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WELSH STATUTORY INSTRUMENTS

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**2018 No. 1077 (W. 226)**

**WATER INDUSTRY, WALES**

**The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 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), 11(5), 17(5), 18(3), 23(7), 24(5) and 28 of Schedule 3 to, the Flood and Water Management Act 2010<sup>(1)</sup>, make the following Regulations.

**PART 1**

**Introduction**

**Title and commencement**

1.—(1) The title of these Regulations is the Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018.

(2) These Regulations come into force on 7 January 2019.

**Interpretation**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Flood and Water Management Act 2010;

“applicant” (“*ceisydd*”) means a person who makes an application for approval;

“application for approval” (“*cais am gymeradwyaeth*”) means—

- (a) an application for approval made in accordance with paragraph 9 of Schedule 3, or
- (b) that part of a combined application that seeks approval made in accordance with paragraph 10 of Schedule 3—

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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).

and a reference to a “valid application” (“*cais dilys*”) is to be construed accordingly;

“approval” (“*cymeradwyaeth*”) means the approval required under paragraph 7(1) of Schedule 3 for a drainage system<sup>(2)</sup> for construction work<sup>(3)</sup>;

“confirmed proposal” (“*cynnig a gadarnhawyd*”) means a proposal to carry out reconstruction work confirmed under regulation 15;

“developer” (“*datblygwr*”) has the meaning given in paragraph 23(2)(b) of Schedule 3;

“development” (“*datblygiad*”) has the meaning given in section 55 of the Town and Country Planning Act 1990<sup>(4)</sup>;

“national standards” (“*safonau cenedlaethol*”) means the national standards for sustainable drainage published under paragraph 5 of Schedule 3;

“reconstruction work” (“*gwaith ailadeiladu*”) means work carried out—

- (a) to reconstruct a sustainable drainage system to the state it was in before statutory works commenced, or
- (b) to construct a new sustainable drainage system in accordance with the national standards to operate in place of the sustainable drainage system affected by statutory works;

“remedial work” (“*gwaith adferol*”) means work carried out on a sustainable drainage system—

- (a) to remedy damage caused by statutory works, and
- (b) to ensure the sustainable drainage system complies with the national standards;

“Schedule 3” (“*Atodlen 3*”) means Schedule 3 to the Act;

“statutory undertaker” (“*ymgymerwr statudol*”) has the meaning given in regulation 13;

“statutory works” (“*gwaith statudol*”) has the meaning given in regulation 14;

“sustainable drainage system” (“*system ddraenio gynaliadwy*”) means those parts of a drainage system that are not vested in a sewerage undertaker pursuant to an agreement under section 104 of the Water Industry Act 1991<sup>(5)</sup>;

“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>(6)</sup>, or other public holiday in Wales.

(2) In these Regulations a reference to “construction work” is to be construed as a reference to construction work having drainage implications<sup>(7)</sup>.

## PART 2

### Determination of applications for approval

#### Refusal to determine application for approval

3.—(1) An approving body<sup>(8)</sup> may refuse to determine an application for approval which is not made in accordance with paragraph 9(2) or 10(2) (as the case may be) of Schedule 3.

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(2) “Drainage system” is defined in paragraph 1 of Schedule 3.

(3) “Construction work” is defined in paragraph 7(1)(a) of Schedule 3.

(4) 1990 c. 8.

(5) 1991c. 56. Section 104(1) was substituted by section 96(4)(a) of the Water Act 2003 (c. 37). There are other amendments not relevant for the purposes of these Regulations.

(6) 1971 c. 80.

(7) “Drainage implications” is defined in paragraph 7(2)(b) of Schedule 3.

(8) “Approving body” is defined in paragraph 6 of Schedule 3.

(2) Where an approving body refuses to determine an application pursuant to paragraph (1), it must as soon as practicable—

- (a) inform the applicant of the refusal and the reasons for it, and
- (b) return any application fee accompanying the application.

#### **Duty to consult before determining application for approval**

4.—(1) An approving body, when requesting a response from a person consulted under paragraph 11(3) of Schedule 3 (a “consultee”), must specify a date for response which is within 3 weeks beginning on the first working day after sending the request.

(2) Before the end of the period specified under paragraph (1) the approving body and consultee may agree a different date for response.

(3) The approving body may disregard a response that is received from a consultee after the relevant time limit.

(4) In this regulation, “relevant time limit” means—

- (a) a period specified under paragraph (1), or
- (b) any other period agreed under paragraph (2).

