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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – Summary of Responses

Implementation of Sustainable Drainage Systems on New Developments

Summary of responses and Welsh Government response

Date of issue: **25 April 2018**

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

Audience	The consultation aimed to engage with all stakeholders with an interest in managing surface water from new developments. This included developers, their agents and consultants, local authorities, sewerage undertakers, regulators, environmental NGOs and professional institutions.
Overview	This document summarises the responses to our consultation published on 16 November 2017 on the draft statutory instruments and National Standards required for the implementation of Schedule 3 of the Flood and Water Management Act 2010, which deals with sustainable drainage for new developments. In addition it gives the Welsh Government response to the consultation.
Action Required	None – for information only
Further information	<p>Enquiries about this document should be directed to: Water Branch Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Email: water@gov.wales Telephone: 03000 258302</p>
Additional copies	This document can be accessed from the Welsh Government's website at consultations.gov.wales
Related documents	<p>Further related information as follows is available from: 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)

Implementation of Sustainable Drainage Systems on New Developments

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Introduction

1. Purpose of consultation

- 1.1 On 15 November 2017, the Welsh Government published a further consultation on the implementation on Sustainable Drainage Systems on New Developments.

The full text of the consultation is available at:

<https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments-draft-regulations-and-national>

This followed a consultation between May and August of 2017 on the Welsh Government's proposed approach for delivering effective sustainable drainage systems (SuDS) on new developments. This earlier consultation proposed the implementation of Schedule 3 of the Flood and Water Management Act 2010 (the Act) as a framework for the approval and adoption of SuDS serving new developments.

The full text of the May consultation is available at:

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

- 1.2 Having considered the responses to the May consultation, the Welsh Government published a further consultation seeking views on the Statutory Instruments and the National Standards for Sustainable Drainage (SuDS Standards) required to implement Schedule 3 of the Act.

2. Consultation period and distribution

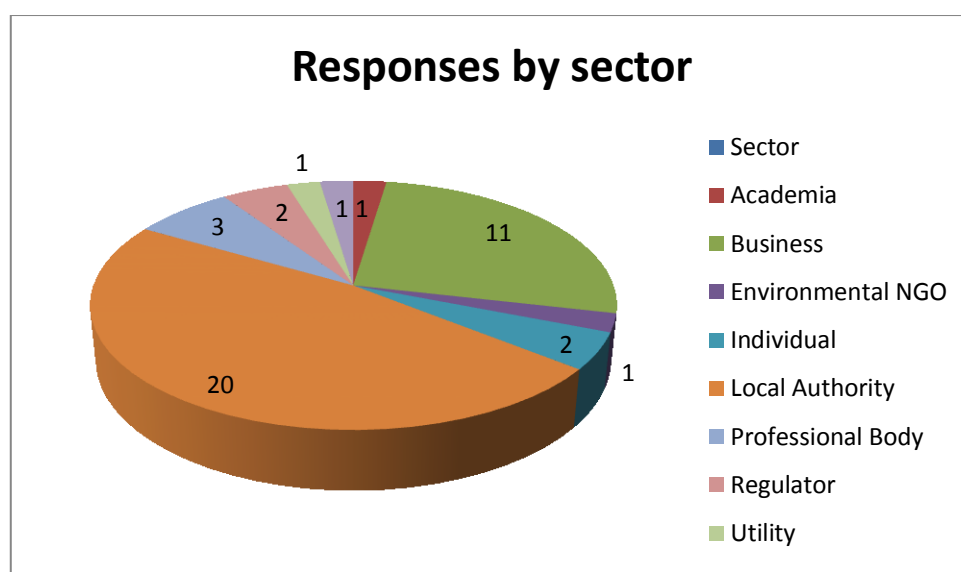
- 2.1 The consultation ran for 12 weeks from 15 November 2017 to 12 February 2018. It was widely distributed and was also published on the Welsh Government website. See **Annex A** for the distribution list.
- 2.2 In addition, the Welsh Government hosted three facilitated consultation workshops across Wales to enable stakeholders to provide further feedback. Invitations to these workshops were sent to a wide range of stakeholders.

3. Responses

- 3.1 42 responses were received from a range of sectors set out in Figure 1 (below). Of these four responses were received after the deadline but have been included. A full list of respondents and associated sector information is included in **Annex B**.
- 3.2 A total of 21 questions were asked, with provision for additional comments to support each response. A full list of the consultation questions is given in **Annex C**. Most respondents provided direct answers to the questions,

with many supporting these with additional comments. Question 21 was an open question, providing an opportunity for related comments.

Figure 1 – Responses received by sector



- 3.3 Around 120 individuals attended the consultation workshops, providing valuable depth to the responses to the consultation. This document contains a brief summary of the workshop feedback. A full record of the workshops is available on request.

4. Welsh Government Response

- 4.1 The Welsh Government is pleased with the constructive engagement with this consultation from stakeholders, both written responses and workshop contributions.
- 4.2 The implementation of Schedule 3 involves significant changes for developers and their agents, local authorities and sewerage undertakers. We have worked closely with these sectors through the consultation period and are grateful for their contributions.
- 4.3 We have taken into consideration all the responses to the consultation and the comments made in the consultation workshops. These have been incorporated where appropriate into the draft statutory instruments, Government Guidance and the final SuDS Standards.
- 4.4 We have also continued to review the statutory instruments in the light of legal advice and in order to simplify them. As a consequence, they will be significantly restructured and the provision on fees placed in a separate set of regulations.
- 4.5 The Welsh Government is grateful to those who have helped with the development of this and the earlier consultations and to those who

responded. We appreciate in particular the contribution of those who have been part of our Advisory Group.

5. Overview

- 5.1 We have considered all the formal responses to the consultation alongside the feedback from our consultation workshops in this summary. Broadly speaking there was support for most of our proposals from those who responded. A number of local authorities expressed concern that they might be expected to implement the new approval process in May, as they felt that would not allow sufficient time for preparation. A November start date was seen as more achievable. However, a number of the responses expressed a sense of urgency, citing the increasing pace of new developments and the potential for missed opportunities if Schedule 3 is delayed further
- 5.2 The answers we received to the questions are summarised in the next section, along with examples of the individual comments which provided detail to explain the replies. We have also provided a summary of the information collected in the workshops, which provided a lot of valuable detail. Very little comment was made on the SuDS Standards, which will be published in a substantially unchanged form alongside the statutory instruments.
- 5.3 The majority of the responses were from local authorities, including the Welsh Local Government Association. In general, they were supportive of implementation later in 2018 rather than sooner, seeking a full six months between the legislation being put in place and it coming into force. There was a wide spectrum of opinions over implementation challenges. Most agreed with the proposed details of the regulations and orders relating to powers of entry, enforcement and fees. A number of comments were made over the complexity of charging based on hours worked. Some of these responses expressed concern over tight timescales for determination, consultation and administrative work. Many of these responses addressed the issue of potential exemptions, generally seeking to keep these to the minimum.
- 5.4 A small number of the responses provided detailed suggestions for amendments to the draft statutory instruments which we have used to inform their revision, alongside the responses to specific individual questions.
- 5.5 Responses from the agricultural sector suggested that the requirements of Schedule 3 should not apply to agricultural developments.

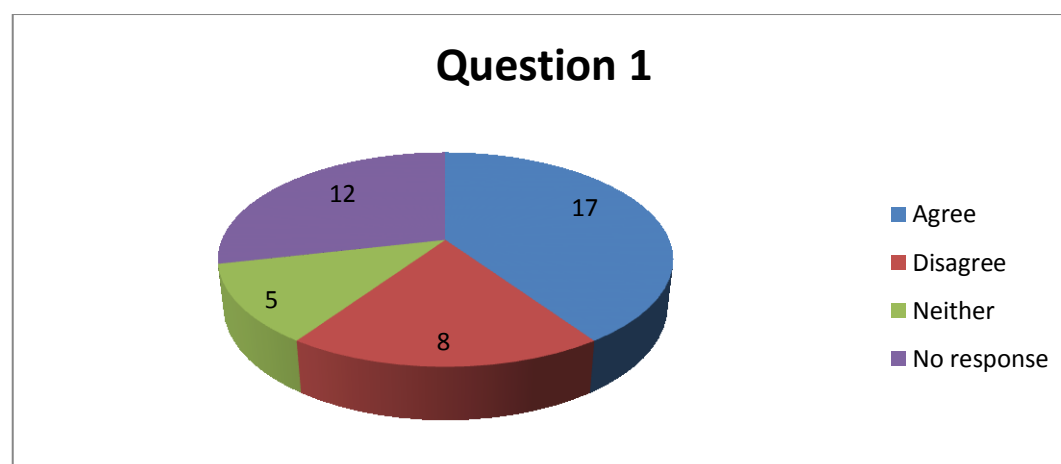
Responses to individual questions

Question 1

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.

Figure 2



Summary of responses

The majority of those responding to this question agreed the proposed timescale was reasonable. A number of the responses expressed a sense of urgency, citing the increasing pace of new developments and the potential for missed opportunities if Schedule 3 is delayed further.

Many of the local authorities believed implementation six months after the statutory instruments are laid in May would allow adequate time to establish the new approvals processes, whilst recognising the timescales is challenging. However, a number have reservations and would like a longer period to allow for greater clarity over organisational, process and funding matters. Some statutory consultees had reservations about the potential workload impacts for them and their ability to provide timely responses. Developers requested all of the guidance and any paperwork such as application forms associated with the process should be published prior to commencement.

A number of the responses stressed issues relating to staff skills, the need for training and support from the Welsh Government and the Welsh Local Government Association. The importance of guidance and a common approach across Wales was a common theme in responses.

Responses included the following comments:

“There is a need to express a sense of urgency as development of Wales is occurring at an increased pace” Professional Body

“This is unreasonable as there are still outstanding queries in relation to resources, funding in relation to the different aspects of the elements involved in the SAB process.” Local Authority

“Making the clear commitment to the creation of SABs by commencing schedule 3 will give the definitive driver required for LLFAs to make the appropriate arrangements to prepare for the delivery of the SAB role” Local Authority

“While the introduction of the SIS by May 2018 seems to be reasonable, we welcome the transition period of 6 months.” Local Authority

“... some local authorities have yet to fully appreciate the opportunities and responsibilities that their SAB role will bring. anecdotal reports from developers suggesting, for example, that some authorities continue to resist connections to highway drains and are, instead, directing customers to combined sewers.” Utility

“It would be in everyone’s interest if local authorities were encouraged to trial the regime prior to the Statutory Instruments coming into force.” Utility

“... welcomes WG’s intention to introduce the legislation into the Assembly in May 2018 and strongly support the intention to allow for a transitional period. This will allow local authorities to be operational to deliver the SAB function and process applications.” Local Authority

“There are a large number of large scale developments occurring in our area and the lack of green SuDs should be viewed as a loss of opportunity.” Local Authority

“This is likely to put significant pressure on LLFA’s, especially those with very limited existing resources who may already be struggling to deliver their statutory duties. However, it is recognised that these measures are required and with the appropriate support and direction from Welsh Government & the WLGA it is anticipated that the November 2018 should be achievable.” Local Authority

“... commencing Schedule 3 would appear to offer the best chance of consistent approach to implementation, approval, adoption and maintenance of SuDS across Wales ...” Individual

Government Response

Overall there was support for bring forward the necessary statutory instruments (SIs) in May, with implementation no sooner than November 2018. In order to do this, we will introduce a Commencement Order for Schedule 3 to the Assembly in mid May. This will provide Ministers with the powers to make the necessary legislation. It will also set a “coming in to force” date for the full requirements of the Schedule with respect to SAB approval and adoption of new surface water drainage systems.

