

# Road and sewer bonds

Guidance notes and conditions effective from 1 September 2021 v2



Raising Standards. Protecting Homeowners



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## Part 1 – Introduction

NHBC offers a service to act as surety in providing bonds in favour of local authorities, water companies, urban development corporations and other public bodies in the United Kingdom and the Isle of Man, in relation to commitments to construct roads, sewers and open space areas. When you are approached to provide a bond, please contact us to discuss your needs. We charge an application fee. Quarterly late redemption charges apply only if the bond is not released by the agreed release date.

### Bond provision

- The bond service is discretionary. NHBC reserves the right to withhold the service in any specific case. NHBC may change applicable terms and conditions at any time, subject to reasonable notification.
- NHBC does not provide 'performance bonds' (i.e. they do not guarantee the work to be carried out by a builder or developer). An NHBC bond is a conditional undertaking to pay a sum of money with a view to assisting a Beneficiary to complete the work concerned.

### Eligibility criteria

Please note, the following conditions must be met before NHBC can consider a bond application:

- You must be a NHBC registered builder or developer or a Housing Association. If you are a registered builder or developer, you must have an A1 Premium Rating. If the Applicant is a Housing Association, NHBC may, at its absolute discretion, issue a bond, even if the builder or developer does not have an A1 Premium Rating and provided the builder or developer is registered with NHBC.
- The bond required must relate to residential or mixed-use developments. We are unable to provide bonds where there is no residential element.
- For multi-phased developments, each phase must be covered by a separate bond. The bond application must relate to a site on which all homes will be registered with NHBC for warranty cover under one of NHBC's Buildmark or Buildmark Choice schemes.
- The requested Value of the bond must, in NHBC's sole opinion, be reasonable in proportion to the overall cost of the work to be bonded on the site concerned.
- The Value of each individual bond applied for should not exceed £500,000.

- NHBC will only consider providing a bond where its expected duration is five years or less.
- You will be allocated an overall bond limit for all bonds issued by us. Bonds will not be issued if that would result in the limit being exceeded. The bond limit for an A1 Premium Rated builder or developer will normally be calculated by multiplying a specified sum (currently £3,000) by the number of homes registered with NHBC for warranty purposes by the Applicant during the last four calendar years (January to December (inclusive)) before the date of application. Where the Applicant is part of a group registered with NHBC, the Applicant may exceed its own personal limit, so long as the total usage of all the parties in the premium rated group does not exceed the total group limit (based on the number of homes registered by the group as a whole). Limits will normally be reviewed annually.

Part 2 of this document explains the procedure for applying to use this service and provides other general information. Part 3 sets out the terms and conditions on which the bond service is available. We have tried to cover the majority of situations, but if you have a specific query, please contact us to discuss further (please see page 6 for contact details).

## Part 2 – How to apply for a bond

### Application

To apply for a bond, you must send the following to NHBC:

1. A completed application form and the application fee as detailed on the application form.
2. Originals of the proposed Bond Agreement, in a form ready for execution.
3. A photocopy of the Bond Agreement.
4. One copy of the site plan, coloured and marked up as referred to in the Bond Agreement to show the homes served.
5. A copy of any applicable Advance Payments Code (APC) notice under S219/220 Highways Act 1980 (where applicable in England and Wales) for APC (S220) bond applications only.
6. A copy of the Construction Consent (Scotland only).

You do not need to send a copy of the specification of work if it is separate from the Bond Agreement.

If NHBC decides to accept a bond application, it will sign the Agreement under a power of attorney and send this back to you. Within one month, you must obtain the Beneficiary's execution of the Bond Agreement and send a fully executed original back to NHBC.

Note: for road construction, wherever possible, you should use model forms of agreement approved by the Home Builders Federation and the Local Government Association.

## Indemnities

Before any bond is issued by NHBC, all Applicants must enter into (or procure the entry into by a third-party acceptable to NHBC) an indemnity agreement in a form specified by NHBC. The purpose of this is to enable NHBC to recover from the Applicant (or the third-party providing security on behalf of the Applicant) any sums NHBC will be required to pay if called upon by the Beneficiary. (See section 5 of the terms and conditions.)

## Housing Associations

If your application relates to a development for a Housing Association, you may be eligible to apply on behalf of the Housing Association for exemption from the usual indemnity obligation. You should contact NHBC as early as possible to obtain further information about this option. (See section 7 of the terms and conditions.)

