
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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.