

APPENDIX 2 - SuDS Approving Body (SAB) Overview

Schedule 3 of the Flood & Water Management Act (2010) introduces a new service to be established to manage surface water within future development. The Act:

- Establishes a SuDS Approving Body (SAB) in unitary and county councils.
- Requires SAB approval for drainage in new developments and redevelopments, before construction can commence.
- The proposed drainage system will have to meet new National Standards for design, construction, operation and maintenance of SuDS.
- Water companies, Environment Agency, Internal Drainage Boards, British Waterways and highway authorities will all be statutory consultees to the SAB.
- Requires the SAB to adopt and maintain approved SuDS that serve more than one property.
- Amends S106 of Water Industry Act 1991 to make the right to connect surface water to public sewers **conditional** on the SAB approving the drainage system as meeting the National Standards.

Implementation

Defra propose implementing a common commencement date which is anticipated to be within 2014 (final date is subject to various high level clearances and approval of secondary legislation by Parliament).

Transitional arrangements mean SAB approval will not be required for the first 12 months for:

- Developments that were already granted full 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 had been submitted before commencement.

Phased implementation arrangements will make SAB approval a requirement for large major and major developments only for the first 3 years. After 3 years the requirement would be extended to include minor developments.

Fees

Defra are proposing to set a national fee structure for approving applications for the first 3 years (thereafter the SAB may be required to set its own fees):

£350 for each application plus (up to a maximum limit of £7500):

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

Defra also propose to make provision for fees for:

- Applications to vary approval
- Applications that are resubmitted to the SAB
- Discount where 2+ applications setting out alternative proposals are submitted together
- Applications that require approval of more than one SAB because the construction area spans more than one SAB area
- Circumstances under which application fees must be refunded

Where the SAB approves an application subject to a condition that inspection(s) of the drainage system are undertaken, Defra are proposing that the SAB may charge an inspection fee based on cost recovery in relation to work done by the SAB.

Defra estimate that the application fees should fund the required number of full time equivalents needed to fulfil the SAB role.

Approval Process

Two approval routes:

1. With planning application (where planning permission required).
2. A freestanding application direct to SAB (whether or not planning permission is required).
 - ⇒ SAB will be a statutory consultee to planning process.
 - ⇒ SAB decision **independent** of planning decision.
 - ⇒ Applicant *may* be charged a non-performance bond (Defra might issue guidance for calculating the amount required for a non-performance bond).
 - ⇒ SAB has powers to grant approval subject to conditions.
 - ⇒ SAB must consult with the statutory consultees where an application may impact upon that consultee (Defra propose setting a time limit of 21 days for response).

There will only be one stage of application to the SAB which must include all the required details to enable the SAB to check against the National Standards.

The SAB must determine an application for approval within 12 weeks for major development and within 7 weeks for all other development. Pre-application discussions are strongly encouraged but are not compulsory. In all cases the SAB and applicant may agree to extend the timeframe provided the specified timescales have not expired. Should the SAB fail to meet these timescales, the SAB will remain obligated to make a decision and notify the applicant of that decision. However, if the applicant so wishes, the application will be deemed to have been refused for the purposes of an appeal, allowing an applicant to make an appeal.

The SAB may impose conditions upon any approval and it will have the power to condition design, construction, operation and maintenance. However, discharge of conditions is not a formalised process. Inspection, inspection fees and bonds are not automatic and they will have to be imposed by condition. It is recommended that the SAB institutes a formal process for the discharge of conditions.

National Standards

The National Standards are being developed to provide developers and SABs with a consistent framework for drainage design, giving certainty and flexibility for their construction.

Appeals

Government proposes to mirror planning and provide for three types of appeal procedures, that is; written representation, hearing and inquiry.

There will be no cost to developers when making appeals, although this will be kept under review. 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.

Defra propose that an appeal must be made within 6 months of the SAB's decision or within 6 months of when the decision was due. (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 the appeal.)

The main proposed appeals provisions are outlined in Figure 2 below.

