

Consultation on the Implementation of the Sustainable Drainage Systems provisions in Schedule 3

Flood and Water Management Act 2010

December 2011

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This document/publication is also available on our website at:
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Annexes

- Annex A** Draft National Standards for Sustainable Drainage
- Annex B** Draft Sustainable Drainage (Approval and Adoption) (England) Order 2012
- Annex C** Draft Sustainable Drainage (Enforcement) (England) Order 2012
- Annex D** Draft Sustainable Drainage (Procedure) (England) Regulation 2012
- Annex E** Draft Sustainable Drainage (Appeals) (England) Regulations 2012
- Annex F** Impact Assessment on the commencement of the Flood and Water Management Act 2010: Schedule 3 for Sustainable Drainage Systems
- Annex G** Full list of Consultation Questions
- Annex H** List of Consultees
- Annex I** List of National Standards Project Advisory Board Members
- Annex J** Glossary
- Annex K** Regulatory Framework

Part I – Introduction and Background

Purpose of this consultation

- 1.1 This consultation describes how Government proposes to implement the Flood and Water Management Act 2010 (the Act) for the use of sustainable drainage systems (SuDS) for future development in England.
- 1.2 This is your opportunity to tell us what you think of the proposed National Standards and statutory instruments (regulations and orders) which provide much of the detail of how the SuDS process will work. There are a series of questions throughout the document and we ask that you take the time to consider your responses and reply within the 12 week consultation period.

Background

- 1.3 Surface water flooding is a serious problem. Of the 55,000 properties damaged in the summer of 2007, two-thirds were flooded by surface runoff overloading drainage systems. We must not forget the tragedy of the lives lost during this flood.
- 1.4 Despite significant improvements in the quality of our rivers and groundwater in recent years, the damaging effects of diffuse pollution are of increasing concern.
- 1.5 Conventional piped drainage has a limited capacity and is usually designed to convey surface runoff rapidly from a development; it also provides no facility to control diffuse pollution. Significant investment is required to increase the capacity of our sewerage system, which struggles to cope with the high volumes of surface runoff and the increasing costs of improving water quality.
- 1.6 The SuDS approach makes use of different techniques, such as infiltration and retention, which mimic runoff from the site in its natural state. Rainwater should be managed close to its source and on the surface where possible. As a result the water is stored and released slowly, reducing flood risk and improving water quality. Less surface runoff frees up capacity in our sewers, whilst more natural materials improve biodiversity and amenity. Examples of SuDS techniques include permeable paving, soakaways, green roofs, swales and ponds.
- 1.7 SuDS can be used effectively in both rural and urban areas and help support new development without adding to the risk of flooding or pollution.

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- 1.8 Government policy¹ already encourages developers to build SuDS. However, we estimate that as few as 40% of new developments and redevelopments are drained by SuDS of some sort; and uptake has been slow.
- 1.9 Sir Michael Pitt's review of the 2007² floods identified a number of factors that contribute to the slow uptake of SuDS. His recommendations to resolve these issues included:
- Government should resolve the issue of which organisations are responsible for the ownership and maintenance of SuDS.
 - The automatic right to connect surface runoff from new developments to the sewerage system should be removed.
- 1.10 Government supports these recommendations and wants to increase the use of SuDS in new developments and redevelopments wherever possible by establishing National Standards that maximise the benefits this approach offers. In order to do this the Act³ includes Schedule 3 for SuDS.

Context

- 1.11 The arrangements for SuDS will work alongside other legislation, policy and standards that include:
- Draft [National Planning Policy Framework](#)
 - [Localism Act 2011](#)
 - Building control ([Part H of the Building Regulations](#))
 - [Code for Sustainable Homes](#)⁴
 - [Flood Risk Management](#)
 - [Water Framework Directive](#)
 - [Groundwater Directive](#)
 - [Water Industry Act 1991](#)
 - [Highways Act 1980](#)
 - [New Roads and Street Works Act 1991](#)

¹ <http://wales.gov.uk/topics/planning/policy/tans/tan15/?skip=1&lang=en>

² http://www.preventionweb.net/files/2935_250608floodssummary.pdf

³ <http://www.legislation.gov.uk/ukpga/2010/29/schedule/3>

⁴ The Code for Sustainable Homes is a voluntary national standard for the sustainable design and construction of new homes which supports the use of SuDS

- 1.12 Most types of development will require specific planning permission from the relevant local planning authority. All material considerations will help determine the appropriateness of development, which may include surface runoff and flooding. Planning permission may be refused or granted subject to conditions to manage flood risk, for example.
- 1.13 Some development does not require specific planning permission as it is granted an automatic planning permission (i.e. classed as 'permitted development'). Many types of building and land have permitted development rights which enable various types of development from changes of use to alterations of existing buildings to the construction of new buildings. Permitted development rights exist for the provision of some hard-surfacing in certain situations (though in general this must be permeable unless there is a risk of ground-water contamination). Local planning authorities may withdraw permitted development rights where this would result in a particular local problem, for example flooding.
- 1.14 The links between planning and sustainable development; and SuDS provisions are discussed in Annex K.

Planning reform

- 1.15 Government is committed to reforming the planning system and is currently considering the responses submitted to the recent public consultation on the National Planning Policy Framework. Neighbourhood planning is at the forefront of Government's planning reforms and desire to see a strong plan led system under the Localism Act.
- 1.16 Communities – through parish councils and designated neighbourhood forums – will be able to create Neighbourhood Development Orders that give planning permission for development that meets requirements agreed in a local referendum. How the proposed SuDS approval process can take account of Neighbourhood Development Orders is a part of this consultation.

Flood and Water Management Act 2010

- 1.17 Schedule 3 to the Act requires construction work with drainage implications to have its drainage systems for managing surface runoff (including rainwater, snow and other precipitation) approved before construction may begin. A SuDS Approving Body (SAB) will be established in unitary or county local authorities to approve and, where appropriate, adopt SuDS.
- 1.18 The Act requires the Minister to publish National Standards on the design, construction, operation and maintenance of SuDS. In order for drainage applications to be approved, the SAB must ensure that the applicant has designed the SuDS in accordance with the National Standards. Once approved, the SAB must adopt and maintain those SuDS that are functioning properly and serve more than one property.

- 1.19 The Act amends the Water Industry Act 1991, making the right to connect surface runoff to public sewers conditional upon the drainage system being approved by the SAB.

Draft National Standards

- 1.20 The draft National Standards at Annex A reflect Governments' policy on SuDS which, when read with the four draft statutory instruments, will implement that policy.

Draft statutory instruments

- 1.21 The four draft statutory instruments deal with:
- Approval and adoption;
 - Enforcement of the requirement for SAB approval;
 - Procedural matters relating to approval and adoption; and
 - Appeals against SAB decisions.
- 1.22 The four statutory instruments are included at Annexes B to E. They assume implementation will start on the common commencement date of 1 October 2012 and are drafted accordingly but dates will ultimately reflect the outcome of this consultation. The statutory instruments are for England only and a separate set are under development for Wales.
- 1.23 It is now Government policy for the operation and effect of new regulations to be formally reviewed so that decisions can be made on whether there is a continuing need for them or whether they should be allowed to expire. For example, review and expiry clauses have been included in each of the draft statutory instruments.
- 1.24 Schedule 3 to the Act uses the term "the Minister" which for England means the Secretary of State responsible for drainage systems and we have used the same convention in this document.
- 1.25 References are made throughout this document to the draft statutory instruments along with a number of related questions. We will review the draft statutory instruments in light of the outcome of this consultation and they will then be submitted to Parliament for its approval.
- 1.26 In view of the close links between the requirement for SAB approval and obtaining planning permission we have, where practical, used the existing planning system as a model to develop our proposals. It is our intention that the measures that we are proposing will not delay development or the

planning application and determination process. We are also mindful of current planning reforms, including Government's work on simplifying the planning system. We are therefore seeking views on aspects of the SAB approval process that could be simplified.

