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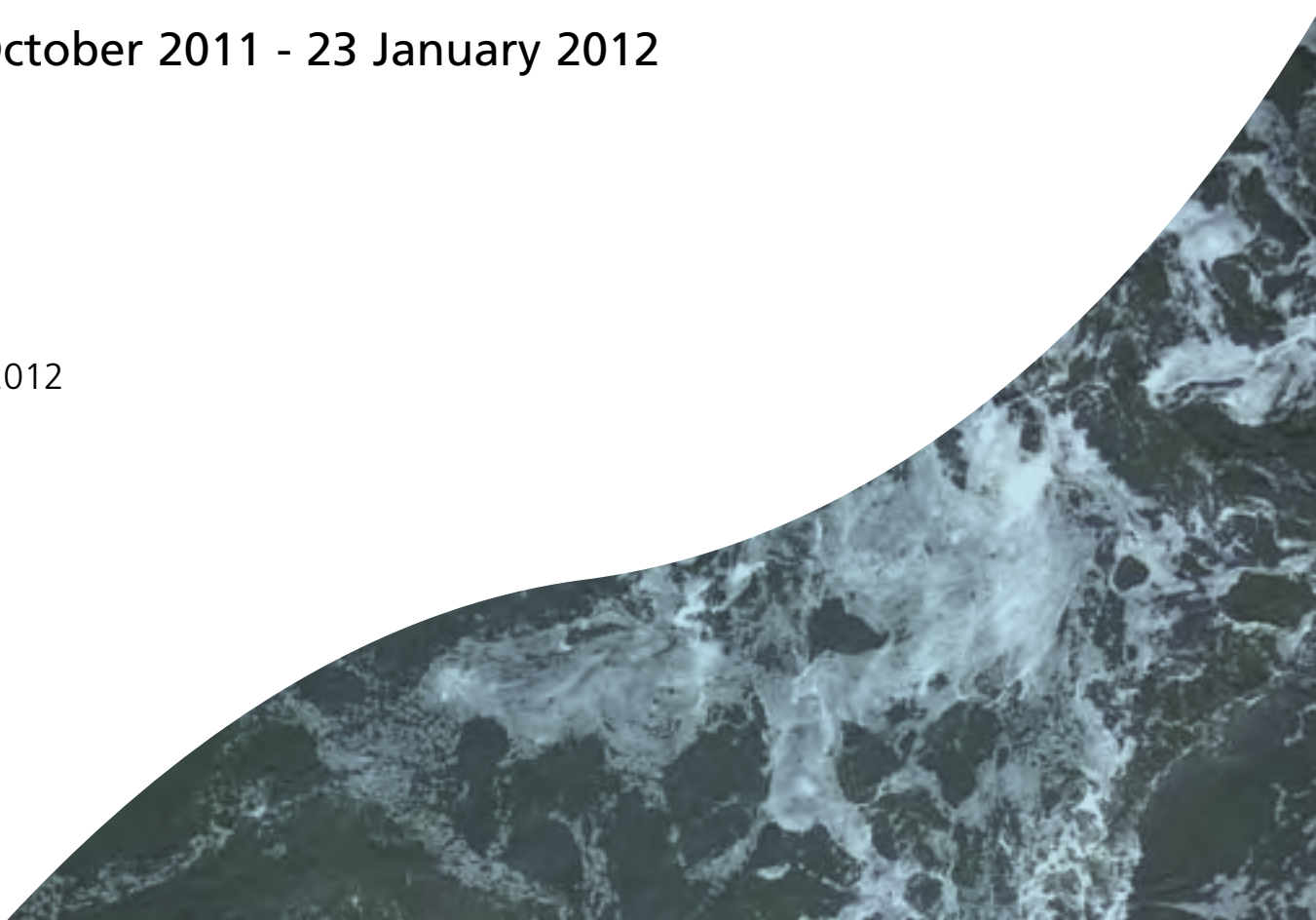
Welsh Government

Summary of responses

Mandatory adoption arrangements for
new foul sewers and lateral drains and
Mandatory Build Standards for new gravity
foul sewers and lateral drains

31 October 2011 - 23 January 2012

June 2012



Information about this publication and further copies are available from:

Welsh Government
Water Branch
Cathays Park
Cardiff
CF10 3NQ

water@wales.gsi.gov.uk

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1. Introduction

Purpose of consultation

On 31 October 2011 the Welsh Government, published a consultation on the implementation of Section 42 of the Flood and Water Management Act 2010 (Section 42) which introduces mandatory adoption arrangements for new foul sewers and lateral drains and Mandatory Build Standards for new gravity foul sewers and lateral drains.

The consultation sought views on the draft version of the Welsh Ministers' proposed Mandatory Build Standards for gravity foul sewers and lateral drains, timescales for implementation of Section 42 and draft Regulations which include provision for adoption in the event that the required adoption agreement under Section 104 of the Water Industry Act 1991 is not completed.

Consultation period and distribution

The Welsh Government consultation ran for a 12 week period from 31 October 2011 to 23 January 2012. The consultation was sent to a wide range of stakeholders and published on the Welsh Government web site.

During the consultation period, the Welsh Government held two stakeholder workshops in January 2012 to allow an additional opportunity for stakeholders to find out more about the policy aim of this change, discuss the draft Mandatory Build Standards and feedback around the contents of the consultation.

