

Guide to implementation of Schedule 3

What is Schedule 3 and what does it mean for my local authority?

Schedule 3 originates from the Flood & Water Management Act 2010. Schedule 3 was not enacted with the rest of the Act. Instead, the National Planning Policy Framework (NPPF) was updated in addition to making LLFAs statutory consultees to planning, to require the use of SuDS, seeking to implement the intentions of Schedule 3 using the current planning system. The [Jenkins review](#) (2020) concluded this approach was not working. DEFRA undertook a [review into the implementation of Schedule 3](#), published in January 2023, concluding that Schedule 3 should be implemented as written, with unitary or county councils as approving bodies. This conclusion was accepted by ministers with government now considering how to implement, alongside final scope, threshold and process, ahead of public consultation later this year (expected November) and implementation in 2024.

Schedule 3 provides a framework for the approval and adoption of drainage systems, an approving body (SAB), and national standards on the design, construction, operation, and maintenance of SuDS. Also, it makes the right to connect surface water runoff to public sewers conditional upon the drainage system being approved before any construction work can start.

DEFRA has acknowledged implementation of Schedule 3 will require professionals with the skills and knowledge to design, construct, assess and maintain SuDS. This would also extend to administrative and back-office functions. The review recommends that actions are developed to ensure there is sufficient access to the right skills and capabilities to deliver and maintain SuDS.

Construction work that meets the SAB threshold cannot begin until SAB approval is received. This is separate to planning permission. The SAB threshold and any staged rollout is likely to form part of the public consultation.

Schedule 3 implementation would lead to local authorities having new duties. The net additional cost of all new burdens placed on local authorities by central government must be assessed and funded. These costs will fall under the New Burdens Doctrine and a new burdens funding assessment will be required.

New workload:

- Back office review of roles and structure (management of the activities)
- Customer enquiries
- Receiving, validating, and taking payments for SAB pre-applications and full applications
- Discussions with applicants
- Site visit for initial assessment
- Technical evaluation of all new surface water drainage systems in accordance with national and local standards
- Managing the application process from validation to adoption
- Liaising with consultees (consideration and determination), both internal and external
- Ensuring a consistent response to both the SAB and Planning Application, for the same development proposal
- Calculating and processing non-performance bonds and commuted sums (arrangements TBC)
- Writing letters of refusal with reasons, letters of approval with conditions and letters requesting additional information
- Preparation for, and representation at appeals, hearings and inquiries
- Inspecting on site, all new surface water drainage during construction and discharging SAB approval conditions
- Enforcement issues (stop notices / legals / records) – note, LPA enforcement costs are not funded through application fees, with the cost borne by central budgets
- Statutory undertakers remedial work
- Negotiating and securing legal agreements (easements, transfer of land, maintenance, access etc)

- Recording assets on systems / designating assets
- Adopting, maintaining & inspecting all new “SAB adoptable” drainage systems, inc. managing S106 contributions (in accordance with Flood & Water Management Act 2010, Section 17.

Whilst costs to set up the SAB will come from New Burdens funding. Running costs are envisaged to be covered from the applications and approval processes.

The three main costs and funding are around:

a) The costs to set up the SAB :

The net additional cost of all new burdens placed on local authorities by central government must be assessed and funded.

b) The running costs of the SAB :

As part of the application process, the developer will pay an application fee, which will provide a means of funding the SAB’s operational costs. This is expected to result in a net-zero cost for the local authority. A DEFRA-led review of the SAB arrangements enacted in Wales reported SABs rely heavily on charges for technical assessment of pre-applications (including provision of advice and negotiation etc.) but are generally running at a loss.

c) The operation and maintenance costs of SAB adopted SuDS:

This may form part of the consultation. Various views on where this funding should come from including the following suggestions by DEFRA:

- Developers to provide means of funding, e.g. commuted sum
- There is a charge for surface water drainage as part of water bills. This amount for each house on a new development that drains rainwater to a SuDS could be transferred by the water company to the SAB
- Or, the household could get rebate on their water bill and instead pay a service charge of the same amount of the rebate to the SAB.

What can we expect?

DEFRA are currently undertaking multiple pieces of work prior to a public consultation. Current discussions on National Standards have looked to align with the changes proposed in the [review of the non-statutory technical standards](#) alongside a seventh standard to cover fees, adoption and maintenance. This is part of ongoing discussions and is expected to form part of the public consultation.

