

## SCHEDULES

### SCHEDULE 3

Section 32

#### SUSTAINABLE DRAINAGE

##### *“Drainage system”*

- 1 (1) In this Schedule “drainage system” means a structure designed to receive rainwater except—
- (a) a public sewer, or
  - (b) a natural watercourse.
- (2) The reference to a structure includes a reference to—
- (a) any part of an existing or proposed structure, and
  - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater.
- (3) “Public sewer” has the meaning given by section 219(1) of the Water Industry Act 1991.
- (4) “Natural watercourse” means a river or stream.

##### *“Sustainable drainage”*

- 2 “Sustainable drainage” means managing rainwater (including snow and other precipitation) with the aim of—
- (a) reducing damage from flooding,
  - (b) improving water quality,
  - (c) protecting and improving the environment,
  - (d) protecting health and safety, and
  - (e) ensuring the stability and durability of drainage systems.

##### *Cross-border systems*

- 3 Where a drainage system is partly in Wales and partly in England, each part is to be treated as a separate system for the purposes of this Schedule (except that decisions in relation to one part may be made having regard to the existence and effect of the other part).

##### *“The Minister”*

- 4 In this Schedule “the Minister” means—
- (a) for drainage systems in Wales, the Welsh Ministers, and
  - (b) for drainage systems in England, the Secretary of State.

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### *National standards*

- 5 (1) The Minister shall publish national standards for the implementation of sustainable drainage.
- (2) Standards must address the way in which drainage systems—
- (a) are designed,
  - (b) are constructed,
  - (c) are maintained, and
  - (d) operate.
- (3) Standards may—
- (a) permit or require approving bodies to form judgments by reference to specified criteria;
  - (b) require approving bodies to have regard to guidance to be issued by the Minister.
- (4) The Minister must consult before publishing standards.

### *Approving body*

- 6 (1) The approving body for a drainage system is—
- (a) the unitary authority for the area in which it is, or in which it is to be constructed, or
  - (b) if there is no unitary authority, the county council for the area.
- (2) “Unitary authority” means—
- (a) the council of a county for which there are no district councils;
  - (b) the council of a district in an area for which there is no county council;
  - (c) a county borough council;
  - (d) the council of a London borough;
  - (e) the Common Council of the City of London;
  - (f) the Council of the Isles of Scilly.
- (3) The Minister may by order appoint a body as approving body for drainage systems in all areas or in one or more specified areas (instead of the body that would be the approving body under sub-paragraph (1)).
- (4) An order under sub-paragraph (3) may—
- (a) appoint a body as approving body for specified purposes only;
  - (b) appoint different bodies as approving body for different purposes.
- (5) An order under sub-paragraph (3) may confer on the approving body a power of a kind exercisable by the body that would be the approving body under sub-paragraph (1).
- (6) An order under sub-paragraph (3)—
- (a) if it includes provision under sub-paragraph (4) or (5)—
    - (i) may not be made by the Secretary of State unless a draft has been laid before and approved by resolution of each House of Parliament, and

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- (ii) may not be made by the Welsh Ministers unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
- (b) otherwise, shall be subject to annulment in pursuance of a resolution of—
  - (i) either House of Parliament, in the case of an order of the Secretary of State, or
  - (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.

#### *Requirement for approval*

- 7
- (1) Construction work which has drainage implications may not be commenced unless a drainage system for the work has been approved by the approving body.
  - (2) For the purposes of sub-paragraph (1)—
    - (a) construction work means anything done by way of, in connection with or in preparation for the creation of a building or other structure, and
    - (b) construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater.
  - (3) Sub-paragraph (1) does not apply to work requiring development consent under section 31 of the Planning Act 2008 (nationally significant infrastructure projects).
  - (4) The Minister may by order—
    - (a) provide that a specified class of work is to be or not to be treated as construction work;
    - (b) provide for work to be or not to be treated as having drainage implications in specified circumstances;
    - (c) provide exceptions to sub-paragraph (1).
  - (5) For the avoidance of doubt, anything that covers land (such as a patio or other surface) is a structure for the purposes of sub-paragraph (2)(a).

#### *Applications for approval*

- 8
- (1) This paragraph provides two approaches for applying for approval required by paragraph 7.
  - (2) If the construction work does not require planning permission, the application for approval under paragraph 7 must be made in accordance with paragraph 9.
  - (3) If the construction work requires planning permission, the application for approval under paragraph 7 may be—
    - (a) made in accordance with paragraph 9, or
    - (b) combined with the application for planning permission in accordance with paragraph 10.
  - (4) “Planning permission” means planning permission under the Town and Country Planning Act 1990.

