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Environment, Food and Rural Affairs Committee

Post-legislative scrutiny: Flood and Water Management Act 2010

Sixth Report of Session 2016–17

Report, together with formal minutes relating to the report

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The Environment, Food and Rural Affairs Committee

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Contacts

All correspondence should be addressed to the Clerk of the Environment, Food and Rural Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5774; the Committee's email address is efracom@parliament.uk.

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Summary

The Flood and Water Management Act 2010 provides the fundamental legislative underpinning for the current flood and water management approaches in England. The majority of its measures have been implemented and we have scrutinised the effectiveness of many key provisions in previous reports, including those establishing the roles and governance of flood risk management bodies. The next Government must act on the recommendations in our *Future flood prevention* report published in November 2016 to remedy fragmented, inefficient and ineffective approaches to flood prevention. In this inquiry we looked at certain specific provisions in the Act that have either not been commenced or have not been commenced in full, including those relating to sustainable drainage systems, private sewer transfers, reservoir safety, and water customer debt.

Sustainable drainage systems (SuDS)

The commitment to deliver some one million new homes by 2020 must be achieved cost-effectively and without an increase in flood risk. Sustainable drainage systems, which remove surface water through green methods such as infiltrating water through permeable surfaces or storing run-off in ponds and swales, are a key part of the policy solution. SuDS reduce the pressure on conventional drainage, can cost no more to build and maintain, and can have multiple benefits for amenity and the environment. The Government purports to support the use of sustainable drainage but has not commenced provisions set out in Schedule 3 of the Act which would have established a robust policy framework to promote their uptake. Instead the Government has relied on flawed planning policies: these sub-standard SuDS approaches have led to far too few schemes being installed in new developments and too many schemes fail to deliver maximum biodiversity, water quality and amenity benefits.

We considered whether using Schedule 3 provisions would provide the best method of remedying current failings. But there are potential drawbacks to commencing the measures: Ministers, together with many of those submitting evidence, had strong concerns about the potential for delays to development from measures such as the requirement for a SuDS Approval Body to approve drainage systems before planning permission is granted. We therefore do not recommend commencement at this time, but recommend a strengthening of current approaches:

- Planning rules must be strengthened to require high-quality SuDS schemes, which deliver benefits for amenity and the environment as well as reducing flood risk, be installed in all developments of more than one property;
- Planning guidance must be tightened to reduce significantly the potential for developers to opt-out from installing schemes on cost or site-practicality grounds;
- In addition the next Government must make specific improvements, including:
  - making standards for SuDS construction statutory to provide a stronger basis for enforcement;

- amending statutory definitions of a sewer to make it easier for Water and Sewerage Companies to adopt SuDS;
- ending the automatic right of new developments to connect surface water discharges to conventional sewerage systems to spur developers to develop sustainable alternatives; and
- improving support for local authorities which have SuDS responsibilities.

The incoming Government must demonstrate a significant improvement in the numbers and quality of SuDS schemes installed by the end of 2018. Our successor Committee in the next Parliament may wish to reconsider recommending commencement of Schedule 3 provisions if it is not satisfied that sufficient progress has been made by then.

Other measures

Private sewer transfer: Provisions in section 42 of the Act must be commenced to enable automatic transfer to Water and Sewerage Companies (WaSCs) of private sewers, lateral drains and pumping stations built since July 2011. Failure to do so could lead to an accumulation of sub-standard infrastructure. Furthermore, because measures have not been commenced, those using sewerage systems and pumping stations built since July 2011 unfairly have to bear the costs of operation themselves whilst those using older systems have the costs shared out amongst all of a WaSC's customers.

Reservoir safety: We support the Government's current decision to retain the threshold for the application of the Reservoirs Act 1975 to raised reservoirs with a capacity of 25,000 cubic metres or more. However, Defra must provide an update on the findings of its research on lowering the threshold to raised reservoirs with a capacity of 10,000 cubic metres or more. If the Government proposes in future to reduce the threshold, it must set out a full evidence base to justify how this decision balances safety, economic and water management issues.

Water customer debt: Customers are paying on average £21 a year to cover the debts of those who do not pay their water and sewerage bills. With a high proportion of debt attributable to those living in rented properties, voluntary schemes for landlords to share information about tenants with water companies must work more effectively. Should improvements not be secured by the end of 2018, we recommend that our successor Committee consider whether to call for provisions in the Act to be commenced that require landlords to provide tenant information to Water and Sewerage Companies.

1 Our inquiry

1. The Flood and Water Management Act (the Act) provides the statutory underpinning for flood and water management approaches in England.[1] It is a broad Act which redefined and clarified authorities' responsibilities for managing flood and coastal erosion risk management, as well as setting out measures on miscellaneous matters from sustainable drainage to the affordability of water customers' bills. We have scrutinised the effectiveness of many of these measures in previous inquiries. In particular, our recent *Future flood prevention* report published in November 2016 looked in-depth at the effectiveness of flood risk management approaches set out in the Act.

2. In January, the Committee received Defra's *Post-legislative Memorandum on the Flood and Water Management Act 2010*.[2] Government departments are required to publish a Memorandum including a preliminary assessment of how an Act has worked in practice, normally three to five years after Royal Assent, and submit this to the relevant Departmental Select Committee for potential scrutiny.

3. The Post-legislative Memorandum (the Memorandum) asserts that the Act has provided better flood risk management and delivered improvements for water customers. This view is at odds with the findings of our *Future flood prevention* report published in November 2016 which strongly criticised some of the current approaches rooted in the Act. We found current flood risk management structures to be "fragmented, inefficient and ineffective".[3] Our concerns have been endorsed by a number of stakeholders, including the Committee on Climate Change Adaptation Sub-Committee which considered that "there is no evidence that implementation of the Act has led to a reduction in flood risk".[4] We repeat our calls for implementation of our recommendations tackling the broad strategic and governance concerns raised in our *Future flood prevention* report.

4. This inquiry did not revisit the broad flood risk management issues in that report. Rather we took the opportunity presented by publication of the Memorandum to scrutinise the effectiveness of Government approaches with regard only to certain provisions in the Act which have either not been commenced or have not been fully commenced. These are measures on:

- Sustainable drainage systems (SuDS) (Chapter 2);
- Connections of surface water discharges to existing sewers (Chapter 3);
- Reservoir safety (Chapter 4), and
- Water customer debt (Chapter 5).