We are therefore making the necessary arrangements to amend the consultation draft SIs to take account of the consultation responses and aim to lay them in the Assembly at the end of May. Subject to Assembly approval, they would then be in place for the end of June and come into effect six months later, on 7 January 2019.

TABLE 1 Commencement Timetable

Action	Date
Publish Consultation summary and Government Response	26 April 2017
Schedule 3 Commencement order	By 15 May 2018
Lay Statutory Instruments in the Assembly for four weeks	By end May
Assembly debate on affirmative Regulations	By end June
Schedule 3 comes into force	7 January 2019

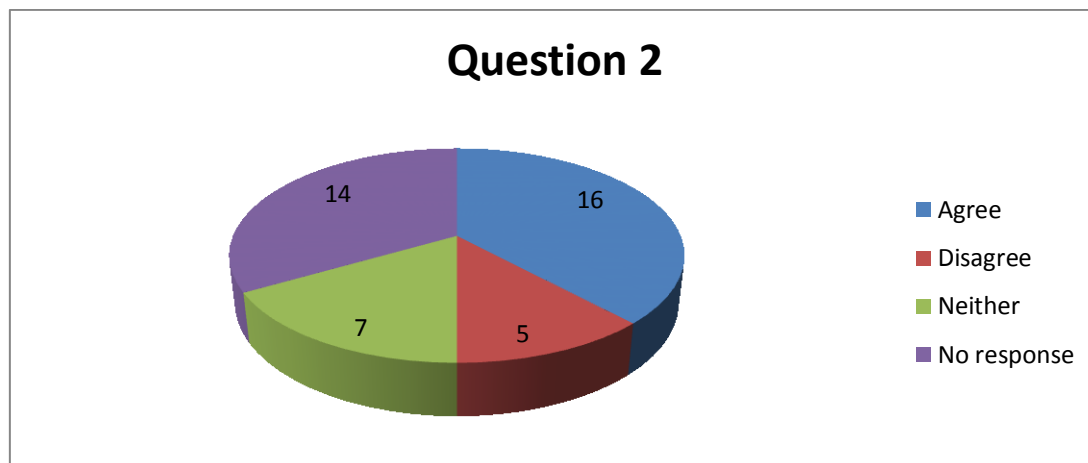
Question 2

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.

Question 2: Do you agree with this approach for transitional arrangements?
If not please give reasons.

Figure 3



Summary of responses

The largest response was from those who agreed with the proposed approach, with around a quarter of respondents not expressing any view and a few neither agreeing nor disagreeing. Only a small minority were opposed.

Whilst most agreed with the proposed transition period proposals, there seemed to be some confusion around the coming into force date. Clarification was sought around when the 12 month period would begin and end. Clarification was also sought on what would occur in the situation where a variation of a planning condition is requested.

The view was expressed both by those agreeing and disagreeing with the 12 month transitional proposal that some developers might bring forward planning applications in advance of the requirements coming into force so as to avoid the need to comply. Among those opposed to the proposals, some thought a shorter transitional period of six months would be more appropriate whilst others were concerned about the SAB being ready within a year and proposed a longer period.

Responses included the following comments:

“We agree with this, however would highlight that there may be missed opportunities to fully deliver proper SuDS schemes within the transitional period due to developers trying to beat the transitional period.” Local Authority

“There needs to be clarification regarding the commencement date – would this be May 2018 (commencement of Schedule 3) or November 2018 (full implementation)? suggest using May to November 2018 as a trial period to assess how many applications we are likely to receive. ” Local Authority

“Although I would not have an issue in relation to sites that have been granted planning permission before commencement there should be a time limit on this to avoid developments commencing just before the time limit of any planning permission expires or an extension of time is requested.” Local Authority

“Exceptions to the requirement for approval should be driven by the date of inception/function of the SAB within the LLFA area. If it takes 12 months to adequately resource the SAB then this date (e.g. May 2019) should be used for the purpose of exceptions associated with previous permissions or conditions. This burden could be eased with consideration of a phased approach to the requirement for SAB approval.” Local Authority

“This transitional period should be reduced to 6 months and to cover planning applications with full permission only... [this]... will ensure SuDs are able to be secured on the majority of developments moving forward in 2018 / 2019. It is likely that developers will submit a large number of applications in order to take advantage of any transition period..” Local Authority

Welsh Government response

The transitional arrangements for the implementation of this new approval requirement require careful consideration of the options. Whilst there was broad support for a twelve month exemption where planning permission is in place, it remains a key objective that we do not adversely impact on planned development.

We therefore propose that any development for which there is an existing planning permission or for which a valid application has been made before the SuDS requirements come into force, SAB approval will not be required. There is a risk that some developers may seek to avoid the need for SAB approval by submitting applications before the date. However, we believe developers will balance the avoidance of the need for approval against the benefits from the use of the SuDS approach and the advantages of the SAB being able to adopt the surface water systems.

All new planning applications made following the coming into force date will then need SAB approval.

Question 3

We understand the importance of guidance in implementing the SuDS process. We have been working with local authorities, developers, statutory consultees and others to develop a suitable document. We have worked with our SuDS Advisory Group and through a series of consultation workshops in February 2018, with a view to having draft guidance in place by Spring 2018.

We indicated the areas guidance might cover in the consultation, which included:

- 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

.and asked if there were any additional areas that should be included.

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

Summary of responses

Most consultees responded to this question (more than 25 responses) and they provided a wide range of responses with a lot of detailed information. The need for guidance on the setting up of the SABs was highlighted by local authorities, as well as model legal agreements and standard documentation. Clarification of the requirements for SuDS applications was identified as a priority by some in local authorities. One response sought further information around enforcement powers. Issues relating to fees and bonds were raised by several respondents and more detailed guidance on the value and use of bonds was requested. A number of the responses asked for technical guidance relating to the circumstances where approval will be required, biodiversity matters, the design of SuDS and the identification of opportunities for their use and evaluation.

One response highlighted the need for guidance to address larger scale phased developments where a drainage strategy which has already been agreed for the whole site might be impacted.

The importance of clear links to Planning Policy Wales and the related Technical Advisory Note was highlighted in several responses. Several respondents commented on the value of guidance in ensuring a consistency of implementation across Wales.

Several responses asked for clarity over the implementation timescales and the availability of the guidance.

A number of responses also addressed the issue of training for local authority staff, emphasising the potential shortage of the appropriate skills. The importance of all those attending training understanding what is meant by good quality, multi-beneficial SuDS was highlighted. Training should include a basic understanding of what to look for with respect to SuDS delivering multiple benefits both during design and inspection stages and should also cover enforcement aspects. Several responses offered assistance in the development of training resources.

One response said a priority of the training programme should be joint SAB and planning training to clarify how the two approvals processes operate and to avoid contradictory approvals / rejections.

Responses included the following comments:

“To enable a consistent application of the SAB role across Wales it is essential that LLFAs are given appropriate support and guidance to ensure an appropriately resourced and provisioned SAB can be in place and ready to function as and when schedule 3 is commenced. ” Local Authority

“We would suggest including requirements suggested as part of 7.23 (evidence to support future review mechanism of SAB approval costs) within the guidance to ensure consistent recording across the 22 LLFAs. ” Local Authority

“ ... there should be more specific national guidance like a 'SuDS for Adoption' to the details comparable to that in the Sewers for Adoption ...” Local Authority

“More detail on the exemption criteria would be of benefit” Local Authority

“Legal matters including the designation of structures, easements and procedures for enforcement etc. ” Local Authority

“ statement at the beginning of the guidance.... ‘For every new development, the Welsh Ministers expect SABs to seek an overall reduction in, or significant attenuation of, surface water volumes reaching public sewers and combined systems....” Utility

“Guidance and/or training should be given to SABs regarding what to consider for a maintenance contract to ensure that the national SuDS standards continue to be met. This must include information around monitoring and enforcement and encompass SuDS which are not adopted by SABs.”
Environmental NGO

“There should be a commitment from WG to provide a continuous programme of training.” Local Authority

Welsh Government response

We will continue to work with stakeholders to develop our guidance. We have, where appropriate, taken into account comments received as part of this consultation. We anticipate it will be a “living document” which will need to be revised in the light of experience and we therefore welcome suggestions for improvements in the future, as Schedule 3 is implemented.

However, some matters, such as implementation within a local authority, are best determined by the authorities themselves, with the support of the Welsh Local Government Association (WLGA). We will, as far is appropriate, aim to work with and support WLGA in this.

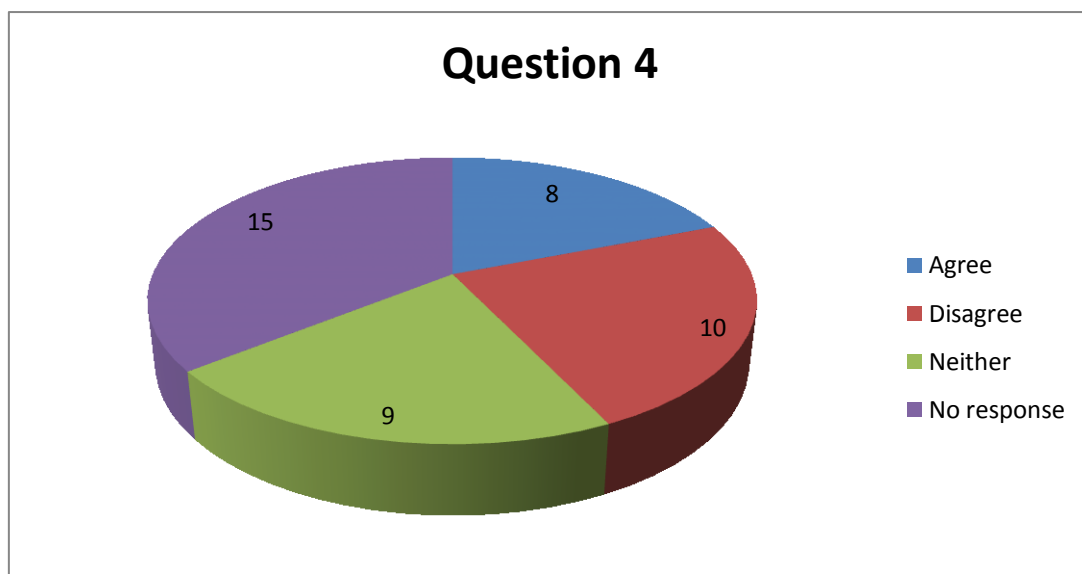
Our Guidance will not cover technical issues or training requirements, which will be dealt with separately. It will signpost a wide range of relevant supporting resources, and we welcome suggestions for additional links for inclusion.

Question 4

This question considered developments which will be exempt from the requirement for SAB approval. In particular, following responses to our May 2017 consultation, it considered a further possible exemption for works carried out by Lead Local Flood Authorities (LLFAs).