Funding of Maintenance for adopted SuDS

- 1.27 In the short-term, maintenance of adopted SuDS will be funded by Government. This will pay for the costs of SuDS maintenance in the early years of implementation.
- 1.28 Government is considering a range of options for the long term funding of maintenance for adopted SuDS.

Water White Paper

- 1.29 Provisions in the Act apply to new development and redevelopment; the Water White Paper sets out Government's intentions for the retrofit of SuDS. Further information on the Water White Paper can be found at:
<http://www.defra.gov.uk/environment/quality/water/whitepaper/>

Guidance

- 1.30 Government recognises the importance of guidance in implementing the SuDS process. It proposes to support the development of guidance by working with local authorities, developers, statutory consultees and others. This will be developed through workshops and correspondence over the winter, with a view to having a "living draft" available for April 2012.
- 1.31 We have indicated below some of the areas guidance might cover:
- Principles of designing SuDS
 - Affordability
 - Reasonably Practicable
- 1.32 Although this consultation does not seek views on the guidance itself, expressions of interest are sought from those who wish to contribute to the development of guidance during the consultation period. Expressions should be submitted via the Defra mailbox: SUDS@defra.gsi.gov.uk **before 20 January 2012** to allow work to start as soon as possible.

Impact Assessment

1.33 An Impact Assessment is included with this consultation at Annex F and is referred to in Part II of this document.

Geographical Scope

1.34 The Act applies to England and Wales. However, the statutory instruments, National Standards and this consultation are for England only. Welsh Government will be holding a separate consultation.

Consultation Process

1.35 Comments and views are welcome on all or any of the questions asked in this consultation. A consolidated list of the questions is attached at Annex G.

How to contribute

1.36 The duration of this Consultation is 12 weeks which will run from 20 December 2011 and will **close on 13 March 2012**.

1.37 There are a number of ways to respond to the consultation:

Online survey

1.38 The questions contained in the consultation have been incorporated into an online survey. We would be grateful if you could complete this survey to enable us to analyse your responses efficiently and effectively. Please see separate explanatory note which explains this in full.

Postal and email responses

1.39 Responses should be sent to:

SuDS Team
Defra
Area 2A
Ergon House
Horseferry Road
London SW1P 2AL

Email: suds@defra.gsi.gov.uk

Department for Environment, Food and Rural Affairs

- 1.40 It would be helpful if email respondents provide their name and/or the organisation they represent.
- 1.41 Please contact us if you wish for the consultation documents to be made available in a different format (large print etc.) and we will endeavour to accommodate your request.

Confidentiality

- 1.42 Defra is proud of its policy of openness and at the end of the consultation period copies of the responses will be made publicly available at:

Defra Information Resource Centre
Lower Ground Floor
Ergon House
17 Smith Square
London SW1P 3JR

- 1.43 They may also be published in a summary of responses to this consultation. **If you do not consent to this, you must clearly request that your response be treated as confidential.** Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. Respondents should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000.

Compliance with the Code of Practice for Consultations

- 1.44 This consultation is being undertaken in accordance with the Better Regulation Executive guidance on written consultation as set out at: <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>
- 1.45 If you have any comments or complaints about the consultation process, as opposed to comments about any of the issues in this consultation paper, please address them to:

Defra Consultation Coordinator
Area 7C, Nobel House
17 Smith Square
London SW1P 3JR

Email: consultation.coordinator@defra.gsi.gov.uk

Next steps

- 1.46 Government intends to place a copy of the responses together with copies of consultation responses to personal callers or in response to telephone or email requests in the Defra Information Resource Centre. This is so that the public can see them. Wherever possible, personal callers should give the Centre 24 hours notice of their requirements. Also, members of the public may ask for a copy of responses under freedom of information legislation. All the responses received by the deadline will be analysed and a summary of the responses received will be placed on the Defra web site. To see consultation responses and summaries, please contact the library at:

Defra
Information Resource Centre
Lower Ground Floor
Ergon House
17 Smith Square
London SW1P 3JR

Telephone: 020-7238-6575
Email: defra.library@defra.gsi.gov.uk

Part II – Implementation

- 2.1 Schedule 3 to the Act requires that construction work which has drainage implications cannot commence unless the drainage system has been approved by the SuDS Approving Body (SAB). This is a broad power and the Impact Assessment has considered, amongst other things, a range of options for how it should be implemented. In particular, consideration has been given to whether a phased implementation of the requirement for approval is needed and whether development which takes place under a Neighbourhood Development Order should be exempt from the requirement. Government also proposes to provide transitional arrangements for implementation. We are also seeking views on the proposed implementation date. All of these aspects are explained more fully below.

Impact Assessment

- 2.2 In the Impact Assessment (IA) (See Annex F) Government has compared the costs, benefits and risks of options to deliver SuDS. It explains why the statutory instruments and National Standards are necessary and provides the evidence for the relative merits of each option.
- 2.3 The IA is based on a number of assumptions, covering our changing climate and its impact on rainfall, future development (and the impact of neighbourhood plans) as well as the current use of SuDS and their reduction of flood damage and water pollution. We draw your attention to the evidence for our assumptions from paragraph 49 of the IA.
- 2.4 The IA estimates the cost of the new regulation and the National Standards to developers and the cost to SABs of approving and enforcing drainage construction. It also estimates the cost to SABs of adopting SuDS that serve more than one property and cost to the Planning Inspectorate (PINS) for appeals against SABs decisions.
- 2.5 The costs are compared to the benefits of SuDS, which reduce flood damage from surface runoff, as well as reducing environmental damage through pollution or the cost of treating surface runoff to sewers and freeing up sewer capacity.

Options considered

- 2.6 The implementation options assessed in the IA include:

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- The size of development, the threshold for which the SABs are required to approve drainage plans and development under a neighbourhood development order.
 - Whether approval should be targeted in areas of flood risk.
- 2.7 Options for the development thresholds are based on existing planning definitions for the number of dwelling houses:
- Large-scale Major development of 200+ dwelling houses
 - Major development of 10+ dwelling houses
 - Minor development of 1+ dwelling houses
 - All development with drainage implications (includes permitted development)

These options also include any development with a footprint of more than 100m².

- 2.8 An option to target approval by flood risk area was also considered in the IA. However, there is a problem with controlling development in one place and flooding or water pollution effecting another (downstream) and therefore the economic case for this option is low.
- 2.9 The IA shows that greatest benefit from the requirement for SAB approval is implemented for large a major, major and minor development which provides a benefit (net present value) of £5.1bn. However, we recognise that this may not be feasible or desirable in this economic climate and an alternative approach is set out below.

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?

Transitional arrangements

- 2.10 To ensure that developers have certainty over their obligations and opportunity to prepare for the SuDS approval requirement; and in recognition that some developments will be at an advanced state of planning; Government proposes transitional arrangements for the implementation of SuDS (regulation 5 of Annex B). We propose that SAB approval will not be required for the first 12 months for:
- Developments that already granted planning permission before commencement; or

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- Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or
- A valid planning application had been submitted before commencement.

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
- Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or
- A valid planning application that was submitted before commencement

Do you agree with this approach for transitional arrangements, if not please explain why?

Timing

- 2.11 Government intends to implement the SuDS provisions in the Act as soon as possible. We aim to publish the National Standards and commence the statutory instruments on the common commencement date of 1 October 2012 parliamentary time permitting.

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?

Phasing

- 2.12 As explained in paragraph 2.9 above, the economic evidence in the IA suggests that all large major, major and minor size development should require SAB approval from commencement, in order to get the most benefit. However, Government is aware that some local authorities which will take on the SAB role are concerned about their capacity to deal with the volume of applications – we estimate up to 9 full time equivalents (FTE) funded through the application fees (see paragraphs 4.21 – 4.25) could be needed in the largest SABs.
- 2.13 We are considering whether it would be preferable to start more slowly with a requirement for the approval of **large major and major size developments only for the first 3 years** – we estimate only 1 FTE would be needed per SAB which the fees will fund. The effect would be fewer applications to each SAB,

giving local authorities time to increase their capacity. After 3 years the requirement would be extended to include minor size development as well. By taking this approach it will take 3 years to realise the most benefits, net of costs, as set out in the IA.