1 Flood and Water Management Act 2010
2 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017
3 Environment, Food and Rural Affairs Committee, Second Report of Session 2016–17, *Future flood prevention*, HC 115
4 Committee on Climate Change (FWA 40) para 6

2 Sustainable drainage systems (SuDS)

Sustainable drainage systems (SuDS) are designed to control surface water run-off close to where it falls and to mimic natural drainage as closely as possible. One of their uses is to reduce the causes and impacts of surface water flooding. SuDS can include a number of different practices or mechanisms designed to drain or soak-up surface water in a more sustainable way than the conventional practice of draining water run-off through a pipe into a sewer. Practical examples include soakaways (draining water through permeable surfaces into the ground) and ponds (draining water into a surface water body).

Source: Tom Watson, Natural Environment Research Council: The science of sustainable drainage.

5. Sir Michael Pitt's review of the severe floods of 2007 made recommendations on policy changes which could help combat surface water flooding, including changes to promote the greater use of SuDS. The Act was the principal statutory mechanism for taking forward a large number of the Pitt recommendations, including to "increase the uptake of sustainable drainage systems in new developments and redevelopments, wherever possible, by introducing standards for their design, construction, maintenance and operation." (See box below).[5]

5 Flood and Water Management Act 2010, Section 31 and Schedule 3

Flood and Water Management Act, Schedule 3:

- makes provision for the publication of national standards for the design, construction, maintenance and operation of new SuDS;
- establishes unitary or county councils as SuDS Approval Bodies (SABs);
- requires all construction work which has 'drainage implications' to gain approval for its drainage system from a SAB before it commenced;
- requires the SAB to consult with a number of bodies, including the Environment Agency, any relevant Internal Drainage Board and any relevant sewerage company when considering the application; and
- provides the SAB with the power to attach conditions to any approval it grants, including the provision of a non-performance bond.

6. The measures in Schedule 3 have not been commenced. Instead the Government has focussed on using the planning system for increasing the installation of SuDS in new developments. We consider in this chapter whether these alternative approaches are delivering the Government's objectives effectively. Submissions diverged in opinion as to the best method of improving SuDS policies: at the heart of the debate are concerns as to whether current planning approaches are sufficient and proportionate, or whether measures in the Act should be commenced as originally intended.

Progress on achieving SuDS objectives

7. The Government has a target of building some one million new homes by 2020 and, whilst planning frameworks aim to direct building to areas of lower flood risk, there is no blanket prohibition on development in areas likely to flood. Indeed, currently some 8% of new developments are being built in high-risk flood areas.[6] The Government's policy objective is to ensure that sustainable drainage systems are provided in new major developments where appropriate to minimise surface water contributing to flooding.

8. Evidence to this inquiry overwhelmingly endorsed the broad objective of using of SuDS as extensively as practicable, delivering multiple benefits for flood reduction, amenity and the environment where possible. The Government acknowledges that sustainable drainage schemes can be built and maintained as cost-effectively as traditional drainage.[7] However, almost without exception, submissions concluded that policies were failing to achieve this objective.

6 Zurich Insurance (FWA 16)

7 Department for Environment, Food and Rural Affairs and Department for Communities and Local Government, *Delivering Sustainable Drainage Systems*, September 2014

Numbers of SuDS schemes

9. Data on the numbers of SuDS schemes being installed are incomplete as there is currently no national monitoring of the uptake of SuDS.[8] However, a 2014 survey by Committee on Climate Change found that only 15% of planning applications in flood risk areas referred to sustainable drainage.[9]

10. Evidence identified a number of deficiencies in current policies contributing to fewer SuDS schemes being incorporated in new developments. These included that:

- **Current developments of fewer than 10 properties are not required to include SuDS.** However 90% of planning applications are for developments below this threshold.[10] In contrast, Schedule 3 measures would apply to any development of more than one property. Submissions such as that from the Association of British Insurers urged the Government to mandate the installation of SuDS in all new build, of any size;[11]
- **Developers can invoke cost or practicality opt-outs in planning rules**. Ministers have stated that SuDS need not be installed if demonstrated to be "inappropriate" for a site or if maintenance and operation requirements are not "economically proportionate";[12] and
- **Developers retain an automatic right to connect surface water run-off to Water and Sewerage Company (WaSC) sewers**: this means they are not incentivised to develop sustainable drainage options.

Quality of SuDS

11. The concept of sustainable drainage covers a range of measures from a simple system which restricts discharge using conventional pipes, through to complex green infrastructure systems incorporating features such as permeable surfaces, ponds and swales,[13] green roofs and rainwater harvesting. These more complex schemes, broadly defined as 'high quality' SuDS, can not only control water flows effectively but can also deliver other benefits. These multiple benefits, as CIWEM noted, include improved water quality and the addition of quality greenspace near to homes, providing valuable pockets of habitat for wildlife as well.[14] However, a large number of submissions concluded that many lower quality SuDS systems are being built which miss opportunities to deliver optimum benefits for local amenity and the environment. For example, Somerset County Council expressed disappointment that schemes "overwhelmingly comprise below-ground, hard-

8 Chartered Institution of Water and Environmental Management (FWA 04)
9 Committee on Climate Change Adaptation Sub-Committee, Managing climate risks to well-being and the economy, 2014
10 Written Statement by the Secretary of State for Communities and Local Government, 18 December 2014, WS 161 to be read in conjunction with para 103 of the National Planning Policy Framework
11 Association of British Insurers (FWA 22)
12 As above
13 Swales are shallow, broad and vegetated channels designed to store and/or convey runoff and remove pollutants. They may be used as conveyance structures to pass the runoff to the next stage of the treatment train and can be designed to promote infiltration where soil and groundwater conditions allow
14 Chartered Institution of Water and Environmental Management, A place for SuDS? February 2017, p26

engineered solutions".[15] Only 8% of respondents to a recent CIWEM survey believed that the current framework was driving high quality and effective SuDS in England.[16] Specific reasons cited were that:

- **Developers can be reluctant to sacrifice more than the minimum amount of land for drainage features** since they wish to retain as much of a site's area as possible to build on. Below-ground, hard-engineered solutions may take up less space than high quality SuDS; and
- **Developers have no requirement to consider SuDS at an early stage of drawing up site proposals**, hence lower quality SuDS (such as a pipe to a tank) are commonly constructed rather than multi-benefit SuDS (such as ponds and swales).[17]

12. Not all of those submitting evidence shared these concerns. The Home Builders Federation (HBF) pointed out that some developers had installed SuDS schemes several decades ago and stated that the industry's innovations had meant that new development had "rarely been inundated by flood water" nor had new development contributed to existing flood risk.[18] The Federation had other concerns about the effectiveness of Government policies for delivering sufficient surface water infrastructure. It considered that WaSCs had made insufficient investment in new infrastructure despite housebuilders' contributions of some £2.6 billion towards augmenting sewer systems—the Federation claimed that neither the companies nor the regulator, Ofwat, have accounted for how this money has been spent.[19]

13. The HBF's submission was also critical of fragmented policies which were hampering effective drainage provision. It considered that the Government did not demonstrate leadership to properly manage the inherent tensions between different parties, each with their own agenda. In particular, the Federation was concerned about the imposition of SuDS standards higher than those agreed by the Local Planning Authority (LPA) and the refusal by Lead Local Flood Authorities (LLFAs) to accept discharge limits to public surface water sewers even though they had been agreed by both the WaSCs and the LPA. This had led to confusion and delays in development and false accusations of developers not meeting planning conditions.[20]

14. **New development is essential to support thriving communities and it is important that plans to build a million new homes by 2020 can be delivered cost-effectively. But it is vital that development does not increase flooding. The Government purports to support the use of sustainable drainage systems (SuDS) as a method for reducing flood risk from new development as well as for delivering a range of other benefits. But its sub-standard sustainable drainage (SuDS) policies are leading to too few systems being installed in new developments, and too few of these are of high quality. This is leaving communities unnecessarily exposed to flood risk and planning approaches are failing to deliver maximum biodiversity, water quality and amenity benefits.**

15 Somerset County Council (FWA 06)
16 Chartered Institution of Water and Environmental Management, A place for SuDS? February 2017, p28
17 Somerset County Council (FWA 06)
18 Home Builders Federation (FWA 12) para 4
19 Home Builders Federation (FWA 12) para 1.10
20 Home Builders Federation (FWA 12) para 1.8

Policy improvements

15. The Act's SuDS measures remain under review by the Government and Schedule 3 has not been commenced. The Memorandum refers to the Government's alternative approaches to promote SuDS, primarily the strengthening of planning policy from April 2015 to "ensure that sustainable drainage systems are provided in new major developments where appropriate, and that clear systems are in place for ongoing maintenance over the lifetime of the development".[21] Planning Practice Guidance has been amended and Defra has published non-statutory technical standards for the design, maintenance and operation of SuDS to drain surface water.[22] Defra has also contributed to the development of the CIRIA SuDS manual which highlights the benefits of sustainable drainage.[23]

16. However, a wide range of bodies, including WaSCs, NGOs and local authorities, considered that the planning approach constituted a weaker policy framework than the measures in the Act. The Chartered Institution of Water and Environmental Management (CIWEM) considered that the Government's decision not to commence Schedule 3 had "created a void of effective policy".[24] United Utilities told us that relying on planning processes to prescribe SuDS rather than implementing Schedule 3 would not deliver a "step-change in the proliferation of sustainable drainage".[25] Evidence noted that strengths of a Schedule 3 framework included provisions for SuDS Approval Bodies (SABs) to require standards to be met before planning permission could be granted for new developments, with clarity over funding and responsibility for schemes long-term maintenance.[26] Many submissions, including those from the Institution of Civil Engineers,[27] Bath and North East Somerset Council,[28] and Anglian Water,[29] called for Schedule 3 to be commenced, arguing that the measures addressed a number of the barriers to the proliferation of high-quality SuDS discussed above.

17. However, other submissions expressed concern that commencement would impose additional administrative burdens. The Government's Memorandum refers to stakeholder concerns that "housing supply could be negatively impacted" by the measures.[30] Reservations focus particularly on the bureaucracy of SABs being required to approve new schemes prior to planning permission for new developments being granted. CIWEM considered that the Government's fear that provisions would lead to a "surfeit of bureaucracy" had stymied commencement.[31] The HBF considered that the Government had been right to abandon SABs and that the planning system continued to be the most effective mechanism for ensuring the delivery of SuDS.[32]

21 Secretary of State for Environment, Food and Rural Affairs, *Post-legislative Scrutiny of the Flood and Water Management Act 2010,* January 2017, Cm 9402
22 Defra, Non-Statutory Technical Standards for Sustainable Drainage, March 2015
23 As above, p8. CIRIA, the Construction Industry Research and Information Association, is a member-based research and information body for the construction industry
24 Chartered Institution of Water and Environmental Management (FWA 04)
25 United Utilities (FWA 34)
26 For example, Wildfowl and Wetlands Trust (FWA 19)
27 Institution of Civil Engineers (FWA 15)
28 Bath and North East Somerset Council (FWA 23)
29 Anglian Water (FWA 31)
30 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017, p8
31 Chartered Institution of Water and Environmental Management, A place for SuDS*? February 2017*
32 Home Builders Federation (FWA 12)

18. Some submissions, although expressing support in principle for the use of Schedule 3 measures, accepted the Government's decision to use alternative approaches. Thames Water for example considered Schedule 3 to be a "robust mechanism" for managing flood risk but recognised that the Government had reasons for preferring a planning-based system.[33] The Wildfowl and Wetlands Trust submission expressed disappointment about non-commencement since the measures provided clarity around SuDS adoption and maintenance.[34] The Trust nonetheless conceded that substantial progress could be made by alternative approaches such as strengthening policies on technical standards, connections to sewer systems and maintenance of SuDS.[35] CIWEM supported this position: its submission stated that developers were not opposed to SuDS but, in the absence of Schedule 3 commencement, they needed the support of "stricter policy" and "better SuDS standards" if more developments were to include systems.[36]

