

Welsh Government

Consultation on the implementation of sustainable drainage systems (SuDS) on new developments

Background to CIWEM

CIWEM is the leading independent Chartered professional body for water and environmental professionals, promoting excellence within the sector. The Institution provides independent commentary on a wide range of issues related to water and environmental management, environmental resilience and sustainable development.

CIWEM welcomes the opportunity to respond to the Welsh Government on its consultation on the implementation of sustainable drainage systems on new developments. CIWEM has undertaken extensive work in this area including the 2016 Big SuDS Survey and our report published earlier this year "A Place for SuDS¹". This response has been compiled with the assistance of members from our Urban Drainage Group and Welsh Branch.

Response to consultation questions

1. We have based our proposals on the evidence outlined in our Impact Assessment. Do you agree with our proposals? Please include an explanation with your reply.

Yes, CIWEM supports the mandatory use of SuDS compliant with national standards on all minor and major development (more than 1 dwelling or sites larger than 0.5 hectares).

CIWEM's research has shown that as SuDS are not mandatory and standards are non-statutory we are not seeing anything like the quantity or quality of SuDS needed in new developments. The main barriers we identified are from weak planning policy (the automatic right to connect), non-statutory standards and a lack of clarity on maintenance responsibilities across the UK.

Well-designed SuDS should wherever possible incorporate the four elements of water quantity, water quality, amenity and biodiversity.

2. Do you have any additional evidence that may alter the recommendations of the consultation stage Regulatory Impact Assessment? Please include an explanation with your reply.

¹ A Place for SuDS is available from www.ciwem.org/suds

No, we are pleased to see that evidence from our research has been included in the impact assessment.

3. Do you agree with the existing definition for sustainable drainage? If not, please give suggestions for any changes with your reasons.

Yes we agree with the definition of sustainable drainage as managing rainwater with the aim of:

- Reducing damage from flooding
- Improving water quality
- Protecting and improving the environment
- Protecting health and safety, and
- Ensuring the stability and durability of drainage systems

Added to the list should be the potential for water storage as a resource and a requirement for enhanced place-making and societal benefit.

4. Drainage for surface water runoff should be sustainable and affordable. In your experience do the National Standards, which we published in January 2016, deliver this? Please give reasons.

We agree with the concept of "sustainable and affordable" but fear the word affordable will inevitably raise the question of "affordable to whom?"

Some housebuilders have often hidden behind the desire to implement SuDS by suggesting that they make their developments "unaffordable" by excessive land take and footprint. They often fail to recognise the community and societal value of SuDS as they have a desire to remove all responsibility once the last house has been sold.

The converse of this argument is that some local authorities have shied away from the adoption of SuDS fearing that they will leave them with an operations and maintenance legacy that they neither want nor are able to afford.

In both these cases the value associated by "good" SuDS has been ignored. Would a housebuilder not be proud of an award-winning site that enhances the value of each property by the siting of well positioned and thoughtfully designed SuDS? Would a local authority prefer to dissolve their ownership of parks and recreation spots if they had not an amenity and community value?

We suggest either the removal of the word affordable or a definition describing what affordable is deemed to be.

5. Do you agree with the principles for sustainable drainage contained in the recommended non-statutory National Standards? If not, please give additional or alternative suggestions.

Yes. The principles are very helpful in identifying that water should be managed at the surface, SuDS management trains should be used, future pressures are included and that amenity and biodiversity are maximised.

6. Do you agree with the need for applicants to establish the maintenance requirements of their proposed drainage system and to identify how this will be funded at an early stage? Please give reasons for your response. Is the proposed addition to the Principles adequate?

Yes, but see later comments on adoption at questions 20 and 22.

We believe that failure to consider SuDS from the very start of a development's design is a significant barrier to efficient delivery. Delays in the planning process are often the result of uncertainty over the on-going maintenance of the systems, rather than construction of the SuDS themselves. We therefore consider that providing certainty on 'adoption' of SuDS would help to speed up the planning process.

For SuDS to be most effective, the arrangements for adoption and future maintenance of the system should be considered during the early stages of design. This is likely to influence the design just as much as technical considerations, and the adopting organisation will most likely want to approve the design before construction.

We agree with the addition to the principles that *a maintenance plan should be developed and the means of funding it for its design life identified and agreed.*

We also believe that it should be within the scope of the SAB to set out examples for funding or to identify "funding models" that are acceptable.

7. Do you agree with our view on the need for local authorities to work in partnership to exercise and discharge the SAB function? Please provide suggestions on how this can be achieved?

We agree that the principle of partnership to exercise and discharge the SAB function should be considered but this should be in context with the local authority in question.

For example, Cardiff has an enormous growth potential in housebuilding over the next decade. Swansea has similar aspirations although considerably smaller. It would be wrong to impose a partnership criteria on an authority like Cardiff when it does not need one. Yet some of the smaller and more rural local authorities do not have the available skills and resource that would make them as effective as the SAB. It would seem logical in these cases to share or cooperate as a partnership.

8. What, if any, alternative body should be appointed to approve and undertake adoption of SuDS? Please give reasons.

Dŵr Cymru Welsh Water could be considered. CIWEM's research has shown that sewerage undertakers have a range of relevant skills and already manage several aspects of the water cycle. They have practical drainage experience as well as charging infrastructure that could

help to support long-term maintenance, for example through surface water drainage rates. There is some hesitation though as this could encourage more 'hard' SuDS approaches rather than those that deliver multiple benefits. Some water companies have indicated a preference for pipes and tanks which increase their Retained Asset Value. If they were to adopt, then some clear guidelines would be necessary to prevent the misuse of any additional statutory power.