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?

Neighbourhood planning

2.14 In addition to this phased approach and in order to ensure consistency with Government's planning reforms, we are also considering exempting development built under a Neighbourhood Development Order from the requirement for SAB approval. We assume that about 5% (cumulative) of development per year will be built through neighbourhood plans⁵.

2.15 Our vision is that the discussions on the most appropriate type of drainage for the area will be conducted at the outset, during the development of a Neighbourhood Plan. We believe that this approach supports the presumption in favour of sustainable development. We expect the Local Flood Risk Management Strategy, Strategic Flood Risk Assessment, and the National Standards for SuDS to be drivers for SuDS in new development (even in the absence of a requirement for SAB approval). There may also be pressure from within Local Planning Authorities to deliver multiple benefits such as amenity or biodiversity.

Question 5: do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

2.16 This overall approach to implementation outlined above would be an alternative to the full implementation recommended in the IA and which is outlined in Part IV of this document. If the outcome of this consultation is that the approach which is set out above would be preferable, then the draft Statutory Instrument at Annex B will be re-drafted accordingly (regulation 3 of Annex B).

⁵ An extension from the estimated 5% uptake per year of Community Right to Build through development of Community Plans (Localism Bill: neighbourhood plans and community right to build - Impact assessment, DCLG 2011).

Part III – National Standards

- 3.1 The Act requires the Minister to publish National Standards for the design, construction, operation and maintenance of SuDS in England (See Annex A). The National Standards have been developed to ensure drainage is sustainable and that the most appropriate system is designed for a particular development site. The SAB will be required to approve the proposed drainage design if it is satisfied that, if constructed as proposed, the drainage systems will comply with the Standards.
- 3.2 The National Standards have been developed in collaboration with the Construction Industry Research and Information Association (CIRIA) and a Project Advisory Board (PAB) made up of wide industry representation that includes local authorities, developers and environmental groups. We would like to take this opportunity to thank all contributors for their continued support. A full list of PAB members is included at Annex I.
- 3.3 The National Standards provide developers and SABs with a consistent framework for drainage design, giving certainty and flexibility for their construction. To provide this, the Standards are split into two parts:
- Principles of sustainable drainage;
 - Standards to enable the SAB to determine what is the appropriate drainage to the site and to help developers design appropriate drainage for their site;

Principles of SuDS

- 3.4 The principles encourage SuDS to be considered at the earliest stage of site selection and are designed to ensure that surface runoff is managed both on the surface and at its source wherever it is practical and affordable. They strongly encourage the use of public land, such as car parks and local parks, as part of the SuDS design. This is particularly important where land take risks the affordability of SuDS.
- 3.5 Government is committed to increase home building; accordingly, the building, including the drainage, must be affordable. The affordability test, which only addresses capital costs, aims for drainage to be sustainable and affordable to build. The affordability test is intended to provide clarity for the SAB and developer. Details will form part of the guidance to be developed to support implementation (see paragraph 1.24 – 1.26).

Standards for SuDS

- 3.6 The National Standards set criteria for where surface runoff is discharged, the volume of runoff and how quickly it should flow from the site, the quality of that water entering water bodies and how that drainage should be made to function. These National Standards provide the basis for a conversation between the developer and the SAB on site specific practicability and affordability of the drainage system.

Local development requirements

- 3.7 In addition, to reflect local circumstances there may be policies in local planning authority development plans that set out additional requirements to the National Standards. These local requirements will need to be reflected appropriately in decisions on planning applications for new development and by the SAB.
- 3.8 The National Standards also provide some flexibility to meet future local requirements, so that a strategic approach can be taken for SuDS to take account of planned future developments. This includes consideration of the flow rate and volume of water discharged from the site, enhancing the amenity of development and providing a range of habitats to encourage biodiversity. This is particularly important for large developments undertaken in phases.
- 3.9 Government intends to help stakeholders to develop guidance on the National Standards and encourages interested parties to assist in its development. Details of how to do this will be made available on our websites (see paragraphs 1.24 – 1.26).

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?

Question 7: affordable sustainable drainage systems for surface runoff are comparable in costs with conventional alternatives. Do you agree?

Part IV – Approval

4.1 As provided for in paragraph 6(1) and (2) of Schedule 3 to the Act the SAB will be in either a unitary or county council, as with lead local flood authorities. Paragraph 7 of Schedule 3 requires that construction work with drainage implications is not commenced unless the drainage system has been approved by a SAB. To be approved the SAB must be satisfied that, if constructed as approved, the drainage system will comply with the National Standards (see paragraph 11 of Schedule 3 to the Act). The legislative framework which reflects the preferred implementation option recommended by the accompanying Impact Assessment is set out in Article 3 of Annex B.

What requires approval?

4.2 Most types of construction work with drainage implications will require approval from the SAB. Under paragraph 7 of Schedule 3 to the Act, construction work means the creation of buildings or other structures that cover land and which will affect the ability of that land to absorb rainwater.

4.3 We propose that the following list require SAB approval:

- Construction work (e.g. new house or factory) which requires planning permission; and
- Has drainage implications; and
- Comes within the approval threshold we are proposing under phasing in Part II.

4.4 While some types of construction work do not require planning permission (either because they do not constitute development or because they are permitted development) they may have strategic flood risk or water quality implications. As such we propose those types of construction work which do not require planning permission but involve the construction of a building or other structure covering an area of land of 100m² or more will require SAB approval (unless constructed under a Neighbourhood Development Order as proposed in Part II).

What doesn't require approval?

4.5 We are proposing in Part II that development under a Neighbourhood Development Order would not require SAB approval, nor would development below the large major/major threshold for the first three years (depending on your response to the capacity issues we ask about in Question.4). Planning

applications which have no drainage implications would not require SAB approval either.

- 4.6 Paragraph 7(3) of Schedule 3 to the Act already exempts from the need for SAB approval, work which requires development consent under section 31 of the Planning Act 2008 (nationally significant infrastructure projects). Such work will be considered by the Infrastructure Planning Commission (IPC)⁶. The requirements in the National Standards for Sustainable Drainage will be incorporated into relevant National Policy Statements (NPS) to ensure such infrastructure is drained sustainably. The NPSs will be used by the IPC as a basis for decision making on relevant development consent applications.
- 4.7 Government is considering exempting three other types of development from the requirement for SAB approval. For example trunk roads and motorways managed by the Highways Agency. This is because these roads must be built to the UK Design Manual for Roads and Bridges (DMRB)⁷ and we are currently working with the Highways Agency to update the DMRB to include the National Standards for SuDS. The proposed exceptions are set out in Article 3(1) of (Annex B).
- 4.8 A further possible exemption is also being considered. The Government's measures to support growth and enterprise include exempting micro businesses (business employing less than 10 people) from new regulation. The draft Order at Annex B may be amended to include additional provisions about the application of the SuDS regime to micro businesses.
- 4.9 It is not a requirement for a SAB to adopt drainage in developments that do not require approval (see Part VI). However, the SAB may do so voluntarily (see paragraph 6.20-6.22).
- 4.10 The list at Figure 1 summaries our proposals for what would require SAB approval as an alternative to preferred implementation approach in the IA.

Figure 1: any construction with drainage implications requires approval from the local SAB, except for construction:

- Under a Neighbourhood Development Order
- By an Internal Drainage Board, the Highways Agency or track laid by Network Rail
- Permitted Development of an area <100m²
- Developments of <10 homes or an area <100m²
- Development by micro-businesses?

⁶ <http://infrastructure.independent.gov.uk/>

⁷ <http://www.dft.gov.uk/ha/standards/dmr/index.htm>

Pre-application discussions

4.11 Developers are strongly encouraged to have pre-application discussions with the SAB, local planning authority and other interested parties such as statutory consultees to enable the best drainage plan for the area and development to be prepared. This will help to prevent delays to approval and save money. The SAB may charge for pre-application discussion, if they wish, under powers given to them in Section 93 of the Local Government Act 2003⁸.

