they are a necessary step in the move to build a more resilient and adaptable society in Wales reducing our footprint and beginning to recognise water as a national resource”* Academic
- “A key flaw in Schedule 3 for sewerage undertakers is the wording of s106A which will be inserted into the Water Industry Act 1991 upon commencement of Schedule 3. by making the right to connect conditional on approval being gained from the SAB.
The changes the sewerage undertaker’s ability to refuse connections on the basis of the SuDS draining “land that is neither premises nor a sewer”.
This change will fundamentally undermine the ability of sewerage undertakers*

to control land drainage and overland flows being connected to the sewer, and will undo work to both prevent and remove such connections over the last 25 years” Sewerage Undertaker

“SuDS are currently considered as part and parcel of the planning application process. The Welsh Government proposals appear to create a parallel process that is not considered within the planning application itself.” Local Authority

“SuDS create places that are more resilient to climate change, that have distinct local character, and in which people want to live, work, and visit; places that promote well-being, productivity, educational benefits and crime reduction; and places where communities can actively engage with their local environment” Environmental NGO.

“it is disappointing that the planning system is not seen as a key contributor to facilitating the uptake of SuDS and its possible role is not considered in any detail by the consultation paper. Until the review of TAN 15 is published we will not know how Welsh Government anticipates how SuDS will be integrated into all stages of the development planning process.” Professional body

“ ... firmly believes that WaSCs should assume responsibility for all aspects of surface water drainage, This would be entirely consistent with one of the keynote recommendations of the 2008 Pitt Report believe that WaSCs should be the body responsible for design approval and adoption. We can see no justification for introducing the concept of a SAB.” Business

Welsh Government response

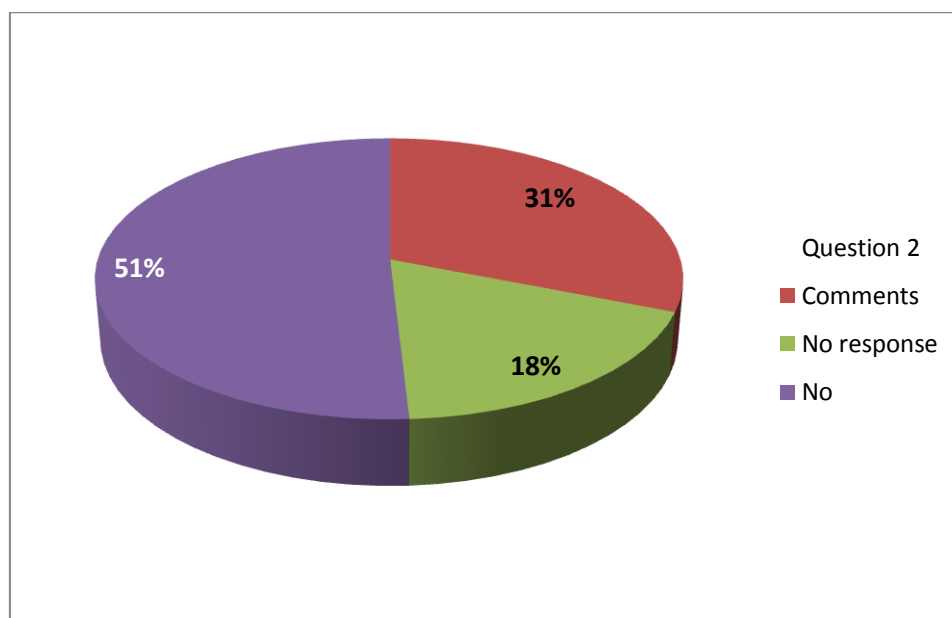
- 2.9 Overall, these responses support our proposal to implement Schedule 3. A number conveyed a sense of urgency and a need to provide clarity and certainty for both developers and local authorities. We have therefore used this document to not only summarise responses to the consultation and our actions as a consequence, but to move forward with a consultation on the Statutory Instruments which will implement Schedule 3.
- 2.10 The only suggested change to the Act related to sewerage undertakers' control of connections to their network. Several other responses highlighted that this would be undesirable. The original legislation was drafted on the basis that the sewerage undertaker would be a statutory consultee in the approvals process. Suitable measures to protect the sewerage network could be requested in response to consultation. Ultimately, sewerage undertakers will benefit from the significant reduction in flows afforded by surface water systems for new and redeveloped sites approved and built to the SuDS Standards.
- 2.11 The draft Statutory Instruments, which are the subject of consultation in this document, address much of the detail of the relationship between the SuDS approval process and planning. We anticipate further positive engagement with local authorities and developers throughout this consultation will help to answer the questions and comments raised over the relationship with planning permission and ensure effective implementation.

- 2.12 We believe that implementing Schedule 3 of the Act will trigger a step change in surface water management for new developments in Wales. This will , enhance the quality of life and sense of place in new and redeveloped communities as well as improving the local environment, controlling flood risk and protecting water quality.

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

- 3.1 Our consultation included a Regulatory Impact Assessment which outlined who would be affected by our proposals and how. It analyses costs, benefits and risks of a number of options and identified that the greatest benefit from implementing SuDS is most likely to be achieved from a mandatory approach. This question sought further evidence to feed in to a final Impact Assessment.

Figure 3 – Responses to question 2



Summary of responses

- 3.2 Most responses from local authorities believed the set-up costs for the SAB had been under-estimated in the Impact Assessment. Given the current challenges to local authorities' budgets, they are of the view that additional funding should be provided to cover the anticipated increase in workload and additional training needs. One response believed that the assumption on staff salaries was incorrect and questioned the assumptions made on staff capacity to process SAB applications. Several local authorities have provided useful information on numbers of planning applications requiring drainage comments.
- 3.3 One response questioned the basis for savings to developers and the suggested the estimates for the number of SuDS systems requiring a connection to a public sewer was unrealistically low. It also expressed the

view that there would be a proliferation of funding arrangements for long-term maintenance which could add to developers' costs.

3.4 A response from developers raised third party land issues in terms of securing any outfall across third party land and the consequences of a developer being held to ransom in such circumstances. It also questioned the assumptions and costs, in particular with respect to potential land take of above ground SuDS, excavation spoil disposal costs and the costs of rainwater harvesting systems. It cited extracts from evidence presented to the UK Government for consideration.

3.5 Natural Resources Wales questioned the absence of information in the RIA on the resource implications for them of their statutory consultee role.

3.6 Responses included the following comments:

"The assessment advises that there would be zero costs in a LLFA setting up a SAB. It is felt that this assumption is incorrect as internal team/departmental changes would be required to set up the SAB, to which would have cost implications. It is felt that LLFA's should be subsidised or financially supported to undertake the role of SAB." Local Authority

"Additional staffing will be required to fulfil additional duties. In particular the aspects of administration, construction supervision and enforcement" Local Authority

"We disagree and challenge the findings of the report identifying the nil cost to LAs to implement a SAB especially for the more built up authorities where the huge amount of planned development would require the employment of new and experienced staff to deal with the large amount of applications" Local Authority

".. we would like to see clarification of how the opex costs for operation and maintenance of SuDS assets has been calculated. In our experience, properly constructed surface water sewers and "end of pipe" solutions require little to no maintenance and are generally designed to be self-cleansing. This therefore means that opex costs associated with their operation and maintenance are low..... the opex costs for "green" SuDS will inevitably be higher due to the nature of them being at the surface and being more visible, and also the need for regular ground maintenance.." Utility

"....consider that currently the RIA lacks detailed information to support many of its conclusions about costs and potential benefits. In particular the conclusion that SuDS (above ground) is cheaper than other perhaps more appropriate solutions." Business

"We are pleased to see that the Impact Assessment acknowledges that the benefits figure for the proposed option is a conservative one due to the difficulties in trying to monetise some of the benefits" NGO

Welsh Government response

3.7 Our Regulatory Impact Assessment was developed in consultation with our Advisory Panel and made use of the best available evidence on costs and benefits. All the evidence used and assumptions made were clearly referenced.

3.8 On operational costs, it is important to recognise that the costs for SuDS are different, but may not be comparable with standard surface water sewers. For example, looking in a more holistic way at drainage, there are significant maintenance costs associated with road drainage. In addition, evidence from some well designed SuDS systems integrated into green space cost no more to maintain than the green space alone.

3.9 Given the comments received, we propose to work closely with the WLGA and individual local authorities during the further consultation to improve the evidence base on their resource needs and costs. We will also seek further evidence from developers, Dŵr Cymru Welsh Water and Natural Resources Wales on costs. This information will be used to produce the final Regulatory Impact Assessment for the commencement of Schedule 3.

3.10 We will also seek further evidence on the benefits associated with the SuDS approach, in particular relating to health and well-being.

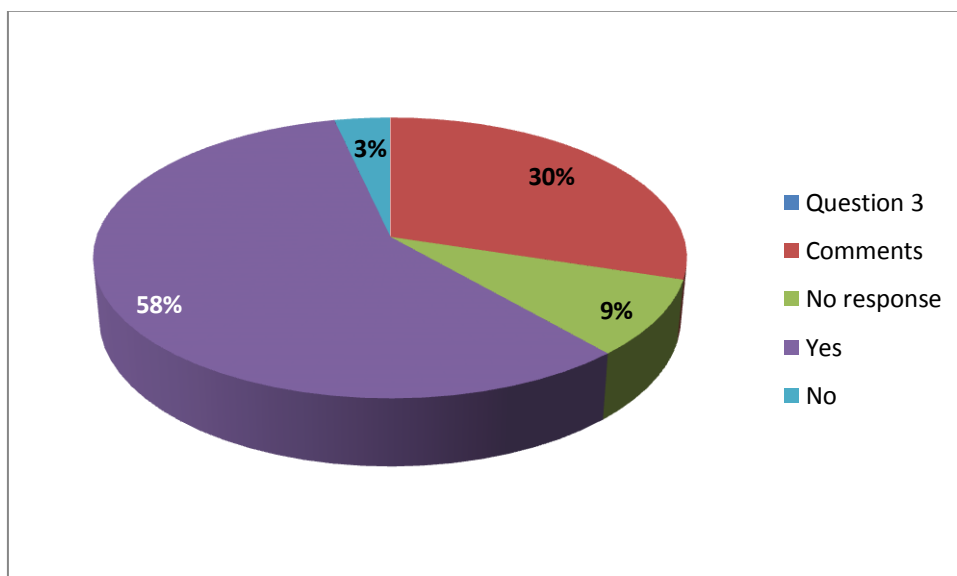
4. Question 3: Do you agree with the existing definition for sustainable drainage? If not, please give suggestions for any changes with your reasons.

4.1 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 sought views on any changes which may be needed.

Figure 4 – Responses to question 3



Summary of responses

- 4.2 The majority of respondents agreed with the Schedule 3 definition. Two wanted to see reference to water reuse, a small number preferred reduction in flood risk to the reference to damage from flooding.
- 4.3 Several responses suggested amendments in line with the goals of the Wellbeing of Future Generations (Wales) Act 2015 and Section 6 of the Environment (Wales) Act 2016, enhancements to emphasise multi-functionality, societal and biodiversity benefits. One response suggested ensuring that buildings and structures are not adversely affected by SuDS features.
- 4.4 Other suggestions included cross-referencing the National Standards for Sustainable Drainage, making reference to mimicking natural flows and trying to ensure that end of pipe solutions are a last resort.
- 4.5 One business sector suggested an alternative:

“Effective management and control of surface water run-off, using a suite of options both below and above ground to mitigate flood risk”.

“Given the benefits of SuDS are much wider than those of conventional drainage systems we suggest the definition of sustainable drainage includes criteria more closely aligned to the Well-being of Future Generations Act 2015 and the principles included within the non-statutory National Standards, therefore being more explicit as to the benefits regarding biodiversity, placemaking, recreation, amenity and well-being” Professional body.

“We also think that two more points could be added to support the principles set out in the Recommended Non-Statutory Standards. We would like to see a point added to reflect that SuDS should not require an energy source to operate, and also a point to reinforce the need for SuDS to encourage water reuse.” Utility company

“We note that the terms ‘reducing’ (damage from flooding) and ‘improving’ (water quality) suggest betterment The terms ‘protecting’ and ‘ensuring’ may be more appropriate,” Consultant

Welsh Government response

- 4.6 The Welsh Government is pleased to note the broad agreement with the definition of sustainable drainage contained in Schedule 3. We believe most of the suggested improvements can be addressed through the SuDS Standards. For example, under the Principles within them, SuDS schemes should aim to:
- maximise the delivery of benefits for amenity and biodiversity;

- seek to make the best use of available land through multifunctional usage of public spaces and the public realm;
- treat rainfall as a valuable natural resource.

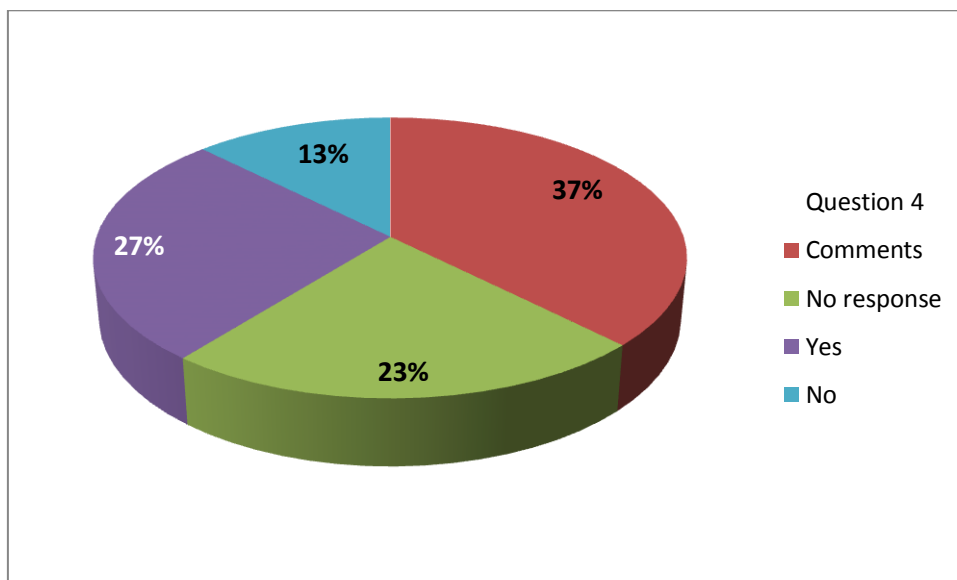
4.7 It is important to note that the definition does not rule out any particular drainage technique. The Standards do introduce preferences, for example with respect to above ground systems and the use of the surface water management train in preference to “end of pipe” systems.

4.8 Overall, we do not believe that we need to make amendments to the definition at this stage. The goals of the Wellbeing of Future Generations Act and Section 6 of the Environment Act already apply for new developments. We will keep this under review and if appropriate seek appropriate suitable legislative opportunity to strengthen the links.

5. Question 4: Drainage for surface water runoff should be sustainable and affordable. In your experience do the National Standards, which we published in January 2016, deliver this? Please give reasons

5.1 We asked about experience of implementing the current recommended non-statutory National Standards for SuDS which we published in January 2016. Specifically we asked whether, in your view, they support delivery of SuDS which are both sustainable and affordable.

Figure 5 – Responses to question 4



Summary of responses

5.2 Most consultees did not answer this question directly, although a number provided relevant comments. Of those providing a direct response, the majority (10 of 11) agreed. However, it was clear from all the comments that there is little or on experience of the voluntary SuDS Standards having been

applied and many of those who agreed were expressing the view that they could deliver sustainable and affordable surface water management if implemented.

5.3 Responses included the following comments:

"We have no specific experience of delivering SuDS using the Recommended Non-Statutory Standards. However, we do not feel that the standards are explicit enough to provide the required clarity, ... compared with the Welsh Ministers' Standards for gravity foul sewers and lateral drains" Utility.