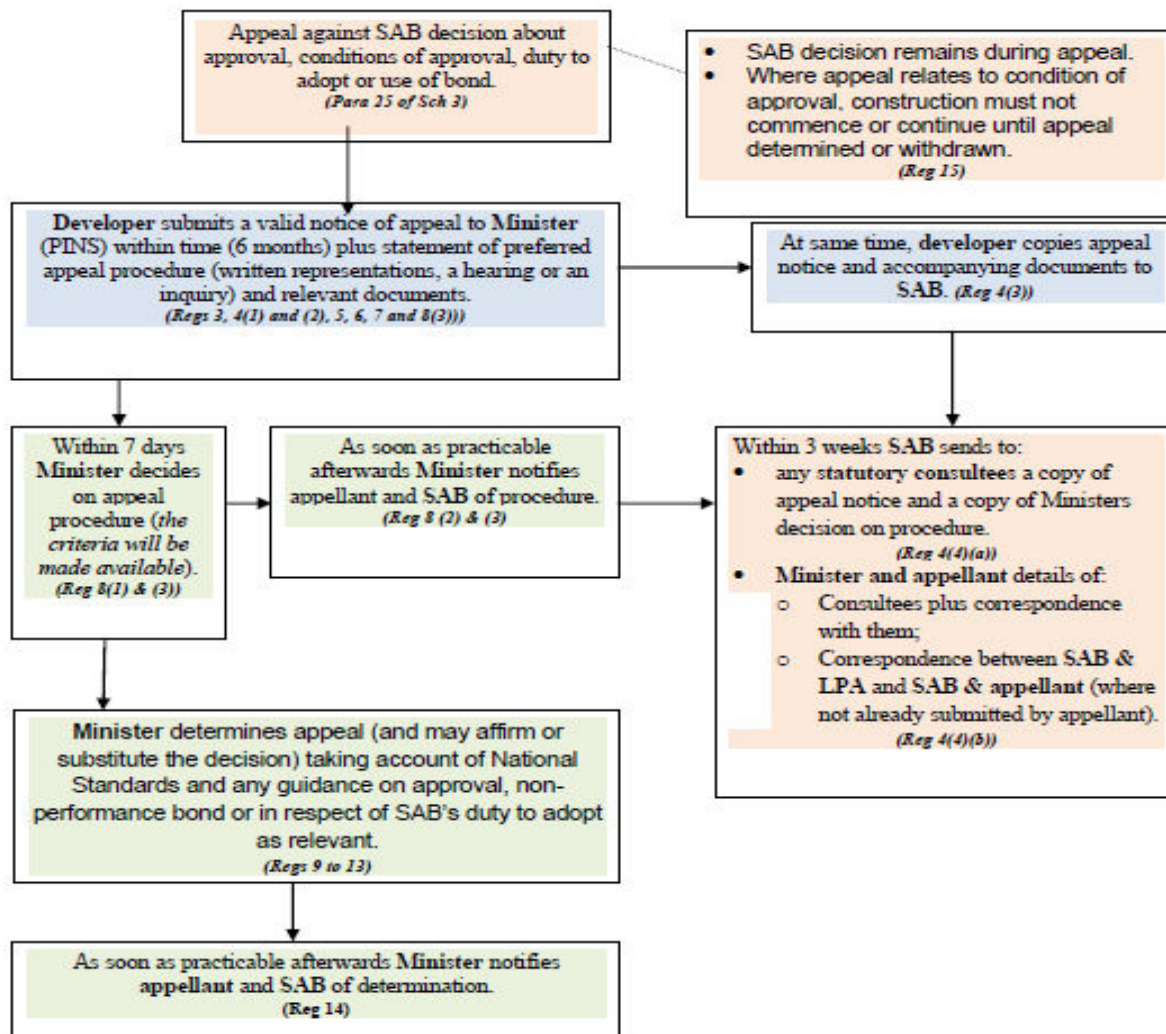


Figure 2: Appeals provision (Defra, 2011)

Adoption

Conditions for adoption:

1. The drainage system was constructed in pursuance of approval;
2. The drainage system was constructed and functions in accordance with approval; and
3. The drainage system is a sustainable drainage system.