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

Figure 4



Summary of responses

Opinions on this question were equally split. No evidence was provided to indicate the potential numbers or types of development undertaken by LLFAs to which an exemption might apply. A number of those responding reflected confusion over the scope of the exemption and the risk it might be seen as applying to a wide range of local authority activities. One response sought further exemptions for highways related drainage activities.

Several of those opposed to the exemption cited transparency and equity as important factors. Those who thought the exemption was reasonable cited the existing oversight of LLFA works as extensive and adequate and felt a requirement for SAB approval would be a waste of resources. However, none of the responses considered what sort of LLFA activity might have “drainage implications” in the language of the Act, or the extent to which such activities would or would not require approval.

Responses included the following comments:

"It is good practice for a public body to be transparent in its approach and to be able to provide evidence in case of scrutiny. As such we do not believe an exemption would stand the test. " Local Authority

"Agree with the exemption for ALLIA to enable them to respond to flood events within appropriate time using our current permitted development rights." Local Authority

"Lead Local Flood Authority works are likely to have significant drainage implications. Such works should also be subject to SAB approval" Local Authority

"All parties involved in new developments should be treated the same to ensure there is no partiality. " Local Authority

*"The consultation document includes no justification for the LLFA"
Business*

"... the Flood Defence and Coastal Protection Team is unlikely to require SAB consent for any work it undertakes, a 'carte-blanche' exemption does raise transparency issues" Local Authority

"These are all works which typically the LLFA would not be required to adopt, and therefore no need to expend resources approving." Individual

Welsh Government response

Given the potential confusion over how such an exemption might apply, and the lack of evidence to support it, we do not propose to include an exemption for Lead Local Flood Authorities at this time. However, we will review this decision two years after the approvals process is implemented and consider any new evidence which would support such an exemption. This will allow time for the collection of evidence by the LLFAs and SABs to support any change.

Question 5

This question sought to test the proposed structure for fees relating to the new SAB approval process and proposals for their review. Having considered the views expressed in response to our May consultation, we proposed a national fee structure for the SAB approval fee. This provides for a fee made up of a set amount for each application plus an additional amount determined by the size of the construction area.

The question sought views on the information that SABs should collect and report to the Welsh Government to inform the setting of future SAB fees and the frequency of reviews.

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?

Summary of responses

Almost three quarters of the consultation respondents had comments to make in response to this topic and a range of views were expressed in response to both questions.

With regards to what information should be submitted as part of a review of SAB approval costs, there was broad agreement on certain essential components. These can be summarised as a measure of the time taken to assess an application multiplied by the number of applications assessed, taking into account the hourly rates of the different grades of officers involved. Evidence to support the basis of each of these factors would be essential.

Among the other factors suggested for consideration, the most common included some measure of the complexity or size of applications, the number of appeals and the inclusion of third party fees, e.g. where there was the need to seek advice from an external consultant. Some responses suggested that every element of the SAB's work needed to be reviewed in order to properly assess the costs, including such items as the hours logged by interdepartmental staff as part of internal consultations.

Several respondents thought pre-application discussions should be included in these cost measures, although one response did not see this possible.

Views on the frequency of such reviews were nuanced. Annual reviews received the least support. Most popular was the suggestion of holding the review every two years. Almost as many respondents proposed annual reviews initially and moving to a bi-annual cycle once the SABs had time to 'bed-in' their approaches and establish accurate costs based on real experience. Two respondents suggested an initial review of costs prior to the end of the first financial year (March/April 2019) and one even suggested that post an initial bedding-in period involving quarterly assessments of costs, then the review frequency could be extended to once every 5 years. A clear emergent theme from Local Authorities' responses was a genuine concern that costs should be accurately and transparently accounted for.

Responses included the following comments:

"In the previous consultation ... a number of responses highlighted additional costs ... that are not covered by the current fees. Local Authorities should be encouraged to monitor such costs... which when added to the proposed fees ...will provide evidence of the real costs of processing SuDS within the SAB. More frequent reporting (once a year) should be undertaken initially in the beginning to obtain a notion of the (real) average national costs. A breakdown by regions will be necessary as well." Academia

“The HBF ...suggest that costs should be the same across Wales unless a higher cost can be justified by a particular SAB, although we cannot see why this would be the case....In terms of the review of costs we would suggest every two years, otherwise the cost will just be continually under review.”
Business

“...resources utilised by the SAB throughout the full process including pre-application discussions should be considered in any review of the fees. This should include access to suitable professional expertise (e.g. ecological expertise to address standard 5, hydrological expertise, future maintenance, etc.). All elements of the process should be considered, including access to ongoing advice on maintenance issues etc.” Local Authority

“The SAB should submit costs for undertaking the role and the average per application. Should certain types of application result in unusual costs compared to most others this should be taken into account to decide if alternative fee are appropriate for these applications. Initially a once a year review would be appropriate to be reduced to once every two years or less when little variation is shown to be required.” Local Authority

“The information to be requested should be defined prior to the commencement of the SAB role and delivery of SAB functions to ensure timely data capture can commence at the outset....Data review should take place once sufficient information has been collected to give meaningful data. A 2 yearly review period would initially appear appropriate – but this should be reviewed in the future once the SAB is up and running.” Local Authority

Welsh Government response

We have continued to work with the Welsh Local Government Association to ensure the initial fee rates are set to reflect the cost recovery basis intended. We will charge SABs with the collection of suitable data to enable a review to be undertaken in April 2020 and 2021. By then there should be sufficient data to provide evidence to support any changes needed to the fees. The inclusion of the rate for fees in Regulation provides both applicants and the SABs with both certainty and consistency across Wales. We will include the fees in a separate set of Regulations, which will facilitate their future review.

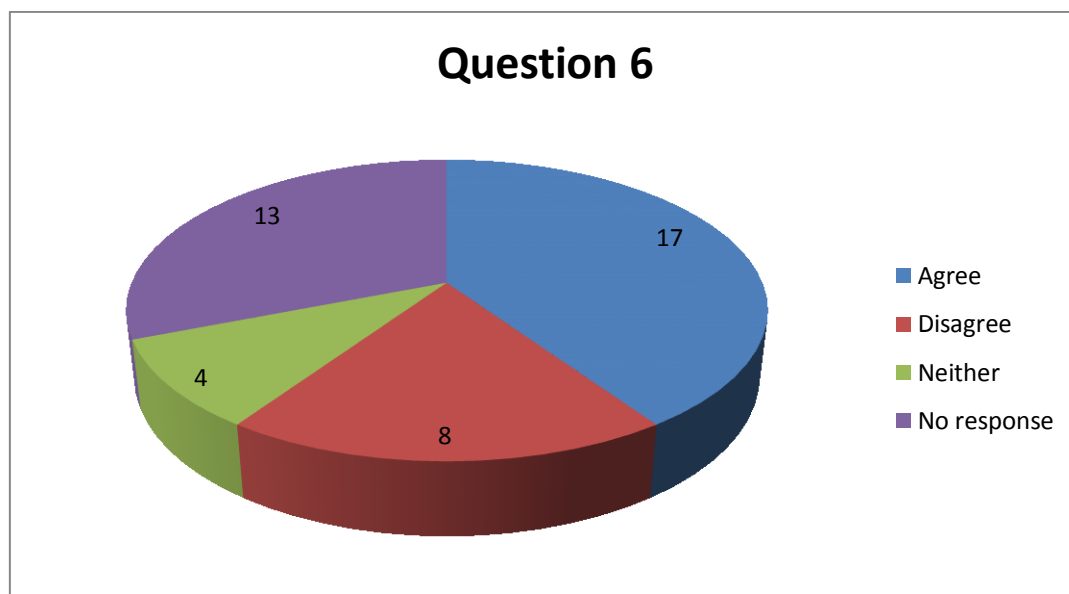
In the light of comments received during the consultation, in particular from local authority technical staff, we are proposing a set fee for site inspections. When combined with approval conditions specifying the number of inspections during the construction and acceptance periods, this will again provide applicants and SABs with certainty over costs. Following discussions with the SuDS Advisory group and others, this fee has been set at £60 initially.

Question 6

In most cases, the SAB and the local planning authority (LPA) are within the same local authority. Where this is not the case, we propose to allow the LPA to lead on enforcement action if appropriate. The SAB will usually take enforcement action but giving powers to the LPA as well will mean that where the SAB and LPA agree, the LPA will be able to take enforcement action on the SAB's behalf. This may be useful 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?

Figure 5



Summary of responses

Just under half the responses supported this proposal, with a quarter opposed. Those in favour recognised the efficiency it offered and the fact that within some local authorities enforcement teams already have the necessary skills.

Those who opposed the proposal cited existing staff shortages, a belief that the enforcement power could not be legally shared in this way and the potential for planning committees to influence enforcement decisions. Concern was also expressed over the potential for confusion between the two separate approval processes and one response took the view that if the SAB approval and Planning Application processes are separate, the enforcement powers should also be kept separate.

Responses included the following comments:

“This would allow officers to take action quickly if there are issues on site that would need dealing with immediately. ” Local Authority

“It is essential that the two enforcement process and powers are aligned to maximise future efficiency when dealing with enforcement issues. ” Local Authority

“ seems to be in contradiction with the overall proposal of having the SAB application process separate from the planning application process. ” Local Authority

“ ... this could potentially create an additional workload for planning enforcement teams. It will be important that the resourcing of this workload is taken into account.” Professional Body

“As part of the initial cost review, enforcement costs will also need to be reviewed. ” Local Authority

“The Planning Enforcement Team ... provides a very similar service They have the necessary skills and experience in managing ‘enforcement matters’ of this type and can both assist the SAB and lead on enforcement matters. ” Local Authority

Welsh Government response

There appeared to be some confusion and misunderstanding over this proposal. Our aim is to ensure that, where legal action is proposed for both planning and SAB enforcement, this could be dealt with in the most efficient manner possible. In most cases in Wales, the local authority will be responsible for both functions and no special provision is needed. However, where the Parks Authority is responsible for planning, there may be scope for joint action, which this provision would facilitate.

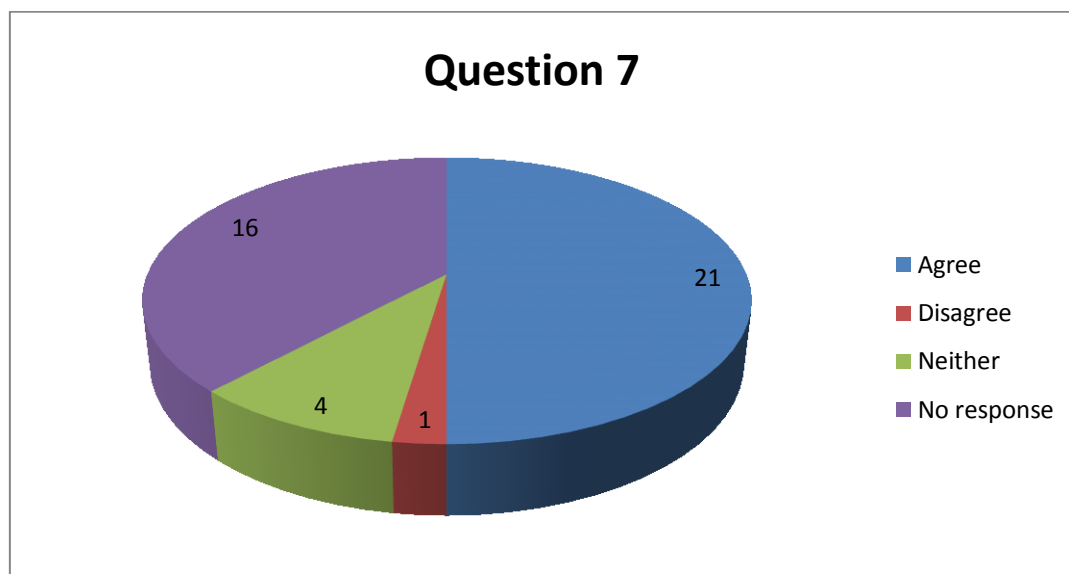
We therefore propose to include this provision in the draft legislation.

