

# Parliament Approves the enactment of Schedule 3 of the FWMA

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The Flood and Water Management Act (FWMA) details the provision of comprehensive flood management to protect people, homes, and businesses. It is written to protect water supplies to the consumer and helps safeguard community groups from unaffordable rises in surface water drainage charges. The Act introduces into law the concept of flood risk management as the preferred approach rather than reliance on flood defences (existing or proposed) for protection of sites.

## **Schedule 3**

Schedule 3 of the FWMA was introduced to establish a SuDS approving body (SAB) at the county and unitary level for the regulation of new development and compliance with The Act. It was intended that this Schedule would be introduced into law around 2015/2016, following the original Act that achieved royal ascent in 2010.

This did not go as planned, with Schedule 3 not achieving approval. Instead, the government made amendments to the National Planning Policy Framework to stipulate those decisions on planning applications relating to major developments (over 10 dwellings, or equivalent non-residential developments) should ensure that SuDS are put in place, unless demonstrated to be inappropriate. The Local Planning Authority in consultation with the Lead Local Flood Authority currently need to approve drainage schemes and ensure they are appropriately maintained.

Schedule 3 of The Act would also have amended Section 106 of water Industry Act 1991 to make the right to connect surface water to the public sewer conditional on the SAB approving the drainage of the site. Currently any scheme that is granted Planning Permission has a right to connect to a public asset for surface water discharge.

Schedule 3 also originally required the SAB to adopt and maintain approved SuDS that serve more than one property. Without Schedule 3 approved, the maintenance of a development currently typically falls under the responsibility of a Private Maintenance Company (PMC). This is usually paid for using service charge agreements with the owners of the new properties and selling residential properties as leasehold rather than freehold.

## **The Current Landscape**

The reliance on non-statutory guidance and local policy being written by each council results in an inconsistency between counties on the level of technical detail, type of submission and general design criteria required. On minor schemes between boroughs, this inconsistency is even greater, with a huge variance in the type of submission required. Typically, a designer is faced with uncertainty on the following (non-exhaustive) list:

- Catchment areas for greenfield run-off calculations
- Type of rainfall estimation method
- *Implementation of different SuDS devices and justification*
- Agreement on final discharge rate
- Level of information required to discount SuDS hierarchy (typically infiltration)
- Level and detail of submission required (manhole schedule, long sections, 3D model etc.)
- Level and detail of the maintenance submission
- Level and detail of any verification report submission

These variances can result in a large amount of uncertainty for a consulting engineer who must price and deliver the submission that satisfies the approving council. This has evolved to the point that it is often better to understand which council the submission is for than to understand the wording of any planning condition so that the workload can be tailored to suit.

### **What Will Change**

George Eustace, the current Secretary of State for Environment, Food and Rural Affairs (at the time of writing) made a statement in Parliament at the beginning of July that Schedule 3 would be enacted.

Enacting Schedule 3 of The Act will ensure that the delivery of SuDS is mandatory (where practical to do so) and hopefully enable councils to adhere to a legal version (yet to be created) of the non-statutory standards for SuDS that will improve consistency of drainage submissions across the UK.

Lead Local Flood Authorities (LLFA) have (over the last few years) increased funding to the sustainable drainage and water sectors within the council, which has enabled teams to be created to review and approve SuDS schemes. This has been, to date, based on the non-statutory guidance. Schedule 3 will enable teams to receive more funding and guidance for operation and will hopefully make the approval process a lot smoother for all concerned.

Enacting this Schedule will also provide engineers with the appropriate leverage to be able to request that sustainable drainage systems be included in the masterplan design of a scheme and have the developer approach the project with drainage as part of the initial considerations, where it has typically been an afterthought.

It is hoped that this will enable more adoption of sustainable drainage assets by statutory authorities and less reliance on PMCs, which will enable new housing to be delivered without a service charge agreement (or with a reduced agreement).

It is expected that the increased adoption of sustainable drainage assets will open the way for a necessary conversation about long term maintenance of drainage systems and how this is funded. One of the primary goals for Stormwater Shepherds is to assist with setting up a framework for the long-term maintenance of SuDS that is funded by a stormwater infrastructure levy, something that has proven very successful in other countries.

There are also obvious benefits to the developer, with less reliance on PMCs and the ability to sell dwellings as freehold without complex service charge contracts.

### **Protecting the Future**

The passing of Schedule 3 can only be seen as a huge benefit to those who design and approve drainage systems and are passionate about introducing sustainable drainage systems on site. It will enable engineers to approach the design proactively, rather than reactive to council comments and to streamline the whole design process. It is believed that this will enable engineers to provide more exemplar SuDS schemes that provide multiple benefits and create great new spaces for occupants, integrated into the design of the scheme.