In our survey of professionals we asked 'who should 'adopt' SuDS?'. There was some division, 40 per cent favoured a local authority and 28 per cent opted for the sewerage undertaker. Therefore we believe it should be undertaken by a publically accountable statutory body, either the local authority or sewerage undertaker. They could then, if necessary, contract maintenance out to another organisation.

9. Do you agree with our proposals about what should require SAB approval and what we propose to exempt? Please give reasons.

Yes we agree with that, with the exception of single dwellings and those that are described as exempt, all construction work requiring planning permission which has drainage implications should need approval.

However many of the proposals are on the basis that the LLFA/LA/LDA/LPA is the SAB. If this were not to be the case, then we believe that there may be the requirement for further justification and cooperative instructions.

10. Do you agree with our proposed set time limits for when the SAB must determine applications for approval? If not, please provide alternatives and give reasons.

Yes

11. Do you agree with our proposal to set time limits for the SAB to give statutory consultees 21 days in which to respond? If not, Please give reasons.

Yes

12. Do you agree with our proposal to set a national fee? If not, please give your reasons.

Yes we agree with the setting of a national fee.

13. Do you agree with our proposal for the rate of fees? If not, please give reasons and offer alternatives.

No view

14. Do you agree with our proposal for future fees to be set subject to annual reporting undertaken by Local Authorities to allow the SABs to provide information on real costs? Please give reasons.

Yes in principle – that would ensure that fees reflect the real costs. However, if the SAB reduces its input on approvals to an unacceptable level in order match its costs to the fees

this could be self-perpetuating. It could also work the other way if fees are set too high, so some degree of checking will be required.

15. Do you agree with our proposals for the SAB to charge for these activities? If not, please give your reasons.

Yes, this will save the developer unnecessary design costs on abortive work so they provide value. If the SAB is not allowed to charge they will not produce good advice and approval costs will rise.

16. Do you agree with our suggestion that the SAB should determine a request for adoption within 8 weeks? If not, please give reasons.

Yes

17. Do you agree with the proposed definition of "sustainable drainage system" for the purposes of the SAB duty to adopt? If not please provide an alternative definition.

Broadly yes, but note that even after commencement of S42 of the FWMA S104 agreements are not mandatory for all sewers since it only applies where sewers are connected to the undertaker's system. Also remember that S42 does not apply throughout all of Wales. This definition is therefore highly variable in its extent.

It also depends on how widely the terms 'sewer' and 'lateral drain' are interpreted by the undertaker.

18. Do you agree with the listed exceptions to the SAB duty to adopt? If not please provide an explanation.

Yes, provided, that in the case of Highway Authorities some guidance is given on how the Welsh Government expects S115 of the Water Industry Act 1991 to operate. Some Highway Authorities are pressuring developers to include a small amount of property drainage unnecessarily in order get the sewerage undertaker to adopt what is essentially highway drainage.

19. We have not proposed guidance on the levels of non-performance bonds. Do you think guidance for calculating the amount required for a non-performance is necessary? Please provide reasons.

This section of the standards remains a little vague on the basis that there are no real precedents on which to form examples. For this reason, although we support the intent, we would recommend that this is kept under review and that the SuDS Advisory Group is maintained to ensure widespread opinion is sought as to the efficacy of this proposal.

20. Do you agree that a maintenance plan should be submitted by the developer with the SAB application? Will these proposed arrangements deliver effectively maintained sustainable drainage? Please give reasons.

It is not clear that this approach is consistent with the intention of the legislation. Is there a danger that courts could find the SAB liable to adopt and maintain at its own costs?

There is a danger that if developers have to find a solution that is difficult then they will revert to only building components which are adoptable by the sewerage undertaker as the easy option.

If management companies are the solution then, since they are unregulated, what is to stop them making unreasonable charges to homeowners at some point in the future?

It is clear that some local authorities likely to become the SAB have clear recognition of the maintenance arrangements that should be put in place. As part of the cooperative nature of this approach we would expect the SAB to convey clearly the type of maintenance that they expect, support and would approve. This will considerably reduce the requirement for developers to try and guess the type of maintenance arrangements that will be required.

21. [What other maintenance options could be viable? Please give examples of their use?](#)

The option that involves adoption of the sewer by the sewerage undertaker in their regulated business may offer the most satisfactory option to the customer if the legal difficulties can be overcome. 'Sewers for adoption' guidance is currently being updated and can form the basis for SuDS to be adopted as sewers.

It is not clear how a developer could contribute to a S114A drainage system.

There may be the opportunity to develop more innovative funding approaches, similar to partnership funding for flood risk management, where those who benefit from a scheme can then contribute towards its costs. This could be adopted more easily for retrofit schemes or for contributions towards long term maintenance.

22. [Do you agree the proposed approach would avoid increases in maintenance costs for householders and developers? Please give reasons.](#)

This is correct provided there are no perverse incentives created, for example to connect unnecessarily to a combined sewer. Also the future maintainer should have some say in the design to ensure it is economic to maintain.

23. [What evidence do you have of expected maintenance costs?](#)

CIWEM encountered mixed views on maintenance costs from its survey. We found that 75 per cent of survey respondents are not quantifying the costs and benefits of SuDS schemes. Defra-commissioned independent research found that maintenance costs are on average no higher than those for conventional piped surface water drainage. Anecdotal evidence suggests SuDS schemes should cost less if they are well designed.