

Sustainability Committee

SC(3)-03-10 (p2): 21 January 2010

Prepared by:

Jane Davidson AM

Minister for Environment, Sustainability and Housing

Introduction

The Flood and Water Management Bill was introduced into Parliament on 19 November 2009 and is currently at Committee stage in the House of Commons.

Please note that this paper reflects the content of the Bill at introduction.

Purpose of the Flood and Water Management Bill

The Flood and Water Management Bill will provide better, more comprehensive management of flood risk for people, homes and businesses, help safeguard community groups from unaffordable rises in surface water drainage charges and protect water supplies to the consumer.

Background to the Bill

In May 2008, the UK Government indicated its intention to bring forward a Flood and Water Management Bill, in response, principally, to Sir Michael Pitt's Review of the floods of the summer of 2007.

The Pitt Review highlighted the need for a revised legislative framework, given its identification of gaps in the management of flood risk, particularly in relation to surface run-off and the need to take a more risk-based approach to reservoir safety. In addition to the delivery of the Pitt Review recommendations, there was a need to legislate on the water management issues that have arisen since the Water Act 2003.

The issues the Bill is intended to address are of equal importance in Wales and the Assembly Government has worked very closely with the UK Government throughout the development of the Bill to ensure that it reflects priorities and needs in Wales and provides appropriate functions for the Welsh Ministers. This close working has been reflected in daily contact between the policy and legal teams on all aspects of the Bill, membership of the Executive Panel that oversees progress on the Bill on a weekly basis, frequent phone and video conferences, regular face to face meetings in London and Cardiff and participation in joint Bill training.

A draft Bill was published for consultation and pre-legislative scrutiny on 21 April 2009. The consultation closed on 24 July 2009 and a total of 642 responses were received across England and Wales. The responses to the consultation, the report from EFRA Committee on pre-legislative scrutiny and a report from the National Assembly for Wales' Sustainability Committee have been reflected in drawing up the Bill for introduction.

Given the constraints of the Parliamentary timetable in the fifth session a focused Bill has been introduced that does not cover all the issues in the consultation and draft Bill. Work continues on provisions covering these issues with the intention that they would be taken forward in future legislation.

Content of the Flood and Water Management Bill

In summary, the key issues addressed by the Bill are:

- roles and responsibilities for flood and coastal erosion risk management
- flood and coastal erosion risk management assets owned by third parties
- sustainable drainage
- reservoir safety
- water administration
- development of a project based delivery approach for large infrastructure projects in the water sector
- drought measures
- introduction of a mandatory build standard for sewers
- surface water charges - concessionary schemes
- rectification of an anomaly relating to the consenting of large infrastructure projects in Wales under section 167 of the Water Industry Act 1991, once the amendments to be made to that section by the Planning Act 2008 are in force

The Bill has three Parts and the content of those Parts are set out below in summary (and more detail is set out in the Annex).

Part 1: Flood and Coastal Erosion Risk Management

This Part provides for flood risk management, expanding on the concept of flood defence in existing legislation. It clarifies the roles and responsibilities of organisations with a role in relation to flood risk management. It also ensures that the flooding from all sources is

covered by legislation, as current legislation focuses on flooding from main rivers and the sea and does not address sources such as surface water flooding.

It gives Welsh Ministers strategic overview of the management of flood and coastal erosion risk in Wales.

The Environment Agency, local authorities and other bodies are given duties and powers that relate to these responsibilities, through amendment to the Water Resources Act 1991, the Land Drainage Act 1991 and the Coast Protection Act 1949, and directly through this Act.

It also gives local authorities in Wales responsibility for preparing and putting in place strategies for managing flood risk from groundwater, surface water and ordinary watercourses in their areas.

Part 2: Miscellaneous

This Part establishes a system for the approval and adoption of sustainable drainage systems and provisions to set National Standards which new sustainable drainage systems must comply with.

This Part also contains a number of provisions that update the current reservoir safety regime. In particular, introducing a risk based approach and lowering the threshold for the size of reservoir that can be included in the reservoir safety regime.

This Part also modernises the special administration regime for water companies and introduces new provisions to enable the regulation of companies set up to deliver large water infrastructure projects.

This Part addresses a number of other issues including the introduction of concessionary surface water drainage charges for community groups which addresses an issue that have been of concerns to groups in some parts of Wales.

Clause 40 in this section rectifies the anomaly identified by the Sustainability Committee relating to compulsory works orders.

Part 3: General

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

It also sets out the territorial extent of the Bill, which extends to England and Wales. Ministerial powers in flood and water policy areas do not always follow the geographical boundary of England and Wales. The Secretary of State's and Welsh Ministers' jurisdictions may instead correspond, for example, to water and sewerage undertakers' areas of appointment rather than the national boundary, though this issue applies to all parts of the Bill.

Implementation of the Bill

The Bill contains broad commencement powers enabling the Welsh Ministers to give effect to the powers contained within the Bill. We are discussing the most appropriate timetable for implementation with key stakeholders including the Environment Agency, Welsh Local Government Association and water companies.

