

# **Sustainable Drainage (SuDS) Statutory Guidance**

## **(DRAFT)**

**For local authorities on the implementation of Schedule 3 to the Flood and Water Management Act 2010, the mandatory use of SuDS on new developments and approval and adoption by the SuDS approving body (the SAB)**



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## Summary

Sustainable development in Wales is established in our legislation. The Well-being of Future Generations (Wales) Act 2015 requires all public bodies in Wales “to work towards the goal of *“A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change”*”.

We need to give more thought to the long-term, working better with people communities, and each other, to prevent problems before they arise. Under section 6 of the Environment (Wales) Act 2016 public bodies in Wales have a duty to maintain and enhance biodiversity and promote the resilience of eco-systems – meeting this duty is vital to ensure long-term viability and climate change adaption.

**From 7<sup>th</sup> January 2019, all new developments of more than 1 dwelling house or where the construction area is 100 square meters or more, will require sustainable drainage systems (SuDS) for surface water. The SuDS must be designed and built in accordance with Statutory SuDS Standards<sup>1</sup> published by the Welsh Ministers and SuDS Schemes must be approved by the local authority acting in its SuDS Approving Body (SAB) role, before construction work begins.**

Implementing SuDS compliant with the [Statutory SuDS Standards](#) for all new developments, will directly contribute to delivering:

- Well-being Goals for cohesive, resilient and healthier communities, consistent with duties on public bodies under the [Well-being of Future Generations \(Wales\) Act 2015](#) (external link)<sup>2</sup>;
- Sustainable development, consistent with duties on planning authorities under the [Planning \(Wales\) Act 2015](#) (external link); and
- Biodiversity enhancement, consistent with duties on public bodies under the [Environment \(Wales\) Act 2016](#) (external link).

### What is a SAB?

Schedule 3 to the Flood and Water Management Act 2010 (the 2010 Act) establishes SABs in local authorities. The legislation gives those bodies statutory responsibility for approving and in specified circumstances, adopting the approved drainage systems.

The SAB is established to:

- Evaluate and approve drainage applications for new developments where construction work has drainage implications, and

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<sup>1</sup> Statutory SuDS Standards for designing, constructing, operating and maintaining surface water drainage systems, available at;

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

<sup>2</sup> Guide to the Well-being of Future Generations (Wale) Act 2015, available at;

<https://gov.wales/docs/dsjlg/publications/150623-guide-to-the-fg-act-en.pdf>

- Adopt and maintain SuDS schemes, subject to the conditions and exemptions specified in the 2010 Act<sup>3</sup>.

### **What is a SuDS application?**

An application demonstrating compliance with the Statutory SuDS Standards for the design, construction, operation and maintenance and operation of surface water systems serving new developments, must be submitted to the SAB<sup>4</sup>.

Applications may be submitted to the SAB for determination either directly as a free standing application or alongside the planning application via the Local Planning Authority (LPA) (a combined application)<sup>5</sup>.

It is important to note that construction work which has drainage implications must not be commenced unless the drainage system for the work has been approved by the SAB<sup>6</sup>.

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<sup>3</sup> See paragraphs 17, 18 and 19 of Schedule 3 to the 2010 Act.

<sup>4</sup> See paragraph 5(2) of Schedule 3 to the 2010 Act.

<sup>5</sup> See paragraphs 8, 9 and 10 to the 2010 Act.

<sup>6</sup> See paragraph 7(1) to the 2010 Act.

# Section 1 : Introduction

## Legal context

- 1.1 [Schedule 3 to the Flood and Water Management Act 2010](#) (external link) (**the 2010 Act**) provides a framework for the approval and adoption of surface water systems serving new developments. It does not apply to retrofit and existing drainage systems. The Welsh Government consulted on its implementation from May to August 2017<sup>7</sup>. A further consultation<sup>8</sup> on the Statutory Instruments required to deliver this followed the announcement in November 2017<sup>9</sup> by the Cabinet Secretary of our intention to introduce the Schedule 3 requirements for new developments.
- 1.2 The issues raised during consultation have been considered in finalising the five statutory instruments, which deal with:
- Approval and Adoption ([The Sustainable Drainage \(Approval and Adoption\) \(Wales\) Order 2018](#)) (external link);
  - Procedural matters relating to approval and adoption ([The Sustainable Drainage \(Approval and Adoption Procedure\) \(Wales\) Regulations 2018](#)) (external link);
  - Fees ([The Sustainable Drainage \(Application for Approval Fees\) Wales Regulations 2018](#)) (external link);
  - Enforcement of the requirement for approval by the SuDS Approving Body ([The Sustainable Drainage \(Enforcement\) \(Wales\) Order 2018](#)) (external link); and
  - Appeals against decisions of the SuDS approving body ([The Sustainable Drainage \(Appeals\) \(Wales\) Regulations 2018](#)) (external link).

## Status of this guidance

- 1.3 **This document is statutory guidance to which local authorities must have regard in relation to their SuDS approving body function which is required under paragraph 6 of Schedule 3 to the 2010 Act. It should be read in conjunction with Schedule 3 to the 2010 Act and the statutory instruments listed above.**
- 1.4 The guidance is issued by virtue of the Welsh Ministers powers under;
- Paragraph 15 of Schedule 3 to the 2010 Act, which provides for guidance to be issued about the process of seeking and obtaining approval, and

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<sup>7</sup> May 2017 consultation on the implementation of sustainable drainage systems on new developments, available at; <https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments>

<sup>8</sup> November 2017 consultation on the implementation of sustainable drainage systems on new developments, available at; <https://consultations.gov.wales/consultations/implementation-sustainable-drainage-systems-new-developments-draft-regulations-and>

<sup>9</sup> November 2017 Written Statement by the Welsh Government, available at; <http://gov.wales/about/cabinet/cabinetstatements/2017/sustainabledrainage/?lang=en>

for all other aspects contained in this guidance which do not come under this provision;

- Section 58A of the Government of Wales Act 2006, which transfers executive functions to the Welsh Ministers to do things which are conducive or incidental to their other functions.

- 1.5 Under Schedule 3 to the 2010 Act, local authorities as the SuDS Approving Body (**the SAB**) have a duty to approve SuDS which follow the national statutory Standards for SuDS (**SuDS Standards**). With the exception of single curtilage sites, the SAB also has a duty to adopt the system.
- 1.6 The legislation and this guidance establish an approvals and adoption mechanism. The guidance provided in this document has been developed with the support of and in close consultation with the Welsh Local Government Association (WLGA) and the SuDS Advisory Group (an external stakeholder forum composed of key stakeholders including developers, local authorities, the WLGA and water utilities). It is expected that SABs will provide further supplementary guidance to build on the guidance provided in this document and support the delivery of the approval and adoption role.
- 1.7 Where this guidance refers to “the Government” or “ministers” it means the Welsh Government and the Welsh Ministers.

## Post implementation review

- 1.8 It is the Welsh Government’s intention to undertake a post implementation review of the statutory instruments and this guidance, to be started within at least two years following implementation on 7<sup>th</sup> January 2019. This will involve inviting stakeholders, including SABs, to submit evidence to the Welsh Government on key aspects of the regulations to inform the review.

## Why we need mandatory SuDS on new developments

- 1.9 Surface water flooding is a serious problem, identified in our National Strategy for Flood and Coastal Erosion Risk Management<sup>10</sup> as a major cause of flooding of homes. The impact on citizens, communities and cost to the Welsh economy is significant. The risk of flooding is on the rise owing to climate change and urbanisation. In particular, local flooding, due to the overloading of volume constrained drainage systems and sewers, is of increasing concern. Under the terms of the Flood and Water Management Act 2010, the Lead Local Flood Authorities (LLFAs) are responsible for managing local flood risk which includes that from surface water.
- 1.10 Surface water runoff can be an important source of diffuse pollution. The potential damage to our groundwater and rivers from polluted surface water runoff increases with each new development.

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<sup>10</sup> National Strategy for Flood and Coastal Erosion Risk Management, available at; <http://gov.wales/docs/desh/publications/120412nssummaryen.pdf>

- 1.11 In addition, uncertainty over the design and adoption of surface water drainage for new developments can hamper development. There are also lost opportunity costs where the drainage design fails to deliver multiple benefits (for example recreation and amenity) beyond simple surface water management.
- 1.12 Schedule 3 to the 2010 Act requires Ministers to publish national standards for sustainable drainage on new developments. It also requires surface water drainage systems to be approved by the SAB before construction work with drainage implications may begin for most developments. When considering an application, the SAB needs to satisfy itself that the drainage system meets the SuDS Standards. If the conditions specified in paragraph 17 of Schedule 3 are met, the SAB is required to adopt and maintain approved SuDS that service more than one property, either at the request of the developer or on the SAB's own initiative<sup>11</sup>.
- 1.13 SABs should actively encourage developers to request adoption once eligible schemes have been completed. Proliferation of unadopted surface water drainage systems and poor management options will only increase the risk of flooding in the long-term impacting on residents.
- 1.14 The responsibility for delivery of the SAB functions rests with the Local Authorities in Wales alongside their duties as LLFA. In delivering this duty, the Welsh Government anticipates a high level of co-operation within councils, encompassing highways and planning functions. In order to promote consistency across Wales and to ensure that an effective and efficient service is delivered, co-operation between councils to make best use of resources will also be key.
- 1.15 Our policy objective is to deliver effective, multi-purpose SuDS in new developments that will be maintained and remain effective for the life-time of the developments they serve. To deliver this, it is vital that we enable partnership working between those involved in the design, construction and maintenance of the SuDS.**
- 1.16 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 as part of the aim of 'Ensuring the stability and durability of drainage systems'<sup>12</sup> in a sustainable way.**

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<sup>11</sup> See paragraph 23(2) of Schedule 3 to the 2010 Act.