#### **Time limits for determining applications for approval**

5.—(1) An approving body must determine—

(a) an application for approval that relates to a development that is the subject of an Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017<sup>(9)</sup> (“the 2017 Regulations”) within the period of 12 weeks beginning on the first working day after it receives a valid application, or

(b) any other application for approval within the period of 7 weeks beginning on the first working day after it receives a valid application.

(2) Before the end of the period specified in sub-paragraph (a) or (b) (as the case may be) of paragraph (1), the approving body and applicant may agree a longer time for determining an application.

(3) An approving body which fails to determine an application within the relevant time limit is deemed to have refused the application.

(4) In this regulation—

“development” (“*datblygiad*”) has the meaning given in section 55(1) of the Town and Country Planning Act 1990<sup>(10)</sup>;

“Environmental Impact Assessment” (“*Asesiad o’r Effaith Amgylcheddol*”) has the meaning given in regulation 2 of the 2017 Regulations;

“relevant time limit” (“*terfyn amser perthnasol*”) means—

- (a) a period specified in paragraph (1), or
- (b) any longer period agreed under paragraph (2).

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<sup>(9)</sup> S.I. 2017/567 (W. 136).

<sup>(10)</sup> 1990 c. 8.

## PART 3

### Duty to adopt

#### Notice of adoption decision

6. A notification under paragraph 23(4)(b) or (5) of Schedule 3 must specify—
- (a) the reasons for the decision, and
  - (b) the date of the decision.

#### Release of non-performance bond where duty to adopt applies

7.—(1) Except where paragraph (3) applies, the approving body must release a non-performance bond within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3.

- (2) Paragraph (3) applies if the approving body—
- (a) issued a certificate under paragraph 12(2) of Schedule 3, and
  - (b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.
- (3) The approving body must, within 4 weeks beginning on the first working day after completing the work—
- (a) 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,
  - (b) pay the developer any excess, and
  - (c) release the non-performance bond.

#### Registration and designation where duty to adopt applies

8. Within 4 weeks beginning on the first working day after giving notice under paragraph 23(4)(b) or (5) of Schedule 3, an approving body must—

- (a) arrange for—
  - (i) the lead local flood authority<sup>(11)</sup> to include the drainage system in the register maintained under section 21 of the Act,
  - (ii) a designating authority<sup>(12)</sup> to make a provisional designation under paragraph 7 of Schedule 1 to the Act of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body, and
- (b) in accordance with regulations made under section 63 of the New Roads and Street Works Act 1991<sup>(13)</sup>, give notice of intention to designate under that section any adopted part of the drainage system that is a street within the meaning of section 48 of that Act.

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<sup>(11)</sup> “Lead local flood authority” is defined in section 6(9) of the Act.

<sup>(12)</sup> “Designating authority” is defined in paragraph 1 of Schedule 1 to the Act.

<sup>(13)</sup> 1991 c. 22. Section 63(5) was inserted by paragraph 27 of Schedule 3 to the Act.

## PART 4

### Where duty to adopt does not apply

#### Single property exception

9. For the purposes of paragraph 18(1) or (2) of Schedule 3 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) a single person, or
- (b) two or more persons together.

#### Release of non-performance bond where duty to adopt does not apply

10.—(1) Except where paragraph (3) applies, an approving body must release a non-performance bond within 4 weeks beginning on the first working day after completion of a drainage system that is constructed in accordance with approved proposals.

(2) Paragraph (3) applies if the approving body—

- (a) issued a certificate under paragraph 12(2) of Schedule 3, and
- (b) carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

(3) The approving body must, within 4 weeks beginning on the first working day after completing the work—

- (a) 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,
- (b) pay the developer any excess, and
- (c) release the non-performance bond.

(4) In this regulation—

“approved proposals” (*“cynigion a gymeradwywyd”*) means proposals approved under paragraph 7(1) of Schedule 3, including any conditions of approval;

“drainage system” (*“system ddraenio”*) is to be construed as a drainage system to which the duty to adopt does not apply.

#### Notification of voluntary adoption

11.—(1) An approving body must give any notification under paragraph 24(2) of Schedule 3 as soon as practicable after deciding to adopt a drainage system to which the duty to adopt does not apply.

(2) The notification must specify—

- (a) the reason for adoption, and
- (b) the date of adoption.