We plan to develop a draft National Strategy on Flooding for consultation in 2010 and are already working with the UK Government on developing National Standards for sustainable drainage systems for consultation.

Jane Davidson AM

Minister for Environment, Sustainability and Housing

Annex

Content of the Flood and Water Management Bill

Part 1: Flood and Coastal Erosion Risk Management

Clauses 1 - 6: key concepts and definitions

For some time it has been recognised that the legislation governing flood and coastal erosion in England and Wales is narrow both in its coverage and the tools it provides to manage the risks.

The current legislation only covers flooding from rivers and the sea, leaving an obvious gap in respect of flooding from other sources and this Bill is an important step in both updating the legislation and enabling better flood and coastal erosion risk management approaches to be taken in future. Critically, it introduces the concept of risk management into legislation allowing risk management authorities to take additional measures beyond defence.

Clauses 7 - 17: Strategies, co-operation and funding

The Bill introduces a new statutory duty on the Welsh Ministers to produce a national strategy for Flood and Coastal Erosion Risk Management in Wales. The Strategy will set out the risks, provide details of the management authorities including which risks each organisation is responsible for, and include information on investment.

The Strategy will take account of the findings of:

- the Pitt Review of the 2007 floods in England;
- the UK Climate Change Predictions for 2009; the
- pilot studies I commissioned in Prestatyn, Barry and Pwllheli; and
- the Welsh Audit Office Report into Coastal Erosion and Tidal Flooding risks in Wales and the subsequent recommendations of the Public Accounts Committee.

Welsh Ministers will retain their current funding powers and overall responsibility for the strategic direction of flood and coastal erosion risk management policy in Wales.

The Environment Agency will be given an enhanced role under the terms of the Bill, covering coastal erosion in addition to their current responsibilities for flooding. As now they will lead on flood risks from main rivers and the sea. In parallel to this local authorities will lead on the flood risks posed by ground water, surface water and ordinary watercourses. This is the first time statutory responsibility for surface water risk management will have been allocated to any of the risk management authorities and represents a significant improvement on the current legislative picture.

To enable local authorities to fully meet their new responsibilities, they will be required to produce local strategies, explaining how they will implement the national objectives and manage the local flood risks. Again, this is a new responsibility. There is currently no requirement to produce local plans or strategies and this will greatly improve the current understanding of the risks we face and the options available to manage them.

Clauses 18 - 21, 30,31 and Schedules 1 and 2: Supplemental powers and duties

The Bill requires the Environment Agency to produce periodic 'state of the nation' reports on flood risk and require local authorities to investigate local flood incidents.

The Bill updates existing legislation to ensure the Environment Agency and local authorities have the necessary powers and functions to undertake and maintain the works necessary to manage the risks posed.

In addition to this the Bill also provides the Environment Agency, local authorities and Internal Drainage Boards with a power to designate and register certain assets within their areas of responsibility that impact upon flood or coastal erosion risk management. Again, this new power will ensure the public are better protected, preventing gaps emerging within the defence system.

Clauses 22 - 26: Regional Flood and Coastal Committees

The clauses require the Environment Agency to establish Regional Flood and Coastal Committees (RFCCs) in accordance with the procedure laid down by the Welsh Ministers in regulations in relation to committees in Wales. It also provides powers for the Welsh Ministers to set out in regulations the procedure for establishing a RFCC, membership requirements and to require the Environment Agency to pay the Chair and to determine the amounts or maximum amounts that may be paid.

These committees will replace Regional Flood Defence Committees (RFDCs) and the Welsh Ministers are given power by order to make transitional provision for this change.

These clauses also requires the Environment Agency to consult an RFCC about the way in which it intends exercise its flood and coastal erosion risk management functions in the Committee's region to take into account any representations made: and before it issues any levy under clause 17, to first obtain the consent of the relevant RFCC.

Clauses 27 - 31: General

Clause 27 relates to sustainable development - it requires certain authorities (listed in sub clause 3) to make a contribution to the achievement of sustainable development when exercising flood or coastal erosion risk management functions. The remaining clauses primarily provide clarification of points in the rest of Part 1: give effect to Schedule 1 on the designation of features and Schedule 2, which provides for various amendments to the Water Resources Act 1991, the Land Drainage Act 1991, the Coast Protection Act 1949, and the Environment Act 1995 so that flood and coastal erosion risk management provisions are introduced into those Acts:or make provision to enable consequential amendments.

Part 2: Miscellaneous

Clause 32 and Schedule 3 (Sustainable drainage)

These clauses contain a number of measures designed to implement a change in the way rainwater drainage is managed and to support the uptake of sustainable drainage systems.

The new approach has a number of important benefits, including reduced flood risk and improved water quality. In moving to a more sustainable approach to rainwater drainage, the Bill requires the Minister to publish National Standards for the implementation of sustainable drainage. In order to make the necessary changes, local authorities will take on responsibility for approving, inspecting and in most cases, adopting new sustainable drainage systems (Sustainable Drainage Approval Body - SAB). The approval process will operate in parallel with the planning process. A number of delegated powers are proposed to allow the appointment of alternative organisations

as the SAB and to facilitate the approval and adoption process.