Approval routes

4.12 Paragraph 8 of Schedule 3 to the Act provides for two approval routes:

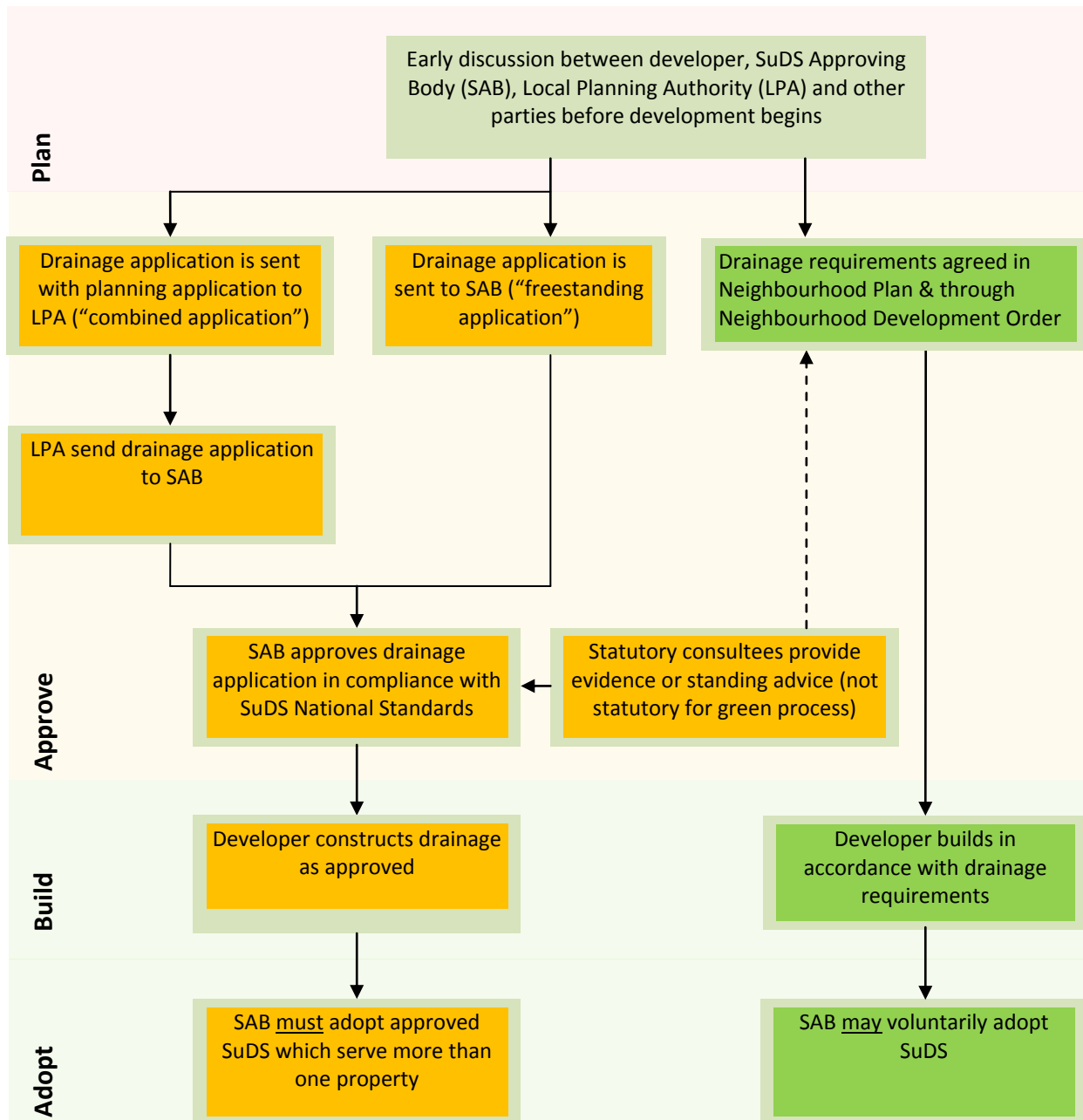
- Direct to the SAB (known as free-standing application): Either where planning permission is not required, e.g. where not *development*⁹ or the development is permitted development or where the developer chooses to apply for SAB approval and planning permission separately.
- Via the local planning authority or LPA (known as combined application): where planning permission is required the application may be combined with the application for planning permission and submitted to the LPA. The LPA must consult the SAB in determining the application for planning approval and must forward the SuDS application and fee (see section on fees below) to the SAB. The SAB's decision on the drainage plan is independent of the LPA's decision on planning permission. We are considering up-dating the Planning Portal to include the SuDS application to further streamline the application process for developers.

4.13 The diagram at Figure 2 sets out how we envisage the options for developments which still requires planning permission, and those covered by a Neighbourhood Development Order, will interact. The orange process demonstrates how SuDS approval would work with developments that still require planning permission. The green process covers development under a Neighbourhood Development Order.

⁸ <http://www.legislation.gov.uk/ukpga/2003/26/section/93>

⁹ Defined in the Planning Acts

Figure 2: Summary of SuDS approval exemption for Neighbourhood Development Orders



Determination of applications

4.14 Government intends to set time limits by when the SAB must determine applications for approval (whether freestanding or combined applications). In doing this we want to ensure that the limits do not cause any delays to the determination of planning applications. We propose that the SAB must determine an application for approval within 12 weeks where it relates to major development or a county matter and within 7 weeks for other applications. Both of these limits are one week less than those under the planning system.

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It should be noted that determination of the planning application is independent from SAB approval. In all cases the SAB and applicant may agree to extend the timeframe provided the specified timescales have not expired (regulation 14 of Annex D).

- 4.15 Should the SAB fail to meet these timescales, the SAB will remain obligated to make a decision and to notify the applicant of that decision, which will remain valid. However if the applicant so wishes, the application will be deemed to have been refused for the purposes of an appeal (regulation 14(4) of Annex D), allowing an applicant to make an appeal.

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

Applications

- 4.16 Government proposes to make provision for what constitutes a validly made application for approval, what must accompany an application and how to vary an approval (articles 4, 5 and 8 of Annex D).

Conditions

- 4.17 Paragraph 11(2) of Schedule 3 to the Act gives the SAB powers to grant approval subject to conditions. In particular conditions could relate to modification of proposed drainage plan, payment of a non-performance bond (see paragraph 4.18), inspections during and after construction and associated fees and/or the payment of a fee in relation to work done by the approving authority in connection with approval amongst other things.

Non-Performance bond

- 4.18 The SAB may require a non-performance bond as a condition of approval. This will give the SAB assurance that the SuDS will be built in line with the National Standards and will ensure that subsequent purchasers acquire properties with appropriate drainage. Under paragraph 12(2) of Schedule 3 to the Act, the bond may only be drawn down if the SAB certifies that the drainage system:

- Has not been constructed according to the approved proposals; or

- It is unlikely to be completed.
- 4.19 The value of the non-performance bond can be set at any amount not exceeding the best estimate of the overall cost of the works. Proposals regarding the subsequent release of the bond are set out in Part VI.
- 4.20 Paragraph 12(6) of Schedule 3 to the Act enables the Minister to issue guidance on how to calculate the maximum value of the non-performance bond and Government is considering whether developers and SABs would find such guidance helpful.

Question 9: do you think guidance for calculating the amount required for a non-performance bond is necessary?

Fees for SAB's

- 4.21 Paragraphs 11(d) and 13 of Schedule 3 to the Act enable the SAB to charge a fee based on cost recovery for all applications for approval. The approval fee cannot cover the costs incurred by statutory consultees in providing input nor any pre-application discussions. The fee must be submitted at the same time as the application for drainage approval.
- 4.22 Government has considered whether it would be appropriate to set a national fee structure for approving applications. Given that this will be a new regime, we are minded to set the approval fee for the first three years of implementation. Thereafter the SAB will be required to set its own fees (regulations 6 and 7 of Annex D). This arrangement will enable the SAB to better understand the resources required in light of experience and set their own fees accordingly.