<sup>12</sup> See paragraph 2(e) of Schedule 3 to the 2010 Act.



## **Section 2 : Implementation**

### **The main provisions of Schedule 3 to the Flood and Water Management Act 2010**

- 2.1 The key provisions relating to sustainable drainage in Schedule 3 to the 2010 Act make the use of sustainable drainage in all new developments (including re-developments) with drainage implications mandatory and provide a mechanism for their adoption and maintenance.
- 2.2 The 2010 Act requires Ministers to publish Standards for sustainable drainage.
- 2.3 In order to deliver the aims of the 2010 Act, it:
- makes unitary authorities in Wales the responsible SuDS approving body to approve new drainage systems before construction can commence.
  - requires the SAB, to adopt drainage systems serving multiple properties, making it responsible for ensuring a surface water drainage system adopted by the SAB is maintained in accordance with the mandatory National Standards.
  - amends the Water Industry Act 1991 to make the right to connect surface water to public sewers conditional on the drainage system being approved by the SAB as meeting the mandatory National Standards.
  - requires Ministers to make secondary legislation providing for a right of appeal against approval and adoption decisions by the SAB; enforcement of the requirement for approval; and for approval fees
  - enables secondary legislation to be made relating to various matters concerning approval and adoption.
  - establishes the role of statutory consultees in the approval process.
- 2.4 A flow chart of the SuDS application process with SAB input is attached at **Annex 1**.

#### **Sustainable Drainage**

- 2.5 Paragraph 2 of Schedule 3 to the 2010 Act defines sustainable drainage as managing rainwater with the aim of:
- Reducing damage from flooding,
  - Improving water quality,
  - Protecting and improving the environment,
  - Protecting health and safety, and
  - Ensuring the stability and durability of drainage systems.

## Statutory Standards for SuDS - principles, standards and guidance

- 2.6 The aim of the Statutory SuDS Standards is to provide a framework in the form of principles and standards, together with guidance for ensuring good quality SuDS on new developments which will stand the test of time. On considering an application for approval the SAB must<sup>13</sup>:
- grant it, if satisfied that the drainage system if constructed as proposed will comply with the Statutory SuDS Standards; or
  - refuse it if not satisfied.
- 2.7 In preparation for meeting the requirement on the Ministers to publish statutory SuDS Standards for sustainable drainage, we consulted on a set of voluntary standards in 2015, along with related guidance. These voluntary standards were published in January 2016.
- 2.8 Further consultation on the Statutory SuDS Standards has been undertaken in developing our SuDS policy and some minor amendments have been made to the original voluntary standards.
- 2.9 The approved statutory SuDS Standards are published on the Welsh Government's web site as the Welsh Ministers' [Statutory Standards for Sustainable Drainage Systems](#) (external link)<sup>14</sup>. Unless a development is exempt from the SAB approval requirement (see section 2 of this guidance), the applicant must demonstrate compliance with the statutory SuDS Standards.
- 2.10 The statutory SuDS Standards contain:
- A set of Principles, which in order to obtain SAB approval must be applied in the design of any surface water drainage scheme, and
  - Six standards, numbered S1 to S6 which deal in turn with:
    - S1 - Runoff destination
    - S2 - Hydraulic control
    - S3 - Water quality
    - S4 - Amenity
    - S5 - Biodiversity
    - S6 - Construction, operation and maintenance
- 2.11 Each of the Statutory SuDS Standards is numbered and presented in the document in a grey box. For example:

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<sup>13</sup> See paragraph 11(1) of Schedule 3 to the 2010 Act.

<sup>14</sup> The Statutory SuDS Standards for designing, constructing, operating and maintaining surface water drainage systems, are available at:  
<https://gov.wales/topics/environmentcountryside/epq/flooding/drainage/?lang=en>

## S3 Surface water quality management

Surface water runoff should be treated to prevent negative impacts on the receiving water quality and/or protect downstream drainage systems, including sewers.

- 2.12 The Statutory SuDS Standards are followed by Welsh Ministers' Guidance in paragraphs prefixed with a G. For example:

### Guidance on Standard S3 - Water Quality

G3.1 Runoff from roads, commercial and other urban environments can, in particular, contain grits, sediments, oils and PAHs, metals, and dissolved salts – each of which has the potential to cause pollution of receiving surface water or groundwater. SuDS can be effective at reducing a wide range of these pollutants through enabling sedimentation, filtration and a range of photolytic, chemical and biological processes.

- 2.13 The Guidance in the Statutory SuDS Standards is to provide clarification on the intentions of the Standards. There are a wide range of techniques which can be used in designing a sustainable drainage scheme for a development, and applicants should be prepared to demonstrate how they have balanced both the Principles and the Standards with site specific constraints.
- 2.14 For details of the range of available solutions, designers should consider the comprehensive SuDS Manual published by CIRIA<sup>15</sup>.
- 2.15 It is important to note that no specific drainage technique is ruled out by the statutory SuDS Standards. They do, though emphasise the preference for solutions close to source and on the surface which deliver multiple benefits through both the principles and the hierarchy within S1. This aligns with the duties<sup>16</sup> on public bodies in Wales for enhancing biodiversity and for improving the environmental, social, economic and cultural well-being of Wales.
- 2.16 The statutory SuDS Standards encourage SuDS techniques such as wetlands, swales, ponds and vegetated systems which can help increase access to green spaces and provide community facilities to bring people together. This is highlighted as a “best buy” to prevent mental ill health and improve mental well-being by Public Health Wales. Studies also suggest that people living closer to good quality green space are more likely to have higher levels of physical activity, are more likely to use the space and to do so more frequently.

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<sup>15</sup> The CIRIA SuDS Manual, is available at;  
[https://www.ciria.org/Resources/Free\\_publications/SuDS\\_manual\\_C753.aspx](https://www.ciria.org/Resources/Free_publications/SuDS_manual_C753.aspx)

<sup>16</sup> See the Summary section of this guidance.

## The design and delivery of multiple benefits SuDS

2.17 The definition of sustainable drainage laid out in legislation and the statutory standards for sustainable drainage both highlight that SuDS need to deliver more than just management of surface water volume. This section aims to facilitate and guide the SAB and others in identifying how and if a SuDS proposal will deliver multiple benefits<sup>17</sup>.

### At the strategic planning level

2.18 It is important that strategic planning provides for SuDS, ensuring space within development so that surface features which are more likely to provide multiple benefits can be accommodated and SuDS do not have to be “squeezed in” and compromises made.

2.19 Where very large sites are identified for development within Local Development Plans which are likely to involve different companies developing different parcels of land within the same site, the best interests of the future residents (as well as the SAB) will be served if SuDS are designed with the whole site in mind, rather than discrete parcels of land.

2.20 Understanding where SuDS can deliver multiple benefits at the strategic level is important for understanding the impact of development and SuDS at a landscape and catchment scale and mitigating any cumulative impacts of development.

2.21 An opportunity mapping exercise by SABs could help identify the best location and opportunities for SuDS. For example, mapping development, infrastructure, topography, green space, flood risk, water quality, protected habitats and using the information to identify where there are greatest opportunities for delivering multiple benefits. If there are specific problems in an area, then these can be identified and SuDS can be designed to mitigate these. Early evaluation of the “right” location may save money and could be seen as enabling resilient development to proceed, preventing SuDS from being cited as an obstacle to development.

### Identifying multi-beneficial SuDS in applications

2.22 There are a number of tools available to developers to better understand how to design and deliver multi beneficial SuDS. These include the [CIRIA Benefits for SuDS tool](#)<sup>18</sup> and the [RSPB/WWT guidance](#)<sup>19</sup> on designing SuDS for people and wildlife

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<sup>17</sup> See paragraph 2 of Schedule 3 to the 2010 Act.