Question 7

We have aimed to provide powers of entry for the SAB which are reasonable and proportionate, whilst at the same time enabling SABs to take action where necessary to carry out their enforcement role:

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

Figure 6



Summary of responses

There was very clear support for the proposed powers of entry for the SAB. The majority of those responding to the question felt the powers were proportionate and appropriate.

The one response which disagreed cited concerns inspecting officers might be discouraged by the related provisions dealing with compensation in the event of a developer incurring any loss as a consequence of the inspection. The need for powers to inspect without notice was highlighted in several responses, balanced by concerns over access to construction sites taking account of health and safety issues.

A small number of responses expressed concern over post completion inspection and recommended appropriate easements should be included as part of any adoption agreement.

Responses included the following comments:

“Yes, they are in line with current powers available to the LLFA which in our experience are sufficient.. ” Local Authority

“ ...some wording may need to be included to cover entry to a construction site, as this is covered by other health and safety legislation requirements in terms of entering the site. This would probably require notice to be given to the site manager or developer where this is practicable.” Business

“Powers of entry without notice are required to ensure the requirements for approval are implemented. ” Local Authority

“Wherever possible the procedures for SABs should replicate the powers already used by the Planning Authorities.. ” Local Authority

“ ... clarification is required regarding the powers of entry ... following adoption of a SuDs structure ... in private land. ” Local Authority

Welsh Government response

Our proposals on powers of entry were recognised as being proportionate and in line with similar powers under other regimes. They aim to provide a balance between the needs of the enforcing body and the owner of the site.

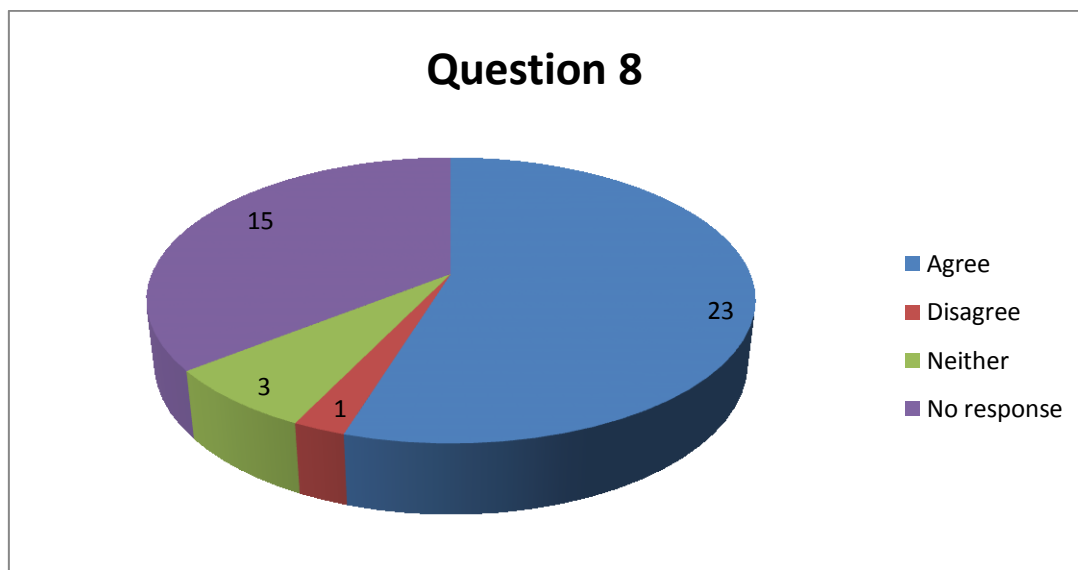
We therefore propose to include these provisions in the SIs in a substantially unchanged form.

Question 8

We propose to make provisions for compensation under certain circumstances where a developer suffers a loss as a result of a temporary stop notice which is withdrawn or allowed to expire without further action being taken, or as a result of the exercising of powers of entry.

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?

Figure 7



Summary of responses

The majority of responses agreed with this proposal without making any further comments. Two agreed in principle, subject to an agreed and consistent methodology being developed for everyone to use. One respondent expressed clear disagreement and supported a 3 month period instead as sufficient. Another agreed with the proposal but expressed the view that costs should not be awarded for utilising rights of entry powers.

Responses included the following comments:

“We question the requirement for a compensation procedure for loss resulting from exercising Powers of Entry. In many instances, Powers of Entry are used to ascertain whether there is a breach. It may well be the case that a breach isn’t found, but this would not be obvious to an investigating officer, unless they carry out an inspection.” Professional Body

“In respect to Temporary Stop Notices, we would expect compensation provisions, however Regulation 7 of the draft Order at Annex D states a developer is entitled to compensation if the approving body does not take any further enforcement action. it may be the case a developeragrees to rectify any breaches/discrepancies found. In such a case the approving body may not need to initiate any further enforcement action.” Professional Body

“Having 12 months to submit a claim seems an excessively long period which could lead to confusion on a site which could have numerous claims made, when they would be dealt with. I would suggest 3 months being reasonable to submit a claim where the information is still fresh.” Local Authority

“For a consistent approach/process the above should align with other compensation procedures.” Local Authority

“Wherever possible the procedures for SABs should replicate the powers already used by the Planning Authorities” Local Authority

Welsh Government response

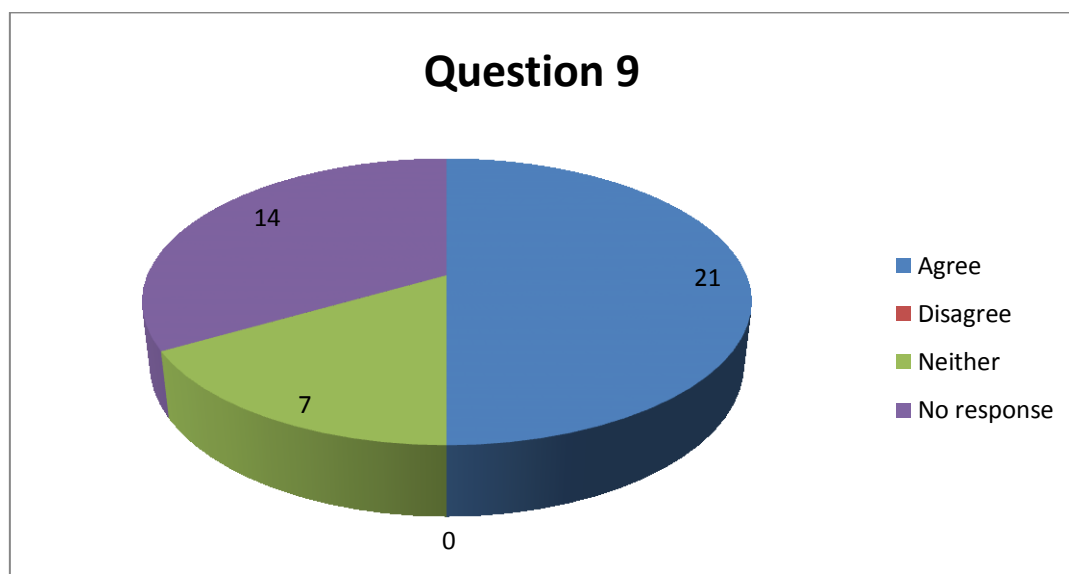
Given the overall support for this proposal, we will take forward the twelve month period in our legislation. However, we aim to clarify the right with respect to a case where a developer agrees to rectify a problem and no further enforcement action is required.

Question 9

We propose to put a time limit on when the SAB is able to issue an enforcement notice. 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.

Figure 8



Summary of responses

The majority of those responding to this question agreed with the proposal to set a time limit of four years for when the SuDS Approving Body is able to serve an enforcement notice. However, some responses called for clarification whether and what alternative enforcement powers would be available after the four year time limit. This clarity was identified as important to ensure that elements of the SuDS system are adequately maintained. Also raised was that failures of these assets could have a detrimental impact on third party properties/land.

One response indicated agreement with the time limit, providing the four year period begins from the date of approval, the SAB has been given an “as built” plan and a camera survey of any underground network. This is important to ensure the system is structurally intact following completion of additional service work undertaken to facilitate the development and to avoid damage once the site is completed.

Responses included the following comments:

“Does this mean that there is no enforcement arrangement available after 4 years?” Local Authority

“For a consistent approach similar procedures and proposed measures should align with planning procedures” Local Authority

“This proposal appears acceptable and concurs with the 4 year time limit for operational development.” Professional Body

“Wherever possible the procedures for SABs should replicate the powers already used by the Planning Authorities.” Local Authority

Welsh Government response

Given the support for a four year period, we will include this within the statutory instrument. However, it is essential that SuDS facilities are maintained and continue to operate as designed.

Where a SAB has a duty to adopt, Schedule 3 requires the SAB to arrange for:

- the inclusion of the drainage system, (including any non-adopted part) on the Lead Local Flood Authority Section 21 Register and
- designation under Schedule 1 of the Flood and Water Management Act 2010 for any part of the system which is eligible for designation.

Although the SAB does not have a duty to make the same arrangements for drainage systems for which it does not have an adoption duty, doing so would ensure that the drainage system is provided with protection from damage.

The effect of designation under Schedule 1 is that the designated feature may not be altered, removed or replaced without the consent of, the Lead Local Flood Authority. Schedule 1 also includes related powers for the LLFA. This raises the issue of the need to include maintenance, which we will explore further.