19. **We acknowledge the views of local authorities and developers concerned about the commencement of Flood and Water Management Act measures for the approval and adoption of SuDS.** ***We are not persuaded that it is currently essential to commence Schedule 3 of the Act in order to improve the SuDS regulatory framework. Rather, we recommend that the Government strengthens planning approaches to require SuDS schemes to be installed in all developments of more than one property so as to prevent smaller developments cumulatively adding to flood risk. Planning policies must also be significantly tightened to reduce the ability for developers to use cost or practicality reasons to opt-out from installing SuDS. Standards must require schemes to deliver multiple benefits wherever possible, including biodiversity, amenity and water quality benefits as well as simply reducing water run-off rates.***

Strengthening the framework

20. Witnesses identified a number of specific areas where the planning framework for SuDS could be improved, principally:

- the technical standards regime for new SuDS construction;
- responsibilities for adoption and long-term maintenance; and
- rights to connect surface water discharges to WaSC sewer infrastructure.

Technical standards

21. Technical standards for SuDS construction are non-statutory; they are set out in planning policy guidance.[37] Witnesses note that this means that planners have no legal back-up to require developers to follow a hierarchical approach in determining the acceptable discharge solution for site.[38] Many submissions asserted that the lack of a statutory underpinning allowed developers an opt-out if they consider SuDS to be too

33 Thames Water Utilities Ltd (FWA 10)
34 Wildfowl and Wetlands Trust (FWA 19)
35 Wildfowl and Wetlands Trust (FWA 19) paras 5 -8
36 Chartered Institution of Water and Environmental Management (FWA 04)
37 Defra, Non-Statutory Technical Standards for Sustainable Drainage, March 2015
38 Chartered Institution of Water and Environmental Management (FWA 04)

costly or impractical for a site. The Home Builders Federation supported nationally-consistent guidance applicable to all planning decisions but considered current standards to be "gold-plated".[39]

22. ***The Government should enshrine standards for the design of SuDS in statute to ensure that all new developments install high-quality SuDS. These standards must ensure that developments do not add to surface water flood risk and that that new drainage systems deliver biodiversity, water quality and amenity benefits.***

Adoption and maintenance of SuDS

23. Many submissions to this inquiry concluded that the current planning system had led to significant uncertainty persisting as to who is responsible for SuDS' long-term maintenance. Developers have the option to either enter into adoption agreements with local authorities or other public bodies, or to hand over maintenance to management companies. This second option might be cheaper for the developer but witnesses were concerned that, with no oversight body such as a SAB to enforce the regime, in the longer-term management companies could abnegate their responsibilities. Companies could also go bust leaving "orphan SuDS" with no-one responsible for ensuring proper operation of the systems.[40]

24. **Stronger regulation is needed to ensure that SuDS systems are maintained effectively in the long-term. Developers can all too easily hand over responsibility for schemes to companies which are subject to no external oversight over how they maintain SuDS on the developments they manage. It is in the interests not only of those living in a new development but also those in the wider local community that SuDS systems continue to function well in order to minimise flood risk. *The Government must clarify how the effective management of SuDS on private land can be better secured through robust agreements for funding and monitoring the long-term maintenance of schemes.***

25. Witnesses argued that SuDS policies needed to make it easier for flood risk management bodies such as LLFAs or Internal Drainage Boards (IDBs) to adopt SuDS by clarifying their responsibilities. The Association of Drainage Authorities considered that the most practical way for improving the framework was for these types of publicly accountable statutory bodies to take on responsibility for SuDS and their maintenance.[41]

26. Furthermore, many witnesses considered that the current framework deterred WaSCs from building and adopting SuDS by the current framework. Some WaSCs called for the statutory definition of a sewer to be amended since the current formulation arguably did not allow them to build and adopt SuDS.[42] However, not all WaSCs would welcome SuDS responsibilities. Southern Water, for example, was concerned about maintenance costs and liabilities falling on sewerage companies. Nonetheless the balance of evidence to this inquiry supported an amendment which would make it clear that sewer definitions included SuDS.

39 Homebuilders Federation (FWA 12)
40 Wildlife Trusts (FWA 38) para 2.4
41 Association of Drainage Authorities (FWA 41) para 1.03
42 For example United Utilities (FWA 34) and Water UK (FWA 27)

27. ***Barriers to Water and Sewerage Companies (WaSCs) being able to adopt SuDS must be removed: the definition of a sewer must be amended to remove any uncertainty over WaSCs' legal ability to build or adopt SuDS. Such adoptions must be accompanied by robust agreements for the funding by private developments of ongoing maintenance costs incurred by WaSCs.***

28. ***We called in our Future flood prevention report for WaSCs to become Water and Drainage Companies with a remit for local surface water management: this would incentivise the installation of new, high-quality SuDS systems. Bringing local flood management and water management together would drive companies to adopt holistic solutions such as SuDS since these would often provide the most cost-effective methods for delivering their regulated range of obligations.***

Automatic right to connect

29. The Committee has in previous reports supported water industry calls for an end to the automatic right for surface water discharges from new development to connect to the traditional sewer system. This would ensure that high-quality alternative drainage schemes would be considered before connection to the traditional system was considered. Wales is proposing to take this approach, as Northern Ireland has already. Scotland has a strong policy in presumption of SuDS.

30. Evidence to this inquiry on balance strongly supported the ending of the right to connect. For example, Water UK told us that retaining the right to connect gave "precedence to development over controlling flows to the network and thus over sewer flooding risk". This appeared to set the wrong balance for creating long-term resilience in the sewerage network.[43] Severn Trent considered that developers saw connection to the WaSC sewer system as an easier option than connecting to a SuDS non-sewer outfall such as a ditch or watercourse. The water company considered that connections to WaSC sewers should only be permitted once all other options had been exhausted.[44]

31. ***The automatic right for new developments' surface water drainage to be connected to conventional drainage systems must be repealed. This would provide a strong incentive to developers to install SuDS systems in far greater numbers.***

Resourcing and skills

32. It is vital that delivery of the policy framework is properly resourced but many witnesses considered that a lack of resources and expertise within the planning system presented a barrier to development of high-quality SuDS. The HBF questioned the competencies of the bodies tasked with SuDS roles, and asserted that the Act failed to recognise the existing expertise within WaSCs for example. The Federation considered the new regime to be "insufficient to serve the needs of the house building industry".[45] Skills problems could be ameliorated by introducing statutory standards since this would place a stronger requirement on financially-constrained local planning bodies to prioritise resources on developing capacity and expertise to ensure the enforcement of SuDS conditions.