"The principles and hierarchy set out within the standards will lead to sustainable management of water until such time as the national standard become a statutory requirement, experience on implementation is limited." Local Authority

"Affordability - this term is subjective and cannot be assessed without clear guidelines on what is being costed. Also, it is not clear who the affordability should be directed towards..." Local Authority

"More significant schemes have been put forward which do not fully meet the requirement of the principles..... Schemes have continued to propose a single "end of pipe" feature, such as a pond" Local Authority.

"If SuDS are built to the National Standards published in January 2016 then yes, we believe they will be sustainable. SuDS, especially those with surface features and more natural features should be cheaper to build and generally cheaper to maintain than traditional drainage." Environmental NGO

"Some housebuilders have often hidden behind the desire to implement SuDS by suggesting that they make their developments "unaffordable" by excessive land take and footprint. They often fail to recognise the community and societal value of SuDS as they have a desire to remove all responsibility once the last house has been sold" Professional Body.

"...not aware of any specific data which has been collected relating to the sustainability or cost of schemes installed post Jan 2016" Trade body

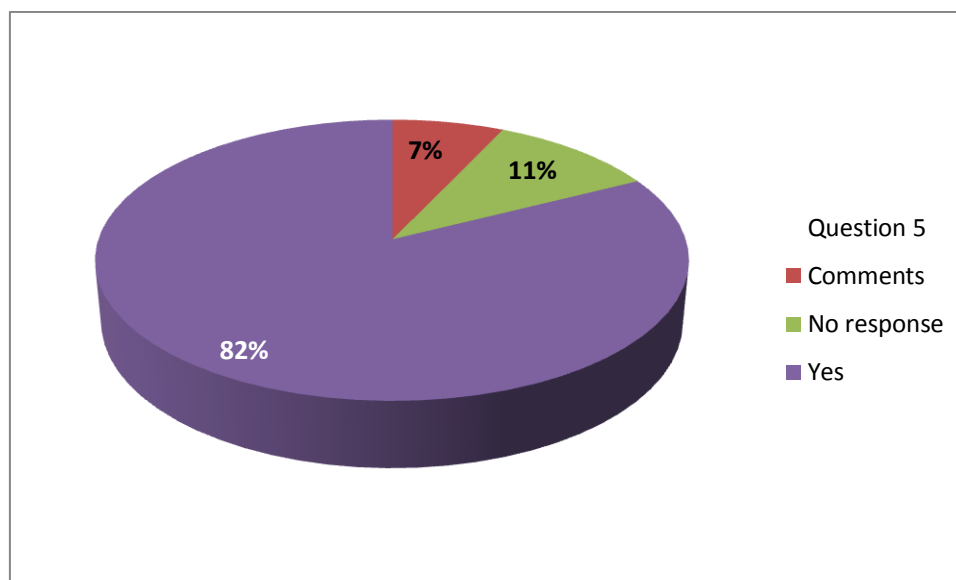
Welsh Government response

- 5.4 We acknowledge that there is no reported experience of the application of the interim SuDS Standards. We also recognise that there are questions relating to affordability, particularly when the wider benefits of multi-functional solutions are taken into account, as the developer may not be the beneficiary. Overall these responses suggest that making the SuDS Standards mandatory should deliver sustainable and affordable surface water management, by integrating drainage design with site design to create desirable communities.

6. 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.

- 6.1 Our current non-statutory SuDS Standards include a set of principles for sustainable drainage, which underpin them. These include matters such as amenity and biodiversity benefits, long term safety and reliability and affordability. We would like your views on these principles.

Figure 6 – Responses to question 5



Summary of responses

- 6.2 Almost all of those responding to the consultation answered this question and confirmed agreement with the principles for sustainable drainage contained in the non-statutory SuDS Standards. There was overwhelming support for implementing mandatory SuDS Standards so that the principles become a statutory requirement for new developments.
- 6.3 Most responses indicated the principles are sufficiently comprehensive and helpful in identifying primary objectives for the design and construction of SuDS. A number of responses felt the principles aligned appropriately with the Environment (Wales) Act 2016 and Well-being Goals in the Well-being of Future Generations (Wales) Act 2015.
- 6.4 One response suggested greater emphasis should be given in the principles to the management of future flood risk and the impacts of climate change. Another response proposed a principle was needed for adoption and a principle for appropriate levels of skills and training, but no example was provided.
- 6.5 Several responses confirmed support for the principles underpinning the standards and went on to provide additional comments on the standards as a whole. Most suggested technical changes on matters relating to infiltration rates, easements, betterment. One response raised concern about implications for areas where there are underground mine works.
- 6.6 Responses included the following comments:

“... generally in agreement with both the non-statutory National Standards and the underlying principles.” Business

“Yes. However, practical experience of the national standards is limited. Despite the national standards being promoted, until such time as they are applied as a statutory requirement they will not be implemented by developers.” Local Authority

“Yes, we agree with the principles set out in the Recommended Non-Statutory Standards, but believe that the standards and process need to be sufficiently robust to ensure that the principles are able to be followed successfully.” Utility

Welsh Government response

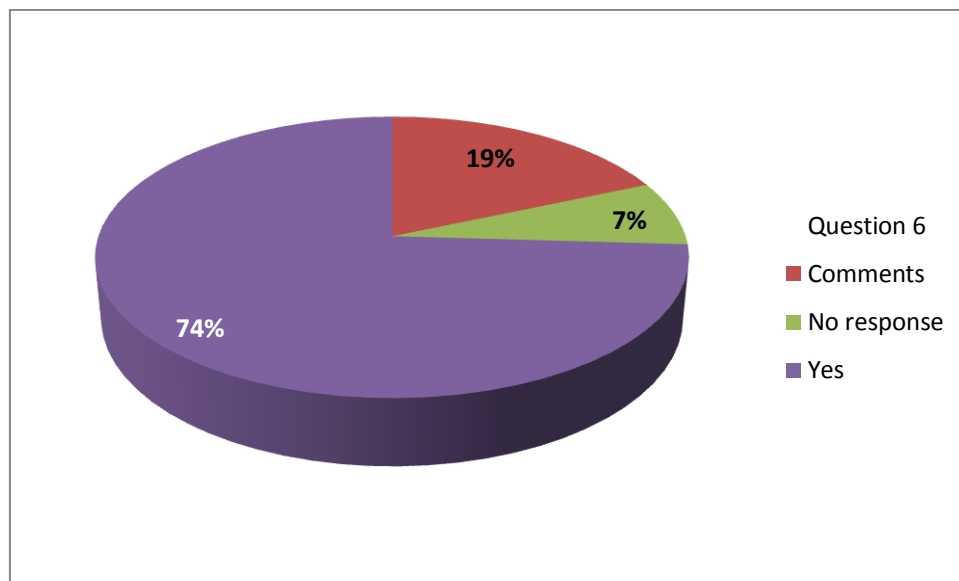
- 6.7 The responses indicate strong support for the principles and our proposal to make mandatory SuDS Standards which would make the principles a statutory requirement for new developments.
- 6.8 A couple of responses suggested ways in which the principles and the SuDS Standards could be further developed. We intend to invite further engagement on the principles and standards at a series of public workshops we will be holding throughout this consultation.

7. 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?

- 7.1 We wish to clarify the need for applicants to establish maintenance requirements and associated costs of their proposed drainage system and to identify how this will be funded. We therefore proposed the following addition to the principles section of the SuDS Standards:

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

Figure 7 – Responses to question 6



Summary of responses

- 7.2 There was clear support for the proposed addition to the principles section of the SuDS Standards. The majority of those responding to the consultation answered this question and agreed the need for applicants to establish maintenance requirements and identify how this will be funded for proposed SuDS at an early stage. There was also overall agreement that adding this principle to mandatory SuDS Standards would achieve clarity and certainty for the applicant, SuDS approving body and wider stakeholders.
- 7.3 In contrast one response was received which raised reservations about the applicant identifying long-term funding for operation and maintenance.
- 7.4 There was one suggestion that the principle should also be incorporated into the detailed standards and guidance section of the SuDS Standards. Another response suggested there should be support for improving design skills in relation to surface water management.
- 7.5 A number of key themes emerged in response to question 6:
- Overall agreement to the addition of the proposed principle subject to clarification on the meaning of 'design-life'.
 - Consensus that establishing maintenance requirements and associated costs of proposed drainage systems should be a collaborative process and a mandatory early stage.
 - Comments that a SuDS 'management and maintenance plan' that captures whole life costs of systems should be a mandatory part of the SuDS application for SAB approval. A number of responses provided additional suggestions about what should be included in the plan.

7.6 Responses included the following comments:

“Yes in principle, but not just the applicants but all involved in the provision of the SuDS system. Yes... [this organisation] considers that the proposed addition to the Principles is adequate.” Business

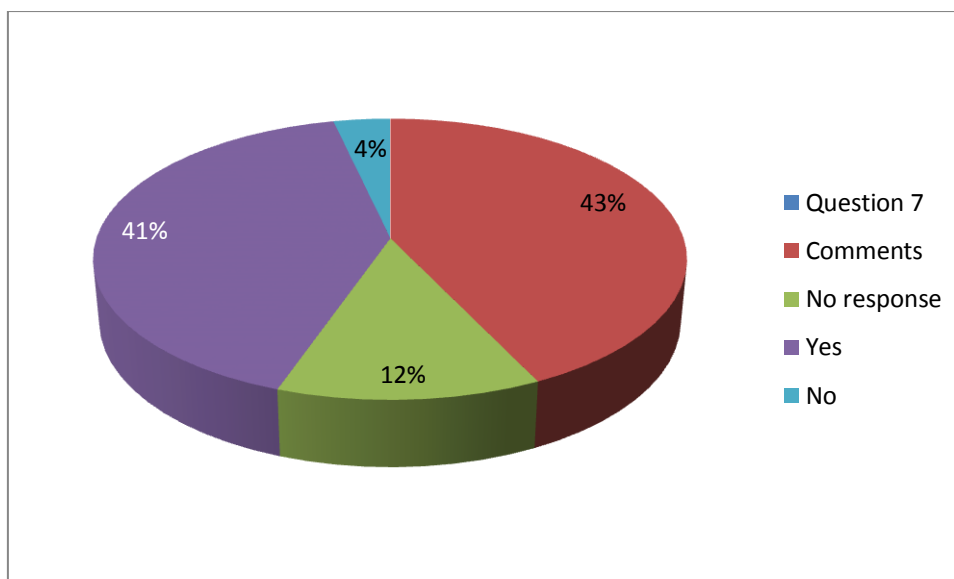
“... [A] recent survey ‘How can we make SuDS work?’ confirmed that one of the major hurdles to the uptake of SuDS concerns ownership and adoption and the consequent uncertainty around long term maintenance. We believe the proposal for applicants to set out the maintenance requirements of the drainage system and how this will be funded is a positive step forward. This should help promote adoption and avoid unfunded liabilities subsequently falling on the owners of connected properties.” Sector Professionals

“..[the] Maintenance strategy should however be developed in conjunction with the adopting body to consider all requirements. The maintenance requirements must be agreed up front and at an early stage..” Local Authority

Welsh Government response

- 7.7 There is strong support for our proposed addition to the principles section of for the SuDS Standards. Moving forward with arrangements for commencing Schedule 3 will make mandatory, as one of the underpinning principles of the SuDS Standards, the requirement for applicants to establish the maintenance requirements of their proposed drainage system at an early stage.
- 7.8 There will be an opportunity during the course of this consultation for further positive engagement on the key themes outlined above.
- 7.9 We have noted comments relating to increasing skills for SuDS design and are seeking further views as to support for training.
- 7.10 We believe collaborative working before development begins at the pre-application stage between developers, local authorities and other stakeholders is vital to delivering effective and successful SuDS for the longer-term. Whilst not a specific question of this current consultation we are nonetheless keen to hear suggestions as to how early and collaborative working may be encouraged.
- 8. 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.**
- 8.1 We believe that partnership working between local authorities is vital to delivering effective and successful SuDS for the longer-term. Question 7 sought views on how this could be achieved.

Figure 8 – Responses to question 7



Summary of responses

- 8.2 The majority of those responding to the consultation answered this question and/or provided additional comments indicating overall agreement on the need for local authorities to work in partnership.
- 8.3 There was strong support for a collaborative approach from local authorities. Those providing additional comments suggested partnership working would enable the sharing of resources, expertise and best practice and would be more likely to encourage SuDS which apply a river basin catchment approach to surface water drainage. Several responses provided examples where non-statutory regional Flood Risk Management Groups are already established and work collaboratively across local authority boundaries. One response suggested the possibility of a local authority shared regional or national SAB hub to undertake administrative elements of the SAB function.
- 8.4 A small number of responses were unclear about how the exercise and discharge of the SAB function would work in practice. Other responses commented on the importance of local authority local site and area knowledge and achieving consistent application of the SAB function across the local authority.
- 8.5 The following key themes emerged in response to question 7:
- Consensus that local authorities should have the flexibility to determine and establish any collaborative working arrangements for discharging the SAB function.
 - Suggestions local authorities could achieve a regional collaborative approach to SuDS and delivering the SAB function through existing non-statutory regional groups covering certain elements of the SAB programme.

- Acknowledgement that overall responsibility for the exercise and discharge of the SAB function would remain that of the local authority for the area (where the local authority is also the SuDS approving body for the area under paragraph 6(1) of Schedule 3).

8.6 Additional comments made in response to this question suggested capacity building training and short term support for detailed technical approval aspects for the SAB function would also support local authorities exercising the SAB function in terms of making best use of resources, building expertise and sharing best practice.

8.7 Responses included the following comments:

“Yes, we agree and encourage a collaborative approach to SAB function with key stakeholders. Whilst we acknowledge that the SAB function may fall with each local authority we would suggest looking at collaboration on a regional basis to maximise opportunities to share good practice and expertise and apply a catchment based approach to SuDs.” Local Authority

“We agree that the principle of partnership to exercise and discharge the SAB function should be considered but this should be in context with the local authority in question.” Sector Professional

Welsh Government response

8.8 There was strong consensus from Local authorities for having the flexibility to determine how they work in partnership to carry out the SAB function. As set out in the Welsh Government’s white paper for Reforming Local Government we believe local authorities should have the flexibility to determine arrangements for working collaboratively across local authority areas. We encourage local authorities to work collaboratively to make best use of resources and expertise and believe that partnership working between local authorities is vital to delivering effective and successful SuDS for the longer-term.

8.9 It is our view that commencing Schedule 3 will provide local authorities with both the flexibility and scope for working collaboratively as set out below:

- Moving forward with arrangements provided under paragraph 6(1) of Schedule 3 will place responsibility on the local authority for the exercise and discharge of the SAB function. We agree that a local authority where it is also the SuDS approving body, could achieve a regional and collaborative approach to SuDS and carrying out certain elements of the SAB function through existing local authority regional groups covering aspects of the SAB programme.
- Alternatively, local authorities may wish to consider whether there is the opportunity under paragraph 6(3) of Schedule 3, to appoint an approving body for SuDS in one or more specified areas (instead of the local authority for the area under paragraph 6(1) of Schedule 3) . In this

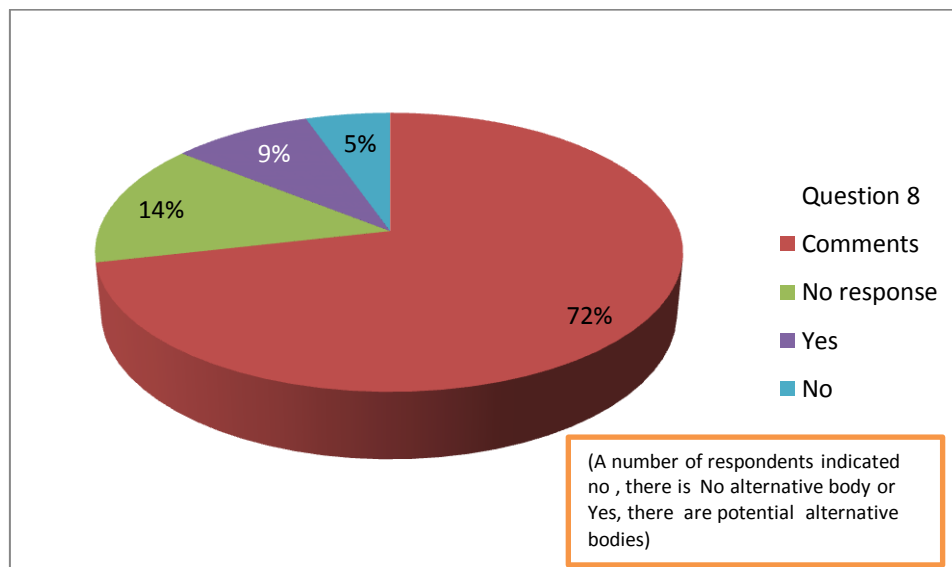
consultation we encourage local authorities to put forward any such proposals for alternative arrangements which could be established under this provision.