What drainage systems are approved and adopted by the SAB?

The SAB approves and adopts where the drainage system serves more than one property

What drainage systems are approved but not adopted by the SAB?

The SAB approves but not adopts where the drainage systems:

- serves a single property
- is a publically-maintained road
- *other exemptions as set out in the SIs – (not disclosed yet)*

A single-property includes:

- 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.

What drainage systems are exempt (not approved or adopted by the SAB)?

The SAB does not approve and, as consequence does not adopt, a drainage systems which:

- forms part of the strategic road network (Highways Agency infrastructure)
- forms part of the national rail network
- for permitted development under 100m²
- which fall outside the transitional and phasing arrangements (see Figure 1 under implementation section for details)
- *other exemptions as set out in the SIs – (not disclosed yet)*

Defra propose that the SAB should determine a request for adoption within 8 weeks of receiving the request.

Once the SAB decides to adopt a SuDS it is required to undertake a number of specified duties:

- SAB releases financial bond (if one has been sought and not used).
- The SAB must arrange for all SuDS (including un-adopted parts) to be added to the LLFA's register of flood risk structures and features, proposed to be within 28 days of giving notice of its decision to adopt.
- The SAB must arrange for all SuDS on private land, eligible for designation, to be designated as a flood risk feature within 28 days of giving notice of its decision to adopt.
- The maintaining authority (SAB or Highways Authority) must designate SuDS in, or alongside, roads (including footpaths and grass verges) as having "special engineering difficulties" as defined in Section 63 of the New Roads & Street Works Act, 1991. It is proposed that the SAB gives notice of its intention to designate within 28 days of giving notice of its decision to adopt.

The SAB is also able to voluntarily adopt SuDS where it is not under a duty to do so. Separate funding arrangements would need to be agreed for the maintenance of the SuDS that are adopted voluntarily by the SAB. It is proposed that the SAB must give notification of its decision to adopt as soon as is reasonable practicable. It is proposed that the 28 day timeframe for registrations and designations should apply to drainage systems which are adopted voluntarily.

Enforcement of the requirement for approval

Defra propose to give enforcement powers to both the SAB and the Local Planning Authority (LPA). The SAB will usually take enforcement action but by giving powers to the LPA as well it means 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 (more applicable in 2 tier authorities). Powers of entry have been proposed.

Defra propose that claims for compensation will be able to be made in respect of loss incurred as a result of exercising powers of entry or for loss suffered as a result of a temporary stop notice being withdrawn or allowed to expire without further action being taken, to be submitted by the developer within 12 months.

Defra propose that the SAB is able to issue an enforcement notice within four years of the date of the breach or when the drainage system is adopted, whichever is sooner.

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, recoverable as a debt.

Defra 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.

Defra are proposing that criminal sanctions are set out should an offence be committed where a development does not comply with the law. These are similar to offences currently contained within the enforcement of planning controls.

Defra propose that the SAB maintains a register of temporary stop notices, enforcement notices and stop notices which will be available for public inspection.

Enforcement may be exercised regardless of whether the SAB required or used a non-performance bond.

Enforcement appeals

Defra propose that a right of appeal be provided on certain grounds in respect of the giving of enforcement notices. The approach is similar to that proposed for appeals against decisions made by the SAB. The appeal against the enforcement notice would be determined by the Minister, with the Planning Inspectorate expected to act on behalf of the Minister.

Work by statutory undertakers

Defra propose that all statutory undertakers must notify the SAB at least four weeks in advance of works that may affect the SuDS operation. A notice to carry out works must be accompanied by a proposal to carry out remedial work. The reconstruction work cannot commence until the SAB has confirmed the proposal. This is deemed to be given unless the SAB responds within four weeks, or 48 hours in an emergency.