Schedule 3 was implemented in Wales in 2019. [Wales have recently published their lessons learnt](#) and DEFRA are keen to incorporate this learning into the implementation of Schedule 3 in England. We can learn a lot from Wales and we would encourage all Councils to take the time to familiarise themselves with the [Welsh statutory guidance](#) and [statutory standards](#) documents along with some of the local processes which can be found on each local authorities website.

What can we do now?

Internal briefings

Ensure that senior leadership and councillors are briefed on what Schedule 3 is and what the impacts are likely to be. Some of these will be consistent across all Councils, whilst some may have more specific concerns. It is encouraged to include Schedule 3 implementation on local Business Risk Registers

Think about your local standards

Whilst National Standards will be set, there may still be a requirement for local standards in some areas. It may therefore be prudent to delay any planned updates to local guidance until we have further clarity on Schedule 3. Alternatively, you may wish to discuss this with neighbouring LLFAs to collaborate on any future local standards to develop regional standards, as is the case for some LLFAs already.

Investigate local adoption processes

Talk to your Highway Authority and Water and Sewerage Company (WaSC). Both of these organisations already have adoption processes (from validation through to adoption and maintenance) and skilled staff. Now is the perfect time to understand how they work, the systems they use (case & asset management) and the skills their staff need. There could be opportunities for secondments, internal training or resource sharing.

Encourage team members to attend relevant CPD sessions and undertake further training

This could include free CPD sessions looking at new products/materials/software, specialist training from organisations such as CIRIA and CIWEM, or informal training internally/with partners looking at biodiversity, landscape etc.

Explore options for a paid advice service

Welsh SABs have experienced a very high uptake for pre-application/paid advice. This is an additional source of income for SABs which is reported to help reduce the workload of applications once they are made as officers are aware of sites and any issues have already been identified and hopefully resolved. Does your service already offer a paid advice service? If not, could this be easily implemented? What would it look like? Do your local planning authorities currently offer a paid advice service? If you already offer paid advice, could this service be easily adapted for the SAB role?

Engage with local with Developers & Consultants

The SAB journey will have lots of hurdles for local authorities, but it's important to remember it will be a big change for other stakeholders too. Are you talking to your local Developers & Consultants about these changes? What more could you do to improve working relationships and keep them updated on the changes at a national and local level? Mailing lists, developers forums and regular 'catch-ups' are options currently being used by some LLFAs.

Build links with Local Planning Authorities, Highways, Internal Drainage Boards, Open Space

Whilst the SAB role will be a standalone function, it's important to build relationships with other stakeholders where possible. These stakeholders may have valuable expertise/advice they can offer to help with establishing and running the SAB process, along with resources to help with the longer-term inspection and maintenance of adopted SuDS.

Construction training and experience of being on live construction sites

Most LLFAs do not currently inspect SuDS during construction. Working with partners (including housing developers) will help to identify knowledge gaps and opportunities for further informal training and identify where more formal training is required. It will also help staff to become more familiar with working on live construction sites, which only comes with experience.

Think about the number of staff you will need and where these people will come from

There's no obvious answer as to how many new staff each SAB will require and this will no doubt vary between authorities. Some LLFAs have estimated the need to expand staff numbers (which includes specialists in other teams, such as ecology & landscape) by a factor of between 2-4, however this estimate can only be refined further once we have a better idea of what the national standards and thresholds look like, and this will of course need to be calculated within future budgets. CIWEM has undertaken a review of local authority capacity to deliver current and future surface water flood risk management function: ['Surface water management – A review of the opportunities & challenges'](#).

It would be a worthwhile exercise to view your LPA Monitoring Report and national statistics, alongside any internal statistics, to see the number of major sites you're currently being consulted on. This number, multiplied by the application fee (once decided) could be a quick way to estimate annual income at an early stage and as such the number of people that could be employed. It could also help to identify any shortfall in funding/staff which can be flagged with DEFRA, or help to influence the fees charged for pre- applications and paid advice.

Commuted sums for SUDS

Work with other departments to understand how commuted sums may be calculated for SUDS assets, in line with the ADEPT (formerly County Surveyors Society) guidance document 'Commuted Sums for Maintaining Infrastructure Assets', with an accompanying design standards document to support this. Some authorities may already have relevant examples where the Highways authority adopt SUDS under Sections 38 and/or 278 of the Highways Act 1980.

Update your local webpage

Updating your local webpage so it's ready to host SAB information and updates to the development community could be a quick win and is [something Warwickshire have done already](#).