43 Water UK (FWA 27) para 27
44 Severn Trent (FWA 29) para 4.2
45 As above, para 2.2

33. Water UK noted that creation of a SAB as required under Schedule 3 would have led to centres of excellence being developed.[46] However, the development of specialist skills can also be supported under voluntary approaches, for example through joined-up working across local authorities to disseminate best practice.

34. ***Improvements to the SuDS policy framework must be matched by effective local delivery arrangements. Under a planning-led approach, it is vital that all Local Planning Authorities and Lead Local Flood Authorities have sufficient skills and expertise on SuDS to ensure that high quality schemes are developed and standards for their construction and maintenance are enforced effectively. The Government must set out the actions it is taking in partnership with the local government sector to ensure that all local authorities with SuDS roles can develop sufficient capacity and expertise.***

SuDS in existing developments

35. It should be noted that in this inquiry we considered SuDS for new developments only. However, with new developments only accounting for some 1% of land use change each year, there is considerable scope to improve the contribution of existing developments to minimising surface-water run-off. Policies are therefore needed to promote the retro-fitting of SuDS in existing built-up areas.

36. **Sewer overflows and surface water flooding are exacerbated by the low prevalence of SuDS installed in existing properties. It is clear that approaches are needed to promote the use of sustainable drainage not just in new developments but for all urban properties. Otherwise, costly new infrastructure could be required to avoid flooding in dense built-up areas as a result of the increasingly intense rainfall likely to affect the UK in future because of climate change.**

Review of progress

37. During the passage of the Housing and Planning Act 2016, Ministers acknowledged concerns over the effectiveness of SuDS policy and supported an amendment to the Bill requiring the Government to carry out a review of planning policies' impact on SuDS.[47] Ministers have commenced this review, however witnesses to this inquiry were concerned that it is being held without full stakeholder involvement or a definite timescale for either its completion or for the implementation of its findings.[48] Our *Future flood prevention* report recommended that the review lead to outcomes as robust as those which would result from implementation of the Schedule 3 regime.[49]

38. ***The Government has conceded the need to review the adequacy of its current approaches. Departments must set out a clear timetable for completion of this work and for the implementation of findings in light of the forthcoming General Election. Consultation arrangements must enable all interested parties to contribute their views. The review must take into account the recommendations in this Report together with the recommendation in our previous Future flood prevention report.***

46 Water UK (FWA 27)

47 Housing and Planning Act 2016, section 171. During passage of the Bill this measure was inserted to require the Secretary of State to carry out a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England

48 Water Management Resources (FWA 39)

49 Environment, Food and Rural Affairs Committee, Second Report of Session 2016–17, *Future flood prevention*, HC 115

39. ***Our successor Committee may wish to review progress in improving the SuDS regime in 18 months' time to ensure that a far higher proportion of new developments are installing high-quality SuDS. If policies fail to provide as robust a regime as that under the Flood and Water Management Act by the end of 2018, we consider it would be appropriate for that Committee to consider recommending commencement of Schedule 3 measures.***

3 Sewer adoption

40. In 2011, private sewers and lateral drains[50] were transferred to WaSCs under Regulations.[51] The Government had intended that private sewers and lateral drains built after July 2011 would also be transferred; section 42 of the Act would give effect to this. The Government has not, however, commenced these provisions, stating that economic evidence has not to date been found to "make the case that the processes […] do not place a new regulatory burden on the housebuilding industry".[52] The Government is instead focusing on encouraging the water and house-building sectors to work together on processes to support voluntary adoption arrangements. In the absence of commencement, it is possible for new private sewers and pumping stations to be transferred, but only with an agreement between the WaSC and developer under section 104 of the Water Industry Act 1991, and adoption is not guaranteed.[53] Witnesses such as the HBF considered non-commencement of the next stage of private sewer transfer to be a failure in implementation of the Act.[54]

41. Witnesses criticised the non-commencement of section 42 for two main reasons. Firstly, it was leading to the amassing of a large number of sewers which might not be being built to technical standards but which might at some stage be transferred to WaSCs who would then have to bear the significant costs of rectifying problems. Although not all WaSCs agreed with its position,[55] Water UK supported the provisions in section 42: it considered the adverse consequences of non-commencement to be "material" and called on the Government to assess the financial impact of remedying faults in future if the measures were not commenced.[56] Secondly, the costs of maintaining post-2011 systems are currently borne by homeowners rather than water companies whilst those with older systems have their costs paid by water bill payers. Beech Tree Close (Bookham) Management Company Limited, representing a group of homeowners, told us that each household paid an extra £200 per annum to cover the costs of their private pumping station—costs they would not have to bear if section 42 were commenced.[57] Defra's own guidance for the 2011 transfer concluded that this type of situation was unfair since:

> These customers are not only paying their water and sewerage companies for sewerage services, but are also responsible for the upkeep of the private sewers serving their properties. They are, in effect, paying twice for their sewer service, and in doing so are effectively subsidising all those who are not served by private sewers. This situation is not only unfair, but also results in hardship for individuals.[58]

50 Drains (serving one property) remain the responsibility of the property owner, with sewers (serving more than one property) and lateral drains becoming the responsibility of Water and Sewerage Companies for those systems covered by the 2011 Regulations.