The SAB will be able to require the statutory undertaker to remedy any damage to the SuDS in line with the confirmed proposal for reconstruction work or with the National Standards or that the SAB could rebuild the SuDS themselves and recover the costs from the undertaker. Within 12 months of the statutory works being completed, the SAB must decide if it is satisfied that the reconstruction works are compliant.

Potential resource requirements

Stage	Involvement		Proposed timescale	Resource requirement
	Internal	External		
Determine application	<ul style="list-style-type: none"> • Drainage engineer • Ecologist • Landscape design • Highways • Maintenance operators 	<ul style="list-style-type: none"> • Applicant • Environment Agency • Southern Water 	<p>Major development within 12 weeks</p> <p>All other within 7 weeks</p>	<p><u>Drainage engineer</u></p> <p>Major only – approx 0.6 FTE</p> <p>All major & minor – approx 2.8 FTE</p>
Inspection	<ul style="list-style-type: none"> • Drainage engineer 			Uncertain
Adoption	<ul style="list-style-type: none"> • Drainage engineer • Highways • Maintenance operators 	<ul style="list-style-type: none"> • Environment Agency • Southern Water 	Determine a request for adoption within 8 weeks	Uncertain
Inclusion on asset register (should include un-adopted SuDS also)	<ul style="list-style-type: none"> • Flood Risk Management 		Within 28 days of notice to adopt	Minimal
Designation under F&WMA (where the SuDS is on private land)	<ul style="list-style-type: none"> • Flood Risk Management 		Within 28 days of notice to adopt	Uncertain
Designation under roads legislation	<ul style="list-style-type: none"> • Drainage engineer • Highways 		Within 28 days of notice to adopt	
Appeals (approval decision, adoption decision, enforcement action)	<ul style="list-style-type: none"> • Drainage engineer • Legal • Other relevant expertise 	<ul style="list-style-type: none"> • Applicant • Minister • Consultees 	Within 3 weeks of receiving a notice of appeal	As required
Enforcement	<ul style="list-style-type: none"> • Drainage engineer • Legal 	<ul style="list-style-type: none"> • Developer 		As required
Ongoing Maintenance	<ul style="list-style-type: none"> • Drainage engineer • Highways • Maintenance operators 	<ul style="list-style-type: none"> • Asset owners (if not LLFA) 		Dependent on number of adopted SuDS.

Ongoing Inspection	<ul style="list-style-type: none"> • Drainage engineer 			Dependent on number of adopted SuDS.
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Admin Involvement	Proposed timescale	Resource requirement
<ul style="list-style-type: none"> • Validation of applications • Fee processing, including refunds 		<u>Admin</u> Major only – approx 0.2 FTE
<ul style="list-style-type: none"> • Correspondence to statutory consultees 		All major & minor – approx 1.4 FTE
<ul style="list-style-type: none"> • Notification of application decision 	Major development within 12 weeks All other within 7 weeks	
<ul style="list-style-type: none"> • Notice of intention to designate (Para 7, Schedule 1 F&WMA 2010 and/or section 63 New Roads & Street Works Act 1991) • Confirmation of proposals for reconstruction works to statutory undertakers • Notification to statutory undertaker to carry out reconstruction/remedial works or debt recovery for any costs incurred by the SAB in carrying out the work due to failure to comply 	Within 28 days of notice to adopt Within 4 weeks of receiving the notice	Uncertain at present
<ul style="list-style-type: none"> • Processing requests to adopt • Notification of adoption decision 	Determine a request for adoption within 8 weeks	Uncertain at present
<ul style="list-style-type: none"> • Release of non-performance bonds 	Within 28 days of notice to adopt or following completion of construction work by SAB	Uncertain at present
<ul style="list-style-type: none"> • Correspondence in relation to appeals 	Within 3 weeks of receiving the appeal notice	As required
<ul style="list-style-type: none"> • Enforcement notices • Updating a register of notices • Processing enforcement compensation claims • Debt recovery (for work undertaken where a developer has failed to comply with an enforcement notice) 		As required