

CONSULTATION RESPONSE



HBF response to DEFRA consultation

31st January 2012

National Build Standards and automatic adoption of new gravity foul sewers and lateral drains

Introduction

1. The HBF welcomes the opportunity to respond to the above Consultation. However we would express from the outset that as an Industry we have some serious concerns about the incompleteness of this Consultation in relation to the intended implementation of Section 42 of the Flood and Water Management Act on 1st April 2012.

2. At the outset of this journey for Mandatory Build Standards we would like to draw your attention to meetings that took place over the last four years with yourselves, (in particular those attended in 2011), Water UK and others in relation to these Standards. At these meetings it was repeatedly stated to us that the Standards would not result in a greater procedural or financial burden on developers than that existing at present, i.e. compliance with Sewers for Adoption 6th Edition and Part H of the Building Regulations. Unfortunately what will occur will be a far greater burden than we could ever have envisaged. This must place in serious doubt the anticipated implementation date of 1st April 2012 for Section 42. We would suggest that political expedience towards enacting incomplete or ill considered legislation will lead to:
 - a) Unintended consequences of increased costs.
 - b) Delays in the completion of new homes through unnecessary confrontations between WaSCs and developers, driven by inequitable and subjective demands from WaSCs

Such a situation must be avoided at all costs.

3. We understand the Government's overarching objective with this consultation but as it currently stands we believe it is an objective that will fall a long way short of being realised. To this end we genuinely believe that as a minimum the introduction of both the MBS and SuDs standards should be delayed until April 2013 as a minimum and the intervening twelve months devoted to developing guidance that has synergy with these two tenets of legislation. This work should be undertaken by interested partners and stakeholders with DEFRA or an independent as chair.
4. **Consultation Period** – this consultation has a reduced time period from that normally expected. From the issue of this consultation only five and a half weeks has been allowed before it closes and this includes the Christmas break. One would normally expect twelve weeks and indeed given the magnitude and importance of this consultation twelve weeks should have been the minimum.
5. **Impact assessment** – It is interesting to see that the Impact Assessment contained in the consultation has not been signed off which leads one to believe that it is not approved. This is understandable given the lack of information within the consultation. As a result we wonder how an Impact Assessment that DEFRA and indeed the Government are happy with could have been produced. We certainly do not consider the Impact Assessment to be accurate but unfortunately we have not had enough time given the brevity of the consultation period to formulate further evidence to supplement that already provided.
6. **SUDS Standards** - As a matter of principle the HBF has always been consistent in the need to have a parallel approach to the implementation of the SUDS Standards and Section 42. Our fear of not adopting this approach is the possibility of some surface water sewers being left unadopted or "orphaned".

From a developer perspective SUDS are closely aligned to the design, construction and adoption of foul sewers. Both have an effect on the other and should not be looked at as two parts but as a whole. Therefore we feel that some serious considerations by DEFRA must be given to the implementation of the SUDS Standards and Section 42 at the same time in the future.

7. **Section 42** - Obviously the Standards are of great importance to the implementation of Section 42. However operationally developers will be more reliant on the Section 104 Agreement to enable them to start on a development. This in turn constitutes a major procedural change from where we are today it is rarely the case that a Section 104 Agreement is in place before a site is started, a point which seems to have been missed or not understood by this consultation.

The harsh reality of this matter is that the Agreement is so important in the process, together with its accompanying procedures. Unfortunately, little to no progress has been made in this area. It is also important for DEFRA to accept that this process cannot be left to the WaSCs to manage. The reason for this is quite simple in that WaSCs will exploit the situation as they see fit to further enhance their commercial position as a private monopoly enterprise.

