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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1074 (W. 224)**

**WATER INDUSTRY, WALES**

**The Sustainable Drainage (Approval  
and Adoption) (Wales) Order 2018**

<i>Made</i>	- - - -	<i>10 October 2018</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>15 October 2018</i>
<i>Coming into force</i>	- -	<i>7 January 2019</i>

The Welsh Ministers, in exercise of the powers conferred by sections 32 and 48(2) of, and paragraphs 4(a), 7(4)(b) and (c) and 23(4)(a) of Schedule 3 to, the Flood and Water Management Act 2010<sup>(1)</sup>, make the following Order.

**Title and commencement**

1.—(1) The title of this Order is the Sustainable Drainage (Approval and Adoption) (Wales) Order 2018.

(2) This Order comes into force on 7 January 2019.

**Interpretation**

2.—(1) In this Order, “Schedule 3” (“*Atodlen 3*”) means Schedule 3 to the Flood and Water Management Act 2010.

(2) In this Order unless otherwise stated, a reference to “construction work<sup>(2)</sup>” is to be construed as a reference to construction work which has drainage implications<sup>(3)</sup>.

**Construction work not to be treated as having drainage implications**

3.—(1) Construction work which, but for this article would have drainage implications, is not to be treated as having drainage implications if it is carried out in the circumstances in paragraph (2).

(2) The circumstances are where—

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(1) 2010 c. 29. Schedule 3 was amended by sections 21(3), 88(a) and 88(b) of the Water Act 2014 (c. 21) and S.I. 2012/1659 and 2013/755 (W. 90).  
(2) “Construction work” is defined in paragraph 7(2)(a) of Schedule 3.  
(3) “Drainage implications” is defined in paragraph 7(2)(b) of Schedule 3.

- (a) construction work is carried out by an internal drainage board in exercise of its functions under the Land Drainage Act 1991(4);
  - (b) construction work is 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;
    - (ii) a railway by Network Rail.
- (3) In this article—
- “highway authority” (“*awdurdod priffyrdd*”) has the meaning given in section 1 of the Highways Act 1980(5);
- “internal drainage board” (“*bwrdd draenio mewnol*”) has the meaning given in section 1 of the Land Drainage Act 1991;
- “Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;
- “railway” (“*rheilffordd*”) has the meaning given in section 67(1) of the Transport and Works Act 1992(6).

#### **Exceptions to requirement for approval: planning permission not required**

- 4.—(1) Subject to paragraph (2), the requirement for approval under paragraph 7(1) of Schedule 3 does not apply to construction work where the construction work does not require planning permission(7).
- (2) The exception in paragraph (1) does not apply where the construction work involves the construction of a building or other structure covering an area of land of 100 square metres or more.

#### **Exceptions to requirement for approval: planning permission required**

- 5.—(1) Subject to paragraph (2), the requirement for approval under paragraph 7(1) of Schedule 3 does not apply to any construction work in respect of which, before 7 January 2019—
- (a) planning permission was granted or deemed to be granted (whether or not subject to any condition as to a reserved matter), or
  - (b) a local planning authority received a valid application for planning permission but by that date had not finally determined it.
- (2) The exception in paragraph (1) does not apply to construction work in respect of which planning permission was granted before 7 January 2019 if—
- (a) the grant was subject to a condition as to a reserved matter, and
  - (b) an application for approval of the reserved matter is not made within the period of 12 months beginning with 7 January 2019.
- (3) For the purposes of this Order, a valid application for planning permission is received before 7 January 2019 if it is made before that date and complies with the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(8).
- (4) In this article—

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(4) 1991 c. 59.

(5) 1980 c. 66. Functions of the Minister in so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (NAW) by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Functions of NAW are now exercisable by Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(6) 1992 c. 42.

(7) “Planning permission” is defined in paragraph 8(4) of Schedule 3.

(8) S.I. 2012/801 (W. 110).

“local planning authority” (“*awdurdod cynllunio lleol*”) has the meaning given in section 1(1B) of the Town and Country Planning Act 1990<sup>(9)</sup>;

“reserved matter” (“*mater a gedwir yn ôl*”) has the meaning given in section 92(1) of that Act.

#### **Exceptions to requirement for approval: construction area less than 100 square metres**

6.—(1) The requirement for approval under paragraph 7(1) of Schedule 3 does not apply where—

- (a) construction work involves—
  - (i) the construction of a single dwelling house, and
  - (ii) the area of land covered by the construction work is less than 100 square metres, or
- (b) in the case of any other type of construction work, the area of land covered by the construction work is less than 100 square metres.

(2) This article applies whether or not planning permission is required for the construction work.

#### **Determining requests for adoption**

7.—(1) The period within which an approving body<sup>(10)</sup> for a drainage system must determine a request to adopt a drainage system is—

- (a) 8 weeks beginning on the first working day after it receives the request, or
- (b) any extended period agreed to by the approving body and developer<sup>(11)</sup> before the end of the period in sub-paragraph (a).

(2) An approving body which fails to determine a request within the period specified in paragraph (1) is deemed to have refused the request.

(3) In this article—

“request to adopt” (“*archiad i fabwysiadu*”) means a request pursuant to paragraph 23(2)(b) of Schedule 3;

“working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971<sup>(12)</sup>, or other public holiday in Wales.

*Hannah Blythyn*  
Minister for Environment under authority of  
the Cabinet Secretary for Energy, Planning and  
Rural Affairs, one of the Welsh Ministers

10 October 2018

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<sup>(9)</sup> 1990 c. 8. Section 1(1B) was inserted by section 18 Local Government (Wales) Act 1994 (c. 19).

<sup>(10)</sup> “Approving body” is defined in paragraph 6 of Schedule 3.

<sup>(11)</sup> “Developer” is defined in relation to a request to adopt in paragraph 23(2)(b) of Schedule 3.

<sup>(12)</sup> 1971 c. 80.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision in relation to the requirement for approval of, and requests for adoption of, sustainable drainage systems under Schedule 3 to the Flood and Water Management Act 2010 (c. 29) (“the Act”).

Article 3 provides that certain types of construction work are not to be treated as having drainage implications.

Article 4(1) provides that construction work which does not require planning permission is excepted from the requirement in paragraph 7 (“requirement for approval”) of Schedule 3 to the Act. Article 4(2) provides that the exception does not apply where the construction covers an area of 100 square metres or more.

Article 5(1) provides that where planning permission is required in relation to construction work, and is granted, or a valid application for planning permission received, by a planning authority for construction work, before 7 January 2019 (the coming into force of this Order), the requirement for approval does not apply.

Article 5(1) is qualified by article 5(2), which provides that the exception in article 5(1) does not apply where the grant of planning permission was subject to a reserved matter, and an application for approval of the reserved matter is not made within the period of 12 months beginning on 7 January 2019.

Article 6 provides that, whether or not planning permission is required, construction work involving the construction of a single dwelling house, or other type of construction, which covers an area of less than 100 square metres, is excepted from the requirement for approval.

Article 7(1) provides that an approving body must determine a request for adoption of a drainage system within 8 weeks of receipt of the request, or any longer period agreed between the approving body and the developer, before the expiry of the initial 8 week period.

Article 7(2) provides that a failure of the approving body to determine a request within the period specified in article 7(1) is deemed to be a refusal of the request.

A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on [www.gov.wales](http://www.gov.wales).