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*Free-standing application for approval*

- 9 (1) This paragraph provides for free-standing applications for approval under paragraph 7.
- (2) An application must—
- (a) be in any form required by the approving body,
  - (b) contain or be accompanied by any information required by the approving body, and
  - (c) be accompanied by any fee chargeable in accordance with paragraph 13.

*Combined applications*

- 10 (1) This paragraph provides for the combination of an application for approval under paragraph 7 with an application for planning permission.
- (2) Paragraph 9(2) applies to that part of the combined application that seeks approval under paragraph 7.
- (3) The planning authority must—
- (a) consult the approving body (if different) in determining the application for planning permission, and
  - (b) inform the approving body (if different) of its determination of the application for planning permission.
- (4) When informing the applicant of the determination of the application for planning permission the planning authority must also inform the applicant of the approving body's determination of the application for approval.

*Determination of application for approval*

- 11 (1) On considering an application for approval the approving body must—
- (a) grant it, if satisfied that the drainage system if constructed as proposed will comply with national standards for sustainable drainage, or
  - (b) refuse it, if not satisfied.
- (2) Approval granted under sub-paragraph (1)(a) may be subject to conditions; in particular, a condition may—
- (a) relate to the construction of the drainage system (which may involve modification of the proposal for construction),
  - (b) provide that approval takes effect only if and when the applicant provides a non-performance bond in accordance with paragraph 12,
  - (c) relate to inspection, or
  - (d) require the payment of fees chargeable under paragraph 13 by reference to work undertaken in connection with approval.
- (3) Before determining an application the approving body must consult—
- (a) any sewerage undertaker with whose public sewer the drainage system is proposed to communicate;
  - (b) the Environment Agency, if the drainage system directly or indirectly involves the discharge of water into a watercourse;
  - (c) the relevant highway authority for a road which the approving body thinks may be affected;

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- (d) British Waterways, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into or under a waterway managed by them;
  - (e) an internal drainage board, if the approving body thinks that the drainage system may directly or indirectly involve the discharge of water into an ordinary watercourse (within the meaning of section 72 of the Land Drainage Act 1991) within the board's district.
- (4) As soon as is reasonably practicable after determining an application for approval the approving body must notify—
- (a) the applicant or, in the case of a combined application, the planning authority, and
  - (b) any person consulted under sub-paragraph (3).
- (5) The Minister may make regulations about timing and procedure for determination of applications for approval; and the regulations may, in particular, specify the consequences of failure to comply with them.

#### *Non-performance bonds*

- 12 (1) A non-performance bond is a bond of a kind and to a value specified in a condition imposed on the grant of an application for approval.
- (2) The effect of the bond must be that the value of the bond is payable to the approving body if it certifies that the drainage system—
- (a) has been constructed in a manner that is not in accordance with the approved proposals, or
  - (b) is unlikely to be completed.
- (3) Before giving a certificate under sub-paragraph (2) the approving body must consult the applicant for approval (“the developer”).
- (4) Where an approving body gives a certificate under sub-paragraph (2)—
- (a) it must notify the developer,
  - (b) the approving body may undertake any work necessary to ensure that the drainage system is completed in such a manner as to make it likely to operate in compliance with national standards for sustainable drainage, and
  - (c) the sums received under the bond may be applied to the expenses of that work, and any excess is to be paid to the developer.
- (5) In requiring a non-performance bond an approving body must specify a value which does not exceed the best estimate of the maximum likely cost of work required to ensure that the drainage system accords with the approved proposals.
- (6) The Minister may issue guidance about what amounts may be required by way of non-performance bonds; and approving bodies must have regard to the guidance.

#### *Fees*

- 13 (1) The Minister shall by regulations provide for fees for applications for approval.
- (2) The regulations may—
- (a) provide for fees to be determined by reference to specified criteria (including the extent or nature of construction works);

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- (b) provide for fees to be paid by reference to work done by the approving authority in connection with approval.
- (3) In making regulations the Minister must have regard to the desirability of ensuring that fee income does not significantly exceed the costs (direct and indirect) that approving bodies incur in connection with approval.

### *Enforcement*

- 14 (1) The Minister shall by order provide for the enforcement of the requirement for approval in paragraph 7(1).
- (2) An order may, in particular, make provision about cases where—
- (a) construction is commenced without a drainage system having been approved,
  - (b) conditions of approval are breached, or
  - (c) construction does not conform to the approved proposals.
- (3) An order may, in particular, provide for—
- (a) notices (including enforcement notices, stop notices, temporary notice and breach of condition notices),
  - (b) applications to a court or tribunal,
  - (c) powers (including (i) discretionary powers conferred on the Minister or specified authorities, (ii) powers of entry, (iii) powers of inspection, and (iv) powers to undertake and charge for remedial work),
  - (d) offences of failure to comply with the regulations or notices under them,
  - (e) financial penalties,
  - (f) rights of appeal, and
  - (g) compensation.
- (4) An order may apply (with or without modification) or make provision similar to a provision of the Town and Country Planning Act 1990.
- (5) An order—
- (a) may not be made by the Secretary of State unless a draft has been laid before and approved by resolution of each House of Parliament, and
  - (b) may not be made by the Welsh Ministers unless a draft has been laid before and approved by resolution of the National Assembly for Wales.

