Flood & Water Management Bill 2009

Summary

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Introduction

The aim of the draft Bill is to take forward the identified legislative needs in three previous strategy documents – Future Water, Making Space for Water and the UK Government's response to the Pitt Review of the Summer 2007 floods. The overall policy ambition of the draft Bill is to manage the risks of flood and coastal erosion and to create and efficient basis for water management.

The draft Flood and Water Management Bill has eight parts:

Part 1: Flood and Coastal Erosion Risk Management

This part gives the Environment Agency overall responsibility for supervising the management of flood and coastal erosion risks, and gives local authorities responsibility for managing local flood risk. It provides duties and powers on the Environment Agency and local authorities so that they can manage those risks. It also transposes the EU Floods Directive by placing duties on relevant bodies.

Part 2: Risk Management: Designation of Features

This part provides additional legal powers for all Operating Authorities to formally designate assets which affect flood or coastal erosion risk.

Part 3: Reservoirs

This part will introduce a risk-based approach to reservoir safety to reflect the danger that reservoir failures might pose to human life. It provides the Environment Agency with necessary enforcement powers to support this.

Part 4: Water Administration Regime

This part replaces the special administration regime in the Water Industry Act 1991 with a new regime closely aligned with the general insolvency regime. It allows the appointed water administrator to either instigate a rescue plan or to transfer the failing company to one or more new owners. The water administrator also has an interim objective to run the company until it comes out of administration.

Part 5: Sustainable Drainage

This part introduces standards for the construction and operation of new rainwater drainage systems, and an 'approving body'. Where the system affects the drainage of more than one property, the approving body will adopt and maintain the system upon on satisfactory completion. The part makes the right to connect surface water run-off to public sewers conditional on the approval given.

Part 6: Water Industry Regulation

This part provides for the Water Services Regulation Authority to make changes to all standard conditions of appointment of water and sewerage undertakers. It extends the Authority's powers to pursue possible contraventions that may be subject to financial penalties, and to collect information related to possible customer service contraventions. This part also introduces a charging mechanism for the Drinking Water Inspectorate and a risk-based enforcement regime for the Environment Agency.

Part 7: Miscellaneous

This part enables the Government to update the scope of water companies to ban, temporarily, non-essential uses of water during periods of water shortage. It also amends certain miscellaneous powers and duties of the Environment Agency under the Water Resources Act 1991.

Part 8: General

This Part sets out various supplementary provisions which apply generally to the draft Bill.

Implications for Local Authorities

The parts of the draft Bill that impact on Local Authorities outlined in greater detail in the following sections.

Part 1: Flood and Coastal Erosion Risk Management

Local Flood Risk Management

The Bill will give the Environment Agency a strategic overview role, provide a new local authority leadership role in local flood risk management, which includes ensuring that flood risk from all sources, including surface water run-off, groundwater and ordinary watercourses is identified and managed, and clearly set out which body is responsible for managing the risk. Figure 1 sets out the proposed roles and responsibilities for all organisations under the draft Bill.

The lead local authority (county or unitary) must develop, maintain, apply and publish a strategy for local flood risk management in its area. This will comprise a range of documents and working practices which sets out how they will:

- convene and coordinate stakeholders to deliver a joined up management of local flood risk in their areas;
- produce flood risk assessments and flood risk action plans (e.g. Surface Water Management Plans) for their areas. These should be consistent with the EA's FCERM strategy and any guidance and use any existing relevant work such as Strategic Flood Risk Assessments.
- develop local flood risk management work programmes (including works which they themselves intend to undertake or works which they consider that other bodies should undertake or works with other bodies are responsible for including water companies and the EA) for example within Surface Water Management Plans (SWMPs);
- identify other bodies whose assets may be an important part of the effective management of flood risk or which may be contributing to flood risk and create an asset register of information on the ownership, location and, where available, the condition of those assets in the area; and
- investigate local flooding incidents with all relevant parties to identify the source of the problem and where responsibility lies for addressing it.

The responsibility for scrutiny will continue to lie with local authorities. The government is considering whether all local authorities should produce reports on the way in which they are managing flood risk which would be reviewed by the relevant overview and scrutiny committee.

County and unitary authorities will have powers to plan, build, alter, operate and remove works to manage flood risk from surface water and groundwater.