£350 for each application plus [up to a maximum limit of £7,500]:

- For every 0.1 ha up to 0.5 ha - £70
- For every 0.1 ha between 0.5 ha and 1 ha - £50
- For every 0.1 ha between 1 ha and 5 ha - £20
- For every 0.1 ha above 5 ha - £10

- 4.23 It is proposed that the nationally set fees for the period October 2012 to September 2015 are charged on the basis of a set amount for each application plus an additional amount determined by the size of the construction area as follows.
- 4.24 Our calculations, following discussion with several local authorities, take account of administration and officer time. The fees structure is set out in

Annex 1 (Paragraphs 98 - 100) of the IA. Special arrangements are proposed for applications from town and parish councils (regulation 6(2) of Annex D).

Other fees

4.25 It is also proposed to make provision for fees for:

- Applications to vary approval (regulation 8(2) and (3) of Annex D)
- Applications that are resubmitted to the SAB (regulation 9 of Annex D)
- Discount where two or more applications setting out alternative proposals are submitted together (regulation 10 of Annex D)
- Applications that require approval of more than one SAB because the construction area spans more than one SAB area (regulation 11 Annex D) and
- Circumstances under which application fees must be refunded (regulation 12 of Annex D)

4.26 Where the SAB approves an application subject to a condition that inspection(s) of the drainage system are undertaken, we propose that the SAB may charge an inspection fee based on cost recovery in relation to work done by the SAB (regulation 15 of Annex D).

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.

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?

Question 12: we propose to make arrangements for fees for applications to vary an approval, re-submitted applications, discounted fees, and 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.

Consultation with statutory consultees

4.27 Paragraph 11(3) of Schedule 3 to the Act requires the SAB to consult with specified bodies where an application may impact upon that consultee. The statutory consultees to the SAB are:

- (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;
- (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.

4.28 The process for involving statutory consultees with SAB approval has been designed to manage the risk of delays. The SAB must consider responses from statutory consultees when determining a drainage application. Where a SAB fails to carry out this statutory duty it could be subject to judicial review proceedings¹⁰ or examination by the Local Government Ombudsman. The SAB is advised to build good working relationships with its statutory consultees.

4.29 Government intends to require SABs give statutory consultees at least 21 days in which to respond to the SAB. This is consistent with the statutory consultation on planning applications. Please note this timescale would have to be reduced if the time for considering applications is reduced (see question 8). The time limit will apply regardless of whether the application is a freestanding or combined application. If no response is received by the time limit then it is treated as no response is given. However, the consultee and the SAB may agree to extend the timeframe (regulation 13 of Annex D). Some consultees may choose to submit standing advice so that they can focus on cases requiring special attention. It may be useful to include statutory consultees in pre-application discussions between the applicant and the SAB.

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?

¹⁰ **Judicial review** - a procedure by which the courts in England and Wales supervise the exercise of public power on the application of an individual.

Part V – Enforcement

- 5.1 Paragraph 14 of Schedule 3 to the Act requires the Minister to make provision for enforcement of the requirement for approval. Enforcement may be exercised regardless of whether the SAB required or used a non-performance bond.
- 5.2 The draft Statutory Instrument at Annex C reflects Government thinking on what is required to deliver a workable enforcement regime. The proposals take account of the close links between SuDS approval and the need for planning permission under the planning system. They therefore provide the SAB with similar provisions to those available to Local Planning Authorities for planning enforcement under the Town and Country Planning Act 1990¹¹.
- 5.3 The flow diagram at fig.3 which summarises the main enforcement provisions in the draft statutory instrument.
- 5.4 We would draw your attention to the points below which are in the draft statutory instrument but may not be specifically reflected in the flow diagram. We would also welcome responses on some specific points as indicated.

Enforcing body

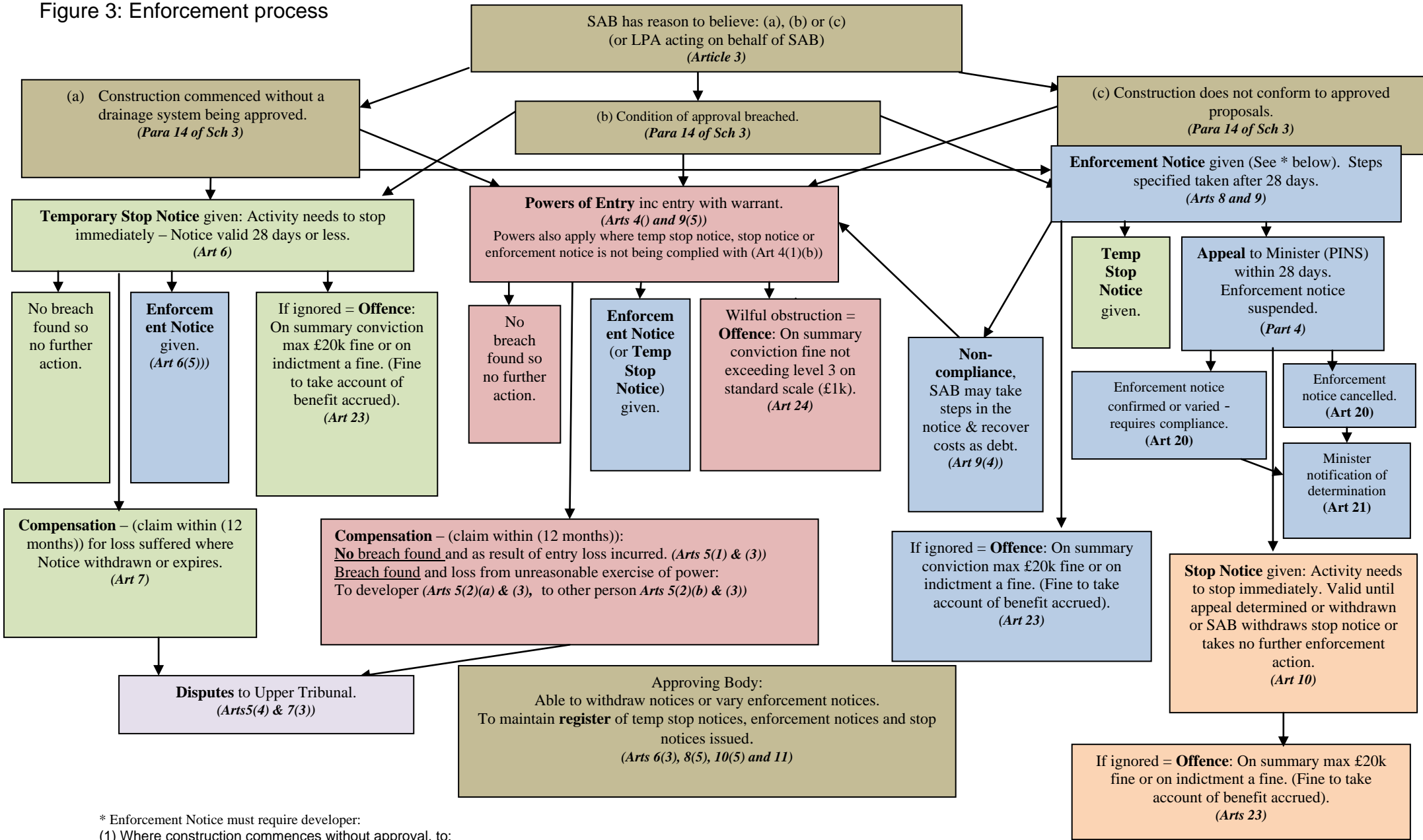
- 5.5 Government proposes to give enforcement powers to both the SAB and the Local Planning Authority (LPA)¹² (article 3). The SAB will usually take enforcement action but by giving powers to the LPA as well it will mean that, where the SAB and LPA agree, the LPA will be able to take enforcement action on the SAB's behalf on a case by case basis. This may be useful for example where there has been a breach of the requirement for approval and also a contravention under the Town and Country Planning Act and it is more cost effective for the LPA to take the enforcement action in respect of both.