- 8.10 We have noted the additional comments made in response to this question concerning capacity building and short-term technical support for local authorities. We are considering more widely the issue of support for local authorities exercising the SAB function.

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

- 9.1 This question provided an opportunity for responders to suggest what if any alternative body to the Local Authority should be appointed to approve and undertake adoption of SuDS.

Figure 9 – Responses to question 8



Summary of responses

- 9.2 Nearly half of all those responding to this consultation commented that the local authority is the appropriate body to approve and undertake adoption of SuDS. Whilst just over a quarter of all responders did not provide an answer to this question.
- 9.3 Over half of all local authority responses suggested that the local authority was best placed to undertake the SAB function. A number of these responses stated local authorities have the necessary knowledge and local interests and commented on the correlation between the SAB role and other local authority functions and duties, including flood risk, land drainage, highways and town and county planning. One response also highlighted links between the SAB function and local authority local community and socio-economic interests.
- 9.4 A small number of responses from local authorities suggested that water and sewerage companies could undertake the SAB function. Some of these

added comments that water and sewerage companies already undertake similar functions. Whilst others had reservations about external interests conflicting with the delivery of other interconnected local authority functions.

9.5 A few responses, a couple from local authorities and a small number from other sectors, suggested the SAB role could be undertaken by either local authorities, water and sewerage companies or Natural Resources Wales. Or by an established flood risk management authority or a new independent authority.

9.6 Some of these responses suggested that adoption elements of the SAB function could be undertaken separately or sub-contracted to another body. The response from developers suggested there should be flexibility to allow for other bodies to undertake approval and adoption. In contrast another response highlighted the need for clarity and certainty over adoption and another stated ultimate responsibility for adopted SuDS and assuring their effective operation and maintenance for the longer term needed to remain with a statutory body.

9.7 The following key themes emerged in response to question 7:

- Strong consensus amongst local authorities, that the local authority, instead of any alternative body, is the most appropriate body to be appointed to undertake approval and adoption of SuDS.
- Comments on the inter-connection of the SAB function to other local authority functions.
- Comments on adoption elements of the SAB function being undertaken separately or subcontracted so that ultimate responsibility remains with the statutory and publically accountable body.

9.8 Responses included the following comments:

“[our] research has shown that sewerage undertakers have a range of relevant skills and already manage several aspects of the water cycle. They have practical drainage experience as well as charging infrastructure that could help to support long-term maintenance, for example through surface water drainage rates. There is some hesitation though as this could encourage more ‘hard’ SuDS approaches rather than those that deliver multiple benefits. Some water companies have indicated a preference for pipes and tanks which increase their Retained Asset Value...”

In our survey of professionals we asked ‘who should ‘adopt’ SuDS?’. There was some division, 40 per cent favoured a local authority and 28 per cent opted for the sewerage undertaker. Therefore we believe it should be undertaken by a publically accountable statutory body, either the local authority or sewerage undertaker. They could then, if necessary, contract maintenance out to another organisation.” Professional Sector

“...It is our belief that local authorities are best placed to manage local flood risk and deliver the role of approval of SuDS via a SAB role.

The Flood and Water Management Act 2010 designates the local authority as a risk management authority with the statutory duty of managing local flood risk. The creation of the SAB within the local authority will assist in delivery of this role. Since the formation of LLFAs, expertise has been developed within local authorities with specific knowledge of local flood risk and drainage requirements.

A key component of delivering the SAB role within the local authority will be knowledge of local flood risk and drainage/ highways drainage issues and existing maintenance responsibility.

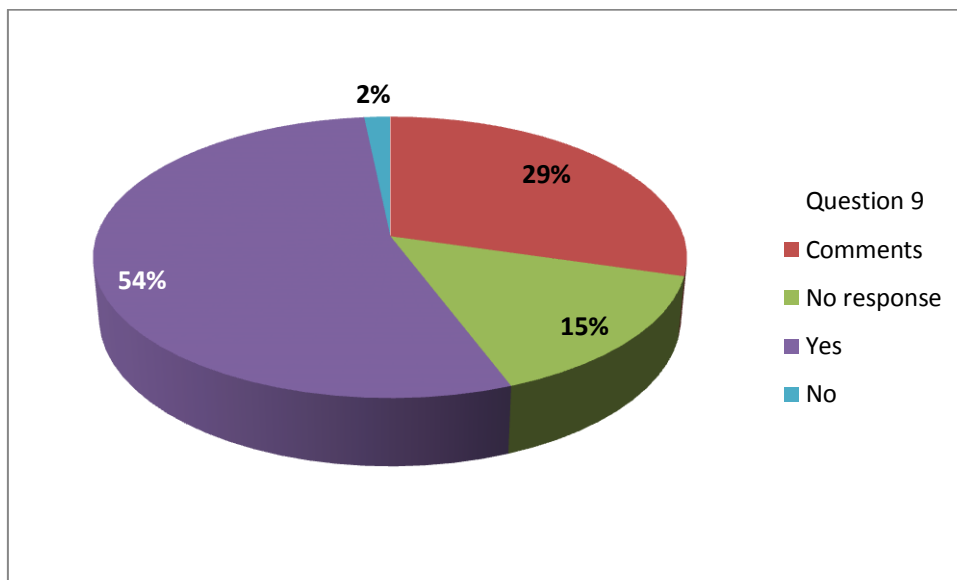
The formation of another body would remove the ability of the local authority to better manage its own flood risk, and create confusion to developers/ the public.” Local Authority

Welsh Government response

- 9.9 Overall there is consensus that the local authority, instead of any alternative body, is the most appropriate body to be appointed to undertake approval and adoption of SuDS.
- 9.10 Comments suggesting certain elements of the SAB function could be undertaken by a separate body have been noted. It is however widely recognised that a key barrier to greater uptake of good quality landscaped SuDS under the current system is uncertainty around adoption and ongoing operation and maintenance.
- 9.11 It is our intention to provide the necessary certainty and clarity by moving forward with arrangements to implement Schedule 3, making local authorities the appointed SAB and responsible for the approval and adoption of SuDS.
- 9.12 We believe there is flexibility in the legislative framework for the SAB to subcontract elements of the adoption role for maintaining SuDS whilst retaining overall responsibility for ensuring the system is maintained in compliance with the SuDS Standards.
- 10. Question 9: Do you agree with our proposals about what should require SAB approval and what we propose to exempt? Please give reasons.**
- 10.1 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.
- 10.2 We propose exemptions would be needed for three specific 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.

Figure 10 – Responses to question 9



Summary of responses

10.3 Most of those providing a clear reply to this question agreed with the proposed exemptions. A number of those who disagreed thought that there should be no exemptions. Common themes from those commenting on the exemptions were the interface with permitted development rights, the status of single dwellings and the cumulative impacts of house extensions and other small-scale developments. The exemption for trunk roads received both supporting and opposing comments. One local authority suggested that all highways authorities should be exempt. A single response sought exemption for mine water remediation schemes and one expressed concern over the potential application to agricultural developments.

10.4 Responses included the following comments:

“We would also like to see works undertaken by the sewerage undertaker or works contained in a s104 agreement as an explicit exemption due to there being legislative provisions in the Water Industry Act 1991, and duplicating this would increase the burden on undertakers and developers, as well as having the potential to dilute the effectiveness of both processes.” Utility

“It is not clear why WG would seek to introduce exemptions for NRW as a drainage body and the Trunk Road as a Highway Authority, but does not extend the exemptions to LA’s performing those very same functions” Local Authority

“..construction of a single dwelling is exempted from approval but there is no mention of exempting minor householder development or a reason given why an exemption is given to a single dwelling.” Local Authority

“...all PD rights will need to be removed from any new development as at present very few if any developers allow for urban creep in their designs”
Local Authority

“If we are to effectively manage and control surface water run-off then there should be no exemptions.” Trade Body

“... it is considered that all developments, including nationally significant infrastructure projects should be included.” Local Authority

“Our experience with Trunk Road designs appear to have sustainability at the forefront of design.” Consultant

Welsh Government response

- 10.5 The Welsh Government aims to ensure that the requirement for SAB approval is applied proportionately, without overburdening either the SAB or the developer. We are aware of the potential for there to be a cumulative impact for small scale extensions and paving, and this concern underpins the conditions attached to Permitted Development Rights which apply to these. We believe our proposed cut-off for developments exceeding 100 square metres is therefore appropriate.
- 10.6 We had proposed single dwelling developments should be exempt from the requirement for approval and a number of respondents expressed the view that this could cause difficulties where a development is sub-divided or as a result of cumulative impacts. One response suggested simple standing guidance for such developments and we will explore this proposal further.
- 10.7 Three specific areas of development were identified for exemptions in our consultation.
- Trunk roads and motorways were proposed on the basis that they are designed and built in accordance with the Design Manual for Roads and Bridges (DMRB), which contains guidance on drainage which is both appropriate for trunk roads and compliant with the principles of SuDS. Given the wide range of developments for which local authority highways departments are responsible, the requirements of the DMRB could be excessively onerous. As a result, we do not believe it appropriate to extend a blanket exemption to all highways authorities.
 - Construction work carried out by Natural Resources Wales in exercise of its functions under the Land Drainage Act 1991 would, in any case,

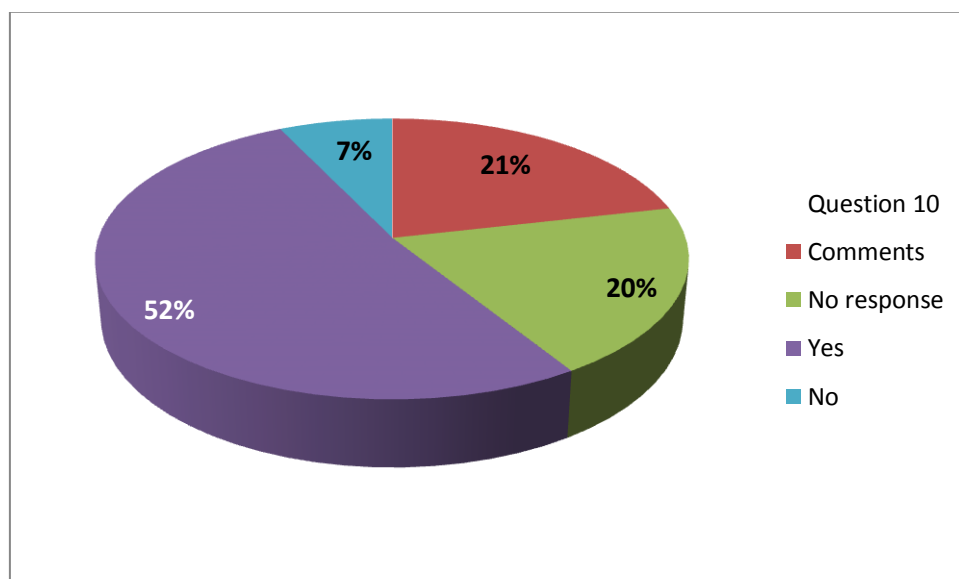
be unlikely to require SAB approval. We will explore the possibility of including works carried out by Lead Local Flood Authorities as part of our further consultation.

- The construction of railways does not, in general, significantly change permeability, given the permeable nature of normal railway construction. As most railway developments occur on existing railway lands, new developments are likely to be infrequent. We propose to discuss this exemption further with key stakeholders before making a final decision.

11. 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.

- 11.1 We propose 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.
- 11.2 We proposed that where an Environmental Impact Assessment¹ 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

Figure 11 – Responses to question 10



¹ Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

Summary of responses

- 11.3 Most respondents agreed that time-limits for determinations should be set. Half of the responses supported the proposed timescales and five clearly disagreed. Common themes were the issue of adequate resources for the SAB to deliver to these timescales and the links with and potential impact on planning processes. A number of local authorities were concerned over delays to planning decisions. Several responses emphasised the importance of pre-application engagement in ensuring timely decisions.

- 11.4 Responses included the following comments:

“The timeframes appear to be very tight if this is a process that is to run parallel and ensure integration with the planning application process.” Local Authority

“ in agreement with the proposed timescales but only if the SuDS approval body is adequately resourced.” Local Authority

“We would encourage WG to undertake further consultation in this area with LAs and WG’s planning departments to ensure all elements of the planning cycle are considered” Local Authority

“The proposed time scale also aligns with the planning process making it potentially easier for developers to manage.” Developers

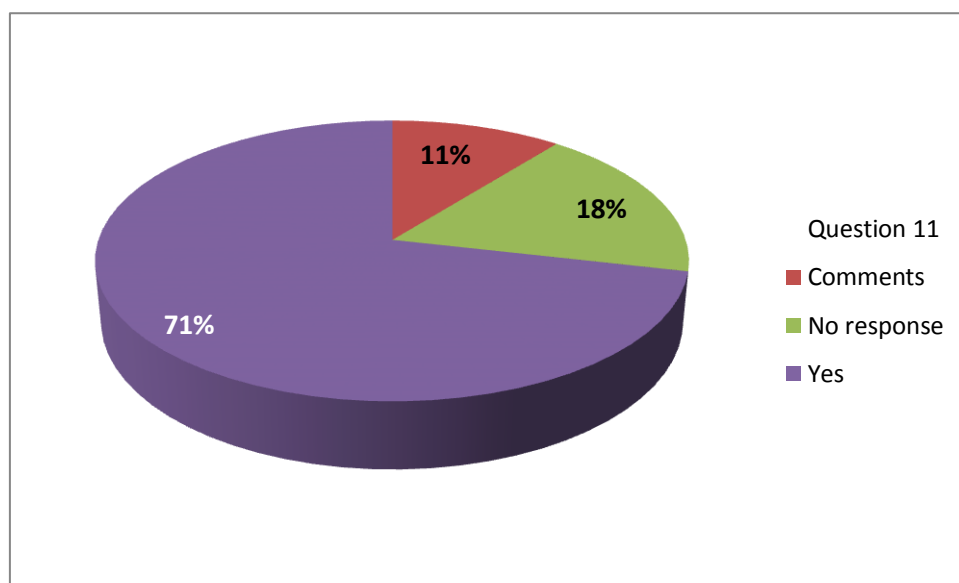
“It is also noted that the SuDs approval is a separate process from the planning approval process but it is anticipated that the outcome of the SuDs application will impact upon the outcome of the planning application. Could a planning application be approved if the development doesn’t gain SuDs consent?” Professional Body

Welsh Government response

- 11.5 Given the agreement on the need for time limits and the support for the time limits we proposed, these have been included in the Statutory Instruments which we are now consulting on. We recognise that we need to work closely with local authorities to ensure clarity in the relationship between planning and SuDS approval. However, these are independent of each other and SAB approval may be sought entirely separately from planning permission. Our suggested time limits are aimed at ensuring the SuDS approval process does not impact on overall development timescales rather than creating a dependency with planning permission.
- 11.6 We anticipate working with local authorities during the consultation period to ensure that the Regulations are workable and that adequate guidance is available.

12. **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 reason.**
- 12.1 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.
- 12.2 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.