The draft Bill will remove the requirement for Environment Agency consent to local authority works on ordinary watercourses on the basis that local authorities will need to do works in a manner consistent with the EA and local authority strategies.

The impact assessment for local flood risk management assumes that local authorities will develop a suite of measures for managing local flood risk, for example, surface water mapping, appropriate development planning and collating information on flood risk and drainage assets. It assumes that:

- the average cost to develop a SWMP is £100,000;
- they will invest £100,000 annually in mitigation measures for surface run-off and groundwater which will produce a real benefit for local flood risk;
- by taking all the measures proposed including coordinating the flood risk management activities of other bodies it will reduce all local flood risk by 40% (over a 43 year period) based on the limited best information available at present.

FIGURE 1 PROPOSED FUTURE ROLES AND RESPONSIBILITIES FOR FLOOD AND COASTAL EROSION RISK MANAGEMENT IN ENGLAND

Environment Agency

Strategic overview role

- Setting National Strategy for Flood and Coastal Erosion Risk Management.
- Support and guidance to LAs, e.g in producing flood risk assessments and plans.
- Develop modelling, mapping and warning systems.
- National investment in flood and coastal erosion risk management measures.
- Report to the Secretary of State on the state of the Nation's flood risk assets.
- Powers to instigate works on non-EA assets and channels when directed to do so by the Secretary of State.
- Statutory consultee on flood (and possibly in future coastal erosion) planning applications.

Delivery/executive role

- Flood risk management on main rivers and the sea.
- Coastal erosion risk management work (concurrently with local authorities).
- Flood warnings for all sources of flooding.
- Produce and contribute to strategic plans.
- Consenting and enforcement powers for sea and main river flooding.
- Category 1 responder under the Civil Contingencies Act 2004.

Local Authorities (LAs)

Local leadership role (county councils in two tier areas)

- Setting Local Strategy for local flood risk management.
- Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater.
- Production of local flood risk assessments, maps and plans including an asset register.
- Improved drainage and flood risk management expertise.
- Co-ordinate Surface Water Management Plan production.
- Drainage from non-Highways Agency roads
- Prioritising local investment.
- Consenting and enforcement powers for certain works affecting ordinary watercourses.
- Promoting partnerships with local planning authorities to produce Strategic Flood Risk Assessments.

Delivery/executive role

- Powers to do works for surface run-off and groundwater flood risk.
- Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies.
- LFRM decision-making integrated into local asset management and investment programmes.
- Category 1 responder under the Civil Contingencies Act including local delivery of flood warnings.

EA's Regional Flood and Coastal Committees (currently Regional Flood Defence Committees)

- Advisory/consultative role to EA and LAs on flood and coastal erosion approaches, priorities etc.
- Consent to levies for local priority flood and coastal erosion risk management work with executive responsibility for work in this area.

Internal Drainage Boards, district authorities (in two-tier areas),highways bodies, water companies

Executive/Delivery Role

- Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies.
- We consult in section 3 on IDB structures, powers and levy raising options.

Duty to cooperate and Share Information

The government intends that all organisations involved in flood and coastal erosion risk management should be under duties to both cooperate with eachother and share information with local authorities and the Environment Agency to facilitate the management of flood and coastal erosion risk.

It is proposed that the EA, as part of their strategic overview role, would review existing data standards and have the power to set and manage standards for information to be shared, to aid common understanding of the data sets and facilitate use within databases.

Regional Flood Defence Committees

The role of Regional Flood Defence Committees will evolve to reflect the recent and proposed changes to the EA's role.

The Bill will:

- replace the RFDCs with new Regional Flood and Coastal Committees (RFCCs) with an extended role and membership to cover coastal erosion;
- have statutory schemes of membership to set out the size and shape of the committee membership subject to retaining a local authority majority. Ministers would continue to appoint the committee chair; local authorities and EA would appoint the other members;
- provide for the committees to advise the EA on investment decisions, priorities etc;
- retain executive powers for the committees to set levies and deciding where levy funding should be spent; and
- extend the levy power to cover coastal erosion risk.

EU Floods Directive

The EU Floods Directive aims to reduce and manage the risk floods pose to human health, the environment, cultural heritage and economic activity.

The EA and county and unitary local authorities should be the competent authorities for implementing the Directive. The EA, fulfilling its strategic overview role, will lead on co-ordinating maps and plans (the EA is responsible for maps, reports and plans in relation to the sea, a main river or a reservoir) and making them available to the Commission. County and unitary local authorities will be responsible for local flood risk assessment, mapping and planning (in relation to ordinary watercourses, surface run-off and groundwater).