Question 14: we propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?

¹¹ <http://www.legislation.gov.uk/ukpga/1990/8/contents>

¹² In the case of the Local Planning Authority, this would be in addition to their enforcement powers under the Town and Country Planning Act 1990.

Figure 3: Enforcement process



* Enforcement Notice must require developer:

- (1) Where construction commences without approval, to:
 - (a) apply for approval (application to be made as if construction work had not commenced); or
 - (b) restore construction area to condition it was in before construction work began.
- (2) Where breach of condition of approval, or where construction does not conform to approved proposals, to:
 - (a) carry out work to ensure drainage system complies with approved proposals; or
 - (b) restore construction area to condition it was in before construction work began.

Powers of entry

- 5.6 Article 4 of Annex C contains our proposed approach on powers of entry. We have aimed to provide powers which are reasonable and proportionate whilst at the same time enabling the SAB to take action where necessary to carry out its enforcement role. Further we propose that once a drainage system has been adopted the powers of entry should no longer apply (article 4(4)).

Question 15: do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?

Compensation

- 5.7 Government proposes that where a claim for compensation is made in respect of loss incurred as a result of the exercising of powers of entry (article 5) or for loss suffered as a result of a temporary stop notice being withdrawn or allowed to expire without further action being taken (article 7), the compensation claim must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ceasing to have effect.

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?

Time limit for enforcement

- 5.8 Government is proposing to put a time limit on when the SAB is able to issue an enforcement notice (article 8(2)). It is proposed that this will be within four years of the date of the breach or when the drainage system is adopted whichever is sooner.

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.

SAB undertakes work

- 5.9 Where a developer fails to comply with an enforcement notice it could result in inadequate drainage being built. This can have serious consequences such as increasing the risk of flooding locally or further downstream or causing water pollution. We therefore intend that where a person fails to comply with an enforcement notice, the SAB may undertake the work in the notice and require the person concerned to pay the costs (article 9(4)). This should be recoverable as a debt and ensures that functioning drainage is provided for the development.

Criminal sanctions

- 5.10 Implementation of the new requirement for approval of drainage plans by the SAB before construction work can commence will require a change in behaviour and a new way of thinking about drainage in the future. Sustainable approaches should be considered before traditional underground, pipe to sewer systems. We are proposing to provide the SAB with a range of non-criminal sanctions to encourage those who do not comply with the requirement for approval to come into compliance. These are similar to those used for planning enforcement namely temporary stop notices, enforcement notices and stop notices.
- 5.11 In the event that a development does not comply with the law, this could have serious implications, including increasing the risk of flooding and water pollution. We believe that it will be necessary to have certain criminal sanctions and these are set out in the draft statutory instrument (articles 23-24). These are similar to offences currently contained within the enforcement of planning controls. Offences which may be committed by a body corporate or partnership (articles 25 and 26) are also included. By way of clarification summary offences are dealt with by a Magistrates Court and offences on indictment are determined by a Crown Court.

Question 18: are the criminal offences proposed in the draft statutory instrument appropriate and proportionate?

Enforcement appeals

- 5.12 Government proposes that a right of appeal be provided on certain grounds in respect of the giving of enforcement notices (article 12). The approach to take for appeals against enforcement notices is similar to the approach proposed for appeals against decisions made by the SAB (see Part VII). The appeal against the enforcement notice would be determined by the Minister. The Planning Inspectorate is expected to act on behalf of the Minister.
- 5.13 There will be no cost to developers when making appeals, although this will be kept under review and could change in the future in light of experience of implementation. It is proposed to include provision to enable the Minister to award costs to any party involved in the appeal in cases where a hearing or inquiry is held, or scheduled but subsequently cancelled at a later stage. We do not propose to make such provision where an appeal is determined by written representation cases (article 22).
- 5.14 The provisions concerning enforcement appeals are set out in Part 4 of Annex C. We would welcome your comments on the following.

Procedures for appeals

- 5.15 Article 13(2) would allow the developer to state the preferred procedure for determining an appeal. The criteria will be made available and is expected to include written representation, hearing and inquiry. Article 16(1) would require the Minister to decide on the procedure for determining the appeal. Articles 17 to 19 deal with the conduct of appeal proceedings. Our proposals mirror the procedures which apply for planning enforcement appeals.

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?

Register of notices

- 5.16 We propose that the SAB maintains a register of temporary stop notices, enforcement notices and stop notices issued which will be available for public inspection (article 11). We propose to take a similar approach to the register of planning enforcement appeals.

Question 20: we propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?

Part VI – Adoption

Conditions for adoption

- 6.1 Under paragraph 17 of Schedule 3 to the Act the SAB is required to adopt drainage systems which satisfy three conditions. In summary:
- Condition 1 is that the drainage system was constructed in pursuance of approval;
 - Condition 2 is that the drainage system was constructed and functions in accordance with approval; and
 - Condition 3 is that the drainage system is a sustainable drainage system.

Definition of SuDS for adoption

- 6.2 Government proposes, in respect of condition 3 above, to define a sustainable drainage system as 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 (see regulation 3 of Annex D). This should have the effect of providing certainty and clarity as to which parts of a drainage system are adoptable by the SAB and which parts are adoptable by the water and sewerage undertaker.

Question 21: for the purpose of the SAB'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 SAB? If not please provide an alternative definition.

Maintenance of adopted SuDS

- 6.3 Paragraph 22 of Schedule 3 to the Act requires the SAB to maintain a drainage system which has been adopted in accordance with the National Standards This will ensure functional drainage over the life of the development.

Exceptions to Adoption Duty

6.4 Paragraphs 18 and 19 of Schedule 3 to the Act exclude from the SAB's adoption duty single-property drainage systems and any part of a drainage system which is a publicly maintained road.

Single property SuDS

6.5 SuDS that serve single properties are excluded from the adoption duty as it is not appropriate for the assets that serve one individual to be adopted and maintained at the wider public expense by the SAB. We propose to define a single property drainage system as a SuDS providing drainage for a building or structure that, when completed will be owned, managed or controlled by either a single person; or by two or more persons together jointly such as a couple, a company or a partnership (Regulation 19 of Annex D). Examples of what would be considered a single property include:

- Residential building with multiple flats;
- Single dwelling-house;
- Retirement village;
- Office or commercial building;
- Industrial development or commercial estate;
- School or university campus;
- Hospital or other medical facility.

Question 22: the SAB'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.

Publicly maintained roads

6.6 Highways Authorities are already responsible for the drainage and maintenance of publicly maintained roads. The SAB is therefore exempt from adopting any part of a SuDS for which the Highway Authority is already responsible for maintenance, i.e. swales alongside roads and permeable surfacing. The Highways Authority must act in accordance with the approved

drainage design including the maintenance regime, in compliance with the National Standards.

Private roads

- 6.7 The SAB is under a duty to adopt SuDS that serve more than one property in or alongside private roads. If the road became a publicly maintained road then the Highways Authority will become responsible for maintenance.

Highway drains and sewers

- 6.8 Paragraph 16(3) of Schedule 3 to the Act amends Section 115 of the Water Industry Act 1991. Consequently a sewerage undertaker must accept any surface water from a publicly maintained road which is in accordance with drainage approved by the SAB. The Government intends these provisions to encourage highway authorities to adopt drainage serving publicly maintained roads, even with third party connections.