Question 10

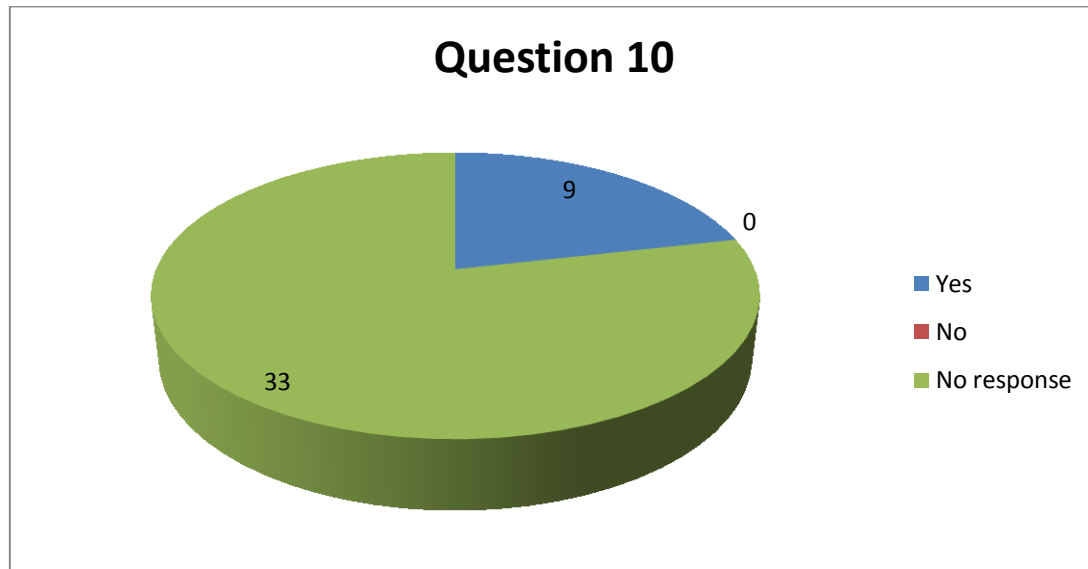
We are proposing to provide the SAB with a range of noncriminal sanctions to encourage those who do not comply with the requirement for approval to come into compliance. These are similar to those used for planning enforcement namely temporary stop notices, enforcement notices and stop notices.

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, similar to offences currently contained within the enforcement of planning controls. Offences which may be committed by a body corporate or partnership are also included.

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

Figure 9



Summary of responses

Only 12 responses addressed this question, and most agreed that the proposed powers and offences provisions were appropriate and proportionate. They recognised that they generally mirrored similar provisions relating to planning. There were very few additional comments provided.

Of these, one expressed concern that the SAB does not have the necessary powers to ensure that SuDS, once constructed, are properly maintained and managed in compliance with the national SuDS standards. Another raised the issue of liabilities in the event of flooding as a result of a system failing to operate adequately.

Responses included the following comments:

“Appears to be appropriate and proportionate” Local Authority

“ ... the proposed intervention powers and criminal offences provisions are appropriate and proportionate. They are consistent/similar with existing LPA enforcement powers/offences. ” Local Authority

“ ... appropriate during construction. However, there is no provision for SABs after adoption to ensure that maintenance is being carried out in compliance with the national SuDS standards.” Business

Welsh Government response

The proposed enforcement provisions are similar to other regimes and the responses recognised this. We will therefore incorporate these in our legislation.

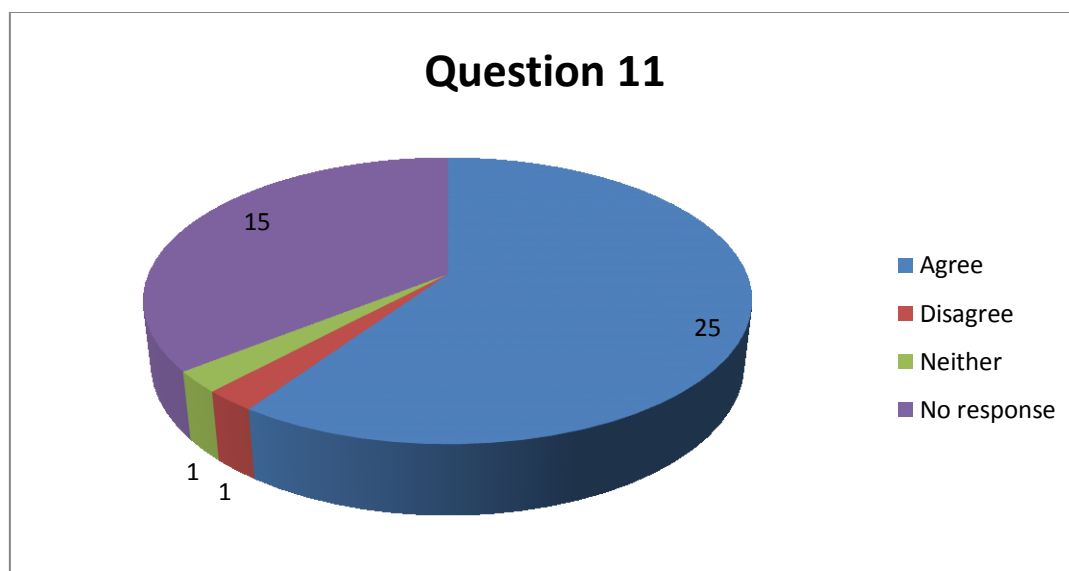
Question 11

We plan to provide a right to appeal against SAB enforcement notices on certain grounds. 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.

This question sought views on appeal procedures, which we intend to be similar to planning appeals. These would allow for determination on the basis of written representations, a hearing or an inquiry. Welsh Ministers will be required to decide on the procedure for determining the appeal.

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?

Figure 10



Summary of responses

There was overall support for this proposal with very few comments other than expressions of the desire for SAB procedures to replicate those already used by the Planning Authorities as far as possible, as both Local Authorities and developers would be familiar with the procedures for planning enforcement.

Only one respondent disagreed with the proposal, suggesting written procedures only should be available.

Responses included the following comments:

“For a consistent approach, similar procedures and proposed measures should align with planning. Consultation/involvement within LAs’ departments including planning, legal and highways would be necessary. ” Local Authority

“Surface water drainage is only one component of a development. The options for enforcement appeals seems excessive and should be confined to written representation only. ” Local Authority

“Adopting a similar appeal procedure to planning would ensure a consistent approach and avoid any conflict with other similar procedures which may be familiar to developers. ” Local Authority

“We recommend that ..., the sewerage undertaker should have the right to appeal” Utility

“Having consistent and complimentary appeals / enforcement processes will aid understanding and awareness.” Individual

Welsh Government response

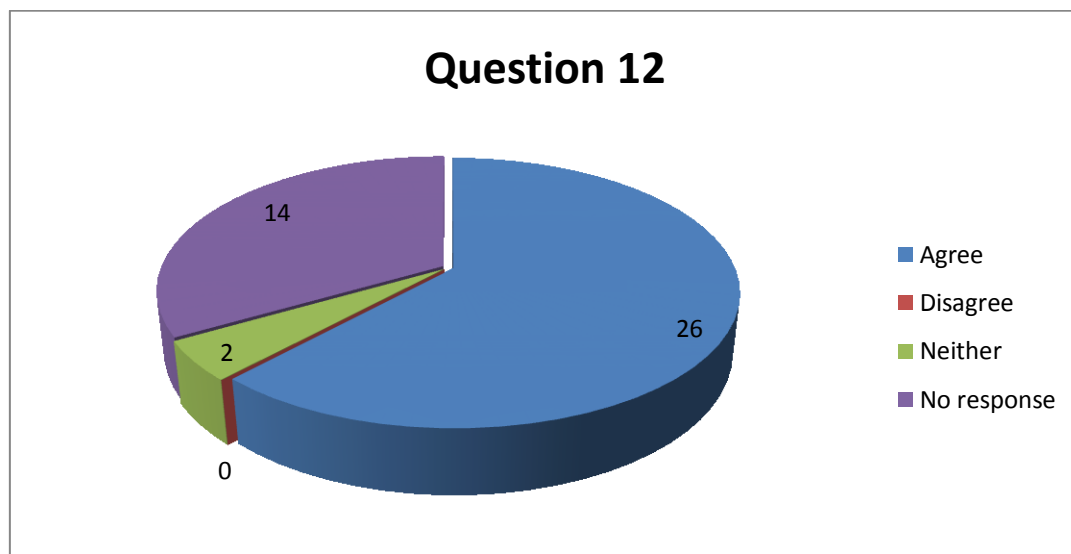
There is clear support for adopting a procedure based around the familiar planning model, so we will take this forward in the legislation without substantive change. We recognise the potential value in providing a right of appeal against the SAB’s decision for statutory consultees. However, we do not believe there is sufficient evidence to support its inclusion at this time. We will include the statutory consultees as interested parties for the purposes of appeals review this in the light of experience once the system has been in operation for two years.

Question 12

We propose a register of all SuDS enforcement notices which will be maintained by the SAB and available for public inspection. Our proposed approach mirrors the procedure for the register of planning enforcement appeals.

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

Figure 11



Summary of responses

The majority of responses to this question agreed with the proposal to have a register of all SuDS enforcement notices and that it be maintained by the SAB and is available for inspection.

There was agreement it is best practice to maintain a register of enforcement notices is viewed as best practice, but concern it should not be too onerous. One response stated whilst they supported this in principle, it could create additional workload for the planning enforcement team.

One responder stated that they understood this process is already ongoing and that it would be a requirement for the CON29 search in any case.

Responses included the following comments:

“it will be essential that this register is shared between the SAB and LPA to ensure both are briefed and aware of enforcement action underway.”
Professional body

“This would ensure transparency and consistency.” Local Authority

“For a consistent approach, similar procedures and proposed measures should align with planning procedures.” Local Authority

“Yes these should be placed on an enforcement notice register and also recorded as a registrable local land charge.” Local Authority

Welsh Government response

Given the level of agreement with this proposal, we will include this provision in the final statutory instrument.

Question 13

Maintenance of adopted SuDS

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.

This question sought information on existing arrangements which might help inform 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.

Summary of responses

The majority of respondents did not answer this question or had no relevant information to share. Three respondents did provide comments. One related to rainwater harvesting systems, which would not generally adopted by the SAB. Other responses highlighted the importance of ongoing monitoring, related technical guidance and information on maintenance. It was suggested that local voluntary groups might play a part in monitoring and maintenance.

One response commented on the potential problems relating to management companies, citing written evidence to the Parliamentary Environment, Food and Rural Affairs Committee Post-legislative scrutiny: Flood and Water Management Act 2010 (session 2016-2017)¹. Another proposed a common basis for calculating commuted sums for maintenance.

Responses included the following comments:

“We propose SABs engage with local nature and community groups who may be willing to undertake this monitoring. Such groups may also be willing to manage the SuDS.” Environmental NGO

“The Landscape Institute have developed technical guidance on maintaining SuDS (and also design considerations relating to maintenance).” Environmental NGO

“The CSS commuted sums formula could be used in this instance to calculate any figures to be used for future maintenance.” Local Authority

¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/inquiries/parliament-2015/flood-water-management-inquiry-16-17/>

Welsh Government response

We will include a provision on maintenance in the SuDS Standards. We will also advise the SABs to collect evidence on maintenance in order to inform a review of the operation of Schedule 3 after two years of operation.

Question 14

SuDS that serve properties within a single curtilage are excluded from the adoption duty. In effect, this means SuDS providing drainage for a development 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 will not be eligible for adoption by the SAB.