51 The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 came into force on 1 July 2011. Sewers and pumping stations connected to the public sewer pre-July 2011 were transferred to water companies in July 2011 and October 2016 respectively

52 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017

53 Water Industry Act 1991

54 Home Builders Federation (FWA 12)

55 Anglian Water (FWA 31)

56 Water UK (FWA 27)

57 Beech Tree Close (Bookham) Management Company Limited (FWA 02)

58 Defra, Private Sewers Transfer Regulations: provisional non-statutory guidance, June 2011, p 3

42. **Failure to commence provisions in section 42 to enable automatic transfer to Water and Sewerage Companies of private sewers, lateral drains and pumping stations built since July 2011 could potentially lead to an accumulation of sub-standard infrastructure. The Government's assessment of the costs and benefits of commencing these provisions was flawed since it did not fully take into account the future costs to the water industry of remedying faults in private sewers upon transfer.**

43. **Furthermore, non-commencement of section 42 has created an arbitrary divide between those reliant on sewers, lateral drains and pumping stations built before 2011 and those reliant on systems built later. Those using pre-2011 systems have their costs shared out among all of a water company's customers but, unfairly, those using newer systems must directly bear the operating costs themselves.** ***We therefore recommend commencement of the provisions in section 42 of the Flood and Water Management Act as soon as Parliamentary time is available after the General Election as this constitutes a fairer and lower-cost option than current approaches.***

4 Reservoir safety

44. The Flood and Water Management Act 2010 amended the Reservoirs Act 1975, the statutory framework governing the way in which reservoirs are controlled and managed in England and Wales. The measures apply a risk-based regime to assessing above-ground reservoirs' safety: before the changes took effect, the owner of such a reservoir was bound to comply with the 1975 Act irrespective of whether or not it posed a threat to surrounding land. Under a new section inserted into the Reservoirs Act by Schedule 4 of the 2010 Act, the Environment Agency is now directed to take a more risk-focused approach to reservoir safety. However, Schedule 4 was commenced with a transitional provision so that the measures apply to reservoirs with a capacity of 25,000 cubic metres or more, rather than the lower threshold of 10,000 cubic metres specified in new section. Reservoirs with a capacity of below 25,000 cubic meters therefore remain outside the scope of Reservoirs Act provisions. The Government stated that:

> smaller reservoirs generally pose les of a risk than larger reservoirs because they hold less water, although there is evidence that a minority of smaller reservoirs could pose a risk in certain circumstances. The Department has commissioned further research to inform a future decision on whether to regulate smaller reservoirs.[59]

45. Witnesses were split over whether or not there was a need to apply the measures to the smaller-sized reservoirs. Some were concerned that lowering the threshold would add costs without concomitant risk-reduction benefits. For example, the National Farmers' Union was concerned a lower threshold could deter farmers from developing water storage on farms, to the detriment of effective water management. It considered that the case had not been made that the change would improve safety but was "certain" that it would lead to extra costs and increase the regulatory burden on the farming community. The costs of engineers' risk assessments and management as well as the need to undertake flood modelling would be "prohibitively expensive" for small reservoirs.[60] Conversely, others, such as Wessex Water, considered that applying the lower threshold would "provide a more comprehensive approach to the management of risk from reservoirs".[61]

46. The Government's Memorandum states that it has paused its intention to reduce the threshold to 10,000 cubic metres since the evidence base "does not currently support such a change".[62] The Government does not make it clear however how the research it has commissioned will be used to ensure decisions on reducing the threshold will balance safety, economic and water management issues.

47. **Taking into account the balance of evidence to this inquiry, we support the Government's current decision to retain the threshold for the application of the Reservoirs Act 1975 to raised reservoirs with a capacity of 25,000 cubic metres or more. However, the Government has said that it is keeping its decision under review and has commissioned further research on regulating smaller reservoirs. *The next Government must update our successor Committee on the findings of this research. It is vital that, should the Government propose reducing the threshold to apply provisions to reservoirs with a capacity of 10,000 cubic metres or more, that it sets out a full evidence base to justify how its decision balances safety, economic and water management issues.***

59 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017
60 National Farmers' Union (FWA 37)
61 Wessex Water (FWA 35)
62 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017

5 Water customer debt

48. Bad debt adds around £21 to the average consumer's annual water and sewerage bill. Some 80% of those owing money to water company are tenants. Section 45 of the Act provides measures for water companies to pursue landlords as well as tenants for unpaid bills if a landlord fails to provide information on the tenant for billing purposes. These provisions have not been commenced although the Government is keeping this under review.

49. The Government's Memorandum notes that respondents to its consultation on the section 45 regulations expressed a strong preference for a voluntary scheme, owing to the potential burdens a mandatory approach could place on small and micro-businesses.[63] Water UK has since established a secure data portal, 'Landlord Tap', to allow landlords to share information on their tenants with WaSCs.[64]

50. Much of the water industry considered that implementing section 45 would help to bring down levels of bad debt.[65] Not all WaSCs concurred, with Anglian Water opposing commencement.[66] Water industry witnesses considered that the voluntary approach is not working well, despite promotion to landlords.[67] Wales has adopted a mandatory approach: 58,000 rental properties from the rental market have been signed up by landlords to provide tenant information. In contrast, Landlord Tap has secured only 13,000 from the much larger English rental property market: a rate of fewer than 10 notifications per 1000 rented properties.[68]

51. However, some witnesses, including the Residential Landlords Association, had strong reservations about imposing additional costly requirements on landlords, many of whom were small or micro-businesses.[69]

52. **Customers are paying on average £21 a year to cover the debts of those who do not pay their water and sewerage bills. With a high proportion of this debt attributable to rented properties, it is vital that landlords share information on their tenants with Water and Sewerage Companies. Whilst a voluntary approach is preferable to imposing mandatory requirements on landlords, many of whom are small and micro-businesses, the current scheme is not working well in England.**

53. ***The Government must review the operation of voluntary initiatives such as Landlord Tap with landlords and the water industry and to make recommendations by the end of 2017 on improving communication so as to improve take-up of the scheme. We recommend also that the Government assesses by the end of 2017 the experience of the Welsh water industry to analyse the impact of a mandatory scheme on both bad debt levels and on costs on landlords. Take-up of the voluntary scheme must significantly improve by the end of 2018: we recommend that our successor Committee consider reviewing this issue then to assess whether the Government should commence the provisions of the Flood and Water Management Act to require landlords to provide information to Water and Sewerage Companies about their tenants for billing purposes.***