### *Guidance*

- 15 The Minister may issue guidance about the process of seeking and obtaining approval; and approving bodies must have regard to the guidance.

### *Sewers and roads*

- 16 (1) After section 106(1A) of the Water Industry Act 1991 (right to connect to public sewers) insert—
- “(1B) The right under subsection (1) is subject to section 106A.”
- (2) After section 106 insert—

### “106A Sustainable drainage

- (1) This section applies to a drainage system construction of which required approval under Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).
- (2) A person may exercise the right under section 106(1) in respect of surface water only if—
  - (a) the construction of the drainage system was approved under that Schedule, and
  - (b) the proposals for approval included a proposal for the communication with the public sewer.
- (3) Where subsection (2) is satisfied, the connection may not be refused—
  - (a) under section 106(4), or
  - (b) on grounds that the drainage system absorbs water from more than one set of premises or sewer, or from land that is neither premises nor a sewer.”
- (3) After section 115(5) of the Water Industry Act 1991 (highway drains and sewers) insert—
  - “(5A) A sewerage undertaker must accept any use by a highway authority which is in accordance with a drainage system approved under Schedule 3 to the Flood and Water Management Act 2010.”

### *Duty to adopt*

- 17 (1) An approving body must adopt a drainage system which satisfies the following conditions.
  - (2) Condition 1 is that the drainage system was constructed in pursuance of proposals approved under paragraph 7.
  - (3) Condition 2 is that the approving body is satisfied—
    - (a) that the drainage system was constructed, and functions, in accordance with the approved proposals (including any conditions of approval), or
    - (b) that the approving body can issue or has issued a certificate under paragraph 12(2).
  - (4) An approving body must have regard to any guidance issued by the Minister about the application of Condition 2.
  - (5) Condition 3 is that the drainage system is a sustainable drainage system, as defined by regulations made by the Minister.
  - (6) Where part of a drainage system is exempt from adoption a reference in this Schedule to the adoption of a drainage system includes a reference to adoption of part of a drainage system.

### *Exception 1: single-property systems*

- 18 (1) The adoption duty does not apply to a drainage system which is designed only to provide drainage for a single property.

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- (2) The adoption duty does not apply to any part of a drainage system which is designed only to provide drainage for a single property.
- (3) The Minister may by regulations make provision for determining when a drainage system, or part of a drainage system, is to be or not to be treated as designed only to provide drainage for a single property.

*Exception 2: roads*

- 19 (1) The adoption duty does not apply to any part of a drainage system which is a publicly-maintained road.
- (2) If part of an adopted drainage system becomes a publicly-maintained road, the adoption lapses in respect of that part.
- (3) Sub-paragraphs (4) and (5) apply—
  - (a) where a drainage system is adopted and part of the system is a publicly-maintained road (and that part therefore need not be adopted);
  - (b) where a drainage system is entirely on a publicly-maintained road (and the adoption duty does not therefore apply to it).
- (4) The maintaining authority must exercise its functions in respect of the road—
  - (a) in accordance with the approved proposals for the drainage system (including any conditions of approval), and
  - (b) in accordance with national standards for sustainable drainage.
- (5) The maintaining authority must designate the road under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties).
- (6) “Publicly-maintained road” means a highway to which the duty under section 41 of the Highways Act 1980 applies (maintenance at public expense); (and a reference to a road includes a reference to part of a road).

*Additional exceptions*

- 20 The Minister may by order provide additional exceptions to the adoption duty.

*Power to adopt*

- 21 An approving body may voluntarily adopt all or part of a sustainable drainage system, as defined by regulations made by the Minister, to which the duty to adopt does not apply.

*Effect of adoption*

- 22 (1) Where an approving body adopts a drainage system it becomes responsible for maintaining the system.
- (2) In maintaining the system the adopting body must comply with national standards for sustainable drainage.