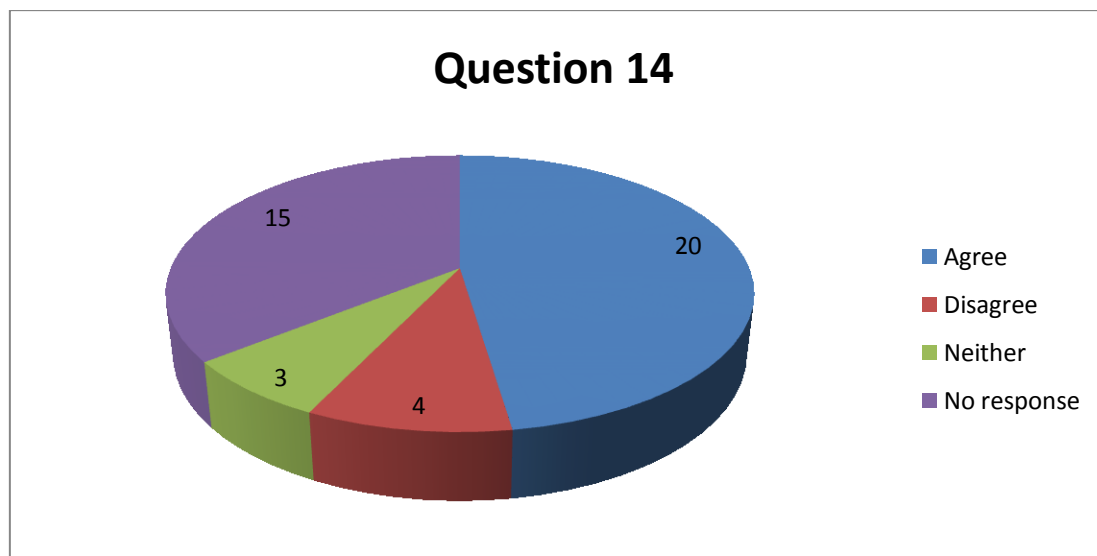
Examples include:

- 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;
- 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?

Figure 12



Summary of responses

Just over two thirds responded to this question. Of these, three quarters indicated that they thought the definition reasonably clear. A number expressed concerns around potential loopholes.

Three general areas of concern were raised. The exclusion from adoption of drainage serving blocks of flats and a lack of clarity in relation to the development of both these and in relation to planning permissions granted for self build single dwellings as part of large developments worried some.

A second concern was raised in relation to development areas associated with single curtilage developments that could generate a high surface water runoff, as these could be a missed opportunity to install SuDS. It was suggested that perhaps single property curtilages over a certain size should require SAB approval and that comprehensive but concise examples of the types of excluded single curtilage should be given.

The third area of concern was that SABs should retain some control over the design and maintenance plans of SuDs features, particularly for major developments such as commercial or industrial estates and educational campuses.

Responses included the following comments:

“This is not clear, possibly by size – need to limit by area and volume discharged” Professional body

“The definition of a single property drainage system is not clear – further clarification is required. Is the 100m² the impermeable area, the roof area or the total development area? ” Local Authority

“The examples of what could be considered to be encompassed by a single curtilage are not satisfactory and CCC does not agree with the supplied examples, with the exception of single dwelling-house. All the other examples should be encouraged to implement SuDS as a main drainage solution. There is concern that the first definition ‘Residential building with multiple flats’ may cause confusion when applied to private development sites. For instance would the exemption apply to a block of flats built as part of a private development which was transferred to a housing associated as affordable housing?” Business

“This would suggest that two otherwise identical developments of flats, one where each flat is separately owned and one rented by a housing association etc. would be treated differently. There does not seem to be any justification for this. ” Local Authority

“Agree that it is clear for a single dwelling however there are instances when a self build site has planning applications for single dwellings on a large site. Also there should be guidance on design and maintenance of new build schools, industrial and commercial development. ” Local Authority

Welsh Government response

A number of the responses to this question reflected a mis-understanding of the proposal, reflecting a view that single curtilage properties would be exempt from the requirements of approval and compliance with the SuDS Standards. This is not the case, as the exemption proposed relates to the SAB's duty to adopt and not the requirement for approval.

We will provide as much clarity as possible within guidance. The issue of ensuring the ongoing maintenance of systems exempt from adoption will be addressed through SAB enforcement powers.

Question 15

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.

Separate funding arrangements would need to be agreed for the maintenance of the SuDS that are adopted voluntarily by the SAB.

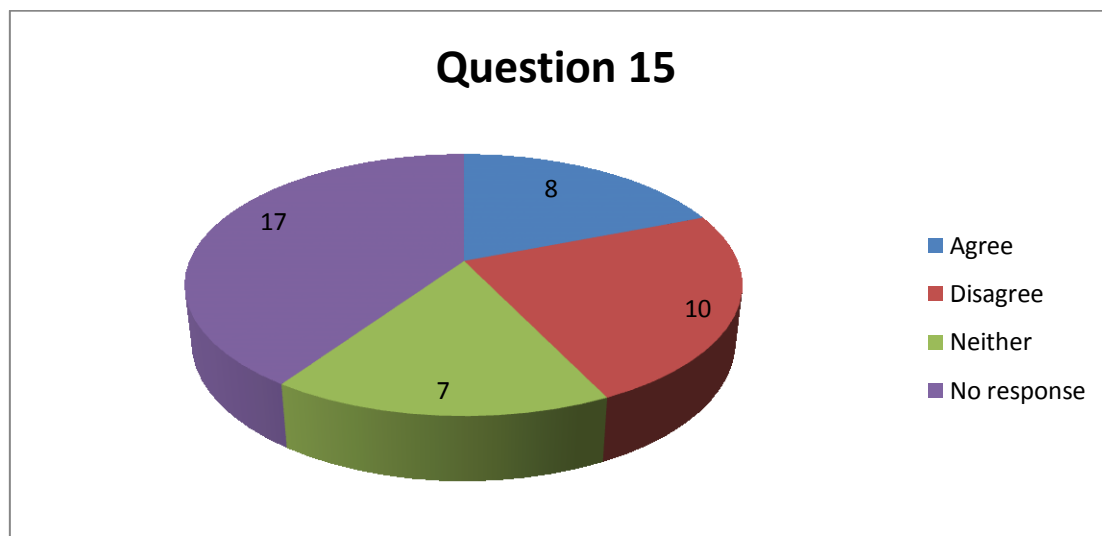
We propose the SAB must give notification of its decision to adopt as soon as is reasonably practicable. It is also proposed that the 4 week timeframe for, registrations and designations should apply to drainage systems which are adopted voluntarily.

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.

Figure 13



Summary of responses

Over half who responded to the consultation either stated they neither agreed or disagreed with the proposal or did not answer the question. Over twenty five percent of those who did answer the question disagreed with the proposed 4 week time limit and provided detailed reasons why.

Concerns raised about the 4 week time limit included staff resourcing (including variability across Local Authorities), insufficient time to return bonds by Finance Departments, no additional funding from the Welsh Government, no leak defect period and possible delays in registration and designation. Also raised was the impact on LLFA's overall capacity to undertake its functions to manage flood risk at a local level as revenue pressures and workflows are increased.

A significant number of respondents suggested that 8 to 12 weeks would be a more realistic time limit in light of the processes and work involved. One option put forward was that the 4 week limit would be agreeable if the timeframe is open to review following the implementation of the SAB.

One local authority response highlighted the power given to Lead Local Flood Authorities (LLFAs) to designate structures has not been used or investigated within their authority and they are not aware of any other authority that has used these powers successfully.

Also identified was a need for a consistent approach with similar procedures and proposed measures aligning with planning and other corporate policies.

One respondent identified that the timescales for releasing the bond would be outside the control of a SAB and that designation is a separate function which may be too onerous for the benefits it delivers. Designation was also identified as a Land Charge requiring input from other Council Departments in answering SuDS questions in relation to Local Searches for house sales.

Reponses included the following comments:

“Given possible workloads within the SAB and resource variability across the LA’s 4 weeks may be difficult to meet; further research/consideration should be given to looking at longer timescale i.e. 6-8 weeks possibly.” Local Authority

“This process should be extended to 8 week minimum. This would align with Planning Applications as a comparable exercise.” Individual

“It is likely that resources will be an issue given that the powers could come into effect in May and that it will take time for staff to be familiar with the process.” Local Authority

“The wording should make it clear if it is a working week, excluding weekends?” Business

“We would propose an alternative timeframe of 3 months due to resource availability and to allow sufficient time to transfer funds between accounts.” Local Authority

“An added pressure is that if there is a need for additional expertise a significant number of the other 22 Local Authorities will be competing for the same resource. Existing vacancies are extremely difficult to fill...” Local Authority

“As revenue pressures and workflow is increased for LLFA’s there is a risk of reducing the overall capacity of an LLFA to undertake its functions to manage flood risk at a local level. As such we would recommend that as part of the SAB implementation process that the duty of LLFA is reviewed and supported by WG to compliment the implementation of schedule 3.” Local Authority

“There is concern that there are no defects period involved and the decision to adopt the system and leak-free performance of the bond. At present Welsh Water is used as a period 12 months defects prior to release the bond on its sewerage systems in order to ensure that the system is working effectively before adopting it. This seems reasonable in this case also.” Local Authority

Welsh Government response

The responses to this question reflected a concern over the SAB’s ability to complete the process of releasing a bond in the suggested four week period. Some responses thought this meant that a bond should be released or repaid within four weeks of the completion of the scheme.

This is not the case, and it is for the SAB and the developer to agree an appropriate time period for the effectiveness of the drainage system to be established (sometimes known as a defect period). This period would then be included as a condition of approval and would depend on the type of system being installed.

Having considered the responses, we believe that a four week period for the release of the bond once the system is adopted or deemed complete (if not due to be adopted) is reasonable.

Question 16

This question sought views on the protection of SuDS on public land that are owned by local authorities. The draft Regulations propose to safeguard their effectiveness, with special provisions for the works of statutory undertakers. These 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?

Summary of responses

The majority of respondents made no comment on this question. However around a quarter identified the need for inclusion of telecommunications and cable works.

“Yes – any telecommunication apparatus needs to be included”. Local Authority

“Telecommunication and Cable works. Issue has previously arisen with drainage implications of telecommunications works presenting a flood risk to both property and public highway.” Local Authority

“Statutory works relating to telecommunications (through the Telecommunications Act 1984 as amended by schedule 3 of the Communications Act 2003) may also affect the effectiveness of SuDS systems on public land and should be included in the list.” Environmental NGO

Welsh Government response

We are grateful for the information provided in these responses and will include statutory works relating to telecommunications as recommended by consultees.

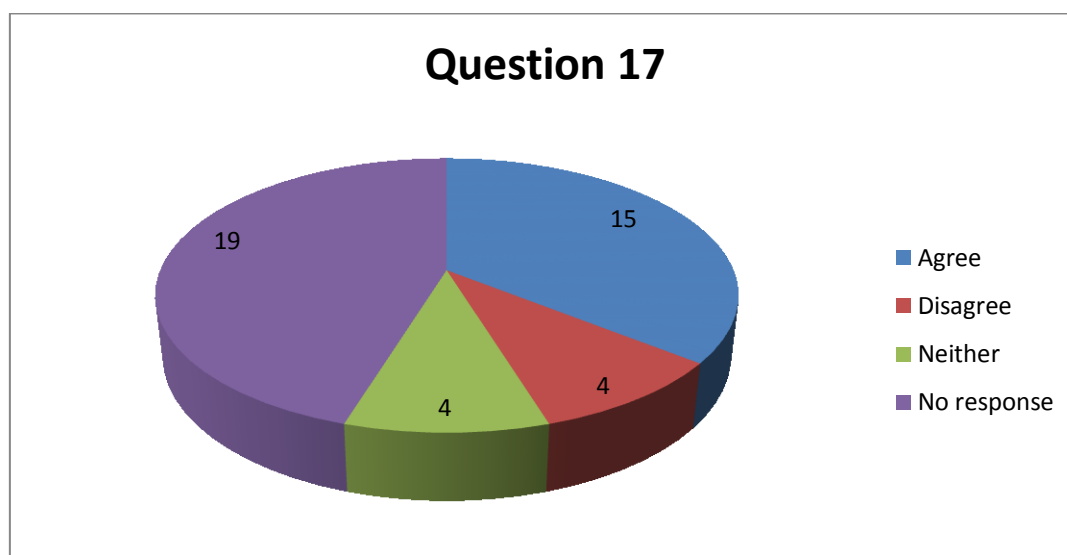
Question 17

We also propose that the SAB will be able to require a statutory undertaker Undertaking works which affect SuDS assets to remedy any damage in line with a 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.