Around 40 stakeholders attended these workshops, including developers, sewerage undertakers, pipe manufacturers, local authorities and the Consumer Council for Water. Comments made at the workshops will be considered along with the formal responses in the summary of response. Positive feedback was received at these workshops and most stakeholders indicated that they would like to be kept informed throughout the process. More information on the workshops can be found in Section 6 (Page 29).

Consultation responses

We received 37 responses to the consultation. These varied from brief answers, to more in depth technical comments on the Welsh Ministers' draft standards and accompanying guidance.

The breakdown of responses is as follows:

Sector	Responses	Percentage
Local Authority	5	13.5%
Developer	7	18.9%
Pipe manufacturer	5	13.5%
Water company	9	24.3%
Industry representative	5	13.5%
Other	6	16.2%

Over view of response and Government response

The Welsh Government has considered the responses to the consultation and as a result a number of changes have been made to the proposals, including:

- a revised date of implementation
- changes to the provisions for adoption where an agreement cannot be completed
- amendments and corrections to the standards, guidance and industry recommendations.

We will develop non-statutory guidance to clarify our intention and the way we expect this major change in drainage law to be implemented.

The actions we have decided to take as a result of the response to each of the questions have been set out for each in the "Analysis of Responses" section of this document at page 10.

Next Steps

Following the consultation, we have met with stakeholders to discuss their responses prior to publishing this document. We have also been working with WRc to ensure that the publishing of Sewers for Adoption 7 will coincide with the implementation of Section 42 and that revised Section 104 agreements are available. Stakeholder workshops on these are proposed for July 2012.

Regulations will be laid in the National Assembly for Wales and Parliament and the commencement order prepared in June 2012 to ensure that the new provisions are in place from October 2012.

We expect to publish the Welsh Ministers' Mandatory Build Standards and non-statutory guidance, which will be developed with assistance from stakeholders in summer 2012. This will ensure that those affected by the changes will have the opportunity to become familiar with the documents prior to implementation.

We have established a communications group which will meet for the first time on 1 June 2012 for stakeholders to work together on a common message for the implementation of Section 42 and will ensure that the change is communicated as widely as possible.

2. Background

In March 2009, the Welsh Government published the Strategic Policy Position Statement on Water which highlighted a commitment to pursue the development of Regulations to facilitate the transfer of private sewers to sewerage undertakers. Following this, the Welsh Governments and the Department for Environment, Food and Rural Affairs (Defra) consulted on the proposed Regulations and Schemes for the transfer of private sewers and lateral drains to water and sewerage companies in Wales and England between 26 August and 18 November 2010.

The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 came into force on 1 July 2011. The Regulations facilitated the overnight transfer of private sewers and lateral drains to sewerage undertakers across Wales and England on 1 October 2011. The transfer was the largest change in sewerage legislation since the Public Health Act 1936 and followed nearly 10 years of consultation exercises, work with stakeholders and an extensive communication exercise in 2011. The transfer has removed the burden of maintenance from householders by spreading costs across all customers. It has also provided greater clarity over ownership and allowed more effective management of the sewerage network. The transfer applied to private sewers and lateral drains connected to the public sewerage system before 1 July 2011.

How will we prevent the creation of a new stock of private sewers?

The Welsh Government is committed to ensuring that we do not have any further proliferation of sub-standard private sewers in Wales.

To ensure that the problems in relation to the ownership of private sewers and lateral drains do not arise again in the future, Section 42 inserts Section 106B into the Water Industry Act 1991. This Section gives powers to Welsh Ministers to create a mandatory process for new gravity foul sewers and lateral drains connecting to the public sewerage system and makes the need for an agreement under Section 104 of the Water Industry Act 1991 mandatory.

A Section 104 agreement is an agreement between the sewerage undertaker and a developer which prescribes that the sewer or lateral drain will be built to a suitable standard in order to be adopted as part of the public system maintained by the sewerage undertaker.

Using the powers under Section 106B, Welsh Ministers are able to publish Mandatory Build Standards which will form the basis of the Section 104 agreements. This will ensure that all gravity sewers and lateral drains adopted as part of the public sewerage system are built to a minimum mandatory standard to avoid costs incurred by the need to upgrade sub-standard sewers or lateral drains being spread across all customers.

What about private sewers and lateral drains connected between the transfer date (1 July 2011) and the implementation of Section 42?

The commencement of Section 42 will trigger a supplementary transfer of the private sewers and lateral drains connected to the public system after 1 July 2011. Provision for this was included in Regulation 4 of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011.

3. List of respondents

Bridgend County Borough Council
City and County of Swansea
Clay Pipe Development Association
Concrete Pipeline Systems Association
Consumer Council for Water
Dŵr Cymru Welsh Water
Get Connected Utilities
Gwynedd Council
Home Builders Federation
Independent Water Networks Ltd
Institution of Civil Engineers
Lloyds Register
Kier Homes
Kijlstra Ltd
Martin Wright Associates
Miller Homes
National Sewerage Association
National House Builders Council
Neath Port Talbot County Borough Council
Northumbrian Water
Ofwat
Persimmon Homes East Wales
Persimmon Homes West Wales
Plastic Pipe Group
Redrow Homes
Rhondda Cynon Taf County Borough Council
Society of British Water and Wastewater Industries
Severn Trent Water
SSE Water Ltd
Teppfa
Thames Water
United Utilities
Utility Law Solutions
Water UK
Wessex Water
WRc PLC (Water Research Centre)
Yorkshire Water

4. Issues beyond the scope of the consultation

We received a number of responses to the consultation and comments at the workshops which fell outside the scope of the consultation. These are addressed individually below.