<sup>18</sup> The CIRIA Benefits for SuDS tool, is available at;  
[https://www.ciria.org/Resources/Free\\_publications/New-tool-assesses-the-benefits-of-SuDS.aspx](https://www.ciria.org/Resources/Free_publications/New-tool-assesses-the-benefits-of-SuDS.aspx)

<sup>19</sup> The RSPB/WWT Guidance on designing SuDS for people and wildlife, is available at;  
[http://www.wwt.org.uk/uploads/documents/1400927422\\_SustainableDrainageSystemsGuide.p](http://www.wwt.org.uk/uploads/documents/1400927422_SustainableDrainageSystemsGuide.pdf)  
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- 2.23 In identifying the multi benefit options available in a development it is important to include designing for multiple benefits from the outset. This includes consulting with relevant local expertise, such as catchment and coastal partnerships, local wildlife trusts and ecologists. The latter is extremely important, as many local authorities do not have in-house expertise. The best results will be obtained if this is initially undertaken at the master planning stage, if there is one, or otherwise at the pre-application stage.
- 2.24 Multi-benefit SuDS can be cost-beneficial in even the most constrained sites if considered from the outset with the right experts at the table.
- 2.25 In assessing whether multiple benefits have been effectively integrated into a development, the SAB should consider whether the following have been assessed and included appropriately in the design of the SuDS:
- ecological and hydrological needs within the site and surrounding area
  - practical opportunities offered by existing water features and land forms
  - water quality issues
  - the needs of the site users and surrounding community
  - strategic green infrastructure needs
  - opportunities to create or restore habitat
  - opportunities to combine SuDS with landscaping, recreation, active travel, and play provision.
- 2.26 If opportunities for multiple benefits have not been taken, a robust argument for the decision must be made. Criteria for this could be developed by the SAB to ensure a fair and standard approach and ensure decision making is transparent. These criteria should be developed using in-house expertise such as biodiversity officers and in consultation with relevant stakeholders such as Natural Resources Wales. Importantly, even with infiltration constraints, a wide range of SuDS such as green roofs and rain garden boxes can still be used which can deliver for multiple benefits. Infiltration constraints are not a valid reason alone for a development not to incorporate multi-beneficial SuDS.
- 2.27 Cost benefit analysis should include full assessment of social and environmental costs and benefits. It should be considered alongside the need for SuDS to deliver other standards recommended in legislation, such as the accessible green space standards in Planning Policy Wales Technical Advice Note 16 on Sport, Recreation and Open Space<sup>20</sup>. This is especially important for understanding viability. We advise that a standard approach to cost benefit analysis is promoted by SABs to place all developers on a level playing field and to make it easier to understand where shortcuts may be being taken. All cost benefit analysis will have gaps and it is important to understand the specific weaknesses in valuing certain costs or benefits in any standard approach adopted. This is acceptable as long as those weaknesses are factored into decision making. The Organisation for Economic Development

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<sup>20</sup> Planning Policy Wales Technical Advice Note 16 on Sport, Recreation and Open Space, available at; <https://gov.wales/topics/planning/policy/tans/tan16e/?lang=en>

and Co-operation (OECD) has developed significant literature on cost benefit analysis<sup>21</sup>.

### **Ensuring longevity of multiple benefits**

- 2.28 Proposals for a maintenance plan should be submitted by the developer with the application to the SAB for approval<sup>22</sup>. It is often the case that surface features and those providing multiple benefits are simpler to manage than traditional drainage options and below surface features. However, they do need to be managed to ensure that they continue to function properly; the delivery of multiple benefits continues; and that compliance with national standards is maintained. As such we recommend that the maintenance plan includes proposals to manage the SuDS in a way which supports the practical ongoing delivery of multiple benefits.
- 2.29 For example maintaining various levels of sward height for biodiversity or using vegetation rather than fencing to avoid accidents. The maintenance plan must make clear the multiple benefits provided by the SuDS and how to best manage them in order to facilitate maintenance.
- 2.30 Adoption and funding – Any maintenance plan should include objectives around maintaining the multiple benefits provided by the SuDS (as detailed in the maintenance plan). Maintenance plans should also include an agreement for adequate biosecurity measures to avoid spread of invasive non-native species. Funding needs to account for maintaining multiple benefits.
- 2.31 Monitoring and reporting – any monitoring and reporting of the maintenance plan overseen by the SAB should show that the multiple benefits laid out in the maintenance plan are being delivered. The SAB may wish to agree with the developer an appropriate monitoring and reporting process.
- 2.32 Community engagement – it is important that the community understands the multiple benefits that the SuDS provide in order to gain community buy in to the schemes. If a community feels proud of its green spaces they are more likely to succeed in delivering multiple benefits for the long term. Possible approaches include using signs to explain how the system works and involving the local school/community group in designing, planting or even maintaining the scheme.

### **Engaging communities and householders**

- 2.33 The move to a requirement for the SuDS approach to be used for new developments will change the appearance of these developments and bring people into closer contact with their local environment. This “reconnection” of people with water is an important outcome of implementing SuDS, but will require the development of a common approach for communicating about SuDS and their benefits.

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<sup>21</sup> The OECD report on Cost-Benefit Analysis and the Environment, is available at; <http://www.oecd.org/env/tools-evaluation/cost-benefitanalysisandtheenvironmentrecentdevelopments.htm>

<sup>22</sup> See the Principles at Section 2 to the Statutory SuDS Standards.

- 2.34 The Welsh Government will work with SABs and other interested groups to develop suitable resources for communities and householders in particular.
- 2.35 It will also be important for those with single premises sites, where the system is not adopted, to understand their responsibilities for upkeep and the consequences of failing to undertake appropriate maintenance. We propose to work with stakeholder groups to develop suitable resources which can be shared across Wales.

## **Transitional arrangements for developments in progress**

- 2.36 We recognise that at the time of commencing Schedule 3 to the 2010 Act some developments will be at an advanced stage of planning. The aim of the transitional arrangements<sup>23</sup> is to avoid incurring additional work for developments which are already in progress.
- 2.37 The requirement for SAB approval and adoption agreements for surface water drainage applies only to new developments and is not retrospective. Existing sites and developments with planning permission granted or deemed to be granted (unless subject to reserved matters – see below), or for which a valid application had been received but not determined by 7 January 2019 will not be required to apply for SAB approval.
- 2.38 Permitted developments of more than 100 square meters which are notified after 7 January 2019 will require SAB approval.
- 2.39 SAB approval will be required if the planning permission was granted subject to a condition as to a reserved matter and an application for approval of the reserved matter is not made before 7 January 2020.
- 2.40 Whilst these developments with planning approval may not require SAB approval and adoption, we believe the benefits of the new process mean that it would be advantageous for both developers and the SAB to consider voluntary agreements for these sites.

## **Exemptions from the need for SAB approval**

2.41 SAB approval is not required for:

- Permitted development covering an area of land under 100 square metres<sup>24</sup>.
- Developments with drainage implications of a single dwelling and the area of land covered by the construction work is less than 100 square metres, or
- In the case of any other type of construction work, the area of land

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<sup>23</sup> See Article 5 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

<sup>24</sup> See Article 4 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

covered is less than 100 square metres.  
<sup>25</sup> ..

2.42 Schedule 3 to the 2010 Act exempts from the need for SAB approval work requiring development consent as a nationally significant infrastructure project<sup>26</sup>.

2.43 The 2010 Act allows Welsh Ministers to make orders about further exemptions<sup>27</sup>. The following construction works are exempt from the need for SAB Approval<sup>28</sup>:

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

### **SuDS subject to SAB approval but not adoption**

2.44 Subject to the exemptions from the need for SAB approval, the SAB approves but does not adopt SuDS if the scheme:

- Serves a single property<sup>29</sup>.
- Is a publically maintained road to which section 41 of the Highways Act 1980 applies<sup>30</sup>.

### **Linking with existing processes - Planning, Highways and Parks departments**

2.45 It is important that however the SAB duty is delivered, those responsible for its delivery work closely with planning, highways, parks and other relevant colleagues within each Local Authority. SAB approval and adoption duties are technical approval processes akin to Building Regulations technical approval rather than planning decision making.

2.46 Whilst Schedule 3 to the 2010 Act allows for combined planning and SUDS applications to be made, it is important that the separation between the SAB approval and planning processes is clearly understood. Neither process is

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<sup>25</sup> See Article 6 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

<sup>26</sup> See paragraph 7(3) of Schedule 3 to the 2010 Act, this exempts developments requiring development consent under Section 31 of the Planning Act 2008.

<sup>27</sup> See paragraph 7 (4)(b) of Schedule 3 to the 2010 Act.

<sup>28</sup> See Article 3 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

<sup>29</sup> See paragraph 18 of Schedule 3 to the 2010 Act and for the definition of single property exemption Regulation 9 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>30</sup> See paragraph 19 of Schedule 3 to the 2010 Act.



dependent on the outcome of the other. For example, a development proposal may receive planning approval but not meet the requirements of the SAB process and vice versa.

- 2.47 Drainage should be considered at the earliest stages of site design to influence the layout of roads, building and open spaces.
- 2.48 Potential purchasers of new properties, including those buying 'off plan', will need to know whether the sewers, highway, roads and SuDS will be adopted. Local authorities will need to be able to respond to such routine inquiries.

### **Planning**

- 2.49 Opportunities for SuDS will be maximised through cooperative working between the SAB and Local Planning Authorities. Developers should demonstrate compliance with the statutory SuDS Standards and local policy when submitting planning applications.
- 2.50 There is likely to be a continuing role for planning permission to be granted subject to section 106 conditions under the Town and Country Planning Act 1990 designed to ensure adequate drainage arrangements for surface and foul water are in place.

### **Highway Development**

- 2.51 Opportunities for SuDS will be maximised through cooperative working between the SAB and Highway Authorities. Highways planned by new developments are required to comply with the statutory SuDS Standards (unless exempt). The legislation requires Highway Authorities to consider for adoption of SuDS approved by the SAB. Where a Highway Authority adopts a road maintainable at public expense they must act in accordance with the approved drainage design, including the maintenance regime, in compliance with the statutory SuDS Standards. Highway adoption policies should be reviewed to reflect this.
- 2.52 The SAB is exempt from adopting any part of a sustainable drainage system for which the highway authority is already responsible or for which it could be responsible for maintenance.

### **Public open space**

- 2.53 Opportunities for SuDS will be maximised through cooperative working between the SAB and Local Authority departments with responsibility for parks, recreation, green space, biodiversity, and countryside. The statutory SuDS Standards encourage good quality SuDS (such as wetlands, swales, ponds and vegetated SuDS) which can help enhance access to green spaces.