63 Defra, *Post-legislative Memorandum on the Flood and Water Management Act 2010,* Cm 9402, February 2017
64 Water UK (FWA 27)
65 For example, Water UK (FWA 27), United Utilities (FWA 34), Northumbrian Water Group Ltd (FWA 36)
66 Anglian Water (FWA 31)
67 Northumbrian Water Group Ltd (FWA 36)
68 Thames Water Utilities Ltd (FWA 10), Landlord Tap Ltd (FWA 21)
69 Residential Landlords Association (FWA07)

Conclusions and recommendations

Sustainable drainage systems (SuDS)

1. New development is essential to support thriving communities and it is important that plans to build a million new homes by 2020 can be delivered cost-effectively. But it is vital that development does not increase flooding. The Government purports to support the use of sustainable drainage systems (SuDS) as a method for reducing flood risk from new development as well as for delivering a range of other benefits. But its sub-standard sustainable drainage (SuDS) policies are leading to too few systems being installed in new developments, and too few of these are of high quality. This is leaving communities unnecessarily exposed to flood risk and planning approaches are failing to deliver maximum biodiversity, water quality and amenity benefits. (Paragraph 14)

2. We acknowledge the views of local authorities and developers concerned about the commencement of Flood and Water Management Act measures for the approval and adoption of SuDS. (Paragraph 19)

3. *We are not persuaded that it is currently essential to commence Schedule 3 of the Act in order to improve the SuDS regulatory framework. Rather, we recommend that the Government strengthens planning approaches to require SuDS schemes to be installed in all developments of more than one property so as to prevent smaller developments cumulatively adding to flood risk. Planning policies must also be significantly tightened to reduce the ability for developers to use cost or practicality reasons to opt-out from installing SuDS. Standards must require schemes to deliver multiple benefits wherever possible, including biodiversity, amenity and water quality benefits as well as simply reducing water run-off rates.* (Paragraph 19)

4. *The Government should enshrine standards for the design of SuDS in statute to ensure that all new developments install high-quality SuDS. These standards must ensure that developments do not add to surface water flood risk and that that new drainage systems deliver biodiversity, water quality and amenity benefits.* (Paragraph 22)

5. Stronger regulation is needed to ensure that SuDS systems are maintained effectively in the long-term. Developers can all too easily hand over responsibility for schemes to companies which are subject to no external oversight over how they maintain SuDS on the developments they manage. It is in the interests not only of those living in a new development but also those in the wider local community that SuDS systems continue to function well in order to minimise flood risk. The Government must clarify how the effective management of SuDS on private land can be better secured through robust agreements for funding and monitoring the long-term maintenance of schemes. (Paragraph 24)

6. *The Government must clarify how the effective management of SuDS on private land can be better secured through robust agreements for funding and monitoring the long-term maintenance of schemes* (Paragraph 24)

7. *Barriers to Water and Sewerage Companies (WaSCs) being able to adopt SuDS must be removed: the definition of a sewer must be amended to remove any uncertainty over*

WaSCs' legal ability to build or adopt SuDS. Such adoptions must be accompanied by robust agreements for the funding by private developments of ongoing maintenance costs incurred by WaSCs. (Paragraph 27)

8. *We called in our Future flood prevention report for WaSCs to become Water and Drainage Companies with a remit for local surface water management: this would incentivise the installation of new, high-quality SuDS systems. Bringing local flood management and water management together would drive companies to adopt holistic solutions such as SuDS since these would often provide the most cost-effective methods for delivering their regulated range of obligations.* (Paragraph 28)

9. *The automatic right for new developments' surface water drainage to be connected to conventional drainage systems must be repealed. This would provide a strong incentive to developers to install SuDS systems in far greater numbers.* (Paragraph 31)

10. *Improvements to the SuDS policy framework must be matched by effective local delivery arrangements. Under a planning-led approach, it is vital that all Local Planning Authorities and Lead Local Flood Authorities have sufficient skills and expertise on SuDS to ensure that high quality schemes are developed and standards for their construction and maintenance are enforced effectively. The Government must set out the actions it is taking in partnership with the local government sector to ensure that all local authorities with SuDS roles can develop sufficient capacity and expertise.* (Paragraph 34)

11. Sewer overflows and surface water flooding are exacerbated by the low prevalence of SuDS installed in existing properties. It is clear that approaches are needed to promote the use of sustainable drainage not just in new developments but for all urban properties. Otherwise, costly new infrastructure could be required to avoid flooding in dense built-up areas as a result of the increasingly intense rainfall likely to affect the UK in future because of climate change. (Paragraph 36)

12. *The Government has conceded the need to review the adequacy of its current approaches. Departments must set out a clear timetable for completion of this work and for the implementation of findings in light of the forthcoming General Election. Consultation arrangements must enable all interested parties to contribute their views. The review must take into account the recommendations in this Report together with the recommendation in our previous Future flood prevention report.* (Paragraph 38)

13. *Our successor Committee may wish to review progress in improving the SuDS regime in 18 months' time to ensure that a far higher proportion of new developments are installing high-quality SuDS. If policies fail to provide as robust a regime as that under the Flood and Water Management Act by the end of 2018, we consider it would be appropriate for that Committee to consider recommending commencement of Schedule 3 measures.* (Paragraph 39)

Sewer adoption

14. Failure to commence provisions in section 42 to enable automatic transfer to Water and Sewerage Companies of private sewers, lateral drains and pumping stations built since July 2011 could potentially lead to an accumulation of sub-standard infrastructure. The Government's assessment of the costs and benefits of commencing these provisions was flawed since it did not fully take into account the future costs to the water industry of remedying faults in private sewers upon transfer. (Paragraph 42)

15. Furthermore, non-commencement of section 42 has created an arbitrary divide between those reliant on sewers, lateral drains and pumping stations built before 2011 and those reliant on systems built later. Those using pre-2011 systems have their costs shared out among all of a water company's customers but, unfairly, those using newer systems must directly bear the operating costs themselves. (Paragraph 43)

16. *We therefore recommend commencement of the provisions in section 42 of the Flood and Water Management Act as soon as Parliamentary time is available after the General Election as this constitutes a fairer and lower-cost option than current approaches.* (Paragraph 43)