Appeals

The subject of the terms of Section 104 agreements and the mechanism for resolving disagreements was raised on a number of occasions in the responses to the consultation and at the stakeholder workshops. Concerns were expressed over the conditions which might be imposed by sewerage undertakers, for example with respect to fees and bonds.

Government Response

There is an existing appeals mechanism under Section 105 of the Water Industry Act 1991, under which a person who has entered or wants to enter an agreement under Section 104 may appeal to the Water Services Regulation Authority (Ofwat) about any matter concerning the agreement (including whether it is concluded, its terms and its operation).

Bonding arrangements

Bonding arrangements and inspection fees were raised by a number of respondents in their responses and at the stakeholder workshops.

Government Response

These are matters for agreement between the developer and the sewerage undertaker. In the event that agreement can not be reached, an appeal may be made to Ofwat. The mechanism for appeals is set out in Section 105 of the Water Industry Act 1991. Appeals may be registered through Ofwat's web site at www.ofwat.gov.uk.

The levels of bonds and fees are a commercial matter and it is and not for the Welsh Government to determine them. However, the Welsh Government is facilitating discussions between Ofwat, sewerage undertakers and developers to ensure that matters related to bonding arrangements are considered appropriately.

Sewers for Adoption 7

A number of respondents highlighted that they did not feel able to comment on the Welsh Ministers' Mandatory Build Standards and accompanying guidance until they had seen the content of Sewers for Adoption 7.

Government Response

Sewers for Adoption 7 is not a Welsh Government document, therefore it was not included as part of our consultation package.

The water industry is responsible for the development of Sewers for Adoption 7 working with WRc. We have worked closely with Defra, Water UK and WRc to ensure that Sewers for Adoption 7 is simplified to remove inconsistencies between companies and that it is aligned, with the Welsh Ministers' Mandatory Build Standards whilst emphasising their mandatory status.

Sustainable Drainage Systems (SuDS)

A large amount of comments were received in relation to the exclusion of surface water drainage from the consultation and the provisions for Sustainable Drainage Systems (SuDS) in Schedule 3 of the Flood and Water Management Act 2010.

Government Response

SuDS sit outside the remit of this consultation document. The Welsh Government is currently developing a consultation on the implementation of the SuDS provisions in Section 32 and Schedule 3 of the Flood and Water Management Act 2010. Any comments we have received through this consultation will be considered in the preparation of the SuDS consultation.

Pumping stations

A large number of responses were received in relation to the fact that the Welsh Ministers' Mandatory Build Standards and accompanying guidance do not include pumping stations.

Government Response

Industry guidance on pumping stations is available in Sewers for Adoption 6 and will be included in Sewers for Adoption 7.

Pumping stations were not included in the Welsh Ministers' Mandatory Build Standards due to the complexity of the subject, which needs to cover, for example, issues such as health and safety, telemetry and electrical supply. Had these been included, it is likely that the implementation of Section 42 would have been considerably delayed. The Welsh Ministers' Mandatory Build Standards have therefore been limited in application to gravity foul sewers and lateral drains.

Processing Section 104 agreements

Many respondents commented on the time taken by sewerage undertakers to process Section 104 agreements. A number suggested that there should be

service standards set for this. However, this is a matter for Ofwat and it is not for the Welsh Government to prescribe such service standards.

Government response

We expect sewerage undertakers to assess their current approach to processing Section 104 applications and to take appropriate steps to ensure that the legislative requirement for Section 104 agreements to be made between the developer and sewerage undertaker can be met in a reasonable timescale. Ofwat are investigating options for this and we will work with them and sewerage undertakers to monitor progress.

5. Analysis of responses

Question 1: Is the adoption process envisaged under Section 42 of the Flood and Water Management Act 2010 clear? If not, is further guidance required?

33 respondents directly responded to this question. 15 of these respondents agreed that the adoption process envisaged under Section 42 is clear. Nine respondents disagreed and thought that it was unclear and one indicated that it may be clear. Eight of the respondents either decided not to comment on this question or did not address the issue in the question.

Common themes:

- Most of respondents made reference to the need for clarification of the “specified event” which will trigger the automatic adoption of newly built gravity foul sewers and lateral drains under Section 106B(5)(a) of the Water Industry Act 1991, as inserted by Section 42.
- A number of respondents made reference to the lack of information on arrangements for private sewerage systems and pumping stations.
- Several respondents highlighted that they were expecting to see Ministerial guidance on Section 104 agreements as Section 42(3) states: “undertakers shall have regard to any guidance about agreements... issued by the Welsh Ministers, in relation to undertaker’s whose areas are wholly or mainly in Wales.”

A number of individual comments included:

- The process is relatively clear in terms of schemes that have yet to start although it would probably be easier to understand if it was simplified further.
- We require a clearer understanding of the impact of the proposed Regulations on the relationship between the undertaker and a developer, particularly on large scale developments.
- The requirement by law that the Section 104 agreement must be in place before the right to connect to the public sewer can be exercised. This needs to be made very specific in the guidance.
- We feel that a prescribed process, along the lines of those currently existing in Sewers for Adoption, should be promptly agreed with developers, their ground workers and sewerage undertakings as this would facilitate process understanding and ensure that support systems are appropriately aligned.
- Clarification is required regarding how assurance will be achieved that the Welsh Ministers’ Mandatory Build Standards (or other agreed standards) have been satisfied.
- It could be clearer and wording changed to make it more enforceable.
- No, the adoption process is not clear enough. It lacks detail, without which there will be no uniformity across regions of the country and certainly no improvement in the standards for sewers.

