

SuDS and SABs – implication of new legislation for local authorities



In this briefing Ruth Newton and Bob Bray highlight the main requirements of the Flood and Water Management Act 2010 and the major implications these will have for local authorities.

Introduction

The Flood and Water Management Act (FWMA) 2010 has introduced a range of significant new responsibilities for local authorities around sustainable drainage systems (SuDS). Unitary and county councils will be responsible for forming SuDS Approval Bodies (SABs) to evaluate and approve SuDS in all new developments and to adopt and maintain SuDS serving more than one property. Following consultation later this year on the details of the legislation and proposed National Standards for Sustainable Drainage, the requirements should come into force in 2012.

Why was the Flood and Water Management Act developed?

Following the devastating floods in England during the summer of 2007, the UK Government commissioned Sir Michael Pitt to carry out an independent review into how the risk and effect of future floods could be reduced (Pitt, 2007). One of the major responses to the Pitt report recommendations was the FWMA 2010, which received Royal Assent on 8 April 2010. The Act aims to reduce the likelihood and effects of flooding, clarify roles and responsibilities around flood risk, improve the efficiency and management of the water industry and improve water quality. The Act has a range of implications for local authorities, and one of the major ones being its creation of a new role for unitary or county authorities as SABs with many new responsibilities relating to SuDS.

What are the main requirements of the Act around SuDS and SABs?

SABs established in unitary and county councils will have two main roles: SuDS evaluation and approval, and SuDS adoption and maintenance:

1. SuDS evaluation and approval

SABs must approve drainage proposals for all new developments and redevelopments before construction can start. To give this approval, the SAB must evaluate SuDS applications to confirm that the proposed drainage system meets the new National Standards for Sustainable Drainage covering design, construction, operation and maintenance. The legislation sets out several details on how the SuDS evaluation and approval process should work:

- SuDS applications can be submitted to the local planning authority with a planning application or directly to the SAB as a freestanding application
- the SAB must consult several statutory consultees where relevant including water/sewerage companies, EA, highways authorities, British Waterways and IDBs. The SAB will also become a consultant to the planning process
- SAB and planning approvals are independent from each other – both applications will need to be approved before construction starts on site
- the time taken for SuDS approval is likely to be same as for planning and important aspects of the SuDS process will mimic planning, including the enforcement process. However one main difference is that there is no political involvement in the SuDS approval process
- the Act strengthens this requirement by amending S106 of the Water Industry Act 1991 so that the right to connect surface water to public sewers is conditional on this approval from the SAB.



Figure 1 Permeable paving on a high density development in Stamford

2. SuDS adoption and maintenance

The Act also requires the SAB to adopt and maintain approved SuDS that serve more than one property, although the definition of one property is still to be confirmed.

- the SAB is required to adopt the SuDS once they are satisfied the system is constructed, and functions, as approved. The SAB can adopt at its own initiative or at the developer's request
- highways authorities will be responsible for maintaining SuDS in adopted roads to the National Standards
- the SAB should release any financial bond taken as a guarantee of SuDS performance (if one has been sought and not used) once performance has been demonstrated
- SABs will also be responsible for designating SuDS and for establishing a land charge and register for SuDS on private land.

What are the National Standards for Sustainable Drainage?

The National Standards are currently being developed and are likely to mirror information found in The SuDS Manual (Woods-Ballard *et al*, 2007), including basic principles and a range of design guidance on runoff destination, peak flow rate and volume and water quality. They should provide a link to local planning policy or other requirements around biodiversity and amenity, although they will not cover these issues directly. Defra will consult on the National Standards later in 2011.

Challenges for SABs

Adopting this new legislation will bring significant challenges for all involved. There is a need to

develop the skills, processes and capacity within county, unitary and district authorities to ensure they are able to effectively resource and deliver these new requirements, while minimising future maintenance risks and delivering the best schemes possible for the local area. A significant amount of capacity building will also be needed within the development industry in preparation for the introduction of the new SuDS requirements.

Funding and resourcing are two major issues for SABs in adopting the Act. The Act will have significant effects on resources at a difficult time for local authority budgets and staff. There will be a need for significant extra resources and skills within a range of services across county, unitary and district authorities to deal with the new duties. Given the current low level of awareness around SuDS in many local authorities, more staff may need to be recruited, or existing officers retrained to enable them to deliver the new requirements.

Funding the new responsibilities brought by the Act is also a major concern for many local authorities. While SABs will be able to charge fees for approving applications and inspections on a cost recovery basis, the co-ordination and budgeting of this income to cover extra costs may be an issue, as would funding the maintenance of adopted SuDS. While maintenance of SuDS adopted by the SAB is to be grant-funded by Defra in the short-term, there is no clarity on long-term funding. Many local authorities lack both experience of adopting SuDS and an understanding of the possible costs of their maintenance, including how these future costs and liabilities can be minimised.

Allocation of responsibilities and co-ordination of skills and processes across different stakeholders may be a significant challenge for SABs, particularly where responsibilities will be split between county and district authorities. There will need to be close co-ordination between planning and SAB processes to tackle interrelated design and management issues and to ensure the most efficient processes are set up in tandem with the planning process. Possible devolution of maintenance responsibilities to districts or contractors will also need to be carefully considered.

Local guidance may also need to be developed to cover amenity and biodiversity issues, to provide clear links with other areas of planning policy and

detail any local standards relating to adoption and maintenance.

Finally, the new legislation creates a significant need for cultural change and awareness raising both around perceptions of risk and health and safety, and to make stakeholders and the general public aware of SuDS. Raising awareness among the public about SuDS, their purpose, benefits and management requirements, may be a particular challenge as SuDS features start to become visible within local areas.



Figure 2 Rain garden situated on a local authority housing estate

What happens next?

Defra is currently drafting the national standards as well as secondary legislation covering details of the SAB approval process, appeals and enforcement. The SuDS provisions in the Act are due to begin in 2012, although Defra will consult on the proposed start date and publish the national standards and regulations in advance. Many local authorities are already beginning to prepare for their impending new role as promoters and regulators of SuDS across the country.

To assist local authorities in preparing for their new roles, Ruth Newton and Robert Bray, in partnership with CIRIA, are offering tailored facilitation and workshop support that will enable local authorities to begin planning the delivery of their SAB requirements in the most effective way. Each facilitation day will be customised to individual needs, will support local authorities in bringing the right stakeholders together and help to develop appropriate processes, skills and standards to ensure the greatest local benefit from the new legislation.



Figure 3 Information board depicting SuDS features on a housing estate in Cambridgeshire

For further information on this offering

Go to the training section of the CIRIA website:
www.ciria.org/training

or alternatively contact Suzanne Simmons

or Paul Shaffer, CIRIA, on tel:020 7549 3300.

References

PITT, M (2007) *The Pitt review. Lessons learnt from the 2007 floods. An independent review by Sir Michael Pitt*, Cabinet Office, London. Go to: <http://tinyurl.com/3vvx954>

WOODS-BALLARD, B, KELLAGHER, R, MARTIN, P, JEFFERIES, C, BRAY, R and SHAFFER, P (2007) *The SuDS Manual*, C697, CIRIA, London (ISBN: 978-0-86017-697-8). Go to: www.ciria.org

Statutes

Flood and Water Management Act 2010 (c.29)

Water industry Act 1991 (c.56)