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.

Figure 14



Summary of responses

Around half of the consultation respondents answered this question. Although nearly two thirds of those responding agreed with the proposed time frame, the common thread running through most of the comments was the suggestion that the timescales employed should as closely as possible replicate those already in place for utility companies giving notice of works to highways departments. The longest timescale most popularly suggested as an alternative was 12 weeks for major planned works with some suggestion that for very minor works somewhere between 10 and 3 days notice might be deemed sufficient. It was also suggested that a shorter period may sometimes be appropriate in circumstances in line with the New Roads and Streetworks Act (1991) provisions for emergency street works.

Further related suggestions included designing SuDS to avoid clashes with Statutory Undertakers (wherever possible) and the placing of a restriction on any non emergency Statutory Undertakers works on newly constructed SuDS

for a period of 12-18 months following completion (as is the case with newly constructed or maintained Highways).

Responses included the following comments:

“A longer notification period would be welcome due to the available resources in the Authority – CCC suggests 3 months”. Local Authority

“Disagree. Programmed works should be subject to a 6 week notification period”. Local Authority

“Requirements will vary with each LA. We would recommend a longer notification period for any pre-planned works”. Local Authority

“With statutory undertakers providing 4 weeks notification of works it will allow the SAB body to review the proposed impact of the works. We would at this point however request that Schedule 3 FWMA accounts for emergency works i.e. the statutory undertaker should notify the SAB of all emergency works to ensure the works have not modified a SuDs feature unknowingly.” Local Authority

“For Statutory Undertakers notice for works in highway the notification period is variable from 3 months for major works to 3 days for works of a minor nature”. Local Authority

“It might be more appropriate for the notice period to be consistent with the requirements of the New Roads and Streetworks Act, i.e., 10 days minimum for minor works and 12 weeks for major planned works”. Local Authority

Welsh Government response

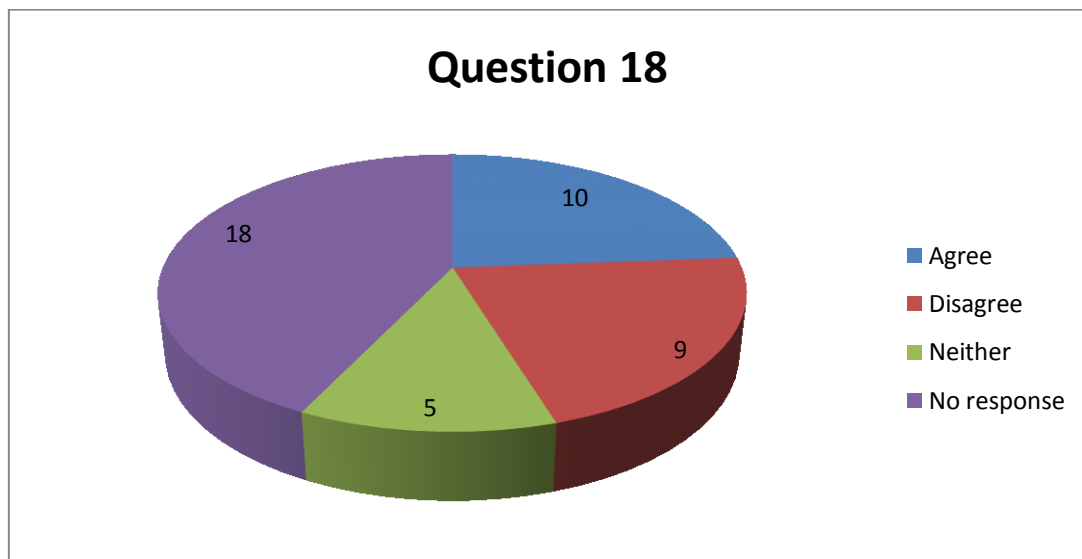
Given the comments on this proposal, we intend to initially include a 4 week period in the statutory instruments which will be reviewed in the light of experience to extend it if needed.

Question 18

This question sought further views in relation to works undertaken by statutory undertakers.

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

Figure 15



Summary of responses

Fifty per cent of consultation respondents either stated they neither agreed or disagreed with the proposed timescale or did not answer the question. Those who responded to this question were equally split between agree and disagree with the proposal that upon completion of the works, the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the SuDS Standards.

Concerns raised about the 12 month timescale included, the need for two seasonal cycles to fully assess SuDS, a typical SuDS would not experience significant maintenance issues within the first 12 months of installation and not sufficient time for green based systems to become established.

A significant number of responses highlighted the importance of ensuring that the SuDS be tested in a range of weather conditions. One response suggested that the functions should be tested over a 5 year period.

Suggested timescales provided ranged from over 12 months to 24 months. A further request was the entire timescale process should be clarified as the non-performance bonds will need to be returned within four weeks of the issue of the notice to adopt.

There was strong support in the responses for the inspection costs (bonds) to be returned/recovered once the SAB is satisfied that the SuDS functions in accordance with the SuDS Standards.

One response suggested the issue of a completion certificate after 12 months and a 12 month maintenance/test period as with Highways. One further request was for an addendum to reflect the awareness of the SAB to the completion of the works similarly to that of the Latent Damage Act 1986 to provide the SAB a full 12 month period from when the SAB becomes aware of the works/damages.

One response identified that to meet the 12 month timeframe for administrative reasons the required assessments and inspections would have to be completed in 10 months. For this reason they identified 18 months as a minimum, but acknowledged this may place undue legacy liability on developers and in turn create difficulties in resolving issues to allow eventual adoption.

Responses included the following comments:

“SuDs can only be fully tested by a range of weather conditions. If the range is not experienced within 12 months the SuDs function cannot be deemed to be fully tested. A longer period would therefore be appropriate.” Professional body

“This seems to be in contradiction with the proposal set-out in question 15 especially in relation to the return of a bond. It is our opinion that a bond should be returned once the SAB is satisfied that the SuDS functions in accordance with the SuDS Standards.” Local Authority

“The principle of 12 months to decide if a SuDS is satisfactory should apply to any SuDS not just a system that may have been adversely affected by a Utility Company. There should be provisions comparable to New Roads and Streetworks Act, NRSWA provisions for carrying out this function.” Local Authority

“12 months seems about right. However, this is a decision that would benefit from a review after, say, 3 years.” Local Authority

“The time scales associated with the entire process need to be clarified. As the non-performance bond needs to be released back to the developer within 4-weeks of the issue of the ‘notice to adopt’ (Sustainable Drainage Procedure Wales Regulations 2018 Para16(1)), it would seem logical that the notice to adopt would not be issued until the SAB is satisfied that the SUDs functions in accordance with the standards. As such the notice to adopt and the release of the bond follows this determination.” Local Authority

“I am not sure all green based systems will have settled/matured in that time. two seasons might be better, especially where tree establishment is part of the system.” Business

“There must be a mechanism to recharge costs for inspections – charges for defective works or unauthorised works to permit cost recovery.” Local Authority

Welsh Government Response

It is clear from a number of the answers to this question that the respondents were thinking of the adoption process and any “defects” period specified. This question is a narrower one relating only to SuDS reinstated following works by a statutory undertaker. However, similar provisions under highway legislation allow for a three year period to in which the utility remains responsible for a reinstatement. We therefore propose that a similar period should apply for the reinstatement of a SuDS installation.

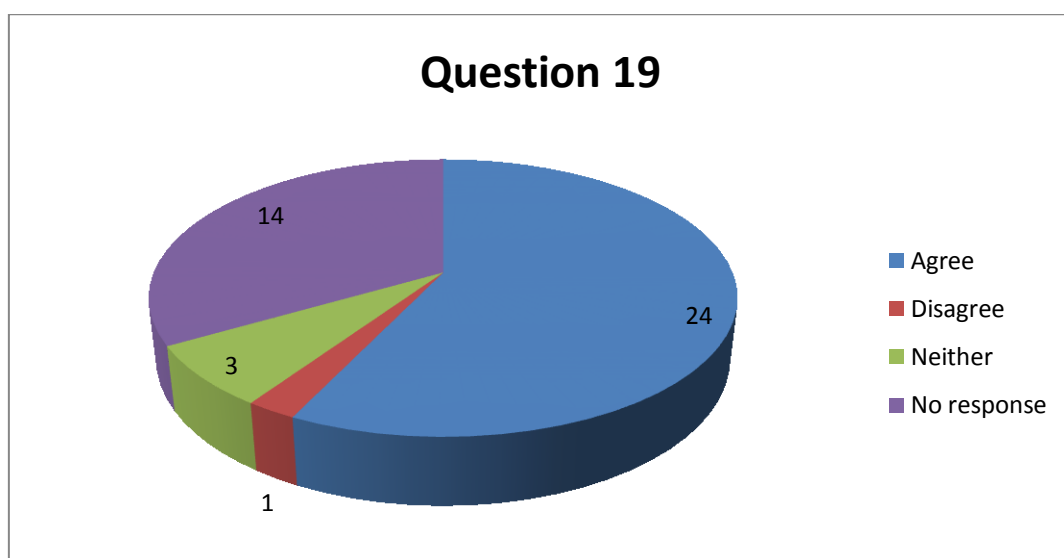
Question 19

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.

Our consultation included draft Regulations outlining an appeals mechanism based on existing planning practice. This question sought views on the proposed time limit for the making of 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?

Figure 16



Summary of responses

Nearly two thirds of the responses supported the proposed timescale. One disagreed and proposed a 12 month limit. The remainder provided no comment.

Responses included the following comments:

“This should be from the date of the decision as there could be a delay if as a SAB it is waiting for further information.” Local Authority

“For a consistent approach similar procedures and proposed measures should align with planning procedures.” Local Authority

“Replicate the existing system for an appeal in the planning process.” Local Authority

“... welcome the proposals. We ... reiterate the need for effective guidance for both; applicants and approvers. This is to ensure the approval process is clear from the point of application to mitigate the need for appeal in the first instance.” Local Authority.