- The process could be clarified by the publication of further guidance, even if this is non-statutory.

Government Response

The majority of respondents thought the adoption process was clear. However, we recognise that some respondents sought further clarification.

We are developing non-statutory guidance to support the implementation of Section 42. This guidance will further clarify the adoption and process and will be published in summer 2012.

Question 2: Are the transitional arrangements envisaged for the Commencement Order for Section 42 effective in preventing unreasonable or lengthy delays to the development process?

32 respondents answered this question. 20 respondents thought that the arrangements were reasonable, four thought that they were not, three did not provide comment and six did not specifically address the question.

Common themes:

- A number of respondents believed that the transitional period was reasonable and in line with Building Regulations 2010.
- Several respondents highlighted that it would be helpful if the transitional arrangements were to reference Part H of the Building Regulations 2010.
- A small number of respondents believed that an extended transitional period of 18 months may be appropriate due to the current economic need for a longer lead in time for projects.
- A few respondents asked for some clarification over what is meant by “the work is started” under Section 4(b) of the Commencement Order. It was suggested that this could be included in non-statutory guidance.
- Clarity was generally welcomed on the situation where construction has started before April 2012 on a large multi phase site and subsequent phases may take many years before they are started, in these instances it is not clear if the latter phases require a new Section 106 notice which would require a new style Section 104 agreement.

Other comments:

- All developers should be made aware of this time period to avoid any confusion.
- It is not made completely clear what the situation is for those plans that are submitted but not yet approved, or those where the design is prepared but not yet submitted. There is a danger that some designers will be unaware of the new standards and still be working to the old ones for designs that are yet to be submitted.
- Although on some larger developments some bespoke transitional arrangements may have to be considered.
- The term "building work" needs to be defined. This should be as defined in Regulation 3 of the Building Regulations 2010.
- While a 12 month transition period might appear a reasonable period, it may not be sufficient taking into account the administrative and information gathering requirements to establish all those developments that will fall into the transitional arrangement period and thereafter ensuring that they have been started or completed.
- There would be benefit in providing further specific clarification that the transition applies to the mandatory standards only and not the mandatory adoption. Clarify that the Section 104 agreement must be in

- place for all developments from the enactment of the new Regulations.
- The wording “full plans deposited” needs to be clarified to confirm whether this relates solely to the deposition of full plans or the approval of the full plans deposited.
 - Plans should be approved by the Local Authority rather than just submitted before 1 April 2012.

Government Response

The majority of respondents thought the transitional provisions were fair. We recognise that some respondents sought further time or greater clarification of what the criteria such as “work started” mean.

We have delayed the implementation of Section 42 from 1 April 2012, as proposed in the consultation, until the 1 October 2012. This provides an additional 6 months for developers to adjust to the new provisions.

We will include further guidance and examples on the criteria such as “work started” in our non-statutory guidance which we will develop to accompany the implementation of Section 42.

Question 3: Should any other transitional arrangements be incorporated?

28 respondents answered this question. 17 respondents offered suggestions for other arrangements and 10 stated that no other arrangements should be incorporated. One respondent did not comment.

Common themes

- A number of respondents requested clarification around arrangements for the supplementary transfer allowed under Regulation 4 of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011.
- Several respondents highlighted a need for transitional guidance on surface water drainage until such time that Section 32 of the Flood and Water Management Act 2010 is commenced and Section 106A of the Water Industry Act 1991 is inserted.
- A number of comments were received relating to bonding arrangements and some respondents highlighted a need for an accredited contractor scheme for works following the commencement of Section 42 in order to reduce the level of bond required.
- A few respondents highlighted that there is a need for clarity around inspection arrangements for new sewers.
- A couple of respondents requested more information about what should happen in the situation of a developer starting works before the end of the transitional period, but not being able to complete the works until some time later.

Individual comments include:

- Given the prevailing market conditions and corresponding slowing and uncertainty of production we would propose that the transition arrangements are extended to 24 months.
- We consider that communication by Government on the new arrangements with developers and local Authorities will play an important part in the transition arrangements and in particular for the commencement of Section 42 due to the short lead in period to the proposed commencement in April 2012.
- The plans approved must refer to detailed drainage arrangements for the whole site but should exclude any pumping station proposals.
- If the transitional provisions would not guarantee the adoption of such sewers or lateral drains through a Section 104 agreement, then the timing of any end date for completion of sewers under the transitional provisions and the timing of the supplementary transfer should be aligned to ensure that these sewers or lateral drains are adopted through the supplementary transfer.
- We support the sunset clause that from April 2013 all new sewers should be built to the new standards. This provides sufficient time to change

design practices and means that plans approved prior to April 2012 are not still being built to different standards 3 or 4 years later.

Government Response

A number of suggestions were made in respect of areas of uncertainty, such as surface water drainage provision. Where possible, we will seek to provide clarification in our non-statutory guidance which we are developing to accompany the implementation of Section 42.

Provisions for the supplementary transfer of sewers connected to the public sewerage system after 1 July 2011 were included in Regulation 4 of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011.

We believe that the use of accredited contractors offers a useful option for the future, but this is a matter for sewerage undertakers and developers to agree.