## Joint applications or other unusual cases

You should contact NHBC as soon as possible if the work that is to be the subject of a bond application is to be carried out jointly by more than one builder/developer acting through a consortium, joint venture or similar arrangement, or if anything in an agreement proposed by a Beneficiary appears inconsistent with NHBC's terms and conditions. We may still be able to provide a bond, though additional conditions and charges may apply.

## Completion of work

Upon completion of each phase or stage of the work, you must promptly apply to the Beneficiary for a written acknowledgement of any reductions in the Value of the bond. You must forward to NHBC a copy of any such acknowledgement as soon as it is received by you.

Likewise, as soon as the work is adopted by the Beneficiary, you must promptly obtain and deliver to NHBC a full release and discharge of the bond. (See sections 3 and 4 of the terms and conditions.)

Please note, we are happy to accept a scanned image of the original document, providing it is issued to [r&sbonds@nhbc.co.uk](mailto:r&sbonds@nhbc.co.uk).



## How to contact us

Please always quote NHBC's bond reference number on any correspondence (including any copy correspondence you forward from a local authority, water company or other Beneficiary).

Applications should be sent to:

**Road and Sewer Bonds**

**NHBC**

**NHBC House**

**Davy Avenue**

**Knowlhill**

**Milton Keynes**

**MK5 8FP**

Telephone **01908 747757**

or email [r&sbonds@nhbc.co.uk](mailto:r&sbonds@nhbc.co.uk).

To view this information online or to download an application form, visit our website:  
[www.nhbc.co.uk/rsbonds](http://www.nhbc.co.uk/rsbonds).

## Part 3 – Terms and conditions

### Interpretation

In these terms and conditions, unless the context otherwise requires:

'Applicant' means any builder, developer, Housing Association or other eligible person, firm or company that applies to NHBC to act as a surety (by NHBC entering into a Bond Agreement).

'Applicable Jurisdiction' means if the Applicant's principal place of business address is in England, Wales, Scotland or Northern Ireland, the applicable legal jurisdiction shall be the legal jurisdiction of the Courts of the corresponding country (England, Wales, Scotland or Northern Ireland); otherwise, the applicable legal jurisdiction shall always be the legal jurisdiction of the Courts of England.

'Applicable Law' means if the Applicant's principal place of business address is in England, Wales, Scotland or Northern Ireland, the applicable law shall be the law of the corresponding country (England, Wales, Scotland or Northern Ireland); otherwise the applicable law shall always be the law applicable in England.

'Beneficiary' means a local authority, water company, urban development corporation, government department or other public or private body having the benefit of a Bond Agreement entered into by NHBC under this service.

'Bond Agreement' means an agreement under which NHBC agrees to act as a surety by undertaking, subject to the conditions set out in the Bond Agreement, to pay a sum or sums of money to the Beneficiary, or perform other obligations, in connection with certain construction and maintenance works that are to be carried out by or on behalf of the Applicant.

'Return Date' means the date on which the Bond Agreement, after being executed by NHBC, is returned to the Applicant by NHBC.

'Expected Release Date' means the date from which NHBC is entitled to receive a Release, being whichever is the earliest of the following:

- Expiry of a consecutive period of one calendar month from the Return Date and the construction and maintenance periods entered on the NHBC application form by the Applicant.
- (If different from the above) Expiry of a consecutive period of one calendar month from the Return Date and the construction and maintenance periods originally or initially specified in the Bond Agreement.
- Expiry of a period of five years from the Return Date.
- Adoption by the Beneficiary of the works that are the subject of the Bond Agreement.

'Grace Period' means a period of time following the Expected Release Date, as defined in 2e.

'NHBC' means National House-Building Council, a company limited by guarantee and registered in England and Wales, number 320784.

'NHBC Rules' means the rules specified in the document entitled 'Rules for builders and developers registered with NHBC', published by NHBC, as amended from time to time in accordance with their terms.

'Release' means, in relation to a Bond Agreement, the release of NHBC from each and every one of its obligations and liabilities under the Bond Agreement, whether by performance by the Applicant of the Applicant's obligations under the Bond Agreement, by arranging, at the Applicant's cost, for an alternative bond or bonds to be entered into by a third party in place of the Bond Agreement and on terms acceptable to NHBC, or otherwise.