## **Setting SAB fees and service standards**

### **Ensuring SAB fees are fair and represent good value for money**

- 2.54 Setting fees for SABs has been considered as part of Welsh Government consultations and workshops held over the course of 2017 and 2018 and in discussion with the SuDS Advisory Group (an external stakeholder group representative of developers, the WLGA, local authorities and other key stakeholders).

### **Service Standards**

- 2.55 Taking into consideration issues raised during consultation, our objective is to ensure that charges are fair to both developers and local authorities. Local authorities must ensure overall charges for their services represent good value for money. In order for this to be achieved we expect SABs to develop service standards and to implement a mechanism for recording and reporting about actual costs for services delivered.
- 2.56 Local authorities will be asked to undertake annual reporting on the delivery of their SAB function to the Welsh Government. This will provide the basis for monitoring overall service standards and setting future fees.

## Section 3 : SuDS Approval

A summary of the SuDS application process is attached at **Annex 1**.

### Before an application for SAB approval is made

#### Shaping new development

- 3.1 Implementing SuDS on new developments requires a fundamental change in how drainage is considered.
- 3.2 SuDS are intended to maximise the opportunities and benefits that can be provided by the effective management of surface water. This can only be achieved when the principles of SuDS are considered fundamental to the design practice **right from the start of the development process, at the conceptual stage.**
- 3.3 The SuDS approach to surface water management will direct the development process and shape the layout of new developments around site drainage. Implementing effective SuDS on a development site will require a joined-up approach by the local authority across multiple disciplines, and early involvement of drainage/flood risk engineers, landscape architects, highways engineers, biodiversity and amenity staff, building control and planners is considered key to secure quality effective SuDS.
- 3.4 Those planning any surface water drainage system, including SuDS schemes need to take account of a range of legislation. Further guidance on the links between SuDS and other relevant legislation is provided in the Statutory SuDS Standards under the section on Sustainable Drainage - the Regulatory Framework.

#### Early engagement

- 3.5 The SAB should work with planners, highways departments and others, such as sewerage undertakers, to encourage pre-application discussion in advance of formal applications being made. There should be an emphasis on partnership working to bring together all those involved in the process at an early stage of site development. This will be critical to achieving the necessary planning, SAB and other approvals and to successful implementation of effective and compliant SuDS.
- 3.6 Pre-application discussions involving all interested parties provide an opportunity to resolve potential conflicting priorities, to consider downstream issues and the potential for mitigation of problems elsewhere. They may influence proposals to comply with national standards and local policy. Pre-application discussion can help ensure the applicant is fully aware of requirements at the outset, thereby limiting delays to approval and reducing cost in the long term. It may also enable the SAB to use its opportunity maps to help developers identify potential options.

- 3.7 The SAB should encourage developers to engage stakeholders at the earliest opportunity in the pre-application stages; advice should be sought from the Local Authority as SAB, Local Planning Authority (**LPA**), Lead Local Flood Authority (**LLFA**) and from relevant parties such as statutory consultees. Although some bodies may charge for pre-application advice, we consider it is worth investing at this stage in order to prevent later delays.
- 3.8 Early engagement with sewerage undertakers will enable developers to take a holistic view of the design of foul and surface water drainage systems. Such discussions are particularly important if the surface water will enter its network at any stage. If the developer wants to connect a surface water system to the public sewer, it must make that explicit in its proposals for SAB approval<sup>31</sup>.
- 3.9 The extent of advice and support that developers will need may vary. In particular, smaller developers may be less familiar with SuDS concepts and are likely to have less access to expert advice. They may be reluctant to seek early engagement. It may be appropriate for SABs to produce simple guidance suitable for such infrequent, small scale developers.
- 3.10 The local authority (which is also the SAB) may choose to use powers available to them under other legislation<sup>32</sup> to seek to recover costs which they incur for undertaking SAB functions but which are not covered by the application fee, such as pre-application advice.

## **Consulting with statutory and non-statutory consultees**

- 3.11 The SAB is required to consult with specified bodies where a SuDS application may impact upon that consultee<sup>33</sup>.
- 3.12 The consultees are:
- Natural Resources Wales<sup>34</sup>,
  - any Sewerage Undertaker whose public sewer may be impacted,
  - Canal and River Trust/Glandŵr Cymru, and
  - the relevant Highway Authority.
- 3.13 These bodies were given a statutory role in recognition of the potential impact of surface water drainage discharges on either their assets or their regulatory interests. To avoid undue delay in the approvals process and for the purposes of the consultation the SAB will want to consider the information needs of statutory consultees and how to best to share the information.
- 3.14 The comments of statutory consultees should be regarded as a material consideration by the SAB. For example, if some or all of the flows, SuDS are

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<sup>31</sup> See paragraph 16 of Schedule 3 to the 2010 Act, which adds a new section 106A (sustainable drainage) to the Water Industry Act 1991.

<sup>32</sup> Such as for example Section 93 to the Local Government Act 2003.

<sup>33</sup> See paragraph 11 (3) of Schedule 3 to the 2010 Act.

<sup>34</sup> Under Section 72 of the Land Drainage Act 1991, Internal Drainage Boards come under the responsibility of Natural Resources Wales.

likely to enter a sewerage undertaker's network, its views must be carefully considered by the SAB and mutually acceptable arrangements sought.

- 3.15 We expect the SAB to establish good relationships with statutory consultees to ensure that the consultation process works effectively. Consultees may wish to identify matters it would expect to be consulted on and establish criteria in relation to the potential impact, location, destination and size of applications to prioritise those most likely to be of concern to their interests. This would allow them to have a standard response for many applications and site specific responses where needed.
- 3.16 Where a site-specific response is required, statutory consultees should provide this within the prescribed three week timescale<sup>35</sup> or seek an agreed extension. The SAB may disregard any comments received after the agreed date.
- 3.17 Statutory consultees are also given the status of interested parties for the purposes of appeals<sup>36</sup>. This is intended to provide for statutory consultees to be told of the appeal and to be given the opportunity to submit representations to be taken into account in its determination by ministers.
- 3.18 The SAB may also wish to undertake additional non-statutory consultation, where appropriate. There is no regulatory requirement for non-statutory consultation, however to avoid delay any non-statutory consultation should be undertaken within the time-frame permitted for statutory consultation.

## **Making an application to the SAB for approval – requirements, determination, conditions and the application form**

- 3.19 An application for approval of a drainage scheme may be made to the SAB separately from or alongside a planning application. The planning and SAB approvals are independent systems and there may be circumstances where separate applications are appropriate, for example for permitted developments, where planning approval is not required but SAB approval is. The legislation is flexible and designed to allow both SAB only applications and applications for both in parallel.

### **Validly made applications**

- 3.20 It is open to the SAB to determine what constitutes a valid SuDS application for SAB approval<sup>37</sup>. We suggest a valid SuDS application to the SAB should at least be accompanied by:
- a plan specifying the construction area and the extent of the drainage system, drawn to an identified scale and showing the direction of North,

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<sup>35</sup> See Regulation 4 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>36</sup> See Regulation 9(3)(d) of the Sustainable Drainage (Appeals) (Wales) Regulations 2018 and Article 17(3)(g) of the Sustainable Drainage (Enforcement) (Wales) Order 2018.

<sup>37</sup> See paragraph 9(2) and 10(2) of Schedule 3 to the 2010 Act.

- information on how the construction work will comply with the Statutory SuDS Standards (this information may assist the SAB with its determination of the application in accordance with provisions in legislation<sup>38</sup>),
- a statement on whether or not the application relates to a development that is the subject of an EIA<sup>39</sup> application (if subject to an EIA, the time limit for SAB determination of the application for approval will be 12 weeks, instead of 7 weeks as for all other applications<sup>40</sup>),
- the appropriate application fee<sup>41</sup>,
- Additionally, the Statutory SuDS Standards contain a principle<sup>42</sup> so that SuDS applications should be submitted with proposals for a maintenance plan and the means of funding for the scheme for its design life.

3.21 If the SAB application is combined with a planning application, as long as the plan accompanying the former shows the extent of the drainage system, a separate plan should not be necessary.

3.22 In addition to the above provisions, the SAB may set any other specific requirements as to the form and any information it requires for applications for approval<sup>43</sup>.

### **The SuDS application form**

3.23 With effect from 7 January 2019, the Planning Application Service Wales<sup>44</sup> website will contain a link to the SAB application form for SuDS approval.

### **Determination of applications**

3.24 If for any reason the SAB application is not valid, the SAB must notify the applicant as soon as practicable, explaining why the application has been rejected and return the fee<sup>45</sup>. In practice the SAB is encouraged to contact the applicant in the first instance to ask for any missing information to be submitted, and to agree an extension to the determination deadline.

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<sup>38</sup> See paragraphs 5(3) and 11(1) of Schedule 3 to the 2010 Act.

<sup>39</sup> Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017.

<sup>40</sup> See Regulation 5 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>41</sup> See Regulations 3, 4, 5, 6, 7 and 9 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>42</sup> See the Statutory SuDS Standards under the section on Principles.

<sup>43</sup> See paragraphs 9(2)(a) and (b) and 10(2) of Schedule 3 to the 2010 Act.

<sup>44</sup> The Planning Application Service Wales, is available at; <https://beta.gov.wales/apply-planning-permission>

<sup>45</sup> See Regulation 3 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

3.25 The SAB has 7 weeks to determine applications other than those requiring an Environmental Impact Assessment, in which case it has 12 weeks<sup>46</sup>. An extension of the timescale can be mutually agreed if needed, but a failure to determine the application within the relevant timescale will result in the application being deemed to have been refused.