Question 4: The transitional arrangements proposed are intended to carry over existing Building Regulations approvals to avoid disruption, additional cost and to recognise the need to minimise the period between transfer and the introduction of mandatory adoption and new build arrangements. Is the proposed date for commencement of Section 42 workable?

29 respondents answered this question. Six believed that the date was workable, 13 believed that it was not workable, eight had no comments to make and two stated that it could possibly be workable.

Common themes:

- A number of respondents believed that the commencement date would only be workable if certain issues were addressed and the standards were published a suitable period prior to commencement.
- Several respondents highlighted that inspection roles were not clear and would need to be addressed prior to implementation.
- A few respondents believed that an accreditation scheme would need to be considered prior to implementation, making the proposed date unworkable.
- A couple of respondents suggested October 2012 as a better option for the implementation date.
- A number of respondents highlighted their desire for commencement to occur on the same date as the implementation of the SuDS policy.
- Several respondents asked for more guidance around pumping stations and bonding arrangements prior to commencement.

Individual comments include:

- There is still a considerable amount of detail which needs addressing to make the implementation of Section 42 workable.
- There still appears to be a lot of detail missing which would make the proposed date seem unworkable.
- The time between the bulk transfer of existing private sewerage assets and the introduction of the Mandatory Build Standards needs to be short but delaying its introduction until October 2012 may be a better option
- The time period is very tight, especially where many developers/designers do not appear to be fully aware of the changes.
- Yes, as long as the mandatory sewer standards are in place at least 6 months prior to the commencement date. This will allow a period of training and understanding before there is a need to commence work in the ground.

Government Response

We recognised the difficulties of implementation on 1 April 2012 and announced in March 2012 that we now intend to implement on 1 October 2012 to allow more time for preparation and to fully consider the responses

made to the consultation in the final Welsh Ministers' Mandatory Build Standards. We announced this delay on 26 March 2012.

Question 5: Are the draft Welsh Ministers' Mandatory Build Standards with the accompanying detailed guidance appropriate?

33 respondents answered this question. 15 believed that they were appropriate; five believed that they were inappropriate, two did not comment and 11 provided comments but did not answer the question directly.

Common themes:

- A number of respondents asked what the status of Sewers for Adoption 7 would be once the Welsh Ministers' Standards and accompanying guidance were published.
- Most respondents highlighted the need for standards and guidance relating to surface water drainage.
- A large number of detailed comments were received on the draft Welsh Ministers' Mandatory Build Standards and accompanying guidance.

A range of individual comments included:

- The Welsh Ministers' Mandatory Build Standards appear appropriate as they meet or exceed the requirements of the Building Regulations.
- The Welsh Ministers' Mandatory Build Standards proposed seem to be appropriate; however, there is a danger of dual standards/confusion for those elements not covered.
- Part H of the Building Regulations should apply within the boundary of any property.
- The wording of the standards and guidance is too vague and open to individual interpretation.
- There should be no conflict between the applicable standards, and any additional material in Sewers for Adoption 7 not currently in the Welsh Ministers' Mandatory Build Standards should be incorporated to provide just one source document for the process of building and adopting sewers.
- The large number of access points available for selection and use will be a challenge to get used to.
- Our initial belief was that the Welsh Ministers' Mandatory Build Standards would be a high level performance or output based document, rather than the detailed and prescriptive text presented in the consultation, with Sewers for Adoption providing the details to satisfy the Welsh Ministers' Mandatory Build Standards.
- We have some serious concerns over the lack of detail within the Consultation about what can and cannot be planted in the form of shrubs, bushes and trees in the front gardens of properties.
- The draft mandatory standards presented in the consultation include many proposals which will result in adverse impact to the industry and customers, or are impractical to implement.
- It might be helpful to state expressly in the national build standards that they are the relevant standards for the purposes of Section 106B (4)(a) of

the Water Industry Act 1991. There would appear to be minimal grounds for confusion as things stand, but this might further reduce any such risk.

Government Response

A number of responses indicated confusion over the status of the industry guidance included with the draft Welsh Ministers' Mandatory Build Standards and their relationship with Sewers for Adoption 7.

We believe that the inclusion of the industry guidance is helpful, so we will aim to make its status clearer.

Our non-statutory guidance on Section 42 will clarify the status of the industry guidance which accompanies the Welsh Ministers' Mandatory Build Standards and its relationship with Sewers for Adoption 7.

A large number of detailed comments were received on the industry guidance, ranging from typographical errors to technical amendments. These will be taken into account in the drafting of the final document. Full details of the consultation responses are available on request from the Welsh Government.

Question 6: Will the standards and guidance secure a high standard of construction and maintenance, as the basis for mandatory adoption?

33 respondents answered this question. 13 believed that they could secure a high standard of construction and maintenance, 14 believed that the standards and guidance alone could not do this, and six respondents offered some more general comments.

Common themes:

- Several respondents stated that the standards and guidance could only secure a high standard of construction and maintenance if there is adequate supervision and inspection of the construction.
- A number of respondents highlighted that an accredited contractor scheme could go some way to securing a high standard of construction and maintenance.
- Some respondents believed that an appropriate bond/surety scheme would secure a high standard of construction and maintenance.