Figure 12 – Responses to question 11



Summary of responses

- 12.3 The statutory consultees include:
- The sewerage undertaker where a connection to a public sewer is involved
 - Natural Resources Wales where the discharge will directly or indirectly pass to a watercourse
 - The relevant highways authority for a road the approving body thinks may be affected
 - Glanddŵr Cymru if the discharge is made directly or indirectly to a waterway managed by them
- 12.4 The majority of responses supported the proposed timescales for the statutory consultees to respond. One response suggested a shorter timescale and two local authorities suggested a 28 day period. One response commented that it would be better to make clear that a failure to respond within 21 days should be taken as “No objections or comments” rather than a nil return. One planning authority suggested the developer should be responsible for

undertaking the consultation before the application is made. A small number of comments were made over the resourcing needed to ensure time limits are met.

12.5 Responses included the following comments:

“Some of the consultees will also be consulted on the planning application itself this could be seen as a duplication of work and may cause problems if both aren’t received together” Local Authority

“Standing Advice could be useful.” Local Authority

“This would represent a new role for NRW. However, it is not clear on the reason for consulting NRW on this matter..... to provide advice on flood risk, water quality, and/or on the potential impact on our ability to manage assets maintained by NRW. We recommend that the reason for consulting ‘statutory consultees’ should be made clear in accompanying regulations/ or guidance”
Regulator

Welsh Government response

12.6 Given the support for a 21 day consultation period for statutory consultees, this has been incorporated in the Procedure Regulations which form part of the further consultation section. We propose to investigate the role of standing guidance during this consultation period and to use guidance to make clear a SAB should regard a failure to respond to a consultation as no objection.

12.7 It should be noted that the reference to consultation with a highways authority specifically relates to a situation where the SAB and the highways authority are each part of a different organisation. It is a principle in law that legislation should not require a body to consult with itself.

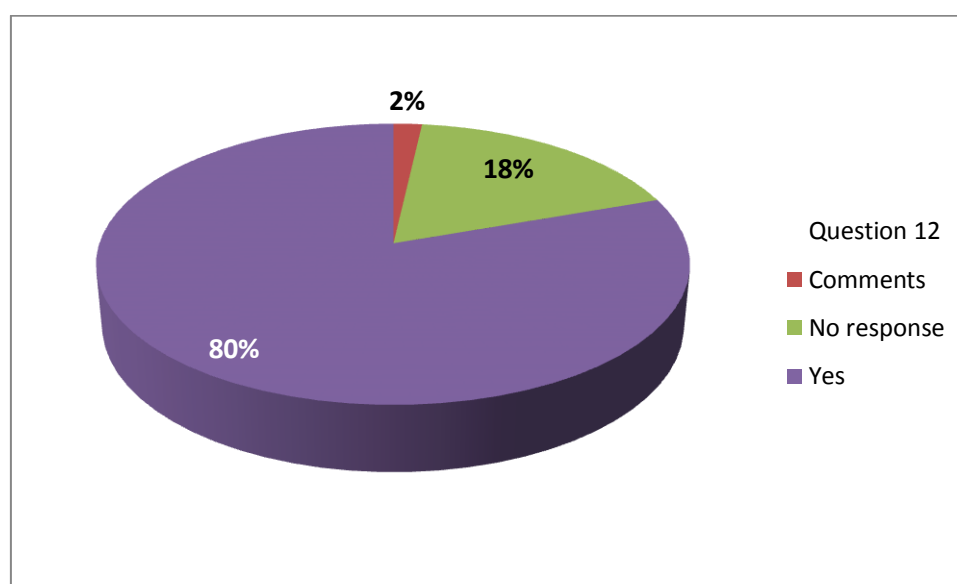
13. Question 12: Do you agree with our proposal to set a national fee? If not please give your reasons.

13.1 The Act provides 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.

13.2 The Welsh Ministers may make regulations about fees for applications for approval. We propose that the fee must be submitted at the same time as the application for drainage approval.

13.3 We 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 suggested that the approval fee should be set nationally by the Welsh Ministers. We also proposed that the national fee should be subject to annual reporting, undertaken by Local Authorities.

Figure 13 – Responses to question 12



Summary of responses

13.4 Most of the responses to this question supported our proposal, many citing the benefits of consistency. A number of the responses emphasised the importance of the fees covering the SABs' costs in full and the importance of annual reviews.

13.5 Responses included the following comments:

"Any national fee must cover not only the administrative aspects of an application but the vetting of the design, inspection of works and potential adoption." Local Authority

"We would therefore encourage WG to undertake a data gathering exercise with LAs before deciding on a fee...." Local Authority

Welsh Government response

13.6 Given the strong support for setting fees at a national level, we have included this proposal in the Procedural Regulations which form part of this further consultation.

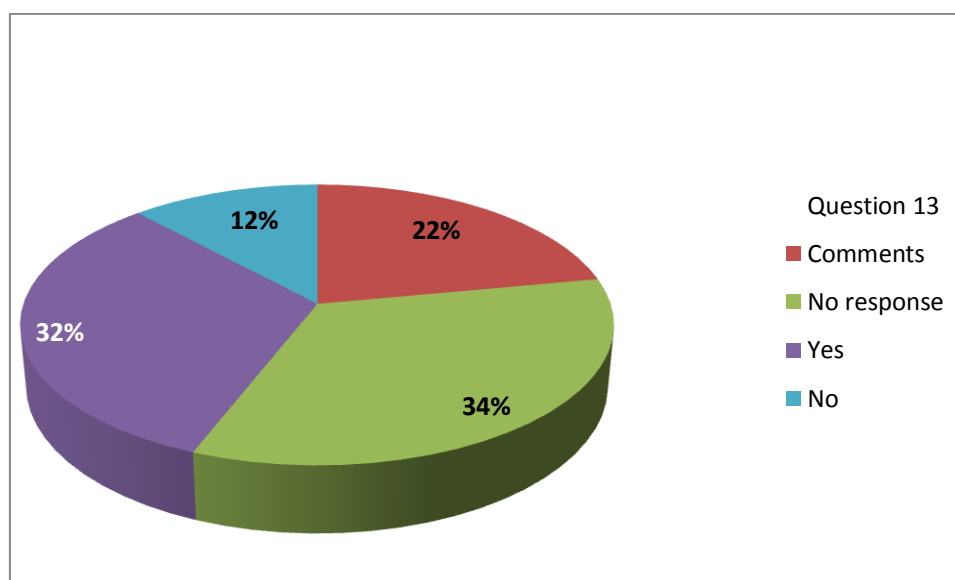
14. Question 13: Do you agree with our proposal for the rate of fees? If not please give reasons and offer alternatives.

14.1 We suggested that nationally set fees for this initial period be 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]:

| | |
|--|------------|
| For every 0.1 ha up to 0.5 ha² | £70 |
| For every 0.1 ha between 0.5 ha and 1 ha | £50 |
| For every 0.1 ha between 1 ha and 5 ha | £20 |
| For every 0.1 ha above 5 ha | £10 |

Figure 14 – Responses to question 13



Summary of responses

14.2 Most of those providing a clear response to this question agreed with the proposed figures. However, a number of responses from local authorities disagreed, providing evidence of the potential costs to support their position. Some local authorities were concerned that the fees might not fully cover costs and sought assurances that Welsh Government would underwrite any shortfall in income. Some respondents thought the charging table too complex and there was some confusion over the precise activities covered by the fees.

14.3 Responses included the following comments:

“The experience of the Council’s drainage engineers is that the size a development may not be a particularly useful indicator for time invested in reviewing and approving proposed surface water drainage designs. Often the proposed surface water drainage systems serving larger scale developments require less resources to review than smaller sites. This may reflect the quality of submissions from better resourced and more experienced larger developers, and also the more opportunity/space on larger sites to design around constraints.” Local Authority

² Any fraction of 0.1 hectare of site area should be corrected upward to the nearest 0.1 hectare.

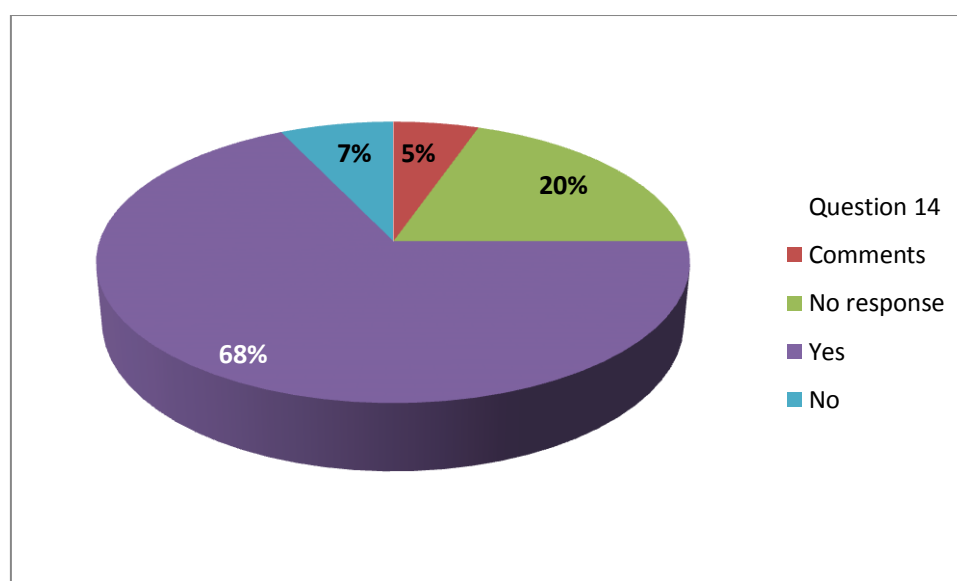
“....questions raised about the proposed decreasing feescale when workload actually increase with bigger sites/developments. We would therefore disagree with the proposed fees unless WG commit in principle to subsidise any gap in the form of revenue funding.” Local Authority

“ ... we note that the current proposed charging appears to incur higher costs proportionally on the smaller builder.” Developer

Welsh Government response

- 14.5 We recognise the difficulty of setting fees that are fair to developers and local authorities, which fully recover costs and which can apply across Wales. We have incorporated our proposed figures in the Procedure Regulations for consultation. We propose to work with stakeholders, including the Welsh Local Government Association, to test these figures during the consultation period. However, we expect local authorities to seek to deliver this new duty in the most cost effective way possible and to work together where this could reduce costs.
- 14.6 We will provide further details of the activities we expect to be covered in the application fees in guidance.
15. **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.**
- 15.1 We proposed that the national fee should be subject to annual reporting, undertaken by Local Authorities. This would provide the basis for future fees.

Figure 15 – Responses to question 14



Summary of responses

- 15.2 The majority of respondents answered this question and most supported the proposed review mechanism. A number emphasised the need to ensure fees matched costs and some linked the review of costs with the performance of the SAB.

- 15.3 Responses included the following comments:

“£350 equates to about 8 hours which should cover the review of the application. However, there will be costs incurred in pursuing agreements, enforcement and supervision – how will these be paid for?” Local Authority

“The LLFA currently provides a similar charging review to Welsh Government (WG) for other flood risk management duties.” Local Authority

Whilst a regular and ongoing review of fees is required, the undertaking of an annual review is considered onerous, and will lead to confusion. Local Authority

“ the principle of full cost recovery this is not a principle which currently exists in the planning application process ...” Developer

“Any increase in fees would also need to be measured against performance.” Developer

Welsh Government response

- 15.4 There was broad agreement with this proposal and we will incorporate an annual review system in implementing the Schedule 3 provisions. We will also consider how the performance of the SABs could be measured and reported.

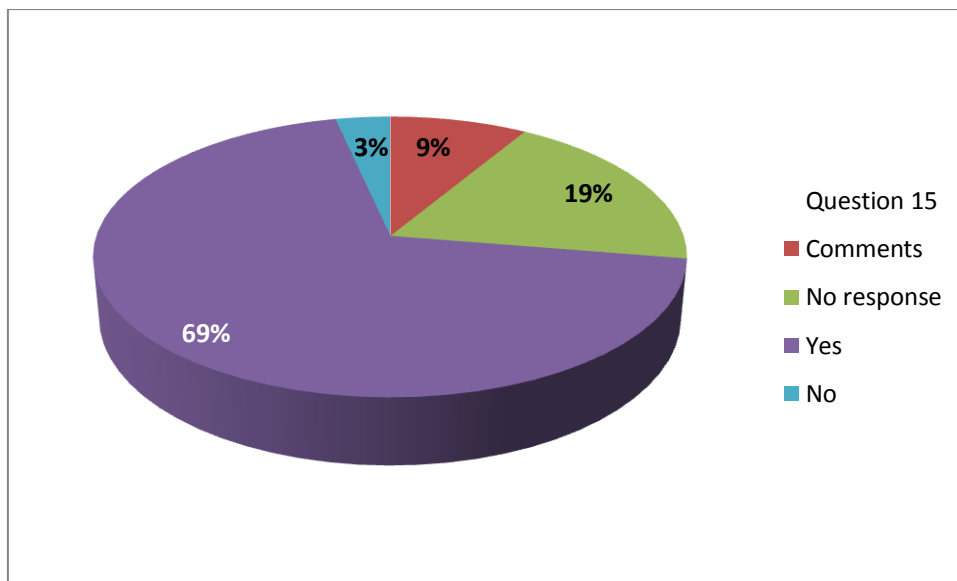
16. Question 15: Do you agree with our proposals for the SAB to charge for these activities? If not please give your reasons.

- 16.1 The SAB may charge for pre-application discussion, if they wish, under powers given to them in Section 93 of the Local Government Act 2003³.
- 16.2 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.

³ <http://www.legislation.gov.uk/ukpga/2003/26/section/93>

- 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.
- 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.

Figure 16 – Responses to question 15



Summary of responses

16.3 A high proportion of responses addressed this question. Most agreed with our proposals. Some were concerned that charging for pre-application discussions could be counter-productive.

16.4 Responses included the following comments:

“ we feel that such charges may be counter-productive by deterring applicants from making the informal pre-app enquiries that lead to subsequent relatively straightforward applications ... there is a two-sided benefit to such activities, in that the developer is able to make the application process cost-effective, and the Officer concerned becomes familiar with the specifics of the project, thus helping their work. Trade Body

We believe that it is fair for the SAB to be appropriately recompensed for the activities that they are undertaking and will fund the resource needed to ensure that robust technical assessments are undertaken. Utility

“this will save the developer unnecessary design costs on abortive work so they provide value. If the SAB is not allowed to charge they will not produce good advice and approval costs will rise.” Professional Body

“It was reported that through earlier engagement, space constraints can be minimised by utilising topographical features which become part of the landscaping design. ... We would therefore encourage this early engagement that should not be prejudiced by high charges.” Professional Body

“the original fee should cover this.” Consultant

“additional fees should be measured against performance.” Developer

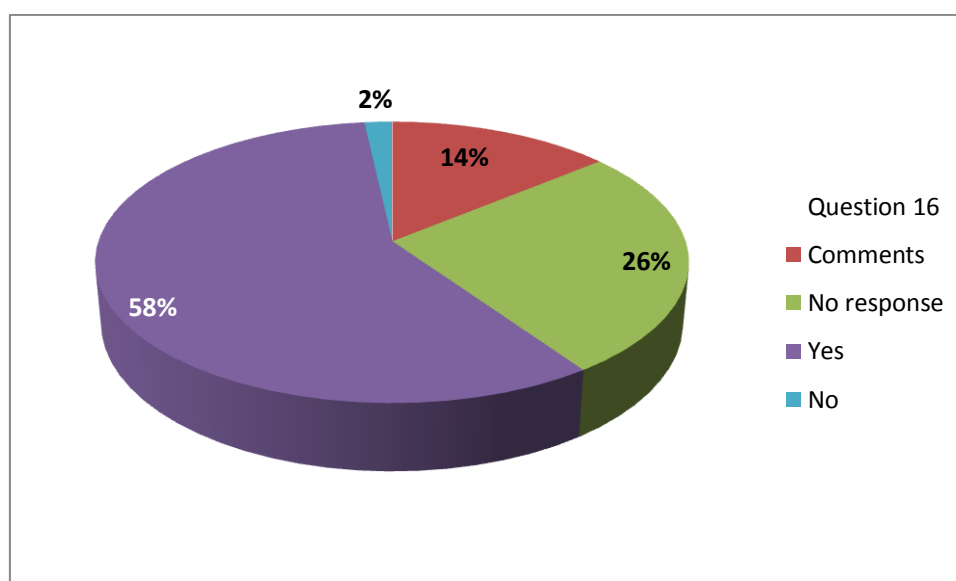
Welsh Government response

- 16.5 In agreeing with our charging proposals, the majority of responses to this question recognised the need to adequately resource the service provided by SABs. We will aim to ensure the fees do not discourage early engagement, with all the benefits it provides, and recognise the need to ensure the levels of service are appropriate, in order to prevent undue delay in developments. Further details are incorporated in the draft Procedural Regulations forming part of the further consultation. (See Part 2 – Applications).

