

From: Matthew Smyth, Director of Environment and Waste
To: Kent Flood Risk Management Committee – 21 March 2023
Subject: Schedule 3 of the Flood and Water Management Act 2010
Classification: Unrestricted

Summary: Defra is planning to implement Schedule 3 of the Flood and Water Management Act 2010. This will require KCC to approve and adopt sustainable drainage in the county and maintain it. Defra is currently consulting on the details for the implementation of this role, including guidance and fees.

Recommendation:

The Kent Flood Risk Management Committee is asked to note the report.

1. Background

- 1.1. The Flood and Water Management Act 2010 (the Act) created Lead Local Flood Authorities (LLFAs) to oversee local flood risks, flooding from surface water, groundwater and ordinary watercourses. LLFAs were established at the upper tier level of local government. This function is performed by the Flood and Water Management team (FWM team). Schedule 3 of the Act sets out an approval and adoption mechanism for the adoption of Sustainable Drainage Systems (SuDS) by the LLFA.
- 1.2. However, Schedule 3 was never commenced. The government spent a lot of time preparing for it, but decided not to implement it. Instead, in 2015 Lead Local Flood Authorities (LLFA) were made statutory consultees under the National Planning Policy Framework for surface water drainage in major planning applications. This function is carried out by the Sustainable Drainage Team, within the FWM team.
- 1.3. Despite this there has been a lot of pressure on the government to implement Schedule 3 and in 2021 it committed to review the case for implementation. In January this year Defra announced the findings of their review, which recommended that sustainable drainage systems should be made mandatory and that the best method of ensuring this was to implement Schedule 3 of the Act.

2. The Sustainable Drainage Systems Approving Body role

- 2.1. Following the implementation of Schedule 3, upper tier authorities, including KCC, will become the SuDS Approving Body (SAB). The SAB must approve the SuDS in accordance with the National Standards, which will be set by Defra and adopt and maintain those SuDs that serve more than one property. The following is a summary of the main duties and powers set out in Schedule 3:

- a. **Approval:** On receipt of applications for drainage approval the SAB must determine if the proposed drainage strategies meet the National standards, consult with statutory consultees, make a decision and advise the applicant on approval or refusal following this technical review. Approval must be sought from the SAB prior to construction commencing.
 - b. **Adoption:** Once drainage systems have been approved the SAB will be required to undertake inspections of systems proposed for adoption, arrange for the adoption of said systems into the councils control upon completion and arrange/manage their ongoing maintenance.
 - c. **Enforcement:** the SAB will have powers to stop development if they have not had approval for their drainage system prior to commencing construction. The SAB also has powers to take performance bonds from developers to fund any remedial works SuDS require prior to adoption.
 - d. **Maintenance:** The SAB will be required to adopt and maintain those SuDS that serve more than one property. As SuDS systems are constructed, they will be added to a suitable asset management system and maintained to ensure that it continues to function as designed.
- 2.2. The approval process will be funded through application fees and the maintenance of the adopted drainage will be funded through commuted sums. These fees and charges have not yet been set.

3. Implementation of Schedule 3

- 3.1. Defra envisage having five Statutory Instruments to support Schedule 3, which will require parliamentary approval. Defra have stated that they hope for these to be completed within approximately 18 months and have indicated that six months notice of commencement would be provided to allow authorities sufficient time to prepare and resource these new responsibilities. Defra has said that is proposed for Schedule 3 to commence in 2024 and it is likely to be towards the end of 2024.
- 3.2. Defra is currently undertaking an engagement exercise in the drainage industry as it prepares for the implementation of Schedule 3. This is helping to inform aspects of the implementation, including guidance, fees, training and resources.
- 3.3. Until more details are available from the statutory instruments and guidance that are being prepared, it is not possible to say what the specific requirements will be for KCC.
- 3.4. The statutory consultee role we currently undertake does give us an insight in to the approval process for the SAB. At present, as a statutory consultee in planning over the last five years, the Sustainable Drainage Team has been consulted on an average of 1807 major planning applications a year with and an average of 643 Discharge of Condition Applications per year. These are only major planning applications, the SAB role will apply to a wide range of construction activities including minor development and some permitted

development. The SAB will also be required to adopt any drainage system that serves more than one property.

3.5. The FWM team is an active participant in the ongoing engagement work on the implementation of Schedule 3. We will keep the committee informed of new developments as they are announced.

4. Financial Implications

4.1. Defra are currently engaging with the industry about fees and charges for this role. Their current position is that the application process will be funded through fees and the maintenance will be funded by commuted sums. Once established, these activities should be self-funded.

4.2. Defra have recognised that the establishment of the SAB is a new burden and they are currently undertaking a new burdens assessment.

5. Summary

5.1. The implementation of Schedule 3 will give KCC a statutory duty to approve, and in certain circumstances adopt and maintain, drainage systems for new developments.

5.2. It is expected that the SAB will be self-funding through application fees and commuted sums for maintenance. Defra is assessment the burden of establishing the SAB.

6. Recommendation:

The Kent Flood Risk Management Committee is asked to note the report.

Contact details:

Neil Clarke, Sustainable Drainage Team Leader, neil.clarke@kent.gov.uk, 03000 413569

Max Tant, Flood Risk Manager, max.tant@kent.gov.uk, 03000 413466

Background documents:

Flood and Water Management Act 2010:

<http://www.legislation.gov.uk/ukpga/2010/29/contents>

The review for the implementation of Schedule 3 of the Act:

<https://www.gov.uk/government/publications/sustainable-drainage-systems-review>