A range of individual comments included:

- Whilst the standards provide the platform for design there is always the need for quality of workmanship to ensure that construction and maintenance are executed in compliance to the standards.
- Adequate maintenance/defect rectification periods need to be defined and enforced through Section 104 agreements.
- The greatest risk to the performance of the sewerage system is in how it is laid. It requires a good standard of workmanship along with adequate amount of site inspection to ensure this.
- Ensuring compliance with the MBS will rely upon sufficiency of bonding/warranty arrangements which are terms of an adoption agreement which in turn is open to challenge by referral to Ofwat and then upon the ability or willingness of the undertaker to draw on such arrangements in order to carry out works in default.
- The standards will not ensure that routine maintenance costs on newly adopted sewers do not increase. The standards should stipulate the consequences of starting work without an agreement.
- We believe that by being consistent with the latest edition of Sewers for Adoption, the proposed Mandatory Build Standards should secure a suitably high standard of construction and maintenance and will accordingly provide an appropriate basis for mandatory adoption. That said, we welcome the flexibility permitted to deviate from the standards where this is appropriate, as this will encourage the development of innovative techniques while at the same time guard against the inefficiency of unnecessarily onerous specification.
- Also, to safeguard future maintenance by not allowing other buildings/extensions to be built over the sewerage system will secure ease of maintenance and reduction in opex costs.

- If the standards remain as they are, we believe that they will serve to stifle innovation, whilst failing to secure the high standard of construction and maintenance required.
- We do not believe the suggested Accredited Contractor Schemes/Sewage Industry Registration Scheme (SIRS) will alleviate the requirement for high bonds.
- In addition to introducing the new standards, there needs to be a behavioural change in ownership of quality compliance.

Government Response

A number of responses highlighted the importance of ensuring that sewers are constructed as designed. We believe the inspection requirements have a vital part to play in this, but we do not wish to rule out innovative alternatives. For example, we would encourage developers and sewerage undertakers to consider an accredited contractor scheme, similar to that used for water mains, which may have an important role in the future.

Question 7: Do you agree with the proposal of a minimum jetting resilience for gravity foul sewers and lateral drains?

If so do you agree with a 4,000 psi (pounds per square inch) (265 bar) requirement or would you propose an alternative?

32 respondents answered this question. 20 agreed that there should be a minimum jetting resilience and six disagreed. However, 14 respondents agreed with the 4,000psi requirement and 12 disagreed. Four respondents did not comment and two did not answer the questions.

Common themes:

- A number of respondents referenced the WRc Jetting Code of Practice and felt that the jetting levels in this document were more appropriate.
- Several respondents believed that more evidence was required before changing jetting pressure levels and that this was something that should be reviewed in the future.
- A number of respondents felt that increasing the minimum jetting resilience would result in increased costs for developers.

Individual comments included:

- We are content for the mandatory build standards in Wales not to specify a minimum jetting resilience unless and until an agreed common position is reached across England and Wales.
- This seems a reasonable figure, but will depend on the strength of the material used.
- The minimum jetting resilience of 4000 psi or 265 bar is acceptable, the sewer cleansing industry will need to be made aware of this and of where existing assets may be to a lower standard.
- The standards need to ensure that the pipes used for sewers and lateral drains are fit for purpose and sufficiently robust for accepted maintenance procedures. The provision of a specified level of jetting resistance is necessary to ensure this.
- Jetting pressure resilience provides improved robustness and long term serviceability of the sewer. Setting the resilience to 4,000 psi for new construction will minimise maintenance costs.
- The suggested level of 4,000psi is too high for the sewers used around the property, at the moment for domestic properties a pressure of 2500psi is used, which we would suggest should be used, and this would ensure that if the sewers were being cleaned which connected with drains being used By the property owner they would not be inadvertently damaged.
- We believe that drainage products should be robust and of an appropriate quality.
- To clear a blockage generally requires low pressures and a good water flow. A high pressure merely punches a hole through a blockage rather than clearing it.

Government Response

The responses to this question were either strongly in favour or against and there was no clear consensus. We have carefully considered the views expressed and the evidence available to support the options. As a result, we do not propose to include a standard for jetting resilience within the Welsh Ministers' Mandatory Build Standards. We will keep this decision under review, and will further consider the need for such a requirement if further evidence emerges to support it.

Question 8: Do you have a view on how future updating/revision of the detailed guidance for the standards for gravity foul sewers and lateral drains should be undertaken?

30 respondents answered this question. 28 had views on the future updating/revision of the guidance and two did not comment.

Common themes:

- A number of respondents felt that the detailed guidance should be reviewed and updated if necessary in line with the arrangements for reviewing Sewers for Adoption. This is currently on a five yearly basis.
- Several respondents stated that the guidance should be reviewed by an appropriate technical group to allow for new innovation and views from the water industry to be incorporated.
- A few respondents believed that detailed guidance should not be issued by Welsh Ministers to accompany the standards, and should instead be contained in Sewers for Adoption 7.
- A number of respondents believe that a review should be undertaken in 2015 with any amendment made by the Welsh Government in 2017.

A range of individual comments included:

- Future revision for the mandatory build standards for Defra/ the Welsh Government will need to be carried out concurrently. Ideally the two build standards should be identical.
- In order to collect enough data and evidence the guidance should be reviewed 3 years after its introduction. WRc who publish Sewers for Adoption 7 could be used to collect any issues/ evidence in that period. Any changes could then be made within the next 12 to 18 months following the review.
- It is an appropriate time to include these standards in the building regulations, update the surface water, SuDS requirements and incorporate them in the Building Regulations and review every 10 years.
- The Standards themselves should be revised by the Minister when need is demonstrated, by consultation with all the stakeholders.
- It appears from past experience of the development of agreements between Statutory Sewerage Undertakers and suppliers of facilities that are to be adopted that updating / revision is a significant and on-going process and a method of achieving this satisfactorily should be included in these Regulations.
- A review of the standards should include surveys of a sample of sewers and laterals constructed under the new regime. Any disputes and determinations by Ofwat should also be taken into account.
- Once the new regime is mature and the disputes resolution mechanisms are shown to be effective, it may no longer be necessary for the Ministers to publish standards.