3.26 It is important to note that SAB approval of the SuDS application for a development proposal is independent of the planning approval process. Timescales for SAB approval prescribed in regulations are aimed at ensuring the SuDS approval process does not impact on overall development timescales.

### **Approval subject to conditions**

3.27 It is open to the SAB to grant approval subject to conditions<sup>47</sup>. In particular, but not exclusively, conditions could relate to:

- construction of the drainage system,
- technical matters such as discharge rate,
- modifications of a proposed drainage plan,
- associated fees and/or payment of a fee in relation to work done by the SAB in connection with approval,
- securing agreements for non-performance bonds,
- the maintenance plan and the means of funding for the scheme for its design life,
- testing periods for the SuDS following construction,
- inspections by the SAB before, during and after construction (based on the fee for inspection set in Regulations<sup>48</sup>).

3.28 Conditions should only be imposed where they are:

- necessary,
- relevant to the SAB approval and adoption process,
- relevant to the development to be approved,
- enforceable,
- precise, and
- reasonable in all other aspects.

Conditions should not duplicate requirements of other legislation.

3.29 A breach of a condition of approval can be enforced under the sustainable drainage enforcement regime<sup>49</sup>.

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<sup>46</sup> See Regulation 5 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>47</sup> See paragraph 11(2) of Schedule 3 to the 2010 Act.

<sup>48</sup> See Regulation 8 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>49</sup> The Sustainable Drainage (Enforcement) (Wales) Order 2018.

## Notice of approval decisions

- 3.30 The SAB must notify the applicant, LPA and statutory consultees of the decision as soon as reasonably practical after determining an application for approval<sup>50</sup>. If the application is refused, the applicant may appeal the decision (see section 5 of this guidance)

## Stipulating what inspections will be required

- 3.31 The SAB may stipulate in conditions of approval what inspections of the SuDS schemes will be required to ensure they are built to the appropriate standard with the specified or suitable materials<sup>51</sup>. The SAB can recover the costs of these inspections from the developer<sup>52</sup>.
- 3.32 The SAB and the developer should establish the need for inspections and their timing and frequency, as part of the approval process. This will provide a degree of certainty over potential costs for both developer and SAB.

## Considering SAB agreements

### Is an agreement needed to support adoption?

- 3.33 SuDS applications should be accompanied by proposals for a maintenance plan and the means of funding for the scheme for its design life. As set out under the principles section of the Statutory SuDS Standards, this will enable applicants to demonstrate how the SuDS scheme will **perform safely, reliably and effectively over the design life of the development, taking into account the need for reasonable levels of maintenance.**
- 3.34 As part of the approval for the construction of a sustainable drainage system, the SAB may require a legal agreement to be entered, to ensure all works function for the duration of the SuDS design life and for the life-time of the development in accordance with SAB approval, including any conditions<sup>53</sup>. The agreement may be entered into whether or not the works are to be adopted by the SAB in accordance with the regulatory criteria for adoption.
- 3.35 By way of example, the legal agreement may need to cover:
- the transfer of land,
  - easements,
  - access.
- 3.36 When an application is submitted, the SAB and developer should also discuss a legal agreement as a formal means of setting out any detailed arrangements concerning; the maintenance of the sustainable drainage system for the life-time of the development, the means of funding for the

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<sup>50</sup> See paragraph 11(4) to the 2010 Act.

<sup>51</sup> See paragraph 11(2) of Schedule 3 to the 2010 Act.

<sup>52</sup> See Regulation 8 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>53</sup> See paragraph 11 (2) of Schedule 3 to the 2010 Act.



SuDS scheme for its design life (including any commuted sum or maintenance funding) . In relation to securing agreements to ensure the SuDS remains compliant for the design life of the development, the SAB may wish to rely on existing powers available to local authorities under local government legislation<sup>54</sup>.

## **Deciding whether a Non Performance Bond is required**

3.37 The SAB may require the deposit of a non-performance bond (the bond) as a condition of approval, so that SuDS approval will only take effect if and when the developer provides the bond<sup>55</sup>. The kind and value of the bond is to be specified by the SAB in the condition<sup>56</sup>.

3.38 The value of the bond may be set by the SAB at any level up to but not exceeding the best estimate of the overall cost of the works required to ensure the drainage system accords with approved proposals. The best estimate of overall cost is the maximum value for the bond<sup>57</sup>.

3.39 Pre-application discussions between the SAB and the developer are a vital part of the process. These will provide an early opportunity to consider SAB conditions of approval and to resolve any potential disagreements. Appeals against decisions by the SAB about a condition<sup>58</sup> should only ever be considered a last resort.

3.40 The bond will be payable to the SAB if it certifies<sup>59</sup> that the drainage system:

- has been constructed in a manner that is not in accordance with the approved proposals; or
- is unlikely to be completed.

### **Purpose of the bond**

3.41 The bond is intended both to underpin and to facilitate the provision of sustainable drainage on new development. It provides a vital safeguard to ensure the SAB has the means to remediate poorly constructed or incomplete SUDS. The bond should also incentivise applicants to complete works in a satisfactory manner to avoid the SAB draw on the bond.

3.42 The SAB may decide whether a bond is necessary. Having a bond may in particular ensure:

- local communities, businesses and occupiers are protected from flood risk resulting from new development,

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<sup>54</sup> See for example; Section 106 of the Town and Country Planning Act 1990, Section 2 of the Local Government Act 2000, and Section 111 of the Local Government Act 1972.

<sup>55</sup> See paragraph 11 (2)(b) of Schedule 3 to the 2010 Act.

<sup>56</sup> See paragraph 12 (1) of Schedule 3 to the 2010 Act.

<sup>57</sup> See paragraph 12 (5) of Schedule 3 to the 2010 Act.

<sup>58</sup> See paragraph 25 (1) (a) of Schedule 3 to the 2010 Act.

<sup>59</sup> See paragraph 12 (2) of Schedule 3 to the 2010 Act.

- the downstream environment will be protected from the consequences of failure to complete sustainable drainage systems to the appropriate standards,
- the cost of rectifying any construction faults does not fall to the public purse,
- the SAB is not obliged to adopt poorly constructed or incomplete SuDS without having the financial means of undertaking repair or completion,
- both the SAB and the developer have a common understanding about the level of financial or related guarantee needed to secure sustainable drainage systems.

### **Calculating the value of the bond**

- 3.43 The value of the bond must not exceed the SABs best estimate of the maximum likely cost of work required to ensure that the drainage system accords with approved proposals.
- 3.44 Neither should the value of the bond be set any higher than is needed to fulfil its purpose. The aim of the bond is to facilitate development, the SAB must ensure the value of the bond is reasonable and justifiable for the developer.
- 3.45 Estimates of costs are expected to be subject to detailed discussions between the SAB and the developer before the bond value or the manner of its release is set as a condition of SAB approval.
- 3.46 The costs of SuDS construction should be based on the most up-to-date information available. Where possible, to ensure consistency for developers the SAB should calculate the bond using industry standard guidance, where this is available. Where this is not possible, the SAB will need to make the best estimate of the cost implications for the non-performance bond. SABs are expected over time to make available a body of reliable data of the costs of SuDS elements.
- 3.47 The evidence required to calculate the bond value should normally be provided by the developer as part of the SuDS application. The SAB may request this or any other relevant information to accompany the application<sup>60</sup>.
- 3.48 The starting point for calculating the value of the bond is the likely cost of the works needed for the construction of the SuDS proposals as approved. The SuDS application should therefore include:
- sufficient detail about the design and dimensions of the drainage system to allow the SAB to quantify each of the elements to be constructed, and
  - the unit cost for each element of the SuDS.

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<sup>60</sup> See paragraph 9(2)(b) and 10(2) of Schedule 3 to the 2010 Act.

This information should enable the SAB to calculate the cost of construction for each element of the SuDS.

3.49 To estimate the overall cost of construction the SAB may also need to take into account local factors likely to affect the cost of constructing each of the SuDS components. This may for example include:

- the special characteristics of the application site,
- the nature of the development proposed on the site,
- local costs of labour and materials, and
- risks of failure in SuDS construction.

3.50 The SAB will need to ensure that elements which should not be included in the cost of construction for bond purposes are identified and excluded from the calculation. This may for example include:

- site investigation, design costs and land costs,
- any SuDS elements which are non-adoptable,
- any SuDS elements unlikely to be subject to SAB remediation under the bond,
- any SuDS elements which drain only the highway, which should be covered by the highway bond rather than the SuDS bond,
- any removable items or features not required for the SuDS operation.

3.51 Ultimately the SAB is responsible for setting the value of the bond. It is for the SAB to ensure all information and calculations provided by the applicant are checked and that cost calculations together with any local factors taken into account are based on robust evidence, so that the bond is both reasonable and justifiable for the developer.

### **Draw down of the bond**

3.52 In the event that the constructed system does not comply with the approved design or the construction is not completed the SAB will request the developer to undertake the necessary work to achieve compliance. Where the developer does not, for any reason, undertake the necessary work, the SAB may need to utilise some, or all, of the bond to undertake the work itself.

3.53 Before doing so, the SAB must consult<sup>61</sup> with the developer. It may then issue a certificate to the developer that the work has not been constructed or completed as approved or is unlikely to be completed. Once the SAB has consulted with and given notice of the certificate to the developer, it may then proceed to undertake any work necessary to achieve compliance. The sums received under the bond will be used by the SAB to meet the cost of the works. Any sums remaining under the bond are to be returned to the developer<sup>62</sup>.