Welsh Government response

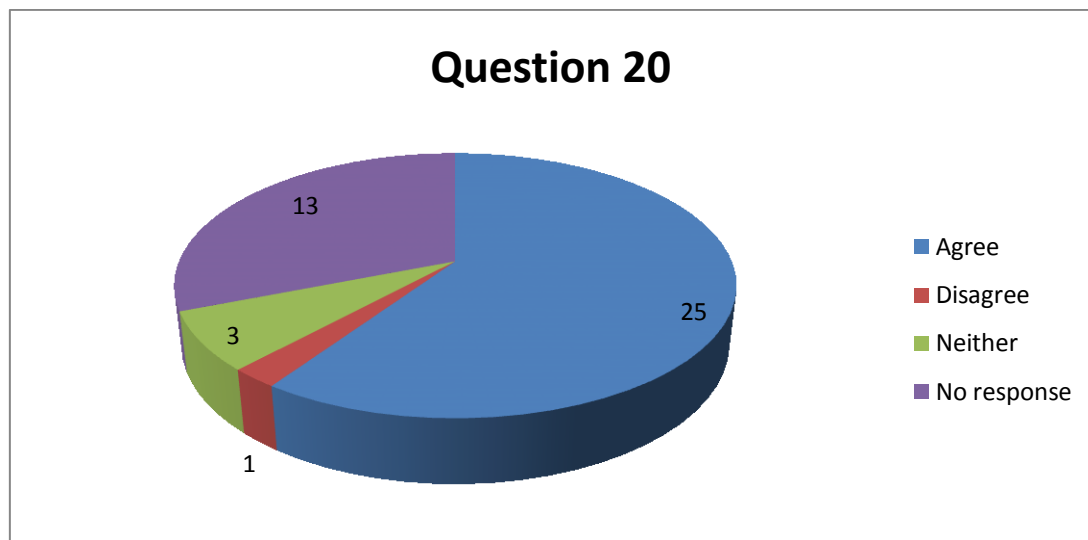
Given the support for the proposed timescale and the comments relating to planning procedures, we propose to include a 6 month appeal timescale in accordance with our original proposal. We are currently developing guidance and will engage with all stakeholders to ensure that it provides as much clarity as possible.

Question 20

We propose to provide a mechanism for appeals relating to SAB decisions . This will mirror the planning appeals process 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.

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.

Figure 17



Summary of responses

The majority of respondents to this question were supportive of this proposal, again seeing consistency with planning procedures as desirable. Those that explicitly or otherwise appeared to disagree were inclined to think the proposal would be too onerous and should either be restricted to an adjudication style solution (prior to appeal to the Welsh Ministers) or to written representation.

Responses included the following comments:

"We support the proposal for appeals to be handled consistently with planning appeals. These should be handled by the Planning Inspectorate, with appropriate additional resources available to them to do so." Professional body

"Surface water drainage is only one component of a development. The options for enforcement appeals seem excessive and should be confined to written representation only." Local Authority

"The proposals appear reasonable. Adopting a similar appeal procedure to planning would ensure a consistent approach and avoid any conflict with other similar procedures which may be familiar to developers." Local Authority

"In view of the limited grounds of appeal in comparison to planning appeals, it is considered more appropriate that procedures should be limited to written representations and Hearing." Local Authority

"This is agreed but the inspector must have a technical drainage understanding for a fair consideration." Local Authority

Welsh Government response

The proposal to replicate the planning appeals process was welcomed. This will simplify the process for SABs, applicants and those dealing with appeals. We will develop the appeals provisions in the statutory instruments to follow the appeals process in the 2017 Planning Appeals Regulations as closely as possible.

Question 21

This question aims to draw out from consultees their comments and concerns which do not necessarily fit with the formal questions 1-20.

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.

Summary of responses

The responses to this section of the consultation raised a wide range of issues. What follows is a high level summary of some of these by sector, with direct quotes used to illustrate specific points.

Academia

One specific response sought to understand the role of non-performance bonds. It highlighted the response to the consultation for the Post-Legislative Scrutiny to the Flood and Water Management Act in England which had highlighted the benefits of non-performance bonds and the pitfalls of inadequate agreements on these.

“For developers, non-performance bonds provide the needed incentive to take SuDS design and implementation seriously... non-performance bonds would... [provide] ...a financial cover for the Local Authority, ensuring that works are completed according to design and National Standards in all cases.”²¹

Rural

Those representing rural businesses recognised the importance of managing flood risk but some felt that requiring SuDS approval for agricultural developments in excess of 100 m² was disproportionate and would impose additional costs in complying with the SuDS Standards and in seeking approval from the SAB.

One additional concern related to the possible impact of the SuDS requirement on the value of land sold for development, reflecting a common view that SuDS take up more land.

“...establishing the threshold for exemption at <100m squared is too low and is insufficient for agricultural purposes. For example, a lot of slurry stores will be larger than 100m2.” Business

Builders and Developers

One response highlighted the need for clarity in the guidance over the interface between Building Control and SAB responsibility for drainage.
“The guidance in the SUDs document isn’t particularly clear, but may imply the expectation is dual control within the site curtilage under Part H via the BCB and the FWMA via the SAB. This could potentially result in the two bodies looking at the same drainage under differing rules.”

Local Authorities

This sector provided the most detail in response to this question.

The timescale for assessment of applications was a common theme. These responses also raised concerns over the time allowed for the transition to the new regime, related set-up costs, resources and the availability of the relevant expertise. Several sought financial support from the Welsh Government towards the establishment of the SABs.

Issues relating to exemptions for small developments (e.g. single dwellings) were raised, both in terms of potential cumulative impacts if exempt and of deliberate avoidance of compliance through staged development.

Further clarity over validation requirements for an application was sought by some who were concerned it could result in the need for resubmissions and delays. Some responses cited a lack of clarity around the demarcation of certain responsibilities and enforcement roles between Local Planning Authorities and SABs.

Other specific areas where clarity was sought included:

- How does the SAB approval role relate to the need for Environmental Impact Assessment or Habitat Regulations Assessment for a development?
- The role of statutory consultees and heritage consultees such as internal conservation officers and archaeological trusts
- Would the requirement for SuDS for all new developments mean they could no longer be claimed as an abnormal development cost for viability purposes
- Conflicting drainage proposals in the Welsh Government consultation 'Talking Forward Wales' Sustainable Management of Resources'

“ acting as a highway authority there is no legal right for a private developer to ... connect their surface water into the highway drainage system...the guidance documentation and direction of schedule 3 in this

matter should identify opportunities for highway networks serving 3rd party connections (operating unsustainably) are conveyed under section 104 Water industry act to the sewerage undertaker where by their ability to charge for the use of the network enables the network to be maintained in a financially sustainable manor.” Local Authority

“The resources implication of technical approval including administrative process has not been adequately reflected within the consultation. Financial resources will need to be provided by Welsh Government to ensure resource can be secured.” Local Authority

Other sectors

Civil engineers suggested amendments to regulations and the standards in relation to water harvesting, permeable paving, the meaning of sustainable drainage systems and also around where exceptions. The importance of a joined-up approach for Welsh Government policy across planning and flood risk management was emphasised. One response sought exemption for canal maintenance operations.

Some further questions and comments raised included the following:

- Will drainage remain a material planning consideration in determining planning applications
- Should there be a minimum level of competence needed to submit a SUDS application, on the basis that similar competence criteria are used across environmental surveys and inspections
- Will rainwater re-use be ‘adequately’ represented in training

“Plans and proposals to deal with the risk of surface water flooding should be progressed alongside the update of TAN 15....” Professional body

“Arguably it is smaller developers which may need more assistance regarding SuDS and have more to lose if they provide an application which does not meet SAB criteria. Therefore pre-application discussions are important...”

“The Welsh Government’s non-statutory national standards are very user-friendly and link into the CIRIA guidance where appropriate, so we would be content for them to be given statutory status.” Utility

“It is unclear how SABs will ensure maintenance in compliance with the national SuDS standards for those SuDS not adopted by SABs ...Guidance would be useful to determine how this might be effected.” Environmental NGO

“One concern... relates to drainage systems which the developers choose not to pass on to the SAB for on-going maintenance but instead decide to engage management companies. There needs to be adequate safeguards to protect residents in the event that the management company goes into liquidation, or otherwise fails to maintain the drainage system,” Utility

Welsh Government Response

The open nature of this question invited a wide range of comments. Some re-enforce the responses made to specific questions in the consultation. A number seeking clarity about particular aspects of implementing Schedule 3 will be taken into account in revising our Guidance.

Representatives from the agricultural sector suggested that their activities should be exempted from the approval requirements of the Act. However, we do not believe that a specific exemption is appropriate, as the impact of an agricultural development would then be treated differently to other similar industrial buildings. In addition, a number of consultation responses expressed the view that exemptions should be kept to a minimum.

We believe that our proposed date for the commencement of the approval duty will allow local authorities sufficient time to prepare for this new process. We are working closely with the Welsh Local Government Association to help with training and resources, but emphasise the importance of a consistent approach across Wales and the benefits of local authorities working together where possible.

Summary of consultation workshops

Facilitated consultation workshops were held in Carmarthen, Llandudno Junction and Cardiff in early February 2018. A total of around 120 people attended. They were from local government (60%), civil engineering and consultants, water industry, the construction sector, design/planning consultancies, environmental NGOs and regulators. Although invited, no one from the agriculture industry attended.

Whilst it was evident that many had misconceptions over Schedule 3, there was a clear understanding that the new approvals and adoption process for SuDS would change the way development is delivered.

We asked specific questions about how participants were preparing for the new process, the need for guidance, technical support, information and training. We also explored the role of statutory consultees, how departmental silos could be broken down and the benefits of collaborative working across local authority areas.

We received a wide range of feedback from participants and extensive notes were taken, which are published in full as part of the consultation response. Common themes included:

- Cost impacts for local authorities and developers
- The importance of communicating the new process
- Training and the need for skilled staff
- The need for consistency across SABs
- Clarification of technical and legal terms and definitions
- Dealing with single properties for approvals and adoption
- Links with the planning process and the need to emphasise that SAB approval is a technical process independent of planning.
- The information requirements of SABs for applications and the importance of early engagement between developers, planners, SAB and statutory consultees.

The workshops provided an opportunity for the Welsh Government to gain an in depth understanding of implementation challenges which all parties face. The comments received have been valuable, especially when taken alongside the formal consultation responses and have helped to shape our approach to implementing Schedule 3. A full report of the workshops is available on request.

We sought feedback from those attending the workshops through a questionnaire at each event. The responses were positive and those attending found them useful.

Conclusions and next steps

The consultation received forty two 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. In addition, more than 120 individuals were directly engaged through a series of facilitated workshops.

Most responses provided detailed replies to the questions, which have been helpful in refining the final statutory instruments, guidance and the SuDS Standards.

We now aim to lay the statutory instruments and a revised Regulatory Impact Assessment in the Welsh Assembly at the end of May 2018, which, subject to the approval of the Assembly, will mean they come in to force at the end of June. At the same time we will introduce a Commencement Order which will implement the SuDS approval process from Monday 7 January 2019.

Subject to the Minister's approval, the SuDS Standards will be published as Statutory Standards under Schedule 3 of the Act at the end of June 2018. The Welsh Government guidance on Schedule 3, "Sustainable drainage (SuDS) in Wales" will be published at the same time. This will be a "living" document which will be updated in the light of experience as needed.

It will be important to review progress with the implementation of this new drainage approval system to ensure that it is operating as effectively as possible. We propose to work with local authorities, statutory consultees and developers to ensure evidence is collected over the two years following implementation to enable the Welsh Government to consider any changes needed to the statutory instruments, including in particular the fees structure and timescales for approvals and consultation. To help with this, we propose to seek the ongoing support of the SuDS Advisory Group we established to implement Schedule 3.