Government Response

There was a wide range of views expressed about the review and revision of the Ministers Mandatory Build Standards. Having considered all of these, we recognise the benefits of a review mechanism that generally aligns with the 5 yearly reviews of the Sewers for Adoption document. We will consider the mechanism for such reviews to ensure there is scope for all those with an interest to be involved and to take account of technical innovation.

Question 9: In respect of newly connected properties served by newly built sewers, if the adoption process has not formally been concluded, is the point at which the first bill is issued the appropriate time at which the adoption process is deemed to be completed?

31 respondents answered this question. Six believed that it was an appropriate time for adoption and 24 believed that it was inappropriate. Two respondents did not comment.

Common themes:

- A large number of respondents believed that the date of occupancy would be a more appropriate time for transfer.
- Several respondents believed that transfer should occur after a maintenance period of between 12 and 24 months from the date that the property becomes occupied.

A range of individual comments included:

- The adoption process should be completed as soon as the inspector is satisfied that the new works have been completed to specification and that there is no risk from further construction activities.
- In practice, adoption can only really take place for defined lengths of sewer, e.g. from manhole chamber to chamber. Since only a proportion of properties connecting to or to be connected to a given length of new sewer may be constructed, occupied and being billed at any one time, sewerage undertakers cannot simply adopt the 10 metres or so of sewer that serves the first few properties being billed in the road and anyway consecutive properties may not be sold consecutively.
- We feel that the most appropriate time for adoption to take place is when the water connection to the property is made.
- The use of accredited contractors would ensure that irrespective of agreements and standards being satisfied the water companies would not be left with problematic pipes, which to maintain would cost all customers further costs.
- Adoption should only take place when all proposed new houses along a particular sewer run have been connected and approved to avoid unnecessary reopening of the road surface. Most authorities will not adopt a road until the sewer system has been adopted.
- Yes, as a backstop, but it should be stated in any guidance that the intention is for adoption to take place prior to occupation by customers, otherwise for some undefined period they will be served by a private sewer
- From the homeowner's position, this is the time that the sewers should be adopted. However there will be times that the developer/builder will need to work on the drainage system, particularly around plots and gardens, and for raising ironwork in carriageways.
- The point at which a bill is issued is very variable and may be up to 6 months after occupation even in normal circumstances. A water company could also avoid adoption of a defective sewer by failing to issue a bill.

- We would agree that the point at which the first bill is issued would be the appropriate time for adoption. At this point we would also call in the developer bond/surety to complete any unresolved construction matters.

Government Response

The majority of responses disagreed with this proposal.

Our proposal was intended only to deal with exceptional cases where the Section 104 agreement could not be concluded, for example due to a developer going out of business. However, a number of written responses and comments in the workshops assumed that we were proposing this approach as the trigger for transfer of sewer assets in all cases.

We have reconsidered this proposal and now propose that the purchase of the property will initiate the transfer.

We will clarify our intention in the non-statutory guidance.

Question 10: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this opportunity to report them

Common themes:

- A range of detailed comments on the draft standards were received.
- Most respondents were supportive of the Mandatory Build Standards being introduced.
- A number of respondents highlighted the lack of guidance on the content of the Section 104 agreements and the adoption process in general.
- A range of comments were received on the draft Regulatory Impact Assessment.
- Several respondents questioned the status of Sewers for Adoption 7 and its relationship with the Welsh Ministers' Mandatory Build Standards.
- A large number of comments were received on the exclusion of surface water drainage and pumping stations from the draft standards and accompanying guidance.
- A number of issues were raised in relation to bonding arrangements as part of a Section 104 agreement.
- Several comments were received in relation to the value of aligning standards across Wales and England.
- A large number of respondents highlighted a preference for the introduction of an accreditation scheme to improve construction standards and reduce or replace the need for bonds.
- Several respondents commented in relation to the need for a robust communication mechanism to ensure that the relevant people are aware of the change and the need for further explanation around some areas, possibly through non-statutory guidance.
- A number of respondent commented on the lack of Ministerial guidance relating to Section 104 agreements under Section 42(3) of the Flood and Water Management Act 2010.

A range of other comments included:

- The transitional arrangements for non-gravity systems/surface water need to be clarified to avoid dual standards and/or difficulties in pursuing adoption.
- It needs to be clear that any new lateral sewers which are constructed should have protection to safeguard future maintenance, in particular no buildings/out-houses to be built over the sewer or planting of trees/hedges in close proximity. This should be clearly stated to developers.
- The time at which adoption should take place is not appropriately defined. It is also not clear that a workable transition can be achieved once Section 42 actions have started.
- Design requirements and standards for materials will not of themselves ensure high standards of construction and maintenance of sewer systems. The consultation has highlighted the need for raising the skill levels for the workforce.