#### Registration and designation following voluntary adoption

12. Within 4 weeks beginning on the first working day after giving a notification under paragraph 24(2) of Schedule 3, an approving body must arrange for—

- (a) the lead local flood authority to include the drainage system in the register maintained under section 21 of the Act, and
- (b) a designating authority to make a provisional designation under paragraph 7 of Schedule 1 of any part of the drainage system (whether an adopted part or not) which is eligible for designation and is not owned by the approving body.

## PART 5

### Works on public land

#### Meaning of “statutory undertaker”

**13.** For the purpose of paragraph 28(3)(a) of Schedule 3, “statutory undertaker” means a person entitled under a provision of an enactment listed in regulation 14 to carry out statutory works on public land.

#### Meaning of “statutory works”

**14.** For the purpose of paragraph 28(3)(b) of Schedule 3, “statutory works” means works that may be carried out by a person under any of the following provisions—

- (a) section 159 of the Water Industry Act 1991(**14**) (power to lay, inspect, maintain etc. pipes);
- (b) Schedule 4 to the Gas Act 1986(**15**) (power to dig up streets);
- (c) paragraph 10(4) of Schedule 4 to the Electricity Act 1989(**16**)(power to make boreholes);
- (d) Schedule 3A to the Communications Act 2003(**17**).

#### Giving notice of statutory works and proposals for reconstruction work

**15.—(1)** Except in an emergency, a statutory undertaker must not commence statutory works that will or may affect the operation of a sustainable drainage system on any public land unless, at least 4 weeks before the statutory works are commenced, it gives notice to the approving body for that drainage system of—

- (a) the proposed statutory works, and
- (b) the proposal to carry out reconstruction work.

(2) Notice given under paragraph (1) must expire on the working day before the statutory works are to commence.

(3) If the statutory works are commenced in an emergency, the statutory undertaker must as soon as is practicable after the statutory works are commenced give notice to the approving body of—

- (a) the commencement of the statutory works, and
- (b) the proposal to carry out reconstruction work.

(4) Reconstruction work may not be commenced unless the approving body has confirmed the proposal to carry out the reconstruction work.

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(14) 1991c. 56. Section 159 was amended by section 97(1) and (5) of the Water Act 2003 (c. 37).

(15) 1986 c. 44. Schedule 4 was amended by Schedule 6, Part 1, paragraphs 1 and 2(1) to the Utilities Act 2000 (c. 27) and by Schedule 8, paragraph 119 to the New Roads and Street Works Act 1991 (c. 22). There are other amendments not relevant to these Regulations.

(16) 1989 c. 29.

(17) 2003 c. 21. Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(5) Unless the approving body has notified the statutory undertaker to the contrary, a proposal to carry out reconstruction work is taken to be confirmed—

- (a) for a proposal notified under paragraph (1)(b), 4 weeks beginning on the first working day after the notice is given;
- (b) for a proposal notified under paragraph (3)(b), 48 hours after the notice is received by the approving body.

(6) The statutory undertaker must as soon as reasonably practical after carrying out reconstruction work notify the approving body of the date the statutory works were completed.

#### **Requirement to undertake remedial work**

**16.**—(1) If a statutory undertaker fails to carry out reconstruction work in accordance with the confirmed proposal, the approving body may require the undertaker to carry out remedial work within a specified timescale.

(2) If a statutory undertaker fails to comply with a requirement under paragraph (1), the approving body may—

- (a) carry out remedial work, and
- (b) recover as a debt from the undertaker any costs incurred in carrying out that work.

#### **Statutory works to comply with the national standards**

**17.**—(1) Within 12 months after statutory works are completed, the approving body must decide if it is satisfied that the requirements in paragraph (2) are met.

(2) The requirements are that—

- (a) a reconstructed or new sustainable drainage system functions in accordance with the confirmed proposal,
- (b) a new sustainable drainage system, if not constructed in accordance with the confirmed proposal, complies with the national standards, or
- (c) a reconstructed sustainable drainage system, if not constructed in accordance with the confirmed proposal, is reconstructed to the state it was in before the statutory works were commenced.

(3) If an approving body is not satisfied that the requirements in paragraph (2) are met, it may require the statutory undertaker to carry out reconstruction work or remedial work within a specified timescale.

(4) If a statutory undertaker fails to comply with a requirement under paragraph (3), the approving body may—

- (a) carry out remedial work, and
- (b) recover as a debt from the undertaker any costs incurred in carrying out that work.