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<sup>61</sup> See paragraph 12 (3) of Schedule 3 to the 2010 Act.

<sup>62</sup> See paragraph 12 (4) of Schedule 3 to the 2010 Act.

## Return of the bond

- 3.54 Where a bond has not been drawn down and the SAB is satisfied that the drainage system has been constructed in accordance with approved proposals, including any conditions of the approval which may specify a defect period and/or establishment period, the SAB must release the bond<sup>63</sup>. The time period for doing so is within 4 weeks beginning on the first day after the SAB has given notice of its intention to adopt or its decision in response to a request to adopt<sup>64</sup>.
- 3.55 Where the SAB uses the bond following certification, on completion of the works the SAB will, within 4 weeks<sup>65</sup>:
- send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work,
  - pay the developer any excess, and
  - release the bond.

## Charging fees for approval and inspections

- 3.56 Regulations<sup>66</sup> enable the SAB to charge a fee based on cost recovery for all applications for approval. The fee must be submitted at the same time as the application for SAB approval<sup>67</sup>.
- 3.57 The approval fee cannot cover the costs incurred by statutory consultees in providing input. Nor can the fee cover the costs of any pre-application discussions (although local authorities may seek to rely on powers under other legislation to recover costs incurred as set out in paragraph 9.10 of this guidance)

### Fee structure for calculating application fees

- 3.58 A national fee structure for approving applications has been set in regulations, this provides for fees to be charged on the basis of a set amount for each application plus an additional amount determined by the size of the construction area as set out below<sup>68</sup>. In this context 'construction area' means the area of land identified on a plan accompanying an application<sup>69</sup>.

£350 for each application, plus (up to a maximum of £7,500):
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<sup>63</sup> See paragraph 23 (6) (g) of Schedule 3 to the 2010 Act.

<sup>64</sup> See Regulation 7 (1) of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>65</sup> See Regulations 7 (2) and (3) of the Sustainable Drainage (Approval and Procedure) (Wales) Regulations 2018.

<sup>66</sup> See Regulations 3, 4, 5, 6, 7 and 9 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>67</sup> See paragraph 9 (2) (c) and 10 (2) of Schedule 3 to the 2010 Act.

<sup>68</sup> See Regulations 4(1)(a) and (b) of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>69</sup> See Regulation 4(2) of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

- for every additional 0.1 hectare (ha) up to 0.5 ha - £70
- for every additional 0.1 ha between 0.5 ha and 1 ha - £50
- for every additional 0.1 ha between 1 ha and 5 ha - £20
- for every additional 0.1 ha above 5 ha - £10

### **Discounted fees**

3.59 Using the fee structure above to calculate application fees, discounted fees are to be charged by the SAB in circumstances where:

- Two or more applications or alternative proposals in a single application are made. The SAB can charge the application fee for the proposal which would attract the highest fee, plus half the sum of the fee chargeable for each of the remaining applications and/or alternative proposals<sup>70</sup>.
- The applicant is a town or community council. The SAB can charge a fee that is half the amount of the application fee<sup>71</sup>.

3.60 The SAB may not charge a fee in relation to the modification of an application, where before determination by the SAB, an application for approval is modified by agreement between the SAB and the developer<sup>72</sup>.

### **Applications that are resubmitted**

3.61 The SAB may charge a fee based on half the amount of the application fee charged for a previously approved application, where:

- the approval was given within the preceding 12 months and the subsequent application relates wholly or mainly to the previously approved SuDS scheme (including construction proposals and conditions of approval of the previous application)<sup>73</sup>.

3.62 The SAB may not charge a fee in relation to a subsequent application for approval where the application relates only to a condition of approval. Unless the condition is in relation to the construction of the SuDS scheme and was made under the previously approved application<sup>74</sup>.

### **Inspection fees**

<sup>70</sup> See Regulation 7 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>71</sup> See Regulation 5 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>72</sup> See Regulation 6 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>73</sup> See Regulation 9 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

<sup>74</sup> See Regulation 9 (3) of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

3.63 Where the SAB approves an application subject to a condition that an inspection(s) of the SuDS scheme are undertaken, it can charge an inspection fee of £168 for each inspection<sup>75</sup>.

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<sup>75</sup> See Regulation 8 of the Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018.

## Section 4 : SuDS Adoption

### Adoption duty

4.1 Under Schedule 3 to the 2010 Act, subject to conditions the SAB must adopt SuDS that serve two or more properties<sup>76</sup>. The duty to adopt does not apply if the system serves a site which is controlled by a single person or two or more persons together, as defined in regulations<sup>77</sup>. Examples of development types are detailed below:

- Residential buildings 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

This list is not exclusive. In determining what constitutes a “single property” under the legislation, SABs may find the body of case law on “premises” and “curtilage” useful.

4.2 In adopting the SuDS system, the SAB should take responsibility for the whole system (which may include features such as pipes and underground stores as well as green features such as swales) until flows leave the system to be either reused, or enter the ground or a surface water body or the sewerage undertaker’s network.

### Adoption conditions that must be satisfied

4.3 The SAB is required to adopt drainage systems which satisfy certain conditions<sup>78</sup>. The adoption duty does not apply for SuDS that serve single properties or publically maintained roads.

4.4 The conditions that must be satisfied are:

- that the drainage system was constructed and functions in accordance with approved proposals, including any conditions of approval, and
- that the drainage system is a “sustainable drainage system”, meaning those parts of a drainage system that are not vested in a sewerage undertaker under a section 104 agreement of the Water Industry Act 1991<sup>79</sup>.

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<sup>76</sup> See paragraph 17 and 18 of Schedule 3 to the 2010 Act.

<sup>77</sup> See Regulation 9 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>78</sup> See paragraph 17 of Schedule 3 to the 2010 Act.

<sup>79</sup> See the Interpretation for *Sustainable Drainage* provided in paragraph 2(1) of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

- 4.5 Once the terms of the approval have been met, including any period required for the establishment of vegetation, the SAB can decide to adopt the drainage system itself or respond to a request from the developer (using any form provided by the SAB for doing so)<sup>80</sup>. Any requests for adoption must be determined by the SAB within 8 weeks. Failure to do so, will be taken as a refusal to adopt unless the SAB and developer have agreed beforehand to extend the time period<sup>81</sup>.

### **Notice of adoption decision**

- 4.6 Where the SAB adopts on its own initiative or in response to a request, it must notify the developer as soon as is practicable after making a decision concerning adoption<sup>82</sup>. The notification must specify the reasons for the decision and the date of the decision<sup>83</sup>.
- 4.7 Where the SAB refuses to adopt, the applicant may appeal the decision<sup>84</sup>.
- 4.8 The SAB must copy the notice to<sup>85</sup>:
- the sewerage undertaker,
  - any person who appears to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance,
  - any other person whom the approving body were obliged to consult on the application for approval,
  - any person who appears to own or occupy land from which water will be drained by the system.

### **Exceptions to the duty to adopt**

- 4.9 Single property drainage systems and any part of a drainage system which is a publically maintained road are exempt from the SAB adoption duty<sup>86</sup>.
- 4.10 Highways authorities<sup>87</sup> are already responsible for the drainage and maintenance of publically maintained roads. The SAB would be exempt from adopting any part of a SuDS which the highway authority would already be responsible for maintaining, for example swales alongside roads and permeable surfacing. The highway authority must act in accordance with the

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<sup>80</sup> See paragraph 23 (2) and (3) of Schedule 3 to the 2010 Act.

<sup>81</sup> See Regulation 7 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

<sup>82</sup> See paragraph 23 (4)(b) and (5) of Schedule 3 to the 2010 Act.

<sup>83</sup> See Regulation 6 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>84</sup> See paragraph 25(1)(b) of Schedule 3 to the 2010 Act.

<sup>85</sup> See paragraph 23(6) of Schedule 3 to the 2010 Act.

<sup>86</sup> See paragraphs 18 and 19 of Schedule 3 to the 2010 Act and Regulation 9 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018 for the definition of single property.

<sup>87</sup> All local authorities in Wales are highways authorities for the local road network within their areas.



approved drainage design, including the maintenance regime, in compliance with the statutory SuDS Standards.

- 4.11 The SAB duty to adopt includes any SuDS in or along private roads. If the road became publically maintained, then the highway authority will become responsible for maintenance.
- 4.12 The SAB does not have a duty to approve or adopt SuDS constructed by a sewerage undertaker under a section 114A of the Water Industry Act 1991. This relates specifically to systems designed to reduce surface water loading on existing sewerage systems which will remain the responsibility of the undertaker.
- 4.13 A sewerage undertaker must accept any surface water from a publically maintained road, where the drainage system construction is in accordance with SAB approval<sup>88</sup>.

## **Voluntary adoption**

- 4.14 The SAB may voluntarily adopt a sustainable drainage system where it is not under a statutory duty to do so<sup>89</sup>. For example, this may include existing SuDS which may not have been built to the statutory SuDS Standards, schemes serving developments which are exempt from adoption under the transitional arrangements or SuDS serving a single property. The SAB must notify any sewerage undertaker or person impacted by its decision to adopt<sup>90</sup>. The notice specifying the reason for adoption and the date of adoption must be given as soon as is practicable after making a decision concerning adoption<sup>91</sup>.