- We would suggest that the Welsh Government considers instigating a review process at a future date to look at how the new process is working. This will provide an incentive to all parties to ensure that any teething problems are addressed.
- Often the sewerage company and the developer do not reach agreement to complete the adoption and improvement of a sewer's condition. This results in continuous sewer blockages leaving either customers or local councils to deal with the problem and associated maintenance costs: a result that is not good for sewerage customers.
- The difficulty in raising Bonds and or guarantees could be particularly acute in the current financial markets. One way around this would be for the industry to move towards an accredited contractor scheme. We would welcome such a move if it improved the process for developers, particularly small businesses.
- The new Regulations should include clear authority permitting or requiring the Building Control Authority or the Undertaker to take action against developers who do so. The scale of fines levied should be such that even large business concerns would avoid making themselves liable.
- There are many outstanding private drains and connections that for a variety of reasons have never been adopted; these problems may include non adoption of lower drains, buildings over the sewers, problems with records etc. These must all be adopted to protect the property owners. They must include commercial and residential development.
- Advice to owners of new properties will need to be required to advise of the restrictions in place due to these regulations and the presence of adopted drains.
- We hope that water and sewerage companies will be responsive to schemes to allow developers with either demonstrable skills or a good track record to pay appropriately lower insurance premiums for bonds and/or lower inspection costs as described in the impact assessment.
- We support the objectives of simplifying process and design, reducing cost, resolving sewer ownership and maintenance issues where these exist, however, as drafted, we fail to see how the proposed measures demonstrate that these objectives will be met, indeed, as drafted, complexity and uncertainty is likely to increase.
- If the sewers have to be adopted anyway, there is less of an incentive for developers to iron out any of the faults noted to them by the sewerage undertaker in the course of pre-adoption inspections.
- Further guidance is required on the maintenance period. On vesting of the sewers, a 12 month maintenance period should start where the Developer is still responsible for the maintenance of sewers and the bond should remain in place for this period.
- If sewer systems not connecting to the sewer system (whether foul or surface water) are offered for voluntary adoption, it should be clear that the Section 104 agreement will have to ensure that all new sewers and lateral drains are adopted if any part of the system is adopted.

Government Response

The open nature of this question has resulted in a wide range of responses. A large number of these are outside the scope of the consultation and are covered in Section 4 of this document. A number of other issues, such as the status of Sewers for Adoption 7 and the detailed comments on the Mandatory Build Standards and the related industry guidance have been covered in the specific responses to questions 1-9.

A number of responses commented on the lack of Ministerial guidance relating to Section 104 agreements under Section 42(3) of the Flood and Water Management Act 2010. This provision does not impose a duty on Welsh Ministers to issue such guidance, but was included in the Flood and Water Management Act 2010 as a power for use if needed. We will review the need for such guidance in the light of experience as these provisions come into force.

We recognise the benefits of common standards for Wales and England. We have worked closely with Defra and will continue to do so. However, it is likely that we will implement the Mandatory Build Standards before Defra.

This is a significant change in the law on sewers and we recognise the importance of good communications in the lead up to implementation. We have therefore established a communication group with representatives from key stakeholders to advise and assist with this. Please contact the policy lead, Michelle Russ at Michelle.Russ@Wales.gsi.gov.uk, to express an interest and find out more details.

A number of the comments and concerns raised in the consultation exercise emphasise the need for further clarification. We will therefore produce non-statutory guidance to accompany the implementation of Section 42 and will seek assistance from stakeholders in doing so.

6. Stakeholder workshops

Two stakeholder workshops were held towards the end of the consultation at the Welsh Government building in Cathays Park, Cardiff. These were on 16 and 23 January 2012. Approximately 40 individuals attended representing a wide range of interests.

These included

- Defra
- Sewerage undertakers
- Inset appointees
- Developers
- Local Authorities
- WLGA
- Water UK
- Industry representatives
- The Consumer Council for Water
- Housing Associations
- WRc

The workshops featured presentations were made by both the Welsh Government and Defra on:

- Proposed standards
- Responses so far and related documents

They also included round table sessions on the consultation questions and the scope of the standards and guidance at which stakeholders were given the opportunity to discuss the issues and feed these back to other attendees.

The presentations aimed to emphasise the policy objectives of the consultation and also to give clarity around matters that were not included.

The issues raised were, in general, the same as those raised in the responses to the consultation. Many of these reflected confusion over the scope of the proposed standards. In summary they covered:

- Implementation timescales
- Section 104 process and the time taken for agreements
- Links to surface water drainage and SuDS standards
- Status of the industry recommendations included with the Welsh Minister's Mandatory Build Standards
- Status of Sewers for Adoption and Building Regulations
- The need for guidance
- Requirements for financial bonds
- Potential for accredited contractors scheme
- Impacts on development

- Benefits of alignment of standards in England and Wales
- Practicality of implementation in April 2012
- Transitional matters
- Jetting pressure

Comments from both workshops have been incorporated in the summaries of response in Sections 5.

Assessment of workshops

37 attendees completed a questionnaire at the end of the workshop which aimed to assess its effectiveness and identify improvements for future stakeholder events.

Generally the feedback indicated that the workshop was regarded as worthwhile and the content and delivery of the presentations was scored highly. The majority of attendees felt that the content of the workshop sessions was appropriate, although a few responses suggested they would have liked longer for discussion.

We received a slightly lower score in response to a question on the provision of new information, which reflected the fact that many of the delegates were familiar with the consultation. We also received similar feedback in response to a question on the extent to which the workshop had influenced delegates to further consider the consultation.

A number of people highlighted that they would have liked more detail on surface water and a broader range of stakeholders at the workshop.

Almost all workshop attendees were keen to be kept informed of developments in relation to the implementation of Section 42 by email.