There will be a duty for all relevant authorities to co-operate and share information which will help meet the requirements of the Floods Directive.

The Directive requires Member States to prepare Preliminary Flood Risk Assessments (PFRAs), based on available or readily derivable information, to help determine those areas where there is a 'significant risk' for which further maps and plans will be required. County and unitary local authorities will be responsible for preparing PFRAs for ordinary watercourses, surface run-off and groundwater flood risk by 22 December 2011, this will be achieved by completing their level one Strategic Flood Risk Assessments (SFRAs). EA should provide local authorities with guidance on the conduct of PFRAs and criteria for the assessment of significant local flood risks

For areas of 'significant risk' Member States are required to prepare Flood Hazard Maps and Flood Risk Maps by 22 December 2013. Flood hazard maps should show flood extent and provide information on depth and velocity or flow under low (extreme event), medium (likely return period ≥100 years) and high probability flooding scenarios. Flood Risk Maps should show the potential adverse consequences, including numbers of inhabitants, economic activity, industrial installations and areas

protected by the Water Framework Directive. Local authorities in England would fulfil their local flood risk mapping requirements by extending their level two SFRAs to look at the impact of flooding on the environment and cultural heritage.

The responsibility for all national scale mapping and provision of tools and techniques should rest with the EA. The EA could, delegate this to competent organisations, such as county and unitary local authorities, if required.

By 22 December 2015, Member States are required to produce Flood Risk Management Plans (FRMPs) which will draw together evidence from the flood risk and hazard maps in order to determine a range of measures to manage and reduce flood risk. To be effective they should be developed in partnership with all relevant flood risk management stakeholders. This will also make it easier to agree an appropriate action plan and subsequent deployment of resources. These

There are several types of flood risk management plan already produced or in development, which would meet the purposes of the Directive (including stakeholders' involvement). These are:

- Catchment Flood Management Plans (produced by the EA for all main rivers in England and Wales);
- Shoreline Management Plans (produced in coastal areas by a lead authority which can either be the EA or a local authority);
- Surface Water Management Plans (produced by county and unitary authorities – in areas of significant risk they should include all forms of local flood risk including from groundwater and ordinary watercourses); and
- Reservoir flood plans – inundation maps (currently being commissioned by EA) and emergency plans (to be prepared by emergency responders).

These will need to be coordinated to ensure that measures and objectives set are consistent. We propose that the EA in its strategic overview role should perform this task.

All Directive appraisals, maps and plans need to be reviewed and, if necessary, updated every six years (taking into account the likely impact of climate change on the likelihood and impact of floods). The only exception is the first review of PFRAs which is due seven years after the first appraisal, but then every six years after that.

Consenting and Enforcement

County and unitary local authorities will take responsibility for consenting and enforcement of work on ordinary watercourses for works undertaken by third parties. The requirement for a local authority to get EA consent on ordinary watercourses is to be removed. County and unitary local authorities will assume powers to enforce obligations to maintain ordinary watercourses, drainage works etc. (under section 21 of the Land Drainage Act 1991), and their consent will be needed for construction of culverts, flow control structures and other works (under sections 23 and 24 of the Land Drainage Act 1991).

Part 2: Risk Management: Designation of Features

The draft Bill includes powers for the EA, local authorities and IDBs to formally designate assets integral to flood and coastal erosion risk management that are owned, maintained and/or operated by third parties. Third parties could not then remove, alter or damage these assets without prior consent, and the consenting process would enable any approved works to be carried on in line with any reasonable conditions imposed.

The concept of designation would be similar in principle to the Listed Buildings classification used by English Heritage. Structures or natural man-made features with an impact on the risk of flooding or

coastal erosion could be identified by the relevant body and the asset owner or other responsible person would be informed in writing (through a provisional designation notice) of the intention to designate the asset. This would set out information about the asset and flood risk and would provide a period for receipt of any representations.

After considering representations the relevant body would be able to confirm the designation by issuing a designation notice and registering a Local Land Charge. If a person was to remove or alter a designated asset (either provisional or confirmed) without prior consent from the body that had designated it an enforcement notice would be issued. Failure to comply with the notice would be an offence. There will be an appeals process and designations can be cancelled if it is demonstrated to be inappropriate or no longer required.