'Site', in relation to the Bond Agreement concerned, means the particular site that is the subject of the Bond Agreement.

'Value', in relation to the Bond Agreement concerned, means the financial limit of the indemnity or maximum amount for which NHBC could potentially be liable under the Bond Agreement(s) at any given time.

## 1 Effect

- a These terms and conditions apply in relation to every application to NHBC to enter into a Bond Agreement submitted to NHBC by the Applicant and to every Bond Agreement entered into by NHBC in response to such application.
- b NHBC's acceptance of the application fee tendered by the Applicant on application to NHBC to enter into a Bond Agreement does not create or imply any obligation upon NHBC to enter into any Bond Agreement, but constitutes only an indication by NHBC that it will consider the application.
- c As between the Applicant and NHBC, when NHBC executes a Bond Agreement:
  - i it is a conditional commitment by NHBC to be bound by the terms and conditions of the Bond Agreement of which the terms and conditions will become unconditionally binding on NHBC only upon execution of the Bond Agreement by all other parties to it; but
  - ii the Applicant is unconditionally bound by its commitments under these terms and conditions with respect to that Bond Agreement (as if it was executed by the other parties to it).
- d NHBC may, from time to time and on reasonable notice, change the eligibility criteria and these and any other terms and conditions applicable to this service.
- e Nothing in these terms and conditions obliges NHBC to act as a surety or to issue or enter into any Bond Agreement. NHBC reserves the right, in its absolute discretion and without giving any reason, to decline to enter into any Bond Agreement at any time.

## 2 Time limits

- a It is a condition of entering into any Bond Agreement by NHBC that (notwithstanding anything to the contrary in the Bond Agreement), when measured from the Return Date plus a period of one calendar month (to allow for processing time):
  - i work on the Site must be due to start under that Bond Agreement within two years
  - ii all work that is the subject of the Bond Agreement (including any post-construction maintenance work) must be due to be completed within a maximum period of five years, i.e. the expected period of NHBC's liability under the Bond Agreement must not exceed five years
  - iii the Applicant must ensure that a Bond Agreement issued for the purposes of Section 220, Highways Act 1980 (Advance Payment Code/APC Bond Agreements) is cancelled and replaced by one under Section 38 of that Act within three months (or such other period as NHBC may agree in writing).

Accordingly, if the work does not start within these two years or is not completed within these five years, or if, in the case of an APC bond, it is not replaced within the agreed period, the Applicant must use all reasonable efforts to have the Beneficiary of the Bond Agreement issue and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require, as soon as possible.

- b If any delay occurs due to the Applicant's failure to comply or to ensure compliance with any of the requirements of 2a above, NHBC may, without limiting its other rights, impose overrun charges as set out in 6b.
- c It is the Applicant's responsibility to ensure that the Beneficiary and any other parties execute and complete all such documents, and do all such other things as may be necessary or expedient for the Beneficiary and any other parties to enter into any Bond Agreement executed by NHBC. Furthermore, the Applicant must use all reasonable efforts to ensure that this is completed, and a fully executed original provided to NHBC, within one calendar month after the Return Date. If this does not occur within that one-month period, NHBC reserves the right to withdraw from, or revise the terms of, the Bond Agreement.
- d The Applicant must use all reasonable efforts to have the Beneficiary of a Bond Agreement issue and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require, no later than the Expected Release Date.

- e If the Applicant fails to procure delivery to NHBC of the Release referred to in 2d for any Bond Agreement, NHBC will apply a Grace Period running from the Expected Release Date. If, after expiry of the Grace Period, the Applicant has still failed to obtain delivery of this, without limiting the Applicant's continuing obligation to procure its delivery, overrun charges will be imposed by NHBC and be payable by the Applicant as set out in 6b. The Grace Period will be calculated as follows:
- i if the Applicant (either alone or together with its parent, subsidiary or associated companies) has had more than 1,000 homes registered with NHBC during the previous January to December calendar year before the Expected Release Date, the Grace Period will be 12 months
  - ii if the Applicant (either alone or together with its parent, subsidiary or associated companies) has had 1,000 or fewer homes registered with NHBC during the previous January to December calendar year before the Expected Release Date, the Grace Period will be six months.





