

## **Annex A**

# **Transitional provisions in connection with the commencement of Section 42 of the Flood and Water Management Act 2010**

**December 2011**

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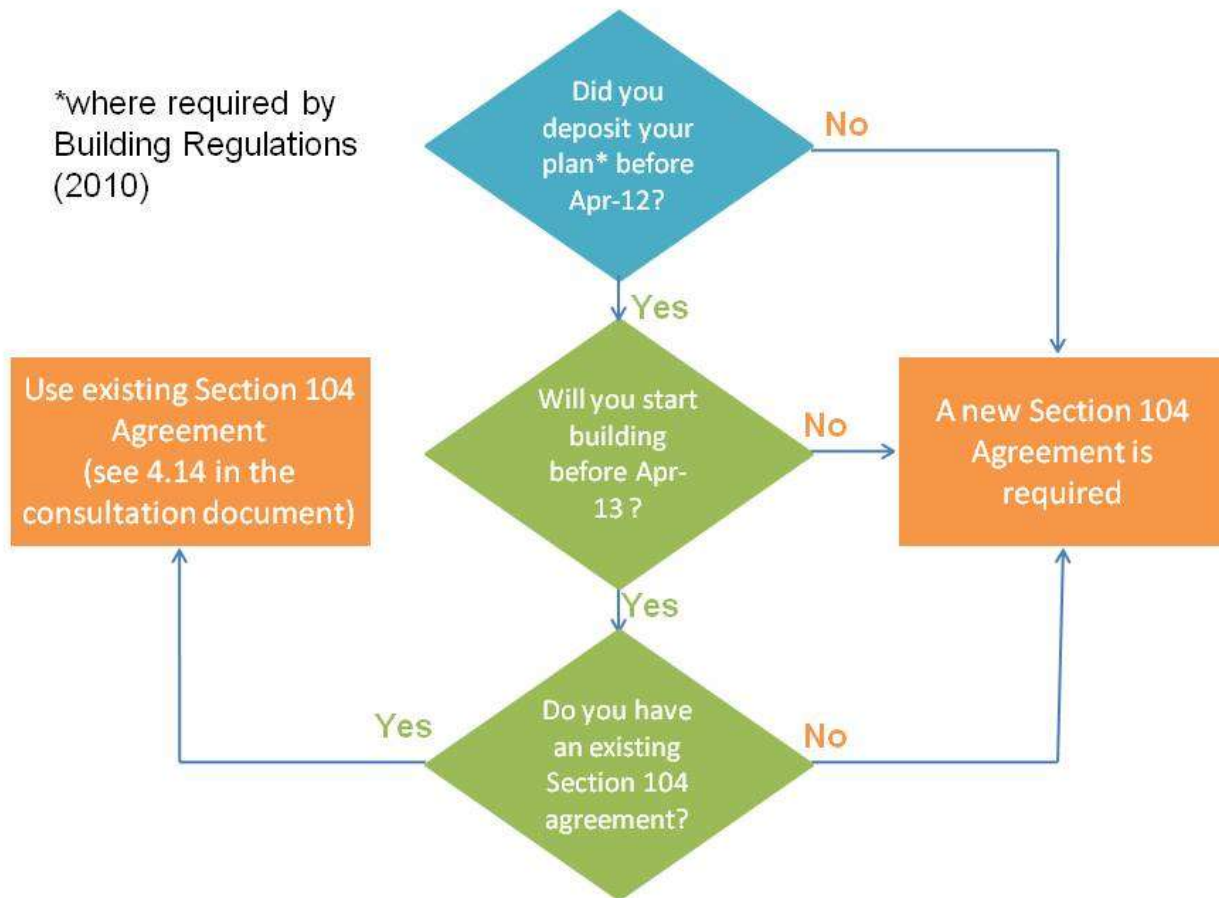
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## Introduction

Transitional provisions are required in order not to disadvantage building developments where sewers are part-constructed before 1st April 2012 or whose construction is to begin shortly after that date. The aim is that the requirement in section 106B of the Act for there to be a section 104 agreement requiring the sewer to be constructed in accordance with the new sewer standards would be disapplied or modified in relation to such developments, as described in this annex and summarised in the figure below.



### Situation 1: sewer connected to building work which needs building consent

Situation 1 is the situation where the development of which the sewer forms part requires a building notice, an initial notice, a plans certificate, an amendment notice or a public body's notice to be given to the local authority, or full plans to be deposited with the local authority, under the Building Regulations 2010. Those terms are defined in those Regulations.

## Department for Environment, Food and Rural Affairs

Transitional provisions apply in situation 1 only in a case where a certain “trigger point” has been reached in relation to the development. It is proposed that the trigger point is that the notice or plans referred to above have, before 1st April 2012, been given to or deposited with the local authority as required by the Building Regulations. This is described in A. below.

The case of B. below is a case where that trigger point has not been reached, and accordingly no transitional provisions apply.

### **A. Where notice/plans required under the Building Regulations have been given to/deposited with local authority before 1st April 2012**

In this case, as long as building work starts before 1st April 2013, then section 106B of the Act applies as if the requirement to comply with sewer standards were a requirement to comply with the notice or plans under the Building Regulations. So there has to be a section 104 agreement and it has to provide for adoption; but the agreement has to include provision requiring that the sewer must be constructed in accordance with the already agreed notice/plans, rather than the new sewer standards.

It does not matter whether the building work has started or not before 1st April 2012.

However if building work does not start before 1st April 2013, then section 106B applies in full, so the section 104 agreement would have to require construction according to the new sewer standards. In such a case it would be necessary to enter into a further revised section 104 agreement pursuant to section 106B.

### **B. Where notice/plans required under the Building Regulations have not been given to/deposited with local authority before 1st April 2012**

In this case, section 106B applies in full, so the section 104 agreement would have to require construction according to the new sewer standards.

## **Situation 2: Sewer connected to building work which does not need building consent**

Situation 2 is the situation where the development of which the sewer forms part does not require a building notice, an initial notice, a plans certificate, an amendment notice or a public body's notice to be given to the local authority, or full plans to be deposited with the local authority, under the Building Regulations 2010.

Developments not subject to the Building Regulations are chiefly the following: Crown developments; buildings belonging to statutory undertakers, the United Kingdom Atomic Energy Authority, the Civil Aviation Authority and air traffic services licence holders (unless the building is a house or a building used as offices or showrooms); and other developments covered by regulation 9 of and Schedule 2 to the Building Regulations (for example, explosives factories, buildings not frequented by people, greenhouses and agricultural buildings).

For these cases the proposal is as follows. As long as building work starts before 1st April 2013, then section 106B applies. There has to be a section 104 agreement. The agreement must provide for construction according to an agreed standard but need not require construction in accordance with new national build standards.

It does not matter whether the building work has started or not before 1st April 2012.

However if building work does not start before 1st April 2013, then section 106B applies in full, so the section 104 agreement would have to require construction according to the new sewer standards. In such a case it would be necessary to enter into a further revised section 104 agreement pursuant to section 106B.