

BRIEFING



HBF Technical Briefing

August 2011

Flood & Water Management Act 2010: Note of a meeting between DEFRA, DCLG and HBF, 7th July 2011

1. Introduction

This note summarises the outcome of a meeting attended by Defra, DCLG and the Home Builders Federation (HBF) on 7th July. It sets out the HBF's understanding of the way in which house builders and Sewerage Undertakers (WaSCs) can deal with the design, construction and vesting of sewerage infrastructure following the transfer of existing private sewers on 1st July 2011 and pending the commencement of Section 42 of the Flood and Water Management Act 2010 (FWMA) with a view to providing some clarity and consistency. Defra officials have seen and agreed that the content of this note fairly reflects the discussion.

2. Overarching Principles

It is not the intention that during the transitional period new requirements should be made pending the introduction of new build arrangements. In general, existing planning/design approvals in place for the provision of sewerage infrastructure should remain valid for new housing developments. Until such time as the proposed changes in legislation under the FWMA are introduced, any design(s) that meet the requirements of Part H of the Building Regulations should prevail as should the terms of an existing Section 104 Agreement.

- a) Surface water sewers which on 1st July communicated with a public sewer will transfer on 1st October. Those which drain elsewhere, for example to a watercourse, will not automatically transfer. Current arrangements (for example via S104 agreements) will continue until such time as the arrangements for SuDS are introduced. Technical approval after 1st July until such time as the arrangements for SuDS are in place should fall within the transfer arrangements.
- b) Further guidance on appropriate transitional arrangements relating to SuDS will be issued in due course.

- c) It is understood that bond availability is severely restricted and bonding arrangements, if they are to apply, will need careful consideration. The role of an 'accredited contractor scheme' is an important component towards the successful integration of both the MBS and SuDS Standards but the provision of a bond must remain as an alternative.

3. Automatic Transfer of Existing Private Sewers

- a) The Regulations dealing with the first phase of the transfer came into force on 1st July 2011. These regulations apply to all existing private sewers and lateral drains which communicated with the public sewerage system on 1st July and which will transfer to the sewerage undertakers on 1st October.
- b) Pumping stations will automatically transfer on the long-stop date of 1st October 2016 unless transferred before that date.
- c) Any existing Section 104 agreement covering such private sewers will fall away but any relevant parts which remain to be completed will remain in force to cover any subsequent sewer construction after 1st July 2011. These later sewers, providing they are construction complete and connected to a public sewer, will automatically vest in the WaSC upon commencement of S42 of the FWMA Act on a date to be confirmed by the Minister.
- d) Current arrangements for the vesting of surface water sewers that discharge to anything other than a public sewer and which are covered by an existing Section 104 agreement will continue. Where surface water sewers discharge to anything other than a public sewer and which have technical approval pursuant to Section 104, all WaSCs are expected to honour their commitment to adopt. Developers are encouraged to complete the Section 104 process and enter into what have hitherto been conventional S104 Agreements. If a WaSC refuses to allow the vesting of any such sewers then an appeal to Ofwat is available through existing appeal provisions.
- e) Until such time as the MBS becomes mandatory, house builders will be free to secure design approval (and formal vesting) under existing arrangements, i.e. conventional sewers designed and constructed to Part H of the Building Regulations.

4. Transfer of Sewers Connected After 1st July 2011

- a) The transfer and/or automatic vesting of these sewers will take place on a date to be confirmed by the Minister on the same terms as the initial transfer.
- b) Until such time as the MBS and any accompanying statutory guidance is introduced the design of conventional sewers and private sewers (Part H) will continue as now.
- c) The commencement order is likely to exempt certain developments from having to comply with new build/specification requirements, i.e. ongoing developments, for an appropriate transitional period, subject to consultation.

5. Introduction of Section 42

- a) This was likely to be in April 2012, subject to the usual government and parliamentary procedures. Given the extent of the work that has already taken place in respect of the 'standards', a relatively short consultation period is envisaged and is unlikely to be as long as the usual three months. Section 42 does not cover surface water drainage which requires approval by the SAB, but until such time as the SuDS Standards and the SAB is introduced, or for drainage which may fall below any SuDS approval threshold, it is anticipated that WaSCs will continue to deal with surface water drainage/sewers as they do at present.
- b) Off-site sewers connecting to a public sewer can still be requisitioned in accordance with established procedures. However, this does not necessarily apply to the outfall from any SuDS facility – see later narrative.

6. SuDS Standards

The consultation covering the SuDS Standards is likely to take place later in the year. At present the date when the SuDS Standards are to be introduced is subject to the satisfactory conclusion of that consultation.

- Defra accept and agree that any approach to SuDS should be a series of structured iterations that take due note of site characteristics leading to a site specific design solution/strategy. If site-specific characteristics mean that it is not affordable (when the defined affordability test is applied) to use surface SuDS, conventional forms of surface water storage and attenuation, for example, underground storage in large diameter

pipes and or tanks, may be acceptable. Issues such as land-take are expected to be discussed further at the workshop series which will accompany consultation.

- a. It is likely that the SuDS standards will not be mandatory for all new developments but will initially only be required for those over a certain size.
- b. Defra has confirmed that the question of long-term funding for adoption and maintenance of SuDS remains under consideration. However, there is concern from house builders that Highway Authorities will seek to demand significant commuted sum payments as a condition of their entering into Section 38 Agreements. The rationale advanced for seeking such contributions would likely be to cover the cost of future maintenance of what is deemed 'out of specification' infrastructure. The forthcoming workshops will allow for discussion on this and other long-term funding issues.
- c. SAB application fees – these are likely to be variable based on the characteristics of the development up to a maximum of around £8000 per application, but views on the fee structure are to be sought as part of the consultation. Similarly, views will be sought on the bonding arrangements for SuDS infrastructure. Once implemented, the fee structure is likely to remain fixed for three years, after which the SAB will be free to levy fees on an 'actual cost' recovery basis.
- d. It is accepted that there are specific instances where there may be issues surrounding the off-site provision of downstream outfalls from certain SuDS infrastructure, in particular those outfalls that have to pass through/over third party land. Specific workshops during the public consultation period will explore whether the SuDS Standards are sufficient to cover these instances.

7. Consultation Process

It is desirable that, if possible, the consultations covering both the MBS and the SuDS Standards will run concurrently. This is much preferred given that it will provide for more comprehensive consideration in terms of the conflict/inter-action of respective standards. However, both consultations remain subject to government clearance so this may not be possible though, if not, the consultations will dovetail in other ways (for example by having shared workshop representation from government teams). It is envisaged that Defra will be running at least two dedicated workshops during the late summer/early autumn, which will allow for simultaneous consideration of the MBS and SuDS Standards.

8. **Next Stage(s)**

Defra are keen to maintain open, direct and constructive communication channels with HBF both during and after the consultation process. HBF welcome this opportunity given that the outcome of the meeting on the 7th July was most productive.

Dave Mitchell
Technical Director