*Process of adoption in pursuance of duty to adopt*

- 23 (1) This paragraph describes the procedure for adoption in pursuance of the duty to adopt.
- (2) An approving body may adopt a drainage system—
- (a) on its own initiative, or
  - (b) at the request of the person who applied for approval under paragraph 7 (“the developer”).
- (3) A request must be made in the form (if any) prescribed by the approving body.
- (4) Where an approving body receives a request it must—
- (a) determine it within such period as the Minister may prescribe by order, and
  - (b) notify the developer as soon as is reasonably practicable of the decision and of any right of appeal.
- (5) Where an approving body adopts a drainage system on its own initiative it must notify the developer as soon as is reasonably practicable.
- (6) Where an approving body gives notice under sub-paragraph (4)(b) or (5) it must—
- (a) ensure that the notice specifies the extent of the drainage system being adopted,
  - (b) copy the notice to the sewerage undertaker in whose area the drainage system is,
  - (c) copy the notice to any person who appears to the approving body to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance),
  - (d) copy the notice to any other person whom the approving body were obliged to consult on the application for approval,
  - (e) copy the notice to any person who appears to the approving body to own or occupy land from which water will be drained by the drainage system,
  - (f) arrange for the inclusion of the drainage system (including any non-adopted part) in the relevant register under section 21,
  - (g) release any bond provided under paragraph 12,
  - (h) arrange for the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body), and
  - (i) designate under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.
- (7) The Minister may make regulations about the timing and manner of compliance with sub-paragraph (6).

*Process of voluntary adoption*

- 24 (1) This paragraph applies where an approving body decides to exercise its power to adopt a drainage system to which the duty to adopt does not apply.
- (2) The approving body must notify—
- (a) the sewerage undertaker in whose area the drainage system is,

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- (b) any person who appears to the approving body to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance), and
  - (c) any person who appears to the approving body to own or occupy land from which water will be drained by the drainage system.
- (3) The approving body must arrange for—
- (a) the inclusion of the drainage system (including any non-adopted part) in the relevant register under section 21, and
  - (b) the designation under Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation (and which is not owned by the approving body).
- (4) The notification under sub-paragraph (2) must specify the extent of the drainage system being adopted.
- (5) The Minister may make regulations about the timing and manner of compliance with sub-paragraphs (2) and (3).

### *Appeals*

- 25 (1) The Minister must by regulations provide a right of appeal against—
- (a) decisions under this Schedule about applications for approval (including decisions about conditions), and
  - (b) decisions under this Schedule about the duty to adopt.
- (2) The regulations must—
- (a) confer jurisdiction on the Minister, a court or a tribunal, and
  - (b) make provision about procedure.
- (3) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and
  - (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers.

### *Building Act 1984*

- 26 (1) At the end of section 21 of the Building Act 1984 (provision of drainage) add—
- “(7) This section does not apply to works in connection with which approval is required in accordance with Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage).”
- (2) The power in section 59(1)(c) of the Building Act 1984 (power to give notice about unsatisfactory condition of drains) applies to sustainable drainage systems, as defined by regulations under paragraph 17(5) above, as to works mentioned in that section; and for that purpose—
- (a) it does not matter whether the drainage system, or any part of it, is adopted under this Schedule, and
  - (b) a reference to a local authority is to be treated as a reference to the relevant approving body.

(3) At the end of section 59 add—

“(7) Schedule 3 to the Flood and Water Management Act 2010 extends the power under subsection (1)(c) of this section to sustainable drainage systems as defined in regulations under that Schedule.”

(4) In section 84(1) of the Building Act 1984 (paving and drainage of yards and passages) for the words “to a proper outfall” substitute “(having regard both to the need to remove water from the court, yard or passage and also to the need to dispose of it satisfactorily in the course of or after its removal)”.

#### *New Roads and Street Works Act 1991*

27 At the end of section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) insert—

“(5) In addition to criteria for designation prescribed under subsection (2) (a), Schedule 3 to the Flood and Water Management Act 2010 requires designation in certain circumstances (relating to sustainable drainage systems).”

#### *Works on public land*

28 (1) The Minister may make regulations requiring a statutory undertaker to notify the approving body before commencing statutory works on public land where the works will or may affect the operation of a drainage system on that land.

(2) “Public land” means land owned or occupied by a designating authority for the purposes of Schedule 1.

(3) The regulations shall define—

- (a) “statutory undertaker”, and
- (b) “statutory works”.

(4) The regulations may specify criteria for determining what works are to be treated as works that will or may affect the operation of a drainage system.

(5) The regulations may include provision about—

- (a) timing, and
- (b) procedure.

(6) The regulations may—

- (a) specify consequences of failure to comply with a provision of the regulations;
- (b) include provision requiring, or enabling an approving body to require, a statutory undertaker who is carrying out or has carried out works affecting a drainage system to carry out further work in relation to the system (which may include, in particular, a requirement to leave the system in a state approved by the approving body, having regard to national standards on sustainable drainage);
- (c) give approving bodies default powers to undertake work and recover costs.

(7) The regulations may amend an enactment so as to introduce a cross-reference to the regulations.