An express duty upon an owner to keep their structures in a reasonable state of repair is not currently proposed but the Government is inviting views from stakeholders on the merits of this in comparison with other options for funding local flood risk.

Part 3: Reservoirs

The Bill will introduce a more risk-based approach to reservoir safety which better reflects the danger that reservoir failures may pose to human life. It will implement the following main changes to the Reservoirs Act 1975:

- to place a requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be included on an EA register;
- to require the EA to classify each relevant reservoir according to whether they pose a threat to human life, or meet technical conditions (to be specified) which in effect mean the risk is negligible;
- to specify the duties of managers; and
- to specify panel engineers' duties in relation to these reservoirs based on the level of risk.

Currently the EA is required to maintain a register of all LRRs for England and Wales. It is proposed that all reservoir managers (as defined in the Bill) should be required to register their reservoirs by a specific date, which, together with the registration requirements will be set out in secondary legislation.

It is envisaged that the requirement to register would involve the provision of the following information:

- details of how the reservoir manager monitors the reservoir's safety, the frequency of this monitoring and the details of the person(s) responsible for carrying out this monitoring;
- an inundation map in relation to the reservoir (i.e. a map showing the area that would be flooded in the event of an uncontrolled release of water – the Government has given a commitment to provide these maps in respect of existing reservoirs in response to a recommendation from Sir Michael Pitt's Review);
- where a manager is not also the owner, details of the owner including his/her name and address; and
- limited key technical information (likely to include, for example, grid reference, dam height, volume, type of construction etc.).

This information is required to assess whether the reservoir is likely to be classed as a high risk reservoir, or, to assess the reservoirs eligibility for exemption from full registration.

There will be duties on reservoir mangers to prepare on-site and off-site plans and to report any incidents on their reservoirs to the EA within a specified period.

It is proposed that Inspecting Engineers should include in their reports details of what maintenance should be carried out and how particular parts of the reservoirs should be maintained. Supervising

Engineers would need to include in their annul statements information on what action they have taken to deal with maintenance issues.

Part 5: Sustainable Drainage

The provisions the Bill relate to new surface water drainage systems from buildings and roads in England and Wales. They do not require any retro-fit of SUDs, or deal with groundwater or foul water.

The main proposals are outlined below.

National Standards

The Government will publish National Standards governing the construction and operation of surface water drainage for new developments and re-developments. These will reflect the need to mitigate flood damage, improve water quality, protect the environment, protect health and safety, and ensure the stability and durability of drainage systems. It is intended that they will be developed with representatives of the key interests and that the Secretary of State and Welsh Ministers will issue the standards in 2011, following extensive consultation.

Approval Process

The Government will develop an approval system for the surface water drainage systems of the majority of new developments, including roads, in line with the National Standards that dovetails neatly with the planning and building control processes

The application will be made to the SUDS Approving Body (SAB), and approval for the surface water drainage will be needed before development can begin. This approval will form the basis for adoption where appropriate and there will be no right to make a new connection to surface water sewer without approval of the SUDS proposals. The SAB may only approve an application if it is in line with the National Standards.

The approving body may inspect the construction of the SUDS and will issue a certificate of satisfactory construction when completed.

Adoption and Maintenance

There will be a requirement on unitary and county local authorities (or other bodies selected by the Secretary of State in England or Welsh Ministers in Wales), to adopt and maintain new SUDS which affect the drainage of other properties.

The Government proposes that wherever new SUDS are operating in line with the national standards and affect the operation of drainage of other properties they should be adopted and maintained by the SAB. For example, this proposal would include a trench or swale that runs through back gardens even when it is on private land. Systems which are completely within the curtilage of, and serve only, a single property will remain the responsibility of their owner.

There is not an intention to specify maintenance standards for SUDS in legislation, because local conditions can vary. Instead the national standards for the sustainable drainage of new sites and re-developments would provide stakeholders and the courts with a guide on acceptable standards for maintenance so that SUDS remain 'fit for purpose' throughout their lifetime.

The SAB should have the ability to insist on a financial bond before work can begin on the SUDS. On satisfactory completion of the SUDS the bond would be released. The benefits of such an approach are:

- it provides an incentive to the developer to complete SUDS to the required standards promptly, so the bond can be released;