Timeframe for decision to adopt

- 6.9 Paragraph 23 of Schedule 3 to the Act enables the SAB to adopt on its own initiative or at the request of the developer. The Government proposes that the SAB must determine requests within 8 weeks from receiving the request unless a longer time period is agreed between the SAB and developer (article 4 of Annex B). Should the SAB fail to meet this timescale, the SAB will remain obliged to make a decision and to notify the applicant of that decision, which will remain valid. However if the applicant so wishes, the application will be deemed to have been refused for the purposes of an appeal (Article 4(2) of Annex B), allowing an applicant to bring an appeal.
- 6.10 Where the SAB adopts on its own initiative it must notify the developer of its decision as soon as is reasonably practicable.
- 6.11 We propose that the notice of adoption decision must include the reason for the decision and the date of the decision (regulation 16 of Annex D).

Question 23: we propose that the SAB should determine a request for adoption within 8 weeks of receiving the request. Do you agree with this timeframe?

- 6.12 Once the SAB decides to adopt a SuDS it is required under paragraph 23(6) of Schedule 3 to the Act to undertake a number of specified duties. The Government proposes to set certain timescales for some of these duties as explained below.

Duties related to non-performance bond

Duty to adopt applies

- 6.13 Where the developer completes the work in accordance with the approval the non-performance bond must be returned to the developer. Government is proposing that the SAB should return the bond within 28 days of giving notice of its decision to adopt the drainage system (regulation 17(1) of Annex D).
- 6.14 If a SuDS is not built as approved and it is necessary for the SAB to use the non-performance bond, it is proposed that any amount remaining from the bond must be returned to the developer within 28 days of completion of the work which the SAB views as necessary to make the SuDS operate in compliance with National Standards (regulation 17(1) of Annex D).

Duty to adopt does not apply

- 6.15 As above, upon completion of the approved SuDS the SAB must return any non-performance bond. Where the work is completed as approved it is proposed the bond is returned within 28 days of completion. If the SuDS was not built as approved and the non-performance bond has been used, it is proposed that the SAB must return the remaining parts of bond within 28 days of completing the work likely to bring it into compliance National Standards (regulation 20 of Annex D).

Registration and Designation Duties

Inclusion in Flood Risk Structures and Features Register

- 6.16 Paragraph 23(6)(f) of Schedule 3 to the Act requires the SAB to arrange for all SuDS (including un-adopted parts) to be added to the lead local flood authority's register of flood risk structures and features (the requirement for the register is contained in section 21 of the Act). The Government proposes that the SAB arranges for the inclusion of the SuDS on the register by the lead local flood authority within 28 days of giving notice of its decision to adopt (regulation 18 of Annex D).

Designation as flood risk feature

- 6.17 Paragraph 23(h) of Schedule 3 to the Act requires the SAB to arrange for all SuDS on private land, eligible for designation, to be designated as a flood risk feature under Schedule 1 to the Act by the relevant designating authority. Designation means that the SuDS may not be altered, removed or replaced without the consent of the designating authority.

6.18 Government proposes that the SAB arranges for a designating authority to make a provisional designation within 28 days of giving notice of its decision to adopt (regulation 18 of Annex D). There are provisions in Schedule 1 for action to be taken should there be a contravention of this requirement. This will ensure that SuDS on private land are protected from alteration, removal or replacement without consent from the designating authority. Designation also means that private owners should be made aware of SuDS on their property. As with any other designated feature, a SuDS would be recorded as a local land charge and will be identified in title searches during the house-buying process.

Designation under roads legislation

6.19 Paragraph 23 (6)(i) of Schedule 3 to the Act places a duty on the maintaining authority (either the Highways Authority or the SAB) to designate SuDS in, or alongside, roads (including footpaths and grass verges) as having “special engineering difficulties” as defined in the New Roads and Street Works Act¹³. This will provide protection for their function until a plan of the works has been agreed between the statutory undertaker (e.g. the utility company) and the maintaining authority. Government proposes that the SAB gives notice of its intention to designate within 28 days of giving notice of its decision to adopt (regulation 18 of Annex D).

Voluntary Adoption

6.20 Paragraph 21 of Schedule 3 to the Act allows for the SAB to voluntarily adopt SuDS where it is not under a duty to do so. For example:

- Existing SuDS which may not have been built to National Standards. This may include existing orphan or un-adopted SuDS (see Part VIII)
- SuDS serving a single property

6.21 Separate funding arrangements would need to be agreed for the maintenance of the SuDS that are adopted voluntarily by the SAB.

6.22 Government proposes that the SAB must give notification of its decision to adopt as soon as is reasonably practicable (regulation 21 of Annex D). It is also proposed that the 28 day timeframe for, registrations and designations should apply to drainage systems which are adopted voluntarily (regulation 22 of Annex D).

¹³ Section 63 of the New Roads and Street Works Act 1991 - http://www.logiclaw.co.uk/Acts/RTA1991/roadtraffic1/www.hmsso.gov.uk/acts/acts1991/Ukpga_19910022_en_15.htm

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?

Maintenance on private property

6.23 If the SAB needs to maintain non-adopted SuDS, it may use existing statutory powers.

Work by statutory undertakers

6.24 Statutory undertakers, such as utility companies, have powers enabling them to enter land to carry out work to lay or maintain pipes, cables and other apparatus. Despite best intentions, there is a risk that some of the works may impact the performance of SuDS. Designation in line with Schedule 1 of the Act will ensure that SuDS on **private** land are protected from alteration, removal or replacement without consent from the designating authority.

6.25 SuDS on **public** land that are owned by local authorities cannot be designated under Schedule 1¹⁴. The Regulations at Annex D (Part 6)) are proposed to safeguard their effectiveness. The statutory works to which the regulations will apply are set out in regulation 24 and include:

- Water and sewerage works (Section 159 of the Water Industry Act 1991)
- Gas works (Schedule 4 to the Gas Act 1986)
- Electricity works (Paragraph 10, Schedule 4 of the Electricity Act 1986)

6.26 Additional statutory works may be added to this list as a result of consultation.

Notification of statutory works

6.27 We propose the Statutory undertakers will be required to notify the SAB four weeks before commencing statutory works that may affect the SuDS' operation, except in an emergency. A notice to carry out works must be accompanied by a proposal to carry out reconstruction work. This reconstruction work cannot commence until the SAB has confirmed the proposal. This will be deemed to be given unless the SAB responds within four weeks, or 48 hours in an emergency (regulation 25 of Annex D).

Remedial work

6.28 We also propose that the SAB will be able to require the Statutory undertaker to remedy any damage to the SuDS in line with the confirmed proposal for

¹⁴ Paragraph 4(5) of Schedule 1 to the Act), so the Act provides [at paragraph 28 of Schedule 3

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reconstruction work or with the National Standards or that the SAB could rebuild the SuDS themselves and recover costs from the undertaker (regulation 26 of Annex D). Within 12 months of the statutory works being completed, the SAB must decide if it is satisfied that the reconstruction works are compliant (regulation 27 of Annex D).

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?