### 3 Reduction and discharge of bonds

- a In addition to the obligations under 2d, it is the Applicant's responsibility to obtain the Beneficiary's written acknowledgement, addressed to NHBC and in such terms as NHBC may reasonably require, of the phased reduction and eventual discharge of the Applicant's obligations under each Bond Agreement and corresponding reduction in Value, in line with progress towards completion of all relevant construction and maintenance commitments as contemplated by the Bond Agreement.
- b For the purposes of calculating any charges under 6b or any other obligations of the Applicant, NHBC will not treat as reduced or cancelled any part of the Value of a Bond Agreement unless or until the Beneficiary's written acknowledgement as aforesaid is received by NHBC.

## 4 Obligations regarding release and replacement of bonds

- a In each of the following circumstances, without limiting any of its other rights, NHBC may, by written notice to the Applicant in respect of a Bond Agreement, require the Applicant as soon as possible to obtain and deliver to NHBC a formal confirmation by the Beneficiary of the Release of the Bond Agreement, in such terms as NHBC may reasonably require:
  - i if the Applicant is in breach of any of its obligations under the NHBC Rules or under the Bond Agreement
  - ii if the Applicant ceases at any time and for any reason to be registered with NHBC on its Register of builders and developers, or its registration is suspended
  - iii if (where the Applicant is an owner of the Site), without NHBC's prior written approval, it mortgages, charges, creates an encumbrance over or in any other way disposes of all or part of its interest in the Site to another person or organisation
  - iv if there is a material change in control or ownership of the Applicant without NHBC's prior approval in writing.
- b Without limiting any of its other rights, in the event of any of the circumstances indicated in 4a, NHBC may, by written notice to the Applicant, impose additional conditions with respect to any Bond Agreement(s) entered into by NHBC at the Applicant's request, requiring the Applicant, on such terms as NHBC may reasonably require:
  - i to cause its parent or any subsidiary or associated companies, or any directors of such companies or any of its partners, to provide undertakings in writing to NHBC to indemnify NHBC against all costs (including legal costs and disbursements) that may be incurred by NHBC in connection with a Bond Agreement in the event of NHBC becoming liable under the Bond Agreement(s); and/or
  - ii to deposit with NHBC a sum determined by NHBC and not exceeding the maximum potential liability of NHBC under the Bond Agreement(s) at the date of the request.

## 5 Indemnity

- a In consideration of the execution of a Bond Agreement by NHBC at the Applicant's request, the Applicant undertakes, on demand (without deduction or set-off), to indemnify NHBC against any and all payments, costs (including legal and other professional costs and disbursements), losses, expenses, damages or other liabilities that NHBC may incur under or in connection with the Bond Agreement, whether as a result of any failure by the Applicant to comply with any construction, maintenance or other obligations under the Bond Agreement or any related agreement, or otherwise.
- b If required by NHBC, to give further or fuller effect to the above-mentioned indemnity:
  - i NHBC may require the Applicant to enter into a separate deed or form of indemnity
  - ii where the Applicant is part of a group of companies, NHBC may require the parent or ultimate holding company to enter into a general indemnity covering Bond Agreements relating to its subsidiaries (and whether or not the parent or holding company is itself registered with NHBC as a builder or developer)
  - iii NHBC may require a personal indemnity from any director or shareholder with interests in a company requesting a Bond Agreement
  - iv NHBC may require other security to be provided by, or on behalf of, the Applicant

in each case, in such terms as NHBC may reasonably require.

- c With respect to each Bond Agreement, the Applicant undertakes to carry out and complete (or to procure the carrying out and completion of) the work that is the subject of the Bond Agreement in a good and workmanlike manner with due diligence and, in any event, in accordance with the Bond Agreement. If the works are not so carried out and completed, NHBC may, at its option, without reference to the Applicant and at the Applicant's expense, either have the work done or reimburse the Beneficiary for the cost of the work and, in either case, may recover the cost of the same from the Applicant under the indemnity in 5a or the security in 5b.
- d In the case of an Applicant registered under the NHBC Rules, any breach by the Applicant of any of these terms and conditions will amount to a breach also of those NHBC Rules, with consequences accordingly under those Rules.