17. 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.

- 17.1 Paragraph 17 of Schedule 3 to the Act requires the SAB to adopt drainage systems which satisfy the following conditions:
- that the drainage system was constructed in pursuance of approval,
 - that the drainage system was constructed and functions in accordance with approval, and
 - that the drainage system is a sustainable drainage system.
- 17.2 Paragraph 23 of Schedule 3 to the Act enables the SAB to adopt on its own initiative or at the request of the developer. Question 16 sought views on our proposal to require the SAB to determine requests within a period of 8 weeks.

Figure 17 – Responses to question 16



Summary of responses

- 17.3 Over half of all those responding to this consultation agreed that the SAB should determine a request for adoption within a period of 8 weeks. A number of these responses indicated this time period aligned well with the planning process. Just under a quarter of all responders did not provide an answer to this question.
- 17.4 Nearly all local authorities responding to the consultation supported the proposed 8 weeks time period. A number also provided additional comments, some of these suggested it may be difficult to determine requests within 8 weeks in the case of large development sites or where necessary supporting documentation is not submitted with the request. Others suggested incorporating a maintenance period similar to that for highway adoptions to ensure satisfactory performance of the SuDS before finalising adoption. A couple of responses confirmed agreement subject to adequate resourcing of the SAB. One response suggested principles for adoption should be determined at the application stage.
- 17.5 One local authority disagreed with the proposed time period and suggested an alternative period of at least 24 months to align with highways adoption and allow sufficient time to demonstrate satisfactory performance of the SuDS.
- 17.6 A couple of responses from other sectors provided additional comments, one suggested the time period could be shorter than 8 weeks whilst another suggested there should be flexibility to extend the time period.
- 17.7 The following key themes emerged in response to question 16:
- Strong overall consensus that the SAB should determine a request for adoption within 8 weeks.
 - Comments on having flexibility in certain circumstances for determining requests outside of the 8 week time period.
 - Comments on the SAB being adequately resourced.

17.8 Responses included the following comments:

“Yes. The suggested timescale is in accordance with other processes/procedures. However, this should only be applicable after the satisfactory completion of a maintenance period.” Local Authority

“The [...] considers this to be a reasonable period of time and in line with the planning process.” Business

Welsh Government response

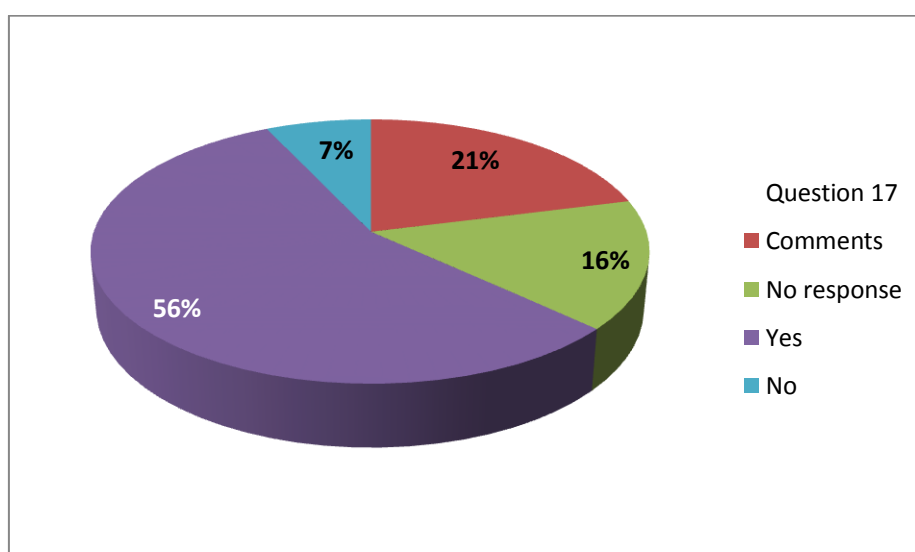
17.9 There was strong consensus that the SAB should determine a request for adoption within a time period of 8 weeks, subject to having flexibility in certain circumstances. In the draft regulations which are part of this current consultation, we have prescribed a time period of 8 weeks with provision for some flexibility to extend the time period where the parties are in agreement.

17.10 We have noted the additional comments made in response to this question concerning the SAB being adequately resourced. As part of this consultation we are engaging more widely with local authorities on support needed to effectively exercise the SAB function.

18. 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.

18.1 We proposed in respect of condition 3 relating to the adoption duty for a SAB (see Question 16) to define a sustainable drainage system in regulations as those parts of a drainage system that are not vested in a sewerage undertaker. 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.

Figure 18 – Responses to question 17



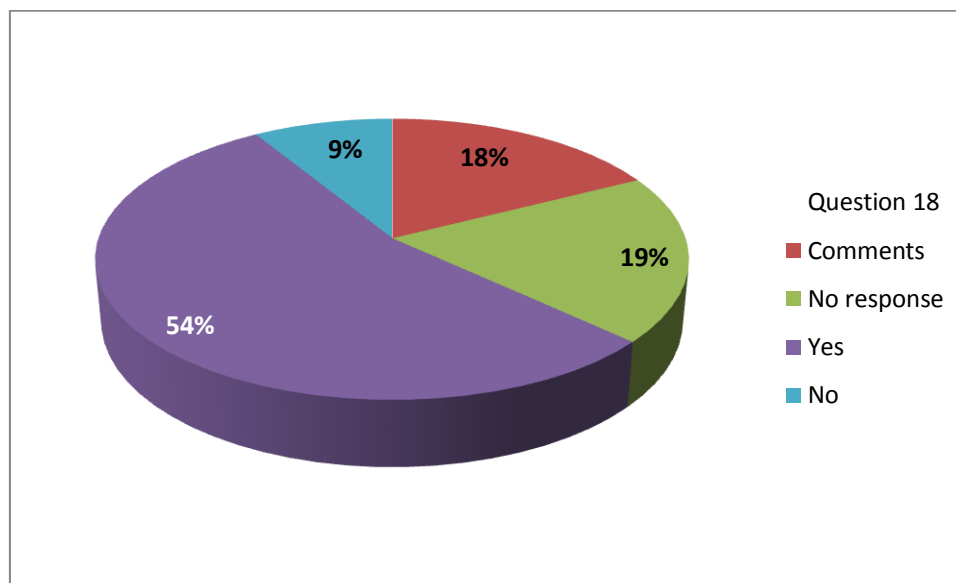
Summary of responses

- 18.2 Most of the responses to this question supported our proposal. However, a number of helpful comments were made and questions raised around the status of SuDS serving individual properties, links with highway drainage and the differing timescales of adoption between sewerage undertakers, highways authorities and the SAB. Those who disagreed sought clarification of the interface with assets adopted by the sewerage undertaker or an additional requirement that the definition should also require the drainage system to demonstrate how it will deliver multiple benefits.
- 18.3 Responses included the following comments:
- “the proposed definition is acceptable as long as it is quite clear and not open to interpretation, what parts of a drainage system that are not vested in a sewerage undertaker.”* Developer
- “concerns exist about adoption of the as-built development. This could be different to the “approved for construction” SuDS, a final assessment of the system by the SAB should be completed before adoption is approved.”* Local Authority
- “agree with the proposed definition of sustainable drainage system as it provides flexibility for the most appropriate body to adopt a system based on the components that it is made up of.”* Utility

Welsh Government response

- 18.4 We welcome the support expressed for this proposal. Some respondents used their replies to this question to raise queries over systems which would not be eligible for adoption.
- 18.5 Systems serving a single property (for example serving a single house or a supermarket car park) are exempt from adoption under Schedule 3 Section 18(1) and (2). Systems forming part of a highway will be approved by the SAB but will become the responsibility of the highways authority rather than the SAB (Schedule 3 Section 19)
- 19. Question 18: Do you agree with the listed exceptions to the SAB duty to adopt? If not, please provide an explanation.**
- 19.1 One of the conditions to be met for the SAB to adopt a drainage system is that it is a sustainable drainage system. For this purpose we proposed 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. 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.

Figure 19 – Responses to question 18



Summary of responses

19.2 Most of those answering this question agreed with our proposal. However, a number expressed concern over the interface with highways drainage functions, including developers and local authorities. One response addressed what is described as creeping development where small individual changes can have a cumulative impact.

19.3 Responses included the following comments:

“Proposals to allow the connection and adoption of third party systems into the highway drainage systems has the potential to increase maintenance liability & cost to highway authorities and would not be supported.” Local Authority

“highway authorities should be able to charge accordingly for the use of their apparatus, due to additional loadings on their systems.” Local Authority

“There is an inherent risk that there will be substantial maintenance responsibility passed onto the highway authority, Any arrangement of this sort would result in a complex arrangement in which the highway authority would be liable for un-chargeable maintenance responsibilities.” Local Authority

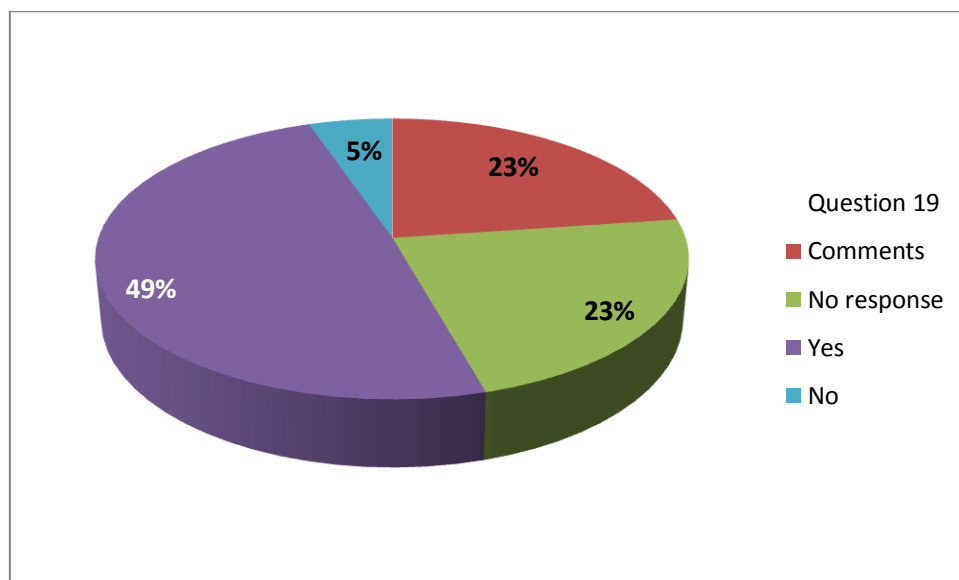
“Schedule 3 was amended by s21 of the Water Act 2014 to insert an additional exception for systems constructed by the sewerage undertaker under s114A of the Water Industry Act 1991.” Utility

“....a SuDS system could end up in shared ownership between the SAB and Highways. Although it is possible that these will both fall under the same Local Authority, due to the way different departments operate this could result in difficulties in the future” Developer

Welsh Government response

- 19.4 Whilst our proposal was supported, a lack of understanding and clarity around the issue of SuDS and road drainage is evident in the comments made. The approach proposed would see SuDS which are part of an adoptable road being managed by the highways authority. For example, maintenance of a road with permeable paving would be the responsibility of the highways function of the local authority, not part of the SAB duty. As the local authority will be both the SAB and the highway authority, the Welsh Government expects both functions to work together to deliver a more holistic approach to the drainage of new developments.
- 19.5 We will engage with local authorities through our further consultation to understand the perceived barriers to delivery and identify solutions.
20. **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 bond is necessary? Please provide reasons.**
- 20.1 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. Question 19 sought views on whether such guidance would be helpful.

Figure 20 – Responses to question 19



Summary of responses

- 20.2 Nearly half of all those responding to this consultation were of the view that it is necessary to have guidance for calculating the amount required for non-performance bonds. A significant number of these responses commented that such guidance would ensure consistent application, providing clarity, certainty and transparency for developers and reduce scope for disagreement on the value of assets.

- 20.3 Just under a quarter of all responders did not answer this question. A similar number did not answer the question directly, but provided additional comments. Some indicated that applicants could estimate costs for assessment by the SAB.
- 20.4 A small number of responders were of the view that guidance was unnecessary. One response did not support the requirement for a non-performance bond raising reservations as to the impact on SMEs. This contrasted with other responses which commented that non-performance bonds and setting these at the right level was crucial and would assist developers.
- 20.5 A number of additional comments were made. Some of these suggested that where national guidance is provided this should take into account regional variations and techniques for estimating asset costs and specific site situations and contexts. Some suggested guidance needed to clarify use of the non-performance bond in relation to the expected operational performance of a SuDS asset over time. Others supported the intent for having guidance but felt this matter should be further explored with the SuDS advisory group.
- 20.6 The following key themes emerged in response to Question 19:
- Clear overall consensus for having guidance for calculating the amount required for non-performance bonds.
 - Comments that guidance should take into account regional variations and techniques for estimating asset costs and specific site situations and contexts.
 - Comments that the matter of guidance for calculating non-performance would benefit from further exploration and engagement.
- 20.7 Responses included the following comments:

“Guidance should be provided to allow consistency and de-risk developer’s budget and could be used to promote lower capital value ‘softer’ infrastructure SuDS approaches.” Sector Professional

“This is essential to ensure systems are constructed correctly.... This principle has been used for many years in road adoptions.” Local Authority

“There is currently variation in the estimated costs for delivering SUDs systems. There is variation across regions and the technique applied.” Local Authority

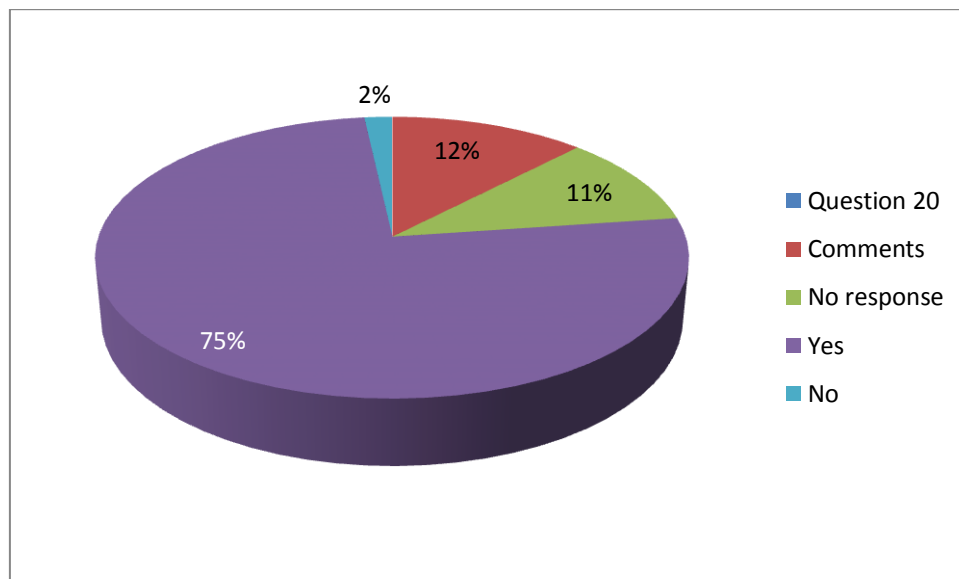
Welsh Government response

- 20.8 There was clear overall consensus on the necessity for having guidance for calculating non-performance bonds. Also there was a significant number of additional comments made in response to this question many of which related to the scope and content of guidance. We have noted comments and will be engaging more widely over the course of this further consultation to develop guidance and ensure this is evidence based and fit for purpose.

