

Sustainability Committee

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Inquiry into the implications of the Draft Flood and Water Management Bill on our organisation and Wales

Submission by Environment Agency Wales on the Draft Flood and Water Management Bill, May 2009

1 Introduction

- The National Assembly for Wales Members Research Service's "Draft Flood and Water Management Bill Research Paper No 09/016 provides background briefing on the Draft Flood and Water Management Bill, which is currently the subject of consultation. Proposals introduced in the draft Bill are briefly described and include improved flood and coastal erosion risk management, improved reservoir safety, sustainable drainage and changes in the regimes of water industry regulation. The policy position for Wales in relation to the Bill is described.
- The UK Government's draft Flood and Water Management Bill was published on 21 April 2009. Publishing this draft allows pre-legislative parliamentary scrutiny and public consultation. The deadline for responses is 24 July 2009.
- One of the major drivers for the draft Bill was Sir Michael Pitt's Review Learning Lessons from the 2007 Floods, as well as the Making space for water" programme, and the Water Strategy for England, Future Water.
- Sir Michael Pitt's review Learning Lessons from the 2007 floods identified 92 recommendations for change, particularly highlighting the lack of legislation relating to surface run-off risk and the requirement for a risk-based approach to reservoir safety. The UK government committed to acting on all of these recommendations, although they do not all require legislation. Welsh Assembly Government is committed to implementing these through its New Approaches Programme.

2 What we seek from the Bill in Wales

2.1 Clarity on roles and responsibilities for those involved in managing flood and coastal risks

- We strongly support proposals for a clear division of roles and responsibilities, in particular between Welsh Assembly Government, ourselves and Local Authorities.
- We should continue our delivery role for main rivers and coastal flood risk management and reservoir safety, and would welcome the proposed broader role in relation to coastal erosion.
- We do not seek any expansion of our delivery role in relation to local flood risks from surface water, groundwater and ordinary watercourses. We believe that delivery should be led by Local Authorities.
- It will be important to ensure that arrangements for local flood risk management will work in practice, and are adequately funded.

2.2 The legislative framework to help us deliver the strategic oversight for all types of flooding and coastal erosion

- The current legal framework is out of date and needs a substantial overhaul to address the new challenges from climate change, as recognised in the Pitt Review of the 2007 floods.
- We welcome the move away from the narrow approach of flood defence to the broader philosophy of flood and coastal erosion risk management.
- We welcome the Environment Agency's proposed oversight role across all aspects of flood and coastal risk management in Wales.

2.3 Introduction of arrangements for the effective management of surface water, integrating flood risk and water quality considerations

- We would like Local Authorities to have a statutory requirement to develop Strategic Flood Consequence Assessments as well as local Flood Risk Management Plans - commonly referred to as Surface Water Management Plans - as in England.
- We note that in England, the proposal is for Local Authorities to be responsible for the adoption and maintenance of Sustainable Drainage Systems or "SUDS". In Wales, we believe the Local Authority should lead, but that others organisations could be more appropriate to adopt, operate and maintain public sustainable drainage systems.
- We support the removal of the automatic right to connect surface water drainage from new developments to the public sewerage system.
- From a water quality perspective, we need to manage all amounts of rainfall runoff effectively, not just those associated with flood risk.

2.4 Management of surface water

Strategies and plans for managing surface water which underpin the draft Bill will require better, more readily available information about current drainage infrastructure. This information is required to support informed decisions about the quantity and quality of water discharged under all operational conditions. It is essential that powers to require information, along the lines of those proposed in the draft Bill, are retained for Wales also.

2.5 Update reservoir safety legislation and move to a risk-based approach for managing reservoir safety

- We welcome proposals in the draft Bill that would cover all raised reservoirs with a capacity above 10,000m³, rather than 25,000 m³ at present, while applying a risk-based approach and only regulating in detail those that pose a risk to life.

2.6 Provide a system for registration and maintenance of assets that perform a flood defence function even if not originally designed to do so

- The Environment Agency and other authorities maintain only around 45% of all such assets that are relied on to protect properties from flooding. The rest are maintained by "Third Parties".

- Those maintained by 'Third Parties' include things such as highways, railway and other embankments, boundary and garden walls and buildings.

- We welcome the draft Bill's provisions for all appropriate authorities to designate assets integral to flood risk management.

- Owners could not remove, alter or damage the assets without prior consent.

- The draft Bill could go one step further through the provision of a duty on those responsible for third party assets to maintain them in a good condition.

2.7 Clarity on funding arrangements and Flood Risk Management Wales

- If the Environment Agency is given an oversight role for coastal erosion in Wales, we would welcome a change in name and remit of the Environment Agency's committee, Flood Risk Management Wales (Regional Flood Defence Committee for Wales) to reflect that wider remit.

- If we are given that oversight role, we would welcome the extension of existing power to raise a "local levy" to include coastal erosion works. This provides an important additional source of funding for projects which are of local significance, but not of such national significance as to attract grant in aid.

- As for England, we recommend that the Committee should have a largely advisory rather than executive role.