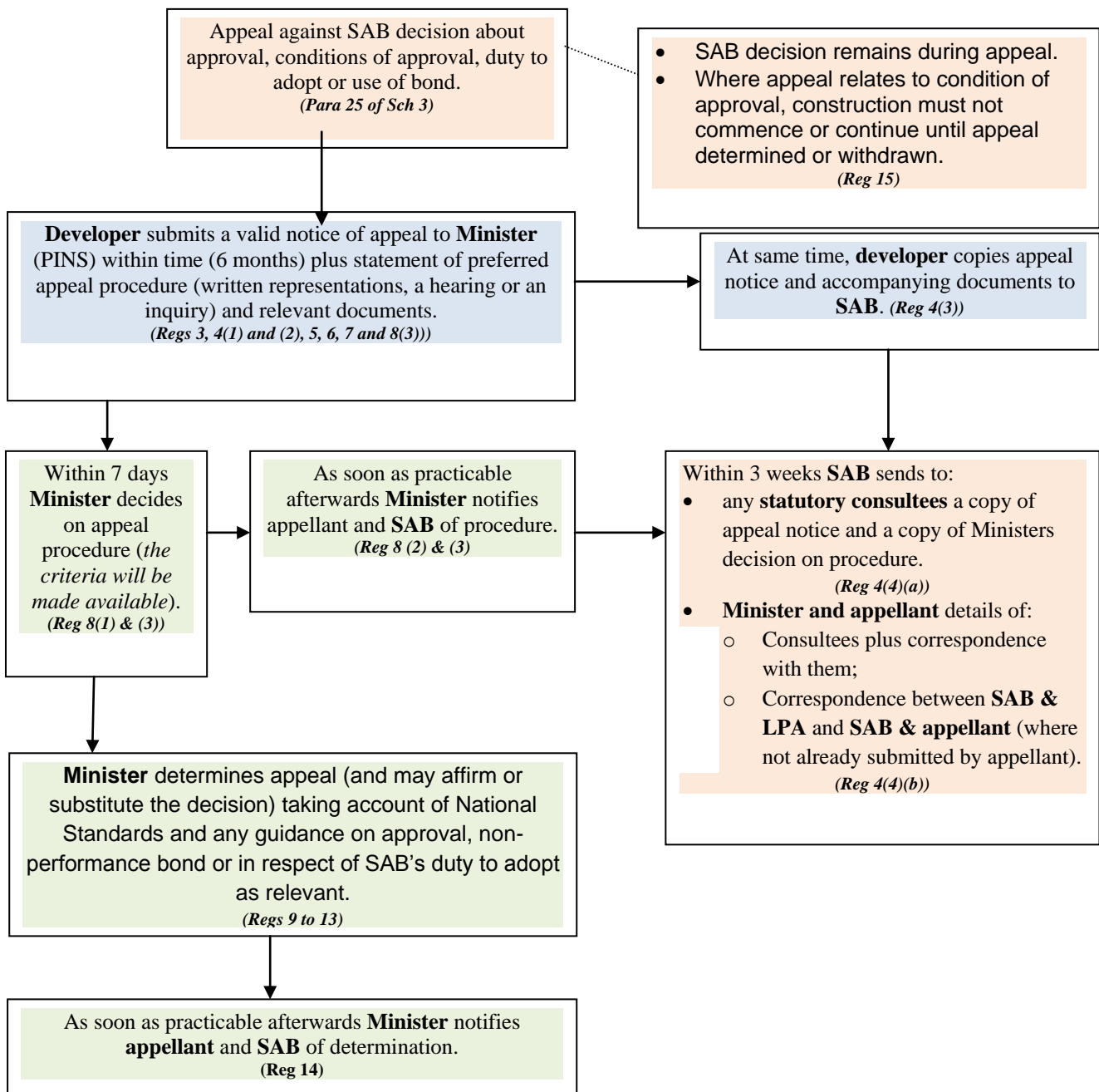
Question 26: we propose upon completion of the works, the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the National Standards. Do you agree? Do you agree, if not please explain why?

Part VII – Appeals

7.1 Paragraph 25 of Schedule 3 to the Act requires the Minister to make provision for a right of appeal against SAB decisions about applications for approval (including decisions about conditions) and decisions about the duty to adopt. The draft Statutory Instrument at Annex E sets out proposals for a workable appeals mechanism. In view of the close links between the approval regime and obtaining planning permission, we have used planning appeals as a model. If changes to planning appeals are made in the future we may want to also reflect such changes for SuDS appeals.

7.2 The flow diagram at fig 4 summarises the main appeals provisions in the draft statutory instrument.

Figure 4: Appeals process



- 7.3 Please note in particular the points below which are in the draft statutory instrument but not specifically reflected in the flow diagram. Your responses on the specific points as indicated below would be welcome.
- 7.4 The appeal will be determined by the Minister. The Planning Inspectorate (PINS) is expected to act on behalf of the Minister. The appeal form will be made available (regulation 4(1)(a) of Annex E).

Cost of appeals

- 7.5 There will be no cost to developers when making appeals, although this will be kept under review and could change in the future in light of experience of implementation. It is proposed to include provision to enable the Minister to award costs to any party involved in the appeal in cases where a hearing or inquiry is held, or scheduled but subsequently cancelled at a later stage. We do not propose to make such provision where an appeal is determined by written representation cases (regulation 16).

Time limit for appeal

- 7.6 Government proposes to set a time limit for making an appeal. The appeal would have to be made within 6 months of the SAB's decision or, if no decision has been made, from the date on which it should have been made (regulation 6). For example, where the SAB does not determine an application for approval within the timescales specified, or any longer time agreed between the SAB and developer, it will be considered a 'deemed refusal' for the purposes of appeal (see Part IV paragraph 4.15). The developer would then have 6 months from the last date on which the approval decision should have been made to make an appeal.

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?

Appeal procedures

- 7.7 Government proposes to mirror planning and provide for three types of appeal procedures, that is; written representation, hearing and inquiry. It is envisaged that the majority of appeals can be handled via written representation. The proposed conduct of procedures for the appeals is contained in regulations 9 to 11 of Annex E. This will mirror the procedures which apply to planning appeals.

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?

Part VIII – “Orphan” SuDS

8.1 SAB is not required to adopt SuDS where:

- SuDS only serves one property
- SuDS was not required to be approved by the SAB e.g. because the construction work with which it is associated is not yet caught due to the proposed phasing of the requirement for SAB approval
- As proposed, development is under a Neighbourhood Development Order

8.2 In such situations paragraph 21 of Schedule 3 to the Act allows for the SAB to voluntarily adopt SuDS to which adoption does not apply (“orphan” SuDS) – SAB’s may chose to do this as part of their wider surface water management responsibilities.

8.3 Developers may seek to reach an understanding with the SAB that “orphan” SuDS will be adopted. This is more likely to happen if the developer has approached the SAB prior to construction and has established how the system should be built in order to comply with the National Standards.

8.4 However there may be situations where developers choose not to seek adoption, and SABs may choose not to adopt, so there is no guarantee that such SuDS will end up being voluntarily adopted.

8.5 Concerns have been raised about the potential increase in un-adopted (or “orphan”) SuDS – usually piped drainage discharging directly to a watercourse – before the SuDS approval mechanism is in place. The numbers of developments built without SAB approval will depend on the approach taken to Implementation including phasing and development under a Neighbourhood Development Order (see Part II).

8.6 Government has considered whether it needs to take action and avoid the increase of un-adopted or “orphan” SuDS, during the initial years of implementation of the SuDS provisions in the Act. There are two possible options (assuming a phased implementation approach is the outcome of this consultation and there is an initial exemption from the requirement for approval for developments below a certain size):

Option A

8.7 The exemption to the requirement for approval for development covered by a Neighbourhood Development Order would continue to apply. However, the exemption for the first 3 years due to phased implementation would not apply to SuDS where no connection to the sewer is proposed (e.g. the SuDS is designed to deal with all the water on-site, or it drains to a watercourse). It is

more important for such SuDS to function properly, because if they don't then the properties served, or neighbouring properties or the watercourse might be overwhelmed. Under this option, there would be no phasing, and the requirement for approval would apply from day one regardless of the size of the development, It would then follow that the duty for the SAB to adopt would also apply (provided the SuDS served more than one property); and the SAB would have to determine a far greater number of approval applications, which may well be constrained by capacity, something a phased implementation is intended to avoid.

Option B

- 8.8 Take no action. In doing this Government would need to accept the risks of an increase in un-adopted SuDS, including consequent drainage failure, flooding and water pollution risks.

No connection to the sewer?

- 8.9 Currently there is no obligation on either local authorities or water companies to adopt surface water drainage systems with no connection to the sewer. Developers may seek to have local authorities adopt these drainage systems, but if they cannot reach an adoption agreement with the local authority then the surface water drainage system will become or remain orphaned (or un-adopted). This may mean that the SuDS would receive no maintenance and consequently their performance is likely to deteriorate, resulting in an increased risk of flooding and pollution downstream as the surface water is not being effectively managed.

Question 29: should we take action to avoid the increase of un-adopted SuDS? If your answer is no, please explain why?

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