21. 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.

21.1 This question asked respondents if they agreed that a maintenance plan should be submitted with a SAB application and if so if it would deliver an effectively maintained sustainable drainage.

Figure 21 – Responses to question 20



Summary of responses

21.2 Nearly all of those responding to the consultation answered this question and confirmed agreement that the submission of a maintenance plan with the SAB application would be helpful in the delivery of maintained sustainable drainage.

21.3 Most responses indicated that maintenance plans would allow for a consistent approach and more confidence to the planning process that the issue of maintenance would be adequately addressed. One response advised that a maintenance plan would reassure occupiers that the system would be effective. A number of responses raised the issue of costs associated with the maintenance plan and felt that a funding arrangement would need to be agreed in partnership with the SAB.

21.4 Responses included the following comments:

“Yes, it is agreed that a maintenance plan (submitted by the developer) would be an important part of the SAB application process. Such an arrangement would be ‘helpful’ in the delivery of maintained sustainable drainage”.

Local authority

“Yes – This is a fundamental part of the SuDs approval process. Without a fully costed/funded maintenance regime the SuDs feature will not reflect the 7 wellbeing goals set out within the Wales Future Generations Act or the Principals of the Non-Statutory standards for Suds. To ensure compliance the requirement for a maintenance strategy should be conditional prior to development. The developer acting as the client will be in position to evaluate the site constraints and design appropriate and maintainable SuDs feature the developer however should take into account the requirements of the adopting body to ensure the design is suitable for maintenance operations for the short and long term”. Local Authority

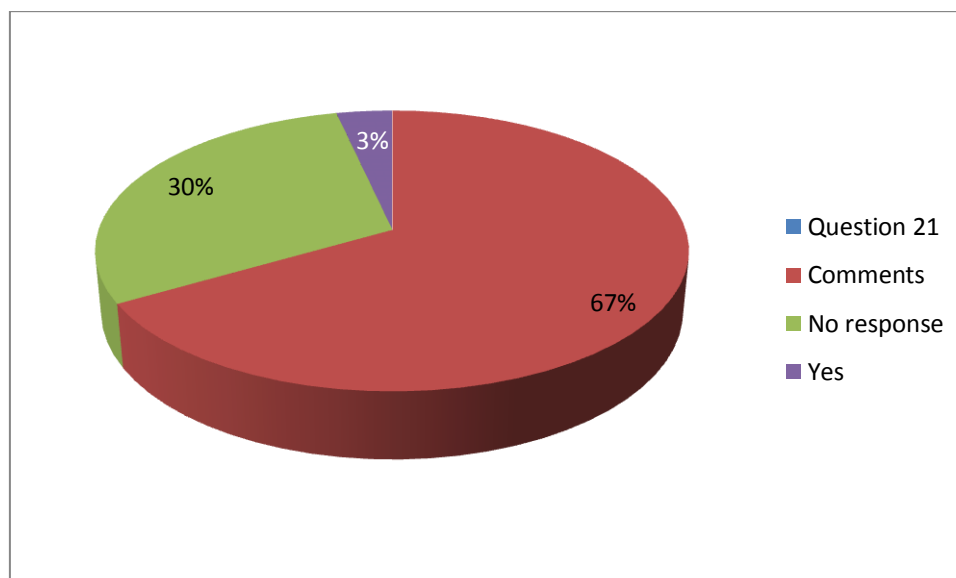
Welsh Government response

21.5 The responses indicate strong support for our proposal to introduce a requirement for a maintenance plan to be submitted with the SAB application. The Welsh Government will work closely with stakeholders to develop this proposal and to further explore costs and options for funding arrangements.

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

22.1 This question asked respondents to provide specific examples of uses of other maintenance options.

Figure 22 – Responses to question 21



Summary of Responses

22.2 An overwhelming number of respondents did not have any evidence to support other maintenance options which could be viable while a small majority had only limited evidence available to them. Several responses suggested that maintenance of surface SuDS works / structures could potentially be carried out by NRW. Some respondents suggested that

responsibility for future maintenance should lie with SAB as the adopting authority for surface water management arrangements.

- 22.3 One comment stated that water utilities already have existing powers and would, therefore, be best placed to assume responsibility for maintenance to property drainage while another response said that any charging for the SuDS maintenance should be cost neutral to residents / householders.

- 22.4 Responses included the following comments:

“No other obvious viable maintenance options” Sector Professional

“Future maintenance obligations should rest with SAB as adopting authority to avoid “grey areas” and confusion”. Individual

“Adoption agreement between the SAB and Sewerage undertaker. In this situation the powers employed by the sewerage undertaker would be best placed to deliver maintenance arrangement to property level drainage. The remaining elements of the drainage assets could be the responsibility of the Highways authority/ SAB. Charging arrangements would need to be agreed between the SAB and sewerage undertaker”. Local Authority

“The option that involves adoption of the sewer by the sewerage undertaker in their regulated business may offer the most satisfactory option to the customer if the legal difficulties can be overcome. ‘Sewers for adoption’ guidance is currently being updated and can form the basis for SuDS to be adopted as sewers. It is not clear how a developer could contribute to a S114A drainage system. There may be the opportunity to develop more innovative funding approaches, similar to partnership funding for flood risk management, where those who benefit from a scheme can then contribute towards its costs. This could be adopted more easily for retrofit schemes or for contributions towards long term maintenance” Sector Professional

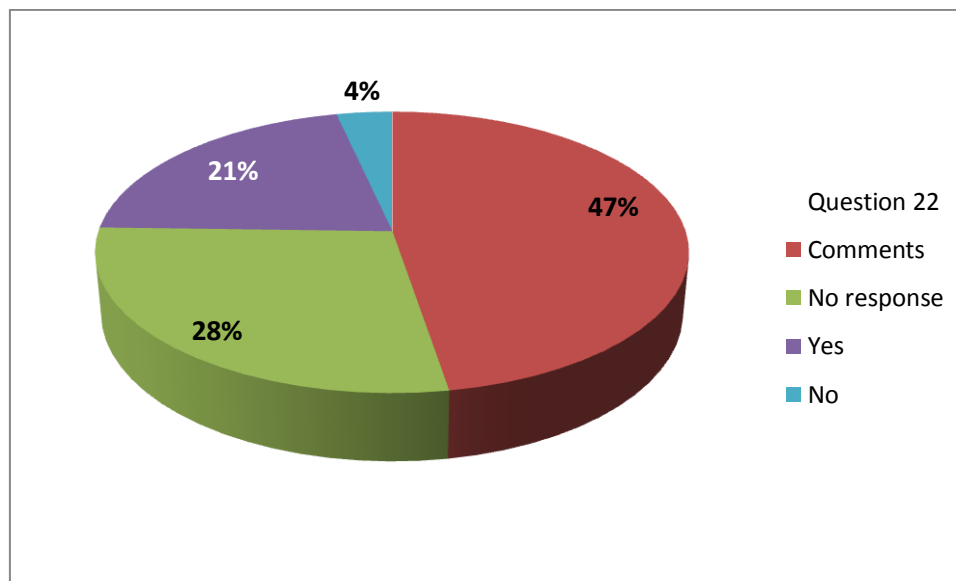
Welsh Government response

- 22.5 The responses indicate there is a lack of evidence to suggest other maintenance options which could be viable to deliver an effectively maintained sustainable drainage system. Moving forward we will be working with stakeholders to further explore funded maintenance options.

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

- 23.1 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. This question sought views on the potential impact of SuDS on customer bills.

Figure 23 – Responses to question 22



Summary of responses

- 23.2 Most respondents indicated they neither agreed or disagreed with this question, with several saying they were unaware of any other options at present. Just under half of respondents agreed that the proposed approach in general would avoid increased costs for householders and developers.
- 23.3 A large number of respondees felt they were unable to provide a response or comment due to a lack of evidence with one local authority stating that costs may differ depending on the type of SuDS employed.
- 23.4 A small number of respondents disagreed that the proposed approach would avoid increased costs as they did not have any evidence that it would not be passed to householders.
- 23.5 Responses included the following comments:

“Yes, no reason to suspect that your proposed approach would result in increased maintenance costs” Sector Professional

“Yes. From the evidence provided in the Consultation Document and EPS report there is a strong indication that overall costs for construction and long term maintenance should be less where a SuDS based drainage system is installed. Would though the suggested £9000 per new home saving in construction costs actually be reflected in the price to the new home buyer. Clearly this would have significant bearing taking into account whole life or ‘totex’ costs for the homeowner.” Sector Professional

“The proposed approach would likely result in the status-quo being maintained. The sewerage undertaken currently receives surface water rates charged against the property owner. The implementation of SUDS solutions could see this charge being transferred to the maintaining body.

It is likely that commuted sums would continue to be levied against developers. Where SUDS systems with reduced maintenance requirements are proposed this is likely to result in lower/similar commuted sums. However, depending on the proposal there could also be increases in commuted sums. Any changing regime/ commuted sum must cover the maintenance costs of the respective system. Guidance on charging regimes/ commuted sum calculations should be provided” Sector Professional

Welsh Government response

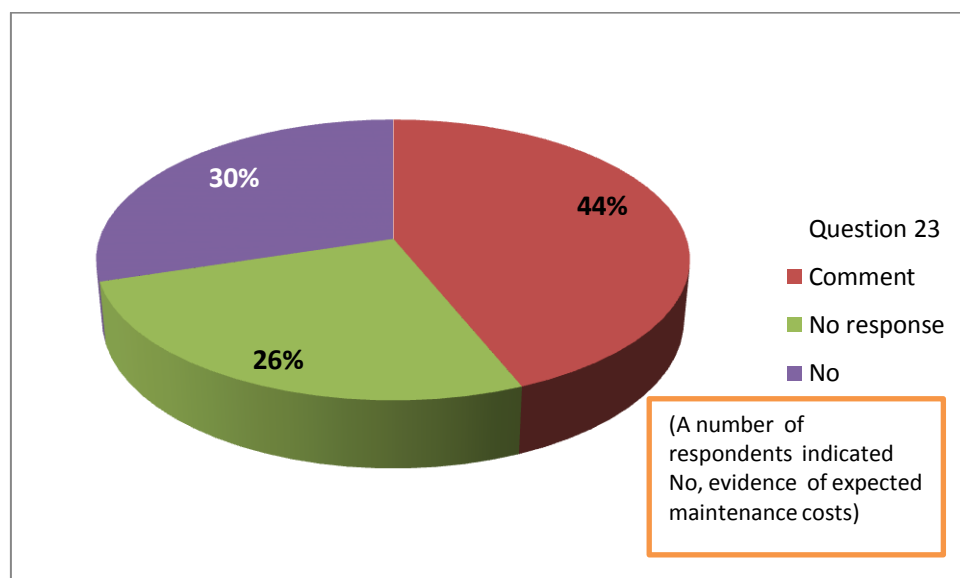
23.6 The majority of those responding to the consultation did not answer this question. However several of the local authorities suggested that based on the supporting information provided in the consultation the proposed approach would in general avoid increases in maintenance costs.

23.7 We have noted comments about the need to ensure SuDs maintenance is adequately funded for the whole system life to deliver effective flood risk mitigation and multiple benefits and to ensure costs to the maintaining body do not increase costs for householders.

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

24.1 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. This question sought additional evidence on maintenance costs.

Figure 24 – Responses to question 23



Summary of responses

24.2 Just over a third of all respondents explained there was not enough evidence available to them to make an informed decision as to expected maintenance costs.

24.3 However one response cited a Defra-commissioned independent research that found maintenance costs were on average no higher than those for conventional piped surface water drainage, while another suggested that maintenance costs are much higher for a local authority where they have adopted a SuDS system than that of a private management company.

24.4 Responses included the following comments:

“These will vary from project to project, but are relatively straightforward to calculate against any specific scenario”. Business.

“No direct evidence”. Sector Professional

“Defra-commissioned independent research found that maintenance costs are on average no higher than those for conventional piped surface water drainage. Through discussions with developers and service managing agents the actual figures for maintenance of some SuDS within managed open spaces can be much lower (a typical example was around £6 per property per year).” Environmental Non-Government Organisation.

Welsh Government response

24.5 A considerable amount of work has been done in recent years to quantify SuDS maintenance costs in the UK. It is clear stakeholders have insufficient information from their own operations to improve our understanding or provide more Wales specific evidence.

25.6 However several responses suggested that although some limited evidence is available, it has not been in place long enough to extract enough information to accurately assess full life costs.

25.7 One response suggested that costs could vary from site to site and with time. As a result no consistent cost estimation can be provided at this stage.

Conclusion and next steps

26. The consultation received fifty four responses, with the majority being from local authorities. Other responses included trade bodies, environmental NGOs and professional bodies, as well as a number of individuals. Most were supportive of the aims of the consultation and believed that the proposed implementation of SuDS was an important step forward, providing clarity and certainty to developers and local authorities and wider benefits for society and our natural resources. Most supported the view that the voluntary approach was not and could not deliver satisfactory results and that only a statutory requirement would be effective. A number conveyed a sense of urgency.
27. We have therefore used this document to not only summarise responses to the consultation and our actions as a consequence, but to move forward with a consultation on the Statutory Instruments which will implement Schedule 3. Details are contained in Part 2 of this document.

Part 2 - Consultation on draft Statutory Instruments and the National Standards for Sustainable Drainage required to implement Schedule 3 of the Flood and Water Management Act 2010

1. Purpose of the consultation

- 1.1 This consultation seeks your views on the Statutory Instruments and the National Standards for Sustainable Drainage (SuDS Standards) required to implement Schedule 3 of the Act.
- 1.2 The responses to our May 2017 consultation⁴ on our proposed approach for delivering effective sustainable drainage systems (SuDS) on new developments expressed strong support for the implementation of Schedule 3. Consultees provided valuable information which we have used in drafting the Statutory Instruments and SuDS Standards. They also raised a number of questions and concerns relating to implementation which this legislation addresses.
- 1.3 The four draft statutory instruments deal with:
- Approval and adoption, (Annex B)
 - Procedural matters relating to approval and adoption (Annex C)
 - Enforcement of the requirement for SAB approval, (Annex D), and
 - Appeals against SAB decisions, (Annex E).
- 1.4 The four statutory instruments are included at **Annexes B to E**. They assume implementation will start in May 2018 and are drafted accordingly. The date for commencement will ultimately reflect the outcome of this consultation.
- 1.5 In view of the close links between the requirement for SAB approval and obtaining planning permission we have, where practical, used the existing planning system as a model to develop our proposals. In the May 2017 consultation we proposed measures that align with planning in order to avoid delays to development or the planning application and determination process.
- 1.6 The draft SuDS Standards at **Annex F** reflect the Welsh Government's policy on SuDS which, when read with the statutory instruments will implement that policy.

⁴ <https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments>

2. Background

- 2.1 Surface water flooding is a serious problem, identified in our National Strategy for Flood and Coastal Erosion Risk Management⁵ as a major cause of flooding of homes. The impact on citizens and communities and the 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.
- 2.2 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.
- 2.3 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.
- 2.4 Commencing Schedule 3 will require surface water drainage for new developments to comply with mandatory SuDS Standards. 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 the SuDS Standards are met, the SAB would be required to adopt and maintain the approved SuDS that service more than one property.
- 2.4 As an interim measure, in January 2016 we published our recommended National Standards⁶ for the design, construction and operation and maintenance of sustainable drainage on a non-statutory basis.
- 2.6 In January 2017 we published the conclusions of a research report⁷ 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.
- 2.7 Between 19 May and 11 August 2017, we undertook a consultation (May 2017 consultation) on the Implementation of Sustainable Drainage Systems on New Developments. The consultation sought views on our proposed approach for delivering effective SuDS on new developments. The responses and Welsh Government response to the consultation are dealt with in Part 1 of this document.