## **Maintenance and the means of funding for the scheme for its design life**

### **Maintenance plans**

- 4.15 The developer is expected to develop and produce in partnership with the SAB a maintenance plan and the means of funding for the scheme for its design life. The Principle for this is set out in the Statutory SuDS Standards, in addition the SAB has broad discretion to impose conditions of approval, which may be used to ensure that the sustainable drainage systems will be maintained for the lifetime of the development. We suggest the maintenance plan should at the least include the following:
  - a) The type of maintenance activities that are required to ensure that the drainage system operates as designed to manage flood risk and deliver multiple benefits;

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<sup>88</sup> See paragraph 16 (3) of Schedule 3 to the 2010 Act, which amends Section 115 to the Water Industry Act 1991.

<sup>89</sup> See paragraph 21 of Schedule 3 to the 2010 Act.

<sup>90</sup> See paragraph 24 of Schedule 3 to the 2010 Act.

<sup>91</sup> See Regulation 11 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

- b) The anticipated frequencies of those activities;
- c) The estimated duration of those activities;
- d) Any specific plant and equipment required to undertake those activities;
- e) The estimated costs to complete those activities;
- f) A site plan showing maintenance areas, access routes and the locations where maintenance activities are anticipated;
- g) A statement describing any secondary function (e.g. recreation area) above or within the SuDS component and details describing how this function is to be managed and by whom.

### **SuDS approval body maintenance and funding**

- 4.16 Developers will need to work closely with the SAB and communities to develop maintenance options and a maintenance plan, together with funding which provides for the SuDS to be maintained according to statutory SuDS Standards for the life-time of the development.
- 4.17 To be effective we suggest the maintenance plan should clearly identify who will be responsible for undertaking maintenance and ensure that funding is fair for household and premises occupiers.
- 4.18 Where the SAB has a duty to adopt it is ultimately responsible for ensuring the adopted drainage system is maintained in accordance with statutory SuDS Standards<sup>92</sup>. In relation to securing agreements to support maintenance arrangements, including any commuted sum or maintenance funding, the SAB may wish to rely on existing powers available to local authorities under local government legislation.

### **Commuted sums**

- 4.19 The use of commuted sums<sup>93</sup> for maintenance is well established. However, there has been considerable variation in their use across Welsh Local Authorities.
- 4.20 Securing a sustainable funding mechanism for the lifetime of development will be a key objective of the SAB. SABs have a responsibility for the management and maintenance of SuDS assets. Commuted sums aim to ensure that the SAB has the resources to cover the upkeep and (where appropriate) the replacement of the assets they have adopted. The effectiveness of SuDS and the associated multiple benefits will rely on appropriate maintenance.

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<sup>92</sup> See paragraph 22 of Schedule 3 to the 2010 Act

<sup>93</sup> A one-off payment of a capital sum made as a contribution towards the future maintenance of an asset to be adopted. Commuted sums generally relate to payments made by developers through bespoke legal agreements.

4.21 In order to ensure consistency throughout Wales we recommend the use of the industry standard guidance “[Commuted Sums for Maintaining Infrastructure Assets](#)” prepared by the CSS (County Surveyors Society), to calculate commuted sums for all drainage assets being adopted by the SAB, whether that be through a S38<sup>94</sup> type agreement or a bespoke legal agreement for the life of the developments (60-120 years).

4.22 The calculation of a commuted sum includes consideration of:

- The estimated periodic maintenance cost of the asset to the adopted e.g. every six months. The SuDs manual provides useful information on this element.
- Its future cost of renewal or replacement (e.g. permeable paving has design life of 20 years, over the lifetime of the development this could lead to 3 replacements).
- The duration over which the sum is required. The Association of Directors of Planning and Transport recommends commuted sums for structures should be calculated to cover a 120 year period and that the period for other items should be 60 years (basically the whole life of the development).
- The effective annual interest rate that will provide a return on the sum invested prior to its expenditure after the effects of inflation have been taken into account (called the discount rate approx. 2.0 – 2.2%).

4.23 The use of the CSS guidance is recommended to provide a common understanding for developers and the SAB in entering into agreements.

### **Local Government**

4.24 Local authorities may wish to outsource the maintenance of sustainable drainage systems. Local authorities could work collaboratively to deliver this service or could enter into contractual arrangements with private management companies or other service providers. Provision for the SAB to intervene in the event of the failure of the management company should be included in the management agreements

4.25 Under this option, local authorities would need to charge to fund their activities in maintaining sustainable drainage systems. The SAB may wish to rely on existing powers available to local authorities under local government legislation to transfer SuDS into the management and maintenance of local authorities upon payment of a commuted sum and/or payment of a maintenance charge which is reflective of the maintenance / replacement plan for the lifetime of the development.

### **Management Company**

4.26 Management companies are often set up to maintain public spaces and other assets on new developments. The SAB may choose to appoint a management company for the maintenance of the drainage system over the

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<sup>94</sup> An agreement made under Section 38 to the Highways Act 1980

lifetime of the proposed development. The SAB should ensure the management company is competent to maintain SUDS.

- 4.27 Charitable trusts, including not for profit community enterprises, could also serve as management companies
- 4.28 Provision for the SAB to intervene in the event of the failure of the management company should be included in the management agreements.
- 4.29 In all cases where the SAB adopts a drainage system, it remains responsible for ensuring the system is maintained in compliance with the Statutory SuDS Standards. .

### **Private individuals – property owners or occupiers**

- 4.30 Owners / occupiers of properties drained by sustainable drainage systems that do not also drain other properties should maintain their own drainage system to ensure that it functions as designed.
- 4.31 Where these systems are simple, with minimal or no proprietary products, easy to maintain and serving only small numbers of properties, the owners / occupiers of these properties may also wish to maintain the sustainable drainage systems collectively.
- 4.32 The developer should provide owner/s / occupiers with full instructions on the maintenance of the sustainable drainage systems, including repair and replacement requirements.

## **Designation - Asset register, monitoring and reporting**

- 4.33 Within 4 weeks of giving notice of its decision to adopt<sup>95</sup> the SAB must arrange for:
  - The LLFA to include the drainage system (whether adopted or not) in the register of structures or features likely to have a significant effect on the flood risk in an area (Section 21 of the 2010 Act requires a LLFA to establish and maintain a register and information regarding structures or features which are likely to have a significant effect on a flood risk in its area).
  - The provisional designation for those parts of the drainage systems that are not owned by the SAB, and are eligible for designation with the designating authority (Schedule 1 to the 2010 Act defines designating authority and the procedure for provisional designation notice).
  - The designation under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) of any adopted part of the drainage system that is a street, within the meaning of section 48

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<sup>95</sup> See Regulation 8 of the Sustainable Drainage (Approval and Adoption Procedure)(Wales) Regulations 2018.

of that Act.

- 4.34 The SAB must arrange for the inclusion within four weeks beginning on the first working day after giving notice of its decision about adoption made under Paragraph 23 (2) of the 2010 Act.
- 4.35 It is recommended that the SAB also arranges for the inclusion of details of approved drainage systems serving more than one domestic property for which it does not have a duty to adopt on the section 21 register.
- 4.36 This register could be used by local authorities to better understand the cumulative impact of SuDS and potentially how developers could extend existing SuDS schemes to incorporate additional development rather than creating new systems. As such it is recommended that section 21 registers include the following information regarding sustainable drainage systems:
- Surface catchment area
  - SuDS components
  - SuDS area
  - Design runoff rate
  - Design runoff volume
  - What and where is the end point of the SuDS management train e.g. watercourse, combined sewer
  - Owner
- 4.37 A record of maintenance and any monitoring to be undertaken should be identified between the SAB and the developer to include within a maintenance plan. This will ensure the SuDS can be adequately maintained to comply with the SuDS standards and should help reduce the need for ongoing inspections by the SAB. Monitoring data could be recorded, and where possible this could be done automatically through the use of smart technology. It may be possible for local wildlife or community groups to collect data.
- 4.38 This information could then be used to produce a regular statement of compliance. If these flag up any irregularities an inspection can be arranged. SABs could arrange an inspection at any time if there are complaints or if they otherwise deem it appropriate..
- 4.39 The registers are public documents and must be available for inspection at reasonable times.
- 4.40 For drainage systems which remain in private ownership, for example on a single property such as a supermarket site, the SAB may need to undertake inspections from time to time to ensure that they are maintained adequately and functioning as approved. The local authority (which is also the SAB) may use powers available to them under other legislation<sup>96</sup> to recover associated costs.

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<sup>96</sup> Such as for example Section 93 to the Local Government Act 2003

## Section 5 : When things don't go to plan

### Resolving disagreements - appeals

- 5.1 We believe that a negotiated solution is best when dealing with disputes around SAB decisions. However a formal mechanism for appeals to the Welsh Ministers is provided in Regulations.
- 5.2 Full details of the procedure for appeals, including; how an appeal may be made, the information to be provided, duties of the SAB in providing information, timescales for appeal decisions and the specific duties for the Welsh Ministers, are contained in the Regulations<sup>97</sup>.
- 5.3 It should be noted that making an appeal does not suspend a decision and a developer appealing against a condition of an approval must not start construction.

