

Department for Environment, Food and Rural Affairs

December 2011

**Consultation on implementation of the  
Sustainable Drainage Systems (SuDS)  
provisions in Schedule 3 of the Flood and Water  
Management Act 2010: Full list of consultation  
questions**

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### Question 1

We have based our proposals on the evidence, outlined in our Impact Assessment, of the impact of surface runoff on future development and the benefits of SuDS. Do you have any additional evidence that may alter the recommendations of the Impact Assessment?

*No, but it is agreed that additional controls are necessary in view of the very real flood risks that exist.*

### Question 2

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

- for developments that already granted planning permission before commencement; or
- for developments with one or more reserve matters where an application for approval of
- the reserve matter(s) is made; or
- for which a valid planning application has been submitted before commencement
- do you agree with this approach for transitional arrangements, if not please explain why?

Yes

### Question 3

We propose implementing on the common commencement date of 1 October 2012, do you agree this is reasonable? If not would you prefer an implementation date of April 2013, October 2013 or after 2013?

*A later date would be preferred e.g. April 2013 at the earliest*

### Question 4

We understand that there may be capacity issues for SABs to meet their new duty to approve drainage. We are therefore considering whether to phase implementation of the requirement for approval. Do you think a phased approach is necessary?

*Yes, the initial need for SAB approval only for major developments for the first 3 years is considered appropriate.*

### Question 5

Do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

*Development under an NDO will not necessarily include sustainable drainage, so the view is taken that this exemption is not appropriate.*

### Question 6

Drainage for surface runoff should be sustainable and affordable to build and maintain. Do the National Standards deliver this, if not please explain why?

*Surface water disposal that is “affordable” in terms of construction cost compared with a conventional system will not necessarily deliver sustainable drainage. A broader view of affordability should be taken, to include the benefits of less flooding and pollution.*

#### Question 7

Affordable sustainable drainage systems for surface runoff are comparable in costs with conventional alternatives. Do you agree?

*No. Effective sustainable drainage systems dealing with run-off at source may be more expensive than conventional drainage due to various factors, including the need to set aside land for SuDS (that then cannot be built on), to provide for underground tanks or other forms of attenuation, and due to maintenance costs (including commuted sums).*

#### Question 8

We propose that the SuDS Approving Body must determine an application for approval within 12 weeks where it relates to major development or a county matter and 7 weeks where it relates to other development. But could applications be determined in less time?

If yes, please specify reduced time to consider applications:

- 1 week less
- 3 weeks less
- 5 weeks less

*No. These time periods will allow for careful consideration, and may permit negotiation before a decision is made.*

#### Question 9

Do you think guidance for calculating the amount required for a non-performance bond is necessary?

*Yes, it would be desirable for there to be national guidance.*

#### Question 10

Do you agree with our proposals to set approval fees for three years? If you disagree, please explain why and provide any supporting evidence.

*Yes, this would be the right approach as this is new legislation. Fees should rise annually in line with inflation.*

#### Question 11

We propose that the fee for each inspection of the drainage system should be set on a cost recovery basis rather than to a fixed fee. Do you agree with this proposal?

Yes

**Question 12**

We propose to make arrangements for fees for applications to vary an approval, re-submitted applications, discounted fees, fees for cross area approvals as well as the refunds of application fees. Do you agree that this covers all the scenarios for which fees are likely to be needed? If not, please explain what is missing and provide further explanation if required.

*Other scenarios cannot be envisaged at present.*

**Question 13**

We propose setting a time limit of 21 days for statutory consultees to respond to the SAB. Do you agree with the timeframe proposed?

*A 14 day period would enable the SAB to determine approval applications within 7/12 weeks.*

**Question 14**

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

Yes

**Question 15**

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

Yes

**Question 16**

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?

Yes

**Question 17**

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?

Yes

**Question 18**

Are the criminal offences proposed in the draft statutory instrument appropriate and proportionate?

Yes

### Question 19

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?

Yes

### Question 20

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

Yes

### Question 21

For the purpose of the SuDS Approving Body's duty to adopt, "sustainable drainage system" means those parts of a drainage system that are not vested in a sewerage undertaker. Do you agree this provides certainty and clarity on what is adoptable by the SuDS Approving Body? If not please provide an alternative definition.

*There needs to be a clear definition of what drainage assets are capable of being adopted by the SAB, they should not include gutters, downpipes, water butts or green roofs.*

### Question 22

The SuDS Approving Body's duty to adopt does not apply to a single property drainage system. We propose that "a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that, following completion of the construction work, will be owned, managed or controlled by a single person or two or more persons together". Is our definition clear on what will or will not be adopted? if not please provide an alternative definition.

Yes

### Question 23

We propose that the SuDS Approving Body should determine a request for adoption within 8 weeks of receiving the request. Do you agree with this timeframe?

*No. This would not allow for a maintenance period. Until there is experience of undertaking the SAB role it will not be clear how long the adoption process will take - but it is suggested that a 12 month period during initial operation of the SAB role would be consistent with practice for adoption of roads and allow for experience to be gained.*

#### Question 24

We propose for the SuDS Approving Body to have a 28 day time limit for administrative processes (for example return of bonds, the process of registration or designations). This time limit applies throughout the SuDS process. Do you agree with this timeframe, if not please explain why?

*No. It is not clear that this will provide enough time. A longer timeframe would be appropriate to allow administrative processes to bed in and experience to be gained. This could be reviewed after an initial period.*

#### Question 25

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?

*Yes, but in an emergency (eg gas leak) statutory undertakers could not be expected to give 4 weeks notice - clearly emergencies should be an exemption. There is likely to be an issue that statutory undertakers may not be aware of the existence of SuDS, and procedures/liaison should be put in place to ensure this is checked by them.*

#### Question 26

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 National Standards. Do you agree, if not please explain why?

*Yes, but see response to 23. SuDS will need to be tested to demonstrate that they will function at times of heavy rainfall.*

#### Question 27

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

Yes

#### Question 28

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

Yes

#### Question 29

Should we take action to avoid the increase of un-adopted SuDS? If your answer is no, please explain why?

*Yes, SuDS that aren't maintained properly will not provide effective drainage.*