⁵ <http://gov.wales/docs/desh/publications/120412nssummaryen.pdf>

⁶ <http://gov.wales/topics/environmentcountryside/epq/flooding/drainage/?lang=en>

⁷ Sustainable Drainage Systems on New Developments, Analysis of evidence Including costs and benefits of SuDS construction and adoption, Environmental Policy Consulting, January 2017.

3. Context

- 3.1 The Well-being of Future Generations (Wales) Act 2015 (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, communities and each other to prevent problems before they arise.
- 3.2 Our well being objectives are central to "Taking Wales Forward", our programme for government which, taken alongside our national strategy 'Prosperity for All', 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.
- 3.3 Our Water Strategy for Wales sets out a clear commitment for increasing the uptake of good quality sustainable drainage on new developments. SuDS can be used effectively in both rural and urban areas to support new development and reduce 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.

4. Legislative Framework

- 4.1 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 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).
- 4.2 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.

- 4.3 Schedule 3 of the Flood and Water Management Act 2010 uses the term “Minister” to denote both Welsh Ministers and the Secretary of State.

5. Flood and Water Management Act 2010

- 5.1 The main provisions of Schedule 3 to the Flood and Water Management Act 2010 (the 2010 Act) are as follows:

- Construction work with drainage implications may not be commenced before its drainage systems for managing surface water runoff (including rainwater, snow and other precipitations) have been approved.
- A SuDS approving body (the SAB) will be established in local authorities to approve and where appropriate adopt SuDS.
- Statutory National Standards (SuDS Standards) on the design, construction, operation and maintenance of SuDS will be published by the Welsh Ministers.
- For drainage application to be approved, the SAB must ensure that the applicant has designed the SuDS in accordance with the SuDS Standards.
- Once approved the SAB must adopt and maintain those SuDS that are functioning properly and serve more than one property.
- The 2010 Act amends the Water Industry Act 1991, making the right to connect surface runoff to public sewers conditional upon the drainage system being approved by the SAB.

6. Implementation

Impact Assessment

- 6.1 The Impact Assessment was included in the May 2017 consultation at Annex 1 and is referred to in Part 1 (see the Welsh Government response at paragraphs 3.7 – 3.10). During the course of this consultation we will continue to work with stakeholders to further develop the evidence base on the costs and benefits of implementing SUDs on new developments.

Timing

- 6.2 The Welsh Government intends to implement the SuDS provisions in the 2010 Act as soon as possible. Subject to the outcome of this further consultation, we expect to introduce the legislation into the Assembly in May 2018, with a view to it coming into force within six months.

**Question 1: We propose to commence Schedule 3 in Wales and bring forward the related Statutory Instruments in May 2018. Do you agree this is reasonable?
If not please give reasons.**

Transitional arrangements

- 6.3 To ensure that developers have certainty and the opportunity to prepare for the SuDS approval requirement and in recognition that some developments will be at an advanced stage of planning we propose transitional arrangements for the implementation of SuDS (**regulation 4 of the draft Order at Annex B**).
- 6.4 We propose SAB approval will not be required for the first 12 months for:
- Developments that already granted planning permission before commencement; or
 - Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or
 - A valid planning application had been submitted before commencement.

Question 2: We propose SAB approval will not be required for the first 12 months for:

- **Developments that were already granted planning permission before commencement; or**
- **Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or**
- **A valid planning application had been submitted before commencement.**

**Do you agree with this approach for transitional arrangements?
If not please give reasons.**

Guidance

- 6.5 The Welsh Government recognises the importance of guidance in implementing the SuDS process. We propose to develop guidance by working with local authorities, developers, statutory consultees and others. This will be facilitated through our SuDS Advisory Group and a series of stakeholder

workshops over the coming months, with a view to having draft guidance in place by Spring 2018.

6.6 We have indicated below some of the areas guidance might cover:

- Flood and Water Management Act 2010 Schedule 3 requirements
- Standards and related guidance
- Transitional arrangements and exemptions
- Pre-application preparations
- Making an application – requirements, plans, timing, draft form
- SAB agreements
- Links with planning, highways
- Bonds, fees and service standards, including the role of statutory consultees
- Inspections
- Adoption and funding, including potential maintenance options
- What happens if an agreement cannot be completed?
- Resolving disagreements
- Communications

6.7 We are also considering the need for a training programme to supplement the guidance, including more detailed sessions for SAB officers looking at assessing applications and the adoption process.

Question 3: What, if any, areas in addition to those listed above should the guidance cover?

Planning

6.8 Planning Policy Wales (Ed.9 2016) sets out Welsh government's national planning policies, including the expectation that SuDS are incorporated in new developments. More detailed advice is included in Technical Advice Note (TAN) 15: Development and Flood Risk (2004). An evaluation of TAN 15 has been undertaken through 2017, in the expectation it will be reviewed and updated alongside the updated National Strategy for Flood and Coastal Erosion Risk Management Strategy in Wales in 2018. Updates to TAN 15 will reflect the latest position on SuDS and new development.

7. Approval

7.1 The draft Sustainable Drainage (Approval and Adoption) Wales Order 2018 at Annex B and the draft Sustainable Drainage (Procedure) Wales Regulations 2018 at Annex C set out exceptions to the requirement for SAB approval and make provisions about timing, procedure and fees for applications for SAB approval.

- 7.2 As provided for in paragraph 6(1) and (2) of Schedule 3 to the Act the SAB will be a unitary or county council, which also have the Lead Local Flood Authority responsibility. Paragraph 7 of Schedule 3 requires that construction work with drainage implications is not commenced unless the drainage system has been approved by a SAB. To be approved the SAB must be satisfied that if constructed the drainage system will comply with the SuDS Standards (see paragraph 11 of Schedule 3 to the Act).

What requires SAB approval?

- 7.3 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. Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 10.5 to 10.7).
- 7.4 With the exception of single dwellings, all construction work requiring planning permission which has drainage implications would 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.
- 7.5 We are considering the need to provide guidance for single dwelling developments which are otherwise exempt.
- 7.6 Some types of construction work do not require planning permission (permitted development), although they can have significant drainage implications. Construction work which does not require planning permission but involves the construction of a building or other structure with a footprint of 100 square metres or more would require SAB approval. This would allow the vast majority of construction utilising permitted development rights to proceed without the need for SAB approval, but significant construction work with drainage implications may require SAB approval (**see regulation 3(2) of the draft Order at Annex B**).

What does not require SAB approval?

- 7.7 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. Under paragraph 7 (4)(b) of Schedule 3 to the Act the Welsh Ministers may by order provide for work to be or not to be treated as having drainage implications in specified circumstances. Under paragraph 7 (4)(c) of Schedule 3 to the Act the Welsh Ministers may make provide exceptions to the requirement for approval. Provision for the following is made **in the draft Order at Annex B**:
- Regulation 2 provides that the following works are not to be treated as having drainage implications, and as such will not be covered by the requirement for approval —

- construction work carried out by an internal drainage board under the Land Drainage Act 1991;
 - construction work relating to a road for which Welsh Ministers act as the highways authority (these are mainly motorways and trunk roads for which the Design Manual for Roads and Bridges provides appropriate standards); and
 - railway works carried out by Network Rail
- Regulation 3 provides an exception to the requirement for approval for work not requiring planning permission unless it exceeds 100 square metres in extent.

7.8 As set out in Part 1 (see paragraph 10.5 to 10.7) a further possible exemption is also being considered. The draft Order at Annex B may be amended to include additional provisions about the application of the SuDS regime to works carried out by Lead Local Flood Authorities.

**Question 4: Do you agree with the proposed exemption for Lead Local Flood Authorities?
Can you provide evidence to support an exemption?**

Pre-application discussions

7.9 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 are strongly encouraged to have pre-application discussions with the SAB, local planning authority, statutory consultees and other interested parties to enable the best sustainable drainage plan for the area and development to be prepared. This will help avoid unnecessary delays to approval and save money. The SAB may charge for pre application discussion if they wish under powers given to them in Section 93 of the Local Government Act 2003⁸.

Approval routes

7.10 An outline of the SuDS approval process is provided at Annex G.

7.11 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

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

- 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, SuDS approval of the drainage for a development proposal is independent of the planning approval process. Time-limits in the draft regulations are aimed at ensuring the SuDS approval process does not impact on overall development timescales rather than creating a dependency with planning permission.

Determination of applications

- 7.12 The SAB must determine applications for approval within set timescales (whether freestanding or combined applications). In doing this we want to ensure that the time limits do not cause any delays to the overall development timescales. Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 11.5 to 11.6).
- 7.13 Where an Environmental Impact Assessment⁹ is required, the SAB would be required to 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.
- 7.14 It is important to note that determination of the planning application is independent from SAB approval. To allow flexibility for both applicant and SAB, we propose they may agree to extend the deadline for a decision, provided the initial specified timescales have not expired **(see regulation 13(2) of the draft Regulations at Annex C)**.
- 7.15 Should the SAB fail to meet these timescales, its obligation to make a decision and to notify the applicant of that decision continues. Any such decision will be valid. However if the applicant so wishes, the application will be deemed to have been refused for the purposes of an appeal, allowing the applicant to make an appeal **(see regulation 3 of the draft Regulations at Annex E)**.

⁹ Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

What is a validly made application?

- 7.16 Provision for what constitutes a validly made application for approval, including what must be submitted with an application and how to vary an approval is made **at regulations 4, 5 and 7 of the draft Regulations at Annex C.**

Approval subject to conditions

- 7.17 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, amongst other things.

Non-Performance bond

- 7.18 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 SuDS Standards and will ensure that subsequent purchasers acquire properties with appropriate drainage. Under paragraph 12(2) of Schedule 3 to the Act, the SAB may only draw upon the bond if it certifies that the drainage system:

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

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.

- 7.19 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. Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 20.8).
- 7.20 As set out in Part 2 (paragraph 6.6) we intend to incorporate guidance on non-performance bonds in our proposed guidance document.

Fees for SAB

- 7.21 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 cannot cover the costs incurred by statutory consultees in providing input nor any pre-application discussions. The application fee must be submitted at the same time as the application for approval. Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 13.6, 14.5, 14.6 and 15.4).
- 7.22 Having considered the views expressed in response to our May consultation, a national fee structure has been set for the SAB approval fee. This provides

for the SAB to charge a fee on the basis of a set amount for each application plus an additional amount determined by the size of the construction area **(see regulation 6 of the draft Regulations at Annex C).**

- 7.23 As set out in Part 1, we are working with stakeholders, including local authorities and the Welsh Local Government Association, to test our calculations for SAB approval costs. We are also exploring options to provide for a review mechanism to inform the setting of future SAB fees. The fee structure in the draft Regulations at Annex C may be amended to take into account this ongoing development work.

**Question 5: What information should the SAB be required to submit as part of a review mechanism of SAB approval costs?
How often should the review take place, once every year or once every two years?**

Other fees

- 7.24 Views were sought on setting other fees for the SAB approval process in the May 2017 consultation (see Part 1 paragraph 16.5).
- 7.25 Provision for other fees for the SAB approval process is made in draft Regulations as follows:
- 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. **(See regulations 7, 8 and 9 of the draft Regulations at Annex C)**
 - 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. **(See regulation 10 of the draft Regulations at Annex C).**
 - SAB inspection of the drainage system, where this is undertaken at any stage in the SuDS construction process. **(See regulation 14 of the draft Regulations at Annex C).**
 - 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. **(See regulation 11 of the draft Regulations at Annex C).**

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

Statutory consultees

- 7.26 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. Views

were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 12.6 to 12.7).

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.

7.27 The Act included reference to internal drainage boards as consultees where the discharge could affect an ordinary watercourse within the board's district. In Wales all internal drainage boards currently operate under the remit of Natural Resources Wales.

7.28 We expect the SABs and statutory consultees to build good working relationships, as we believe it to be critical for the successful delivery of effective SuDS.

7.29 So as not to hold up the approval process, provision requiring the SAB to give statutory consultees 3 weeks in which to respond to the application is included **at regulation 12 of the draft regulations at Annex C.**

7.30 The time limit will apply regardless of whether the application is a freestanding or combined application. If no response is received within the time limit the SAB may consider it as a nil return. To provide flexibility the consultee and the SAB may agree to extend the timeframe **(see regulation 12(2) of the draft Regulations at Annex C).** Consultees may choose to submit standing advice, so that they can focus on sites requiring special attention.

7.31 Consultees may choose to submit standing advice, so that they can focus on cases requiring special attention. We recommend the inclusion of statutory consultees in pre-application discussions between the applicant and the SAB for such sites.

8. Enforcement

8.1 Paragraph 14 of Schedule 3 to the Act requires the Welsh Ministers to make provision for enforcement of the requirement for approval. Enforcement may be exercised regardless of whether the SAB required or used a non-performance bond.

8.2 The Draft Sustainable Drainage (Enforcement) Wales Order 2018 at Annex D provides the mechanism for the SAB to enter and inspect construction areas and to issue stop and enforcement notices. It also sets out the mechanism for

enforcement appeals for developers and offence provisions for failure to comply with notices.

- 8.3 The proposals take account of the close links between SuDS approval and the need for planning permission under the planning system. They therefore provide the SAB with similar provisions to those available to Local Planning Authorities for planning enforcement under the Town and Country Planning Act 1990.

Enforcing body

- 8.4 We propose to give enforcement powers to both the SAB and the Local Planning Authority (LPA)¹⁰ (**see regulation 3 of the draft Order at Annex D**). The SAB will usually take enforcement action but by giving powers to the LPA as well it will mean that where the SAB and LPA agree, the LPA will be able to take enforcement action on the SAB's behalf on a case by case basis. This may be useful for example where there has been a breach of the requirement for approval and also a contravention under the Town and Country Planning Act 1990 and it is more cost effective for the LPA to take the enforcement action in respect of both.

Question 6: We propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?

Powers of entry

- 8.5 **Regulation 4 of the draft Order at Annex D** contains our proposed approach on powers of entry for a person authorised by the SAB to determine if an approval requirement has been breached or a notice has not been complied with. We have aimed to provide powers which are reasonable and proportionate whilst at the same time enabling the SAB to take action where necessary to carry out its enforcement role. Further we propose that once a drainage system has been adopted the powers of entry should no longer apply (**See regulation 4(4)**).

Question 7: Do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?

Compensation

- 8.6 We propose to make provisions for compensation under certain circumstances where a developer suffers a loss as a result of a temporary stop notice. **Regulations 5 and 7 of the draft Order at Annex D** set out that a claim for compensation may be made in respect of loss incurred as a result of the exercising of powers of entry or for loss suffered as a result of a

¹⁰ In most cases the SAB and the LPA will be the same body. However in parts of Wales the relevant National Park Authority is the LPA rather than the local authority.

temporary stop notice being withdrawn or allowed to expire without further action being taken. We propose the compensation claim must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ceasing to have effect.

Question 8: We propose that claims for compensation related to powers of entry and temporary stop notices must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ceasing to have effect. Do you agree, if not please explain why?

Time limit for enforcement

- 8.7 We propose to put a time limit on when the SAB is able to issue an enforcement notice **(see regulation 8(2) of the draft Order at Annex D)**. It is proposed that this will be within four years of the date of the breach or when the drainage system is adopted whichever is sooner.

Question 9: We propose that, as in planning, a time limit of four years is set for when the SuDS Approving Body is able to give an enforcement notice? Do you agree, if not please explain why.

Where the SAB undertakes work

- 8.8 Where a developer fails to comply with an enforcement notice it could result in inadequate drainage being built. This can have serious consequences such as increasing the risk of flooding locally or further downstream or causing water pollution. We therefore intend that where a person fails to comply with an enforcement notice, the SAB may undertake the work in the notice and require the person concerned to pay the costs **(see regulation 9(4) of the draft Order at Annex D)**. This should be recoverable as a debt and ensures that functioning drainage is provided for the development.