8. **Guaranteed Standards of Service** - The consultation indicates that Section 104 Agreements will be required before sewers can be constructed on any site, but infrastructure provision is normally the first construction operation. It is essential therefore that there is rigour in the process to enable WaSCs' performance to meet developer expectations. This can only be achieved with the implementation of Guaranteed Standards of Service (GSS) which is a tried and tested way to monitor and improve monopoly Utility Companies levels of service. The factual evidence supporting this can be found in the NHBC Foundation Report (June 2011) on "Below Ground Issues". Relating to housing provision the concept of GSS has been highlighted to WaSCs for over three years but alas it has been ignored. It is interesting to note that GSS for WaSCs was one of the key recommendations of the Gray Review and a Policy Direction given by the Water White Paper in England. Without GSS there is a major risk that house building could be seriously impaired while Section 104 Agreements are completed in a timeline which suits the WaSCs. The evidence from the report clearly shows that this period is a minimum of six months from application to completion of the agreement.
9. **Sewerage Undertakers Inspection Fees** - As we stand at present no detail has been given to the Industry about the Sewerage Undertakers Inspection Fees. Yet indications are that these will be of a different structure than the previous 30 years of our relying on Sewers for Adoption and that they will be different for each WaSC. This is contrary to the Government's concept/policy of unified standards.

10. Bonding Arrangements - In relation to Bonding Arrangements, the consultation indicates that Bonds or Cash Deposits will be required to 100% of the cost of the reconstruction costs of the works. This is considerably more than the 10% levied at present. This is further exacerbated by the fact that Bonds of this magnitude will be the only way forward and not be readily available. Therefore cash deposits will inflict unnecessary cash flow restrictions on house builders. More importantly, there is no factual evidence as to why 100% bonding is required.

The entire circumstances surrounding the bonding arrangement is totally unjustified and is a major barrier to the implementation of Section 42. It is interesting to note that unknown to the HBF the costs used by WaSCs under Sewers for Adoption 6th Edition are the reconstruction costs. However all previous iterations of SFA were based on construction costs. There is evidence to support our contention that these costs have been inflated as a means of leveraging additional supervision fees.

11. Potential Bonding Solution - Bearing in mind the previous paragraph a solution could be found to bonding requirement by looking at the sewage asset the house builder currently gifts to the WaSCs. It is well known that the house building industry builds all sewerage infrastructure and gifts these to the WaSCs for nothing.

These are money generating assets, in perpetuity, and over time allows the WaSC to accumulate several £billions in terms of revenue.

A far better, fairer way forward would be for the house builder to receive a payment for the asset they currently gift to the WaSCs. This would only be payable to the house builder once the works etc; have been adopted by the WaSC and after the maintenance period. Any remedial work that for whatever reason the house builder does not undertake could be paid for by drawing off of this asset.

12. Accredited Contractor Scheme - As an Industry we see the Accredited Contractor Scheme (ACS) as a progressive and logical way forward to ensure that sewer assets are built to an acceptable standard. The introduction of the ACS is as important as the Mandatory Build Standards. The reason is quite simple in that you can have the best written Standards in the Country however if they are not being constructed correctly then the Standards are not really worth the paper they are written on.

Our Members see the ACS as a solution to a number of problems that currently exist in relation to improving construction standards. The ACS will also negate the need for bonds.

13. Building Regulations, Part H - With the introduction of the Mandatory Build Standards, changes will be required in Part H of the Building Regulations to remove criteria which is applicable to foul sewers and foul lateral drains. It has long been the opinion of the HBF that this should take place at the same time as the implementation of Section 42 and the introduction of SUDS Standards. All of which could be seen as smarter regulations rather than confusing piecemeal legislation. This also stops the possibility of duplication, contradiction and subjective design considerations.

Responses to Consultation Questions

2.1. Is the adoption process envisaged under Section 42 of the Flood and Water Management Act (2010) clear? Is further guidance required?

The Consultation only seeks to address two issues in the adoption process. These are the point of adoption and use of Bonds to rectify defects. We disagree with both sets of proposals.

With regard to the point of adoption occurring when the first demand for a sewerage charge is levied on a Customer we have some procedural concerns over this as a specified event in Section 42. A far more practical specified event for adoption would be when the dwelling is transferred from the developer to the Purchaser. This is easily communicated and understood by WaSCs and house builders. This can also be the trigger for the 12 months defect period for all downstream foul sewers.

As for the concept of using Bonds to repair defects, the HBF does not support such a concept due to the effect on other aspects of our members' business with surety warranty providers. For this principle to apply it must be seen as the option of last resort and other mechanisms need to be investigate, these may look to use existing approval procedures.