The existing right for a developer to automatically connect surface water drainage from a site to the public sewerage system will be constrained in relation to sustainable drainage systems built to the National Standard and will be subject to the approval of the SAB.

Clause 33 and Schedule 4 (reservoirs)

These clauses introduce amended legislation to enhance the reservoir safety regime in Wales. While the lowering of the threshold for the registration of reservoirs from the current 25,000m³ to 10,000m³ will mean that more reservoirs are initially subject to the regime it will also ensure that those reservoirs that pose a risk to human life are more easily identified. The full inspection regime will only apply to those that pose the most significant risks.

All of these changes enhance the current legislative regime and are designed to protect the public and our critical infrastructure from the risks posed by flooding and coastal erosion. The Bill updates existing legislation where necessary and introduces new elements where gaps in coverage have been identified.

Clause 34 and Schedule 5 (special administration)

The Bill makes provision to amend the special administration regime in the Water Industry Act 1991 to bring it into line with modern insolvency practice. It will also streamline the procedures for transferring a failing company to new owners.

Ministerial functions under the existing special administration provisions within the Water Industry Act 1991 are devolved to the Welsh Ministers in relation to water and sewerage undertakers wholly or mainly in Wales (but not in relation to licensed suppliers to the extent that regime applies to them). Ministerial functions under the various insolvency and companies Acts are not devolved. This presents practical issues in the application of the regime in Wales. In order to provide for a consistent system the order making power to amend schedule 2 and the powers to make Regulations applying the Insolvency Acts and Companies Act provisions will rest with the Secretary of State in relation to water and sewerage companies in England and Wales, subject to a requirement that the Secretary of State seeks the consent of the Welsh Ministers before making Regulations.

Clause 35 (Provision of infrastructure)

The Bill contains provisions to enable the regulation of companies set up to deliver large water infrastructure projects and to require that certain projects are put out to tender.

Clause 36 (Water use: temporary ban)

The Bill contains an enabling power to allow the Secretary of State and Welsh Ministers to extend water company hosepipe ban powers to cover other non-essential uses of water. These provisions would apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers for those water and sewerage company areas that are wholly or mainly in Wales.

Clause 37 (Civil sanctions)

This clause relates to the existing ability under the Regulatory Enforcement and Sanctions Act 2008 for certain regulators (such as the Environment Agency) to be given (by Order) the ability to impose various kinds of civil sanctions on persons who have committed offences, as an alternative to prosecution.

This stems from the "Macrory Report" which was concerned that some regulators were over-reliant on criminal prosecution as a means of enforcement and this can lead to a compliance gap. It recommended introducing a set of administrative penalties that would allow regulators to impose proportionate, flexible and meaningful sanctions. Civil sanctions can include financial penalties and restoration notices.

This clause ensures that offences in legislation that are created or amended by the Bill are eligible for orders granting the ability for civil sanction alternatives to be available.

Clause 38 - 39 (Incidental flooding or coastal erosion: Environment Agency and Incidental flooding or coastal erosion: local authorities)

These clauses allow the Environment Agency and lead local flood authorities or internal drainage boards to carry out works, under certain conditions, that may or will cause flooding, an increase in the amount of water below the ground, or coastal erosion.

Clause 40: Compulsory works orders

This clause provides that the amendments made to section 167 of the Water Industry Act 1991 by the Planning Act 2008 cease to have effect, so that the Welsh Ministers retain their powers to make compulsory works orders. Subsection (2) provides that the Secretary of State will no longer be able to make compulsory works orders in relation to England. Subsection (3) confirms that this amendment does not affect Welsh Ministers' functions under section 167, which are retained.

Clause 41: Agreements on new drainage systems

This clause qualifies the right, under section 106 of the Water Industry Act 1991, for owners of premises and sewers to communicate with the public sewer. It provides that after this new section comes into force, that right to communicate with the public sewer via a lateral drain or private sewer may only be exercised where two conditions are satisfied.

Clause 42: Drainage: concessionary charges for community groups

The clauses makes explicit provision to allow water and sewerage undertakers to operate concessionary schemes for community groups for surface water drainage charges and enables Ministers to issue guidance to undertakers in respect of concessionary schemes.

Clause 43: Abolition of Fisheries Committee (Scotland)

This clause abolishes the Fisheries Committee as regards Scotland.

Part 3: General

Clause 44: Pre-consolidation amendments

This clause is intended to allow for the consolidation , in a subsequent consolidation Bill, of legislation applying to flood and water as recommended by the Pitt review which called for a single unifying Act for flood risk management.

Clause 45: Subordinate legislation

This clause defines what is meant by "subordinate legislation" and sets out the sort of provision which can be contained within a statutory instrument made under the Bill as well as applicable procedures.

Clause 46: Technical provision

This clause makes a series of detailed technical provisions in relation to the application and coming into force of this Bill.