Reservoir safety

17. Taking into account the balance of evidence to this inquiry, we support the Government's current decision to retain the threshold for the application of the Reservoirs Act 1975 to raised reservoirs with a capacity of 25,000 cubic metres or more. However, the Government has said that it is keeping its decision under review and has commissioned further research on regulating smaller reservoirs. (Paragraph 47)

18. *The next Government must update our successor Committee on the findings of this research. It is vital that, should the Government propose reducing the threshold to apply provisions to reservoirs with a capacity of 10,000 cubic metres or more, that it sets out a full evidence base to justify how its decision balances safety, economic and water management issues.* (Paragraph 47)

Water customer debt

19. Customers are paying on average £21 a year to cover the debts of those who do not pay their water and sewerage bills. With a high proportion of this debt attributable to rented properties, it is vital that landlords share information on their tenants with Water and Sewerage Companies. Whilst a voluntary approach is preferable to imposing mandatory requirements on landlords, many of whom are small and micro-businesses, the current scheme is not working well in England. (Paragraph 52)

20. *The Government must review the operation of voluntary initiatives such as Landlord Tap with landlords and the water industry and to make recommendations by the end of 2017 on improving communication so as to improve take-up of the scheme. We recommend also that the Government assesses by the end of 2017 the experience of the Welsh water industry to analyse the impact of a mandatory scheme on both bad debt*

levels and on costs on landlords. Take-up of the voluntary scheme must significantly improve by the end of 2018: we recommend that our successor Committee consider reviewing this issue then to assess whether the Government should commence the provisions of the Flood and Water Management Act to require landlords to provide information to Water and Sewerage Companies about their tenants for billing purposes. (Paragraph 53)

Formal Minutes

Tuesday 25 April 2017

Members present:

Neil Parish, in the Chair

Chris Davies	Dr Paul Monaghan
Jim Fitzpatrick	Rebecca Pow
Kerry McCarthy	David Simpson

Rebecca Pow declared a non-pecuniary interest in relation to the inquiry into Post-legislative scrutiny: Flood and Water Management Act 2010 as a Parliamentary Private Secretary to Gavin Barwell, Minister of State for Housing and Planning and Minister for London, Department for Communities and Local Government; and declared that she would take no further part in the inquiry.

Draft Report (*Post-legislative scrutiny: Flood and Water Management Act 2010*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 53 read and agreed to.

Summary agreed to.

Resolved, That the Report, be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[The Committee adjourned.

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

FWA numbers are generated by the evidence processing system and so may not be complete.

1 ADA (FWA0041)

2 Anglian Water (FWA0031)

3 Association of British Insurers (FWA0022)

4 Bath & North East Somerset Council (FWA0023)

5 Beech Tree Close (Bookham) Management Company Limited (FWA0002)

6 CIWEM (FWA0004)

7 Committee on Climate Change (FWA0040)

8 CoPSO (FWA0017)

9 Cornwall Community Flood Forum (FWA0001)

10 Cranleigh Civic Society (FWA0014)

11 GeoSmart Information (FWA0018)

12 Herefordshire Council (FWA0042)

13 Home Builders Federation (FWA0012)

14 Institution of Civil Engineers (FWA0015)

15 Landlord Tap Limited (FWA0021)

16 Merseyside Flood & Coastal Erosion Risk Management Partnership (FWA0030)

17 Mr Roger Nowell (FWA0011)

18 Mrs Gillian Telford (FWA0013)

19 National Farmers Union (FWA0037)

20 National Flood Forum (FWA0028)

21 Northumbrian Water Group (FWA0036)

22 Residential Landlords Association (FWA0007)

23 Ryedale Flood Research Group (FWA0024)

24 Severn Trent Water (FWA0029)

25 Somerset County Council (FWA0006)

26 South Gloucestershire Council (FWA0032)

27 South Tyneside Council (FWA0003)

28 Southampton City Council (FWA0008)

29 Southern Water (FWA0046)

30 St Michael's Flood Action Group (FWA0026)

31 Suffolk County Council (FWA0025)

32 Thames Water Utilities Ltd (FWA0010)

33 The Consumer Council for Water (FWA0033)

34 The Environmental Industries Commission (FWA0043)
35 The Fire Brigades Union (FWA0005)
36 The Wildlife Trusts (FWA0038)
37 United Utilities (FWA0034)
38 Upper Calder Valley Flood Prevention Group (FWA0045)
39 Wanborough Anti-Flood Group (FWA0044)
40 Water Management Research (FWA0039)
41 Water UK (FWA0027)
42 Wessex Water (FWA0035)
43 West Sussex LLFA (FWA0009)
44 WWT (Wildfowl & Wetlands Trust) (FWA0019)
45 Zurich Insurance (FWA0016)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Defra performance in 2015–16	HC 443 (HC 894)
Second Report	Greyhound welfare	HC 478 (HC 133)
Third Report	Farmgate prices	HC 474 (HC 561)
Fourth Report	Air quality	HC 479 (HC 665)
Fifth Report	Common Agricultural Policy: payments to farmers	HC 405–i (HC 664)
First Special Report	Defra performance in 2014–15: Government response to the Committee's First Report of Session 2015–16	HC 894
Second Special Report	Farmgate prices: Government response to the Committee's Third Report of Session 2015–16	HC 561

Session 2016–17

First Report	Appointment of the Chair of the Environment Agency	HC 649
Second Report	Future flood prevention	HC 115
Third Report	Animal welfare in England: domestic pets	HC 117 (HC 1003)
Fourth Report	Future flood prevention: Government's Response to the Committee's Second Report of Session 2016–17	HC 926 (HC 1032)
Fifth Report	Forestry in England: Seeing the wood for the trees	HC 619
First Special Report	Greyhound welfare: Government response to the Committee's Second Report of Session 2015–16	HC 133
Second Special Report	Government response to the Committee's Fifth Report of Session 2015–16: Common Agricultural Policy: payments to farmers	HC 664
Third Special Report	Government response to the Committee's Fourth Report of Session 2015–16: Air quality	HC 665
Fourth Special Report	Animal welfare in England: domestic pets: Government Response to the Committee's Third Report of Session 2016–17	HC 1003
Fifth Special Report	Government's Response to the Committee's Second Report of Session 2016–17: Government Response to the Committee's Fourth Report	HC 1032