2.8 Funding

- While plans for a long-term investment strategy in England are well advanced, it is unclear how Welsh Assembly Government plan will meet the future increased cost of flood and coastal erosion risk management. We believe that Wales needs a long term investment strategy that will make clear what are the funding needs of all the operating authorities over the next 25 years and how Government funding will be prioritised. The risk is too great to plan short term on the basis of terms of office of Government.

2.9 Provide a duty for all those involved to co-operate and share information

- We welcome this provision and support the view that Local Authorities and the Environment Agency should have powers to set the format and standards for the collection of information.

- We have recently agreed a data sharing protocol with Water UK, who represents water companies.

2.10 Transposition of the EU Floods Directive in a way that aligns with the broader FCRM framework

- The Floods Directive requires the production of flood maps and flood risk management plans for areas identified as having significant flood risks.

- We broadly welcome the proposed policy approach reflected in the draft Bill, with Local Authorities developing maps and plans dealing with local flood risks, and the Environment Agency producing maps and plans for main rivers and the sea and co-ordinating overall implementation.

- We think, however, that Local Authorities, rather than the Environment Agency, should publish the risk assessments and plans that they produce.

2.11 Introduce means to target more efficient and equitable use of water resources

- We welcome the draft Bill's proposals in view of the likely impacts on climate change and rising pressure from development.

- We want to ensure equal treatment under the law for similar types of abstraction - we are seeking consistency in how we charge people who use water for irrigation, and the legislation that allows us to apply restrictions during droughts.

- We also support the proposed extension of powers to prevent the waste of water from all sources of supply, rather than just presently groundwater.

3 Issues relating to the current draft bill

These issues include:

- Concurrent Powers - The draft Bill includes the possibility of the Environment Agency in England taking an executive role on local flood risk where that risk should be dealt with by Local Authorities or an IDB initially, but who fail to act.

We would like a similar power for the Environment Agency in Wales. This needs to remain subject to direction by the Minister. It is important that legislation establishes the lead role for Local Authorities to deal with local flood risk from ordinary watercourses (any passage that water flows through which does not form part of a main river), surface water and groundwater and does not create an expectation that the Environment Agency will frequently intervene.

- Emergency powers - There is provision in the Bill for additional powers for county or unitary authorities to make enquiries in the event of a flood, to determine which authorities have relevant functions and whether or not they have exercised them. The consultation document raises the associated question of whether Local Authorities should have powers to carry out works of an emergency nature. We would wish to see these powers available in Wales also.

This should enable the lead Local Authority to take prompt action in the event of local flooding from an ordinary watercourse, surface water or groundwater.

We do not wish such powers to extend to flooding from main rivers or the sea, as this could lead to local decisions for a specific local interest overriding decisions in the best interests of the catchment or coast as a whole.

4 Omissions in the Bill

- It is difficult to determine omissions in the draft Bill for Wales because the delivery framework for Wales has not yet been decided and is therefore not yet in the draft Bill. Pending the result of Welsh Assembly Government's consultation on the draft Bill, we have identified the following important areas which are not currently included:

- Broader development of consenting and enforcement provisions - The draft Bill contains limited proposals to update the consenting and enforcement provisions of the present flood and coastal risk management legislation. Beyond the immediate proposals we would wish to see a more substantive update of consenting and enforcement provisions within this Bill, as called for by the Pitt review.

- Funding arrangements - Welsh Assembly Government seeks views on the proposals set out in the main consultation. It will be important to ensure that new duties for operating authorities are adequately funded.

- Grant Schemes - In England, there are proposals for the Environment Agency to pay grant to any person in connection with the exercise of flood and coastal risk management functions. We would like to see a similar scheme led by Local Authorities that helps resilience at a local, property level developed for Wales and included in this Bill.

- Provisions to support the maintenance of third party flood and coastal risk management assets - The draft Bill includes powers for all appropriate authorities to designate assets integral to flood risk management. The owners could not then remove, alter or damage these assets without prior consent. This is expected to reduce the risk of flood and coastal risk management schemes and systems being compromised, delivering wider public benefits.

The draft Bill could go one step further through the provision of a duty on those responsible for third party assets to maintain them in a good condition. This proposal is raised in the consultation document.

5 Proposed institutional framework

Roles and responsibilities

- We support the Bill's intention to clarify responsibilities with regard to flood and coastal erosion risk management, which was a key recommendation of the Pitt Review.

- The Welsh Assembly Government's consultation must resolve completely the roles and accountabilities of all organisations within the proposed delivery framework,

- It is also essential that the Welsh Assembly Government has the capacity and resources to develop policy and guidance, and fulfil its other responsibilities.

Legislative scrutiny

- The consultation in Annex A sets out the proposed roles. The subsequent primary and secondary legislation will set out the powers and duties to allow us to perform the roles given to us. At this stage, we are unclear what will fall into primary legislation and what into secondary. We are concerned that the detailed wording of the legislation for Wales will not undergo a similar degree of scrutiny as is happening now for England, and that taking forward elements in secondary legislation could delay implementation.

Resources and funding

- It is crucial for effective implementation of the proposed framework that all of the bodies concerned have adequate levels of expertise and funding to be able exercise their functions appropriately.

3rd June 2009

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