Enforcement notices and criminal sanctions

- 8.9 Implementation of the new requirement for approval of drainage plans by the SAB before construction work can commence will require a change in behaviour and a new way of thinking about drainage in the future. Sustainable approaches should be considered before traditional underground, pipe to sewer systems. We are proposing to provide the SAB with a range of noncriminal sanctions to encourage those who do not comply with the requirement for approval to come into compliance. These are similar to those used for planning enforcement namely temporary stop notices, enforcement notices and stop notices. **(See regulations 8, 9 and 10 of the draft Order at Annex D)**.
- 8.10 In the event that a development does not comply with the law, this could have serious implications, including increasing the risk of flooding and water pollution. We believe that it will be necessary to have certain criminal sanctions, these are set out in **regulations 21 and 22 of the draft Order at Annex D**. These are similar to offences currently contained within the enforcement of planning controls. Offences which may be committed by a

body corporate or partnership (**see regulations 23 and 24**) are also included. Summary offences are dealt with by a Magistrates Court and offences on indictment are determined by a Crown Court.

Question 10: Are the proposed intervention powers and criminal offences provisions in the draft statutory instrument appropriate and proportionate?

Enforcement appeals

- 8.11 We propose to provide developers the right to appeal against enforcement notices on certain grounds. (**see regulation 12 of the draft Order at Annex D**). An appeal against an enforcement notice would be determined by the Ministers. In practice, appeals would be heard by a body appointed to act on behalf of the Welsh Ministers such as the Planning Inspectorate.
- 8.12 Grounds for appeal are that the decision was:
- based on a factual error
 - wrong in law
 - unreasonable and
 - there is no breach of the requirement for approval.

Procedure for appeals

- 8.13 **Regulation 13(2) of the draft Order at Annex D** would allow the developer to state the preferred procedure for determining an appeal. Guidance will be made available and is expected to include written representation, hearing and inquiry. **Regulation 16(1)** would require the Welsh Ministers to decide on the procedure for determining the appeal. **Regulation 17** deals with the conduct of appeal proceedings, we propose to mirror the procedures which apply for planning enforcement appeals¹¹.

Question 11: We propose to provide similar procedures for appeals against SuDS enforcement notices to those which currently apply to planning enforcement appeals (written representation, hearing or inquiry). Do you agree? If not please explain why?

Register of notices

- 8.14 We propose a register of all SuDS enforcement notices which will be maintained by the SAB and available for public inspection (**see regulation 11 of the draft Order at Annex D**). Our proposed approach mirrors the procedure for the register of planning enforcement appeals.

¹¹ The Town and County Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.

Question 12: We propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?

9. Adoption

- 9.1 The Draft Sustainable Drainage (Approval and Adoption) Wales Order 2018 at Annex B and draft Sustainable Drainage (Procedure) Wales Regulations 2018 at Annex C set out the time period for the SAB determination of requests to adopt a SuDS system and make provisions about the timing and notification of SAB decisions about the adoption of SuDS systems.

Conditions for adoption

- 9.2 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.

Definition of SuDS for adoption

- 9.3 In respect of condition 3 a sustainable drainage system is 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 (**see regulation 3 of the draft Regulations at Annex C**). Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 18.4 and 18.5).
- 9.4 This definition will 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. It is important to note additional criteria which exempt drainage systems from being eligible for adoption. For example, systems serving a single property and those forming part of a highway are exempt from adoption under Schedule 3 to the Act.

Maintenance of adopted SuDS

- 9.5 Under paragraph 22 of Schedule 3 to the Act the SAB has ultimate responsibility for ensuring a SuDS which has been approved by the SAB is maintained in accordance with the SuDS Standards. Views on maintenance arrangements were sought in the May 2017 consultation (see Part 1 paragraphs 22.5, 23.6, 23.7, 24.5, 24.6 and 24.7).

- 9.6 To realise the full benefits of SuDS it is vital the commencement of Schedule 3 is accompanied by a clear and flexible process covering responsibilities for long-term maintenance and a potential suite of maintenance options which enable sustainable funded maintenance. It is our intention to include the need for applicants to establish the maintenance requirements of their proposed drainage system in the principles section of the SuDS Standards (**see Part 2 paragraph 11.4**). As set out in Part 1 and in paragraph 6.6 of Part 2, we are continuing to work with stakeholders through our SuDS advisory group to further explore options for SuDS maintenance arrangements and will include potential options to enable sustainable funded maintenance in our guidance.

Question 13: Do you have any information or case studies which could help inform the guidance on this subject? If so, please provide details.

Exceptions to the adoption duty

- 9.7 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. Views on this aspect were sought in the May 2017 consultation (see Part 1 paragraphs 19.4 and 19.5).

Single property SuDS:

- 9.8 SuDS that serve properties within a single curtilage are excluded from the adoption duty. In effect, this means SuDS providing drainage for a building or structure that, when completed will be owned, managed or controlled by either a single person; or by two or more persons together jointly such as a couple, a company or a partnership (**see regulation 18 of the draft Regulations at Annex C**) will not be eligible for adoption by the SAB..

Examples of what would be considered to be encompassed by a single curtilage include:

- Residential building with multiple flats;
- Single dwelling-house;
- Retirement complex ;
- Office or commercial building;
- Industrial development or commercial estate;
- School or university campus;
- Sports Club;
- A hospital or other medical facility.

Question 14: Is our definition of a single property drainage system clear on what will or will not be adopted? If not please provide an alternative definition.

Can you suggest additional examples for inclusion in guidance?

Publicly maintained roads:

- 9.9 Highways authorities¹² are already responsible for the drainage and maintenance of publically maintained roads). It is important to note the local authority will be both the SAB and Highways Authority, both functions need to work together to deliver a holistic approach to the drainage of new developments.
- 9.10 The SAB is 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 SuDS Standards.
- 9.11 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 1991¹³. The intention of these provisions is to encourage highway authorities to adopt drainage serving publicly maintained roads, even with third party connections.

Private roads:

- 9.12 The SAB have a duty to adopt any SuDS in or alongside private roads. If the road became publically maintained, then the highway authority will become responsible for maintenance.

Timeframe for decision to adopt

- 9.13 Paragraph 23 of Schedule 3 to the Act enables the SAB to adopt SuDS on its own initiative or at the request of the developer. The SAB must determine requests for adoption within set timescales. In doing this we want to ensure that the time limits do not cause any delays to the overall development timescales. Views were sought on this aspect in the May 2017 consultation (see Part 1 paragraph 17.9 and 17.10).
- 9.14 The SAB must determine requests within 8 weeks unless a longer time period is agreed between the SAB and developer (**see regulation 5 of the draft Regulations at Annex B**). 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.
- 9.15 Where the SAB adopts on its own initiative, it must notify the developer of its decision as soon as is reasonably practicable.

¹² 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 local road network within their areas.

¹³ Para 16(3) of Schedule 3 to the Act

SAB duties following a decision to adopt

Returning the non-performance bond

Where the duty to adopt applies:

- 9.16 If the developer completes the work in accordance with the approval proposals the non-performance bond must be returned to the developer. We propose the SAB should return the bond within 4 weeks of giving notice of its decision to adopt the drainage system **(see regulation 16(1) of the draft regulations at Annex C)**.
- 9.17 If a SuDS is not built as approved and it is necessary for the SAB to use the non-performance bond, it is proposed that any amount remaining from the bond must be returned to the developer within 4 weeks of completion of the work which the SAB views as necessary to make the SuDS operate in compliance with the SuDS Standards **(see regulation 16(3) of the draft regulations at Annex C)**.

Where the duty to adopt does not apply:

- 9.18 Upon completion of the approved SuDS the SAB must as above return any non-performance bond. Where the work is completed as approved it is proposed the bond is returned within 4 weeks of completion. If the SuDS was not built as approved and the non-performance bond has been used, it is proposed that the SAB must return any amount remaining from the bond within 4 weeks of completing the work likely to bring it into compliance with the SuDS Standards **(see regulation 19 of the draft regulations at Annex C)**.

Registration and designation duties

Inclusion in Flood Risk Structures and Features Register:

- 9.19 Paragraph 23(6)(f) of Schedule 3 to the Act requires the SAB to arrange for all SuDS (including un-adopted parts) to be added to the Lead Local Flood Authority's register of flood risk structures and features (the requirement for the register is contained in section 21 of the Act). We propose the SAB arranges for the inclusion of the SuDS on the register by the Lead Local Flood Authority within 4 weeks of giving notice of its decision to adopt **(see regulation 17 of the draft regulations at Annex C)**.

Designation as flood risk feature:

- 9.20 Paragraph 23(h) of Schedule 3 to the Act requires the SAB to arrange for all SuDS on private land, eligible for designation, to be designated as a flood risk feature under Schedule 1 to the Act by the relevant designating authority, which is the Lead Local Flood Authority..
Designation means that the SuDS may not be altered, removed or replaced without the consent of the designating authority.

- 9.21 We propose the SAB arranges for a designating authority to make a provisional designation within 4 weeks of giving notice of its decision to adopt **(see regulation 17 of the draft regulations at Annex C)**. There are provisions in Schedule 1 for action to be taken should there be a contravention of this requirement. This will ensure that SuDS on private land are protected from alteration, removal or replacement without consent from the designating authority. Designation also means that private owners should be made aware of SuDS on their property. As with any other designated feature, a SuDS would be recorded as a local land charge and will be identified in title searches during the house-buying process.

Designation under roads legislation:

- 9.22 Paragraph 23 (6)(i) of Schedule 3 to the Act places a duty on the maintaining authority (either the Highways Authority or the SAB) to designate SuDS in, or alongside, roads (including footpaths and grass verges) as having “special engineering difficulties” as defined in the New Roads and Street Works Act 1991. This will provide protection for their function, for example where a statutory undertaker needs to undertake installation or repair work, until a plan of the works has been agreed between the statutory undertaker (e.g. the utility company) and the maintaining authority. We propose that the SAB gives notice of its intention to designate within 4 weeks of giving notice of its decision to adopt **(see regulation 17 of the draft regulations at Annex C)**.

Notification of decision to voluntarily adopt

- 9.23 Paragraph 21 of Schedule 3 to the Act allows for the SAB to voluntarily adopt SuDS where it is not under a duty to do so. For example:
- Existing SuDS which may not have been built to the SuDS Standards. This may include existing orphan or un-adopted SuDS.
 - SuDS serving a single property.
- 9.24 Separate funding arrangements would need to be agreed for the maintenance of the SuDS that are adopted voluntarily by the SAB.
- 9.25 We propose the SAB must give notification of its decision to adopt as soon as is reasonably practicable **(see regulation 20 of the draft regulations at Annex C)**. It is also proposed that the 4 weeks timeframe for, registrations and designations should apply to drainage systems which are adopted voluntarily (regulation 21).

Question 15: We propose a 4 week time limit for administrative processes (for example return of bonds, the process of registration or designations) for the SuDS Approving Body. This time limit applies throughout the SuDS process.

**Do you agree with this timeframe?
If not please explain why.**

Work by statutory undertakers

- 9.26 Statutory undertakers, such as utility companies, have powers enabling them to enter land to carry out work to lay or maintain pipes, cables and other apparatus. Despite best intentions, there is a risk that some of the works may impact the performance of SuDS. Designation in line with Schedule 1 of the Act will ensure that SuDS on **private** land are protected from alteration, removal or replacement without consent from the designating authority.
- 9.27 SuDS on **public** land that are owned by local authorities cannot be designated under Schedule 1¹⁴. The draft Regulations at **Annex C (Part 6))** are proposed to safeguard their effectiveness. The statutory works to which the regulations will apply are set out in **regulation 23** and include:
- Water and sewerage works (Section 159 of the Water Industry Act 1991)
 - Gas works (Schedule 4 to the Gas Act 1986)
 - Electricity works (Paragraph 10, Schedule 4 of the Electricity Act 1989)

Question 16: Are there any additional statutory works which should be included in this list?

- 9.28 We propose the statutory undertakers will be required to notify the SAB four weeks before commencing statutory works that may affect the SuDS operation, except in an emergency. A notice to carry out works must be accompanied by a proposal to carry out reconstruction work. This reconstruction work cannot commence until the SAB has confirmed the proposal. This will be deemed to be given unless the SAB responds within four weeks, or 48 hours in an emergency (**see regulation 24 of the draft Regulations at Annex C**).

Remedial work

- 9.29 We also propose that the SAB will be able to require the statutory undertaker to remedy any damage to the SuDS in line with the confirmed proposal for reconstruction work or with the SuDS Standards or that the SAB could rebuild the SuDS themselves and recover costs from the undertaker. Within 12 months of the statutory works being completed, the SAB must decide if it is satisfied that the reconstruction works are compliant. (**see regulations 25 and 26 of the draft Regulations at Annex C**).

Question 17: We propose that all Statutory Undertakers must notify the SuDS Approving Body at least four weeks in advance of works that may affect the SuDS operation. Do you agree with this timeframe? If not please explain why.

Question 18: We propose upon completion of the works, the SuDS

¹⁴ Paragraph 4(5) of Schedule 1 to the Act, so the Act provides at paragraph 28 of Schedule 3

**Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the SuDS Standards.
Do you agree with this timescale? If not please explain why.**

10. Appeals

- 10.1 Paragraph 25 of Schedule 3 to the Act requires the Welsh Ministers to make provision for a right of appeal against SAB decisions about applications for approval (including decisions about conditions) and decisions about the duty to adopt.
- 10.2 The Draft Sustainable Drainage (Appeals) Wales Regulations 2018 at Annex E sets out proposals for a workable appeals mechanism. In view of the close links between the approval regime and obtaining planning permission, we have used planning appeals as a model. If changes to planning appeals are made in the future we may want to also reflect such changes for SuDS appeals.
- 10.3 The Diagram at Annex I summarises the main appeals provisions in the draft Regulations.
- 10.4 The appeal will be determined by the Welsh Ministers. The appeals are expected to be handled by the Planning Inspectorate (PINS) on behalf of the Welsh Ministers. The appeal form will be made available **(see regulation 4(1)(a) of the draft Regulations at Annex E).**

Cost of appeals

- 10.5 We propose to enable the Welsh Ministers to award costs to any party involved in an appeal, including cases where a hearing or inquiry is scheduled but subsequently cancelled at a later stage. **(see regulation 13 of the draft Regulations at Annex E).**

Time limit for appeal

- 10.6 We propose to set a time limit for making an appeal. The appeal would have to be made within 6 months of the SAB's decision or, if no decision has been made, from the date on which it should have been made **(see regulation 6 of the draft Regulations at Annex E).** For example, where the SAB does not determine an application for approval within the timescales specified, or any longer time agreed between the SAB and developer, it will be considered a "deemed refusal" for the purposes of appeal. The developer would then have 6 months from the last date on which the approval decision should have been made to make an appeal.

Question 19: We propose that an appeal must be made within six months of either the SuDS Approving Body's decision or the date the decision was due. Do you agree?

Appeal procedures

- 10.7 We propose to mirror planning and provide for a range of appeal procedures, including; written representation, hearing and inquiry. It is envisaged that the majority of appeals can be handled via written representation. The proposed conduct of procedures for the appeals is contained in **regulation 8 of the draft Regulations at Annex E**. This will mirror planning appeals procedures.

Question 20: We propose to adopt similar procedures for SuDS appeals to those which currently apply to planning appeals (including written representation, hearing or inquiry). Do you agree? If not please explain why.

11. The National Standards for Sustainable Drainage

- 11.1 The proposed National Standards at Annex F are based on the voluntary standards and guidance published in January 2016. A number of minor amendments have been made based on the proposals in our May 2017 consultation and the responses we received.
- 11.2 In addition to the May 2017 consultation CIWEM Wales, ICE Wales and the Landscape Institute combined with the Welsh Government to organise a workshop on the SuDS standards that took place on 21st September 2017 in Cardiff. There was broad representation from across sectors including developers, businesses, local authorities and environmental non-government organisations.
- 11.3 A number of key themes were considered at the workshop. This involved considering links with planning, the level of detail needed for a SuDS application, the drainage and development cycle, the maintenance plan and the deliverability of the SuDS standards.
- 11.4 Changes we have made to the non-statutory standards are:
- An additional principle requiring a maintenance plan and agreed funding mechanism.

12. Other comments

Question 21: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed please do tell us about them.