### SAB decisions that can be appealed and the time-limit for doing so

- 5.4 In the event that a developer and the SAB can not find a mutually acceptable resolution of a dispute over a SAB decision, which may relate to:
- an application for approval,
  - approval conditions, including a condition specifying a non-performance bond,
  - a request to adopt a drainage system.
- 5.5 The developer may by notice appeal to Welsh Ministers against the decision, the appeal must at the same time be copied to the SAB. In practice, the Planning Inspectorate Wales (PINS) will handle the appeal on behalf of the Welsh Ministers. A copy of the form needed to make an appeal is available by contacting PINS:
- Website: [https://beta.gov.wales/planning-inspectorate?contact\\_us/](https://beta.gov.wales/planning-inspectorate?contact_us/)
  - Email: [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)
  - Telephone: 0303 444 5940
- 5.6 An appeal must be made to the Welsh Ministers (PINs) and copied to the SAB within the time-limit set in Regulations<sup>98</sup>, as follows.
- Any appeal concerning an application for approval or a request to adopt must be made within the period of 6 months beginning with:

Appeal type	Either	Or
An application for approval (other than a decision about a	The date of the decision	If the appeal is against the deemed refusal of the application arising from the

<sup>97</sup> See the Sustainable Drainage (Appeals) (Wales) Regulations 2018.

<sup>98</sup> See Regulation 5 of the Sustainable Drainage (Appeals) (Wales) Regulations 2018

condition)		failure of the approving body to determine the application within the period prescribed in regulations <sup>99</sup> , the last day of that period.
A request to adopt	The date of the decision	If the appeal is against the deemed refusal of the request arising from the failure of the approving body to determine the request within the period prescribed in regulations <sup>100</sup>

- Any appeal concerning a condition of approval, including a condition specifying a non-performance bond, must be made within the period of 6 months beginning with the date approval is granted.

5.7 In addition, the appellant must identify a choice of appeal mechanism:

- Written representation
- Oral hearing
- Enquiry

5.8 Appeals may be submitted electronically or by post. An appeal may be withdrawn at any time by the appellant by giving notice in writing to the Welsh Ministers (PINs), copied to the SAB.

## **.Enforcement**

5.9 Full details of how the enforcement regime works are contained in the Order<sup>101</sup>. The Order provides similar provisions to those available under planning legislation where feasible and practicable but deviates where necessary to reflect the differences in the regimes, such as the duty to adopt.

5.10 The SAB and the LPA may arrange that the LPA will exercise the enforcement functions on behalf of the SAB<sup>102</sup>.

5.11 To determine if there has been a breach of the requirement for approval the SAB may exercise powers of entry and issue a temporary stop notice. The temporary stop notice must set out the details of the activity that is believed to be a breach and prohibit the developer from continuing the activity.

5.12 The SAB after consulting the developer may certify<sup>103</sup> that the drainage system:

<sup>99</sup> See Regulation 5 of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>100</sup> See Regulation 7 of the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

<sup>101</sup> See the Sustainable Drainage (Enforcement) (Wales) Order 2018.

<sup>102</sup> See Article 3 of the Sustainable Drainage (Enforcement) (Wales) Order 2018.

<sup>103</sup> See paragraph 12(2) and 12(3) to the 2010 Act.

- has not been constructed in accordance with the approved proposals, or
- is unlikely to be completed.

5.13 In which case the SAB, drawing on the non performance bond may arrange for any work to be carried out to ensure the drainage system is completed to comply with the Statutory SuDS Standards.

5.14 Within 4 weeks after completion of the work, the SAB must; send to the developer a full account of any sums received under the bond that have been applied to the expense of carrying out the work, pay any excess bond and release the bond<sup>104</sup>.

### **Enforcement notices**

5.15 Under the Order<sup>105</sup> if a developer breaches the requirement for approval the SAB may issue an enforcement notice. An enforcement notice may be given at any time before a drainage system for the construction work is adopted, but not later than 4 years after the breach has occurs. The enforcement notice may require the developer to take certain steps to rectify the breach or a failure to comply with an enforcement notice.

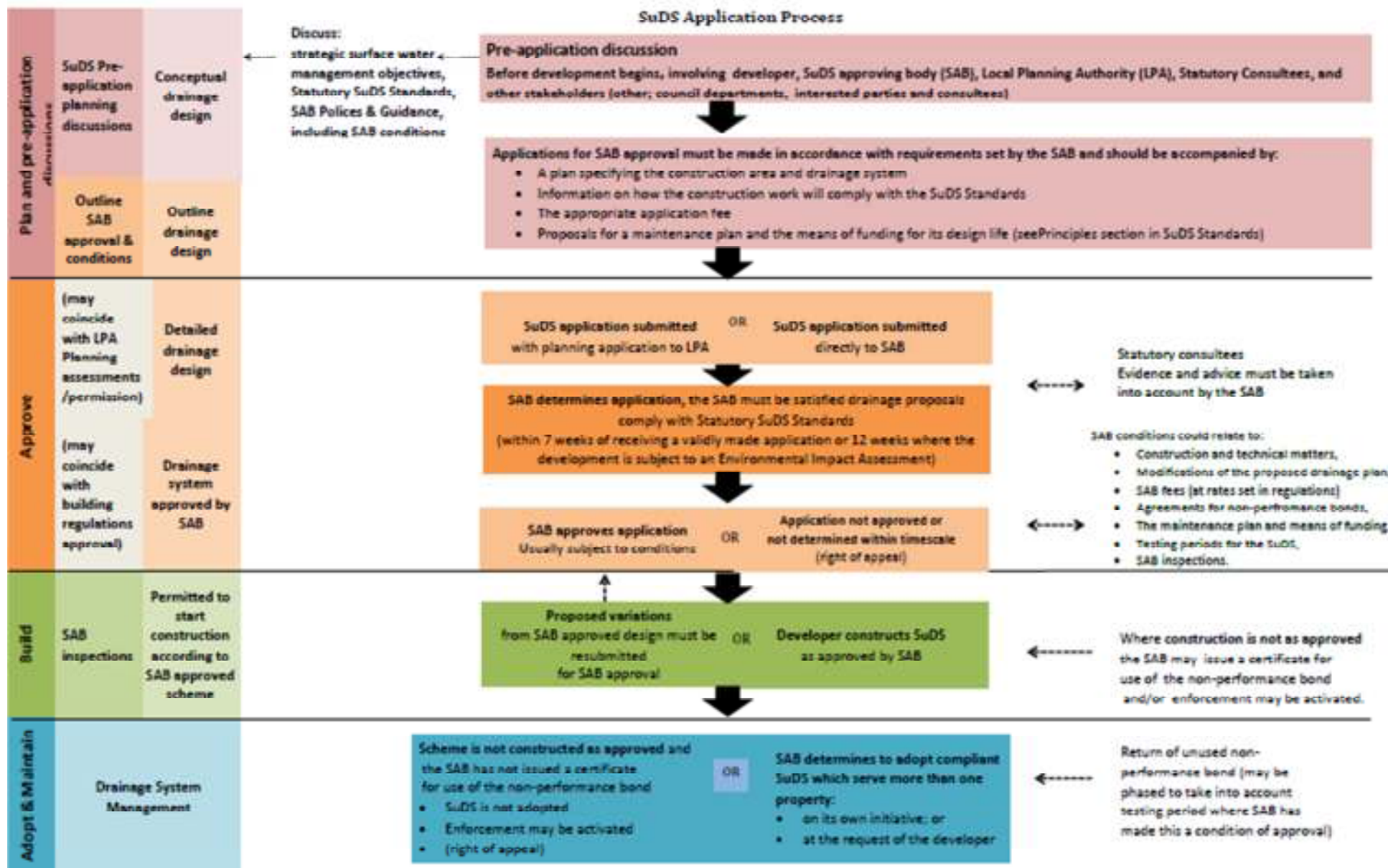
5.16 A developer who is given an enforcement notice may by notice appeal to the Welsh Ministers (PINS) against the decision on the grounds that it was; based on an error of fact, wrong in law, unreasonable or there was no breach of the requirement for approval.

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<sup>104</sup> See Regulation 7(3) of the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

<sup>105</sup> See Articles 8-20 of the Sustainable Drainage (Enforcement) (Wales) Order 2018.





### Resources and Useful Links

A wide range of resources is available to support the implementation of SuDS in Wales. Technical information is available from the Construction Industry Research and Information Association (CIRIA). Recent publications include:

- **The SuDS Manual (C753)**
- **Guidance on the construction of SuDS (C768)**
- **Planning for SuDS – making it happen (C687)**
- **Site handbook for the construction of SUDS (C698)**

CIRIA also manage the [Susdrain](#) web site, which is supported by the Welsh Government. The site aims to support the implementation of SuDS through advice, guidance, case studies and regular news items. It also includes a comprehensive listing of publications on SuDS.

The [Welsh Government](#) web site contains some information on SuDS, including the pdf of this guidance.

The [SuDS Wales](#) web site includes specific information on SuDS in Wales.

Guidance is also published by the Wildfowl and Wetlands Trust/RSPB  
[http://ww2.rspb.org.uk/Images/SuDS\\_report\\_final\\_tcm9-338064.pdf](http://ww2.rspb.org.uk/Images/SuDS_report_final_tcm9-338064.pdf)

In order to ensure consistency throughout Wales we recommend the use of the industry standard guidance “[Commuted Sums for Maintaining Infrastructure Assets](#)” prepared by the CSS (County Surveyors Society), to calculate commuted sums for all drainage assets being adopted by the local authority (by the SAB or Highway Authority).

- [Commuted Sums for Maintaining Infrastructure Assets](#)

### Training resources

We have commissioned the development of a series of training modules on SuDS in Wales. In addition to courses being delivered across Wales, the materials will also be available through the susdrain web site.