10 October 2018

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

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## EXPLANATORY NOTE

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

These Regulations make provision for procedure in relation to the determination by approving bodies, of applications for approval of sustainable drainage systems and for adoption of such drainage systems, in accordance with Schedule 3 to the Flood and Water Management Act 2010 (c. 29) (“the Act”).

Regulation 3 provides that an approving body may refuse to determine an application for approval not made in accordance with paragraph 9 or 10 of Schedule 3 to the Act.

Regulation 4 provides for procedure to be followed by the approving body in relation to seeking responses from the statutory consultees specified in paragraph 11(3) of Schedule 3 to the Act.

Regulation 5(1)(a) provides for the time limit within which an application for approval that relates to a development that is the subject of an Environmental Impact Assessment, must be determined. Regulation 5(1)(b) provides for the time limit for determination of any other type of application for approval. Regulation 5(2) provides that in either case, the applicant and approving body may agree a longer time for determination of the application.

Regulation 5(3) provides that an approving body which fails to determine an application within the relevant time limit is deemed to have refused the application.

Regulation 6 provides for the information to be included in a notification to a developer of a decision in relation to adoption, where a developer requests that an approving body adopt a drainage system, or where the approving body adopts a drainage system on its own initiative.

Regulation 7(1) provides for the time period for release of a non-performance bond by an approving body following notice of a decision in relation to adoption of a drainage system, except where the approving body has certified that the drainage system has not been constructed in accordance with approved proposals or is unlikely to be completed, and the approving body has carried out work to ensure the drainage system was completed in such a manner as to make it likely to operate in compliance with national standards.

In those circumstances, regulation 7(3) provides for the approving body to account to the developer for sums applied to the cost of the work, the return of the balance and the release of the non-performance bond.

Regulation 8 provides that within 4 weeks of notifying a developer of a decision to adopt a drainage system (whether on request or on its own initiative), the approving body must arrange for registration of the drainage system in the register maintained under section 21 of the Act, for a designating authority to make a provisional designation under paragraph 7 of Schedule 1 to the Act, and give notice of intention to designate any part of the drainage system that is a street, within the meaning of section 48 of the New Roads and Street Works Act 1991.

Regulation 9 provides for the definition of “single property” drainage systems for the purposes of exemption from the duty to adopt, pursuant to paragraph 18 of Schedule 3.

Regulation 10(1) provides for the time period for an approving body to release a non-performance bond where a drainage system has been completed in accordance with approved proposals. Regulation 10(2) provides for the case where an approving body has carried out work to ensure that a drainage system is completed so that the system is likely to comply with national standards. In those circumstances, regulation 10(3) provides for the time for an approving body to account to the developer for monies applied to the work, return any excess and release the non-performance bond.



Regulation 11 provides that an approving body must notify the persons in paragraph 24(2) of Schedule 3 as soon as practicable after exercising its power to adopt a drainage system to which the duty to adopt does not apply and regulation 13(2) specifies the content of the notice.

Regulation 12 provides for the time period for registration of a drainage system by the lead local flood authority, and provisional designation of a drainage system by a designating authority under paragraph 7 of Schedule 1 to the Act, following voluntary adoption.

Regulation 13 provides for the definition of “statutory undertaker”.

Regulation 14 provides for the definition of “statutory works”.

Regulations 15(1) to (3) provide for a statutory undertaker to give notice to an approving body of intention to commence statutory works on public land, including in an emergency, where such works will or may affect a sustainable drainage system. Regulations 15(4) to (6) make provision for approval and notification of reconstruction works in relation to sustainable drainage systems following statutory works.

Regulation 16(1) provides a power for the approving body to require a statutory undertaker to carry out remedial works. Where such a request is not complied with, regulation 16(2) provides a further power to an approving body, to undertake remedial works and recover the cost of the works from the statutory undertaker.

Regulation 17(1) requires an approving body to determine, within 12 months of completion of statutory works, whether it is satisfied that the requirements in regulation 17(2) are met. The requirements are that a reconstructed or new drainage system functions in accordance with the approved proposal; whether a new system, if not constructed in accordance with the approved proposal, complies with national standards, or a reconstructed sustainable drainage system, if not constructed in accordance with the approved proposal, is reconstructed to the state it was in before the statutory works were commenced.

Regulation 17(3) provides a power, where an approving body is not satisfied in relation to regulation 17(2), for the approving body to require a statutory undertaker to carry out reconstruction or remedial works within a specified timescale. If such a request is not complied with, regulation 17(4) provides a power of the approving body to carry out the works, and recover the cost from the statutory undertaker.

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).