2.2. The transitional arrangements that we propose are detailed in Annex A and paragraph

4:14 in this document. We believe that these provide workable arrangements. If you disagree, please provide evidence.

In a Workshop with our Members on this Consultation, it was agreed that the transitional arrangements as detailed in Annex A are generally acceptable. However there will be many sites under development by our members and where the drainage strategy will have been crystallised as a condition of planning. In this and indeed other instances there will be a need for a more extended transitional period if additional and unnecessary costs are to be avoided. It is essential that whatever transitional arrangements are introduced that they remain cost neutral.

2.3. Is the point at which the first bill is issued to customers, in respect of newly connected properties served by newly built sewers, the appropriate time at which the adoption process is deemed to be completed?

It would be better to base this on the time that the water meter readings are sent to the WaSCs upon completion of the property. This could be used as an automatic notification of adoption. As such no additional process is involved and it has synergy with the established CML process.

2.4. Are the Secretary of State's national build standards appropriate, given the linkage to the detailed guidance contained in *Sewers for Adoption 7 (SFA7)*, as agreed between developers and the water companies?

SFA7 is not currently in the public domain and not available to inform this consultation. As this is still a draft it cannot be said that it is as agreed between developers and water companies.

This is a serious problem with this consultation.

The Government's objectives are quite clear in that construction of drains and sewers should be to a national standard which indicates that SfA7 (which is guidance) should not be used.

We would welcome a single set of national build standards which would avoid duplication and/ or contradiction and gives a consistency of one national standard.

2.5. Are the standards in the guidance published in SFA7 by WRc and the water companies appropriate to secure an appropriate standard of construction and maintenance, as the basis for automatic adoption?

SFA7 is not currently in the public domain and not available to inform this consultation.

2.6. The draft national build standards for gravity foul sewers and lateral drains, and the detailed supporting guidance to be contained within future editions of Sewers for Adoption, do not refer to jetting resilience. However, a minimum resilience threshold for foul sewers and lateral drains to withstand a jetting pressure of 4,000 psi (256 bar) is being considered for the future.

In this context:

(a) Do you support the concept of having pipes specified by resilience to jetting pressures for foul sewers and lateral drains in future versions of the national build standard and guidance? Please answer YES or NO

No

(b) If your answer to Question (a) is YES, do you consider that 4000psi is the correct

limit? Please answer YES or NO and support this with further explanation as appropriate

Although answering No to (a) above precludes us from answering (b) we feel we should point out that 4000psi is an immense pressure to subject new drains to. This will require pipe wall thicknesses to be increased which will affect all associated fittings etc; this brings with it the inevitable increase in costs. Indeed one does not know whether such a plastic pipe for instance is readily available in this country.

We would ask if these increased costs have been factored into the Impact Assessment.

Also, where is the robust evidence base which suggests that such a change is needed?

(c) If your answer to Question (a) is YES, and you indicate a preference for 4000psi or above at Question (b), when do you consider that such a standard should be introduced, and what other considerations would you like to see in place. Please support your views with justifications.

Not applicable.

2.7 Do you support the evidence we have on costs in the Impact Assessment? Please provide evidence to support your views.

No.

As stated earlier due to the shortness of this consultation it is impossible to provide further evidence.

Without being able to examine all the documents mentioned it is impossible to answer.

In these circumstances one wonders how indeed DEFRA have managed to come up with I.A. they and indeed the government are happy with. This must make it very difficult to come to satisfy the requirement of the one in – one out principle.

Conclusion

The substantive issues highlighted by the HBF in this Consultation only leads us to believe that much more work will be required in many areas before Section 42 can be implemented. The stated deadline of 1st April 2012 does seem at this juncture to be unachievable.

Clearly, given the confusion that abounds and the lack of synergy with other equally important legislation there is compelling justification to delay the introduction of Section 42, the MBS and the SuDs Standards until at least 1st April 2013.

It is equally important that both of these are introduced at the same time.

The intervening period should then be devoted to producing guidance that has synergy with these two tenets of legislation. This work should be undertaken by interested partners and stakeholders with DEFRA or an independent chair.

HBF are more than happy to follow up with DEFRA any of the comments made in this consultation response.

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