- e Nothing in these terms and conditions limits or impairs, in any way, any and all other rights that NHBC may have with respect to the Applicant's obligations under NHBC Rules or any separate deed or deeds of indemnity or counter-indemnity or any other agreement entered into at any time between NHBC and the Applicant.
- f Without limiting any of NHBC's other rights, in the event of any payment being made by NHBC to a Beneficiary under a Bond Agreement, a sum equal to that payment will forthwith, and without notice or demand to the Applicant, become due as a debt from the Applicant to NHBC; and interest will accrue and be payable on that debt as set out in the NHBC Rules.
- g If a Site is owned by a person or organisation other than the Applicant (whether or not registered with NHBC), at NHBC's request, the Applicant must co-operate with NHBC with a view to obtaining for NHBC an indemnity from that Site owner comparable with the indemnities under this section 5.





## 6 Charges

The following charges apply in connection with Bond Agreements. NHBC reserves the right to amend these charges at any time after reasonable notice:

- a An application fee of the sum specified from time to time on the NHBC application form (subject to VAT, if applicable) is payable by the Applicant upon submission of the application form to NHBC, for each Bond Agreement applied for. This application fee will not be refunded if the Bond Agreement is, for any reason, not entered into by NHBC or the Beneficiary or any other party.
- b For each Bond Agreement, overrun charges as follows (subject to VAT, if applicable) will be invoiced quarterly in advance and will be payable by the Applicant within 30 days of the invoice date, if a formal confirmation by the Beneficiary of the Release of the Bond Agreement is not received by NHBC on or before expiry of the relevant Grace Period specified in 2e, or in the event of any delay under 2a, until such a Release is received or for as long as such delay continues:
  - i the minimum charge per invoice is £20 per quarter
  - ii subject to this minimum, the overrun charge per Bond Agreement is a percentage at the following rates during the following periods, applied to the original Value of the Bond Agreement on the Return Date (or any lesser Value expressly confirmed in writing to NHBC by the Beneficiary under 3a).

Period of charge	Percentage charged per quarter	Annualised equivalent percentage
During first year	0.125%	0.5%
During second year	0.25%	1.0%
During third year	0.375%	1.5%
During fourth year	0.625%	2.5%
During fifth to ninth years	1.0625%	4.25%
During tenth to fourteenth years	1.3125%	5.25%
During fifteenth to nineteenth years	1.5625%	6.25%
During subsequent years	1.8125%	7.25%

- c No refund of any charges will be made in respect of any Bond Agreement for which a formal confirmation by the Beneficiary of the Release of the Bond Agreement is received during the quarter for which a charge has been invoiced.

## 7 Housing Associations

- a Subject to the next sub-section, NHBC reserves the right to require any Housing Association with an interest in a Site subject to a Bond Agreement to provide an indemnity under or in accordance with section 5.
- b However, if the Applicant is a builder or developer with an NHBC A1 Premium Rating, the Applicant may apply on behalf of a Housing Association for exemption from the indemnity obligations under section 5. If, in its sole discretion, NHBC accepts such an application for exemption, a charge (subject to VAT, if applicable) will be payable by the Applicant to NHBC equal to 5p per £100 of the development contract price, subject to a minimum charge of £100.

## **8 Information and assistance to be given to NHBC**

- a At NHBC's request, from time to time, the Applicant must provide NHBC with such information relating to the Applicant's business activities and sources of funds, and those of any parent, subsidiary or associated company in its group as NHBC may reasonably request, including copies of up to three years' statutory audited accounts and other up-to-date unaudited financial information.
- b The Applicant must promptly notify NHBC in writing as soon as it becomes aware of the occurrence of any of the circumstances indicated in 4a.
- c The Applicant must execute and complete all such documents and do all such other things, at the reasonable request of NHBC, as may be necessary or expedient to give full or further effect to these terms and conditions or to any Bond Agreement, or to assist NHBC with securing the repayment or reimbursement to NHBC of any sum paid or cost incurred by NHBC in connection with any Bond Agreement.

## **9 No third-party rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions, and no person other than the Applicant and NHBC shall have any rights under, or with respect to, the same.

## 10 Governing law and jurisdiction

- a These terms and conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Applicable Law.
- b NHBC and the Applicant irrevocably agree that, subject as provided below, the courts of the Applicable Jurisdiction shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions or their subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of NHBC to take proceedings against the Applicant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- c Nothing contained in these terms and conditions shall affect the right to serve any writ, process or other documents in any other manner permitted by law.

National House-Building Council is a company limited by guarantee and registered in England and Wales, number 320784.

The registered office is NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Bucks MK5 8FP.

NHBC is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

NHBC is registered in England & Wales under company number 00320784. NHBC's registered address is NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Bucks MK5 8FP

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