

# Sustainability Committee

SC(3)-12-09 (p1, Annex a): 24 June 2009

## The policy position in Wales

### Flood and Coastal Erosion Risk Management

#### Introduction

1. Across Wales there are approximately 170,000 properties at risk of flooding at any time including homes and businesses with an estimated total value of between £8-12 billion. Each year flooding is estimated to cause in the region of £70 million worth of damage in Wales, on top of the significant emotional and physical distress to those affected.
2. In recent times, Wales has escaped the worst of the flooding experienced in other parts of the UK. Despite this, we still face significant risks from flooding and, as our climate changes, bringing greater volumes and intensity of rainfall, rising sea levels and increased storminess, more frequent and more severe flooding events combined with intensified coastal erosion seem inevitable.
3. The evidence of the increasing risks from both flooding and coastal erosion is underpinned by a series of reports produced in the last few years including the "Foresight: Future Flooding Study" (2004), the Stern Review on the Economics of Climate Change (2006) and most recently the Pitt Review into the Summer 2007 Floods (2008). The Welsh Assembly Government has committed to learn the lessons of these reports and in December 2008 we undertook to mainstream the recommendations of the Pitt Review into our policies on flood and coastal erosion risk management.

#### Background

4. At present Wales has a range of systems addressing different types of flooding and separate systems concerned with coastal erosion issues. These systems rely heavily on a defence infrastructure and while they are linked in terms of scope, process and organisations involved, they are not united into one overarching approach. This leaves the possibility of gaps developing in service provision.
5. As is mentioned elsewhere in this document, the current flood and coastal erosion systems are based on a dated legislative framework, the focus of which does not allow for the broad range of interventions required to meet current challenges, including those posed by climate change. Much of this legislation was written pre-devolution and, particularly in relation to water, this is widely recognised to be one of the more complicated areas of the current devolution settlement.
6. Most funding for flood and coastal erosion risk management in Wales currently comes via the Welsh Assembly Government and is directed primarily towards the Environment Agency and the 22 local authorities across Wales. Dŵr Cymru/Welsh Water is also a major operator of sewer systems.
7. Given the age of the legislative framework, the number of items it includes, the number of organisations involved and the overlapping nature of their responsibilities there is a pressing need for change.

#### Issues to be Addressed

8. In moving from a system based on the construction and maintenance of hard defences, to a system based on the management of all aspects of the risks and consequences of flooding and coastal erosion we need to:
  - renew the focus of legislation, to move beyond the current limitations;
  - establish a single overarching risk management approach;
  - establish the case for the allocation of an oversight role;
  - ensure a comprehensive understanding of local risk is in place;
  - allocate and clarify the responsibilities of the operating authorities;
  - close the gaps between the responsibilities of operating authorities; and
  - establish a clearly understood risk management planning and delivery framework, in line with Welsh Assembly Government priorities on sustainable development.
9. Many of these were identified in the Pitt Review, and Welsh Ministers have committed to addressing these, including the need for a national overview of the risks of flooding and coastal erosion, better management of local flood risks and increased cooperation between operating authorities. We are also committed to meeting the requirements of the EU Flood Directive.

#### Legislative Focus

10. An effective flood and coastal erosion risk management system in Wales must focus on protecting people and key assets and managing the impact of the risk on the natural environment. Our aim is to develop a system for Wales that:
  - addresses all of the sources and risks of flooding and coastal erosion;
  - has a holistic understanding of the risks and consequences;
  - deploys the full range of risk management responses;

- prioritises investment, resources and actions;
- undertakes long term planning and directs investment accordingly; and
- is focussed on the needs of individuals, communities and businesses.

11. In the past, managing flood and coastal erosion risk has tended to mean building hard defences. This has come about largely as a consequence of the wording of the existing legislation, which focuses on drainage and the defence. Stopping or diverting water has tended to be the priority for operating authorities, with little or no investment in alternative measures of managing flood risks. Existing definitions need to be expanded to allow a broader range of measures to be used.

12. Furthermore, current legislation focuses only on the risks of flooding from rivers and the sea. To correctly assess the risk of flooding we need to determine both the likelihood and impact of a range of events, compiling information on historic events and present water levels. We need to look beyond the risks presented by rivers and the sea and consider the risks from other sources including surface water and ground water. Crucially, we must also consider what the impact of a flood event would be on people, property, businesses and the environment. Only then can we determine what measures would provide the best response.

13. These could include:

- building and maintaining hard defences;
- approaches utilising the natural environment, like wetlands or salt marshes;
- utilising sustainable urban drainage systems (SUDs);
- considering flooding and coastal erosion in all planning decisions;
- incorporating greater resilience into the design of buildings;
- identifying areas suitable for inundation and water storage;
- increasing levels of preparedness and planning for events;
- engaging communities in decisions on future levels of flood protection and preparedness
- developing better warning systems; and
- improving the response to events.

14. We need to consider the way we use land on flood plains and in vulnerable coastal areas, working with planning authorities and developers to ensure residential and commercial developments are built in areas of low risk and that they include features that reduce the impact of flooding and coastal erosion. We also need to look at how and when we warn people of the risks they face and how to ensure a consistent and clear emergency response to events

15. Welsh Ministers believe that the provisions contained within the draft Bill and outlined in Section 2.1 above will provide the breadth and flexibility to facilitate a holistic flood and coastal erosion risk management system in Wales. While they do not currently apply to Wales, it is our intention that they will apply equally in Wales as in England, with relevant powers conferred on Welsh Ministers for the final Bill.

### **Single Overarching Approach**

16. The Welsh Assembly Government will develop and communicate the long term strategic policy for flood and coastal erosion risk management across Wales. In ensuring a single overarching risk management approach, dedicated to the needs of Wales, Welsh Ministers will assess flood and coastal erosion risk on a pan-Wales basis, and will:

- determine Welsh policy in relation to flood and coastal erosion risk and its management;
- allocate responsibilities to operating authorities across Wales;
- allocate funding in line with Welsh Assembly Government priorities; and
- promote awareness of flood risk within the general population.

17. Working through the Wales Resilience Forum and the Local Resilience Fora across Wales, Welsh Ministers will ensure that all emergency responders are adequately trained, to respond to and recover from flood events. The Welsh Assembly Government will continue to coordinate any national response to any large scale flooding events via the Emergency Coordination Centre.

### **Sustainable Development**

18. In developing a holistic approach to flood and coastal erosion risk management, the Welsh Assembly Government is mindful of the need to ensure consistency with our sustainable development principles. The Environment Agency is already under a duty to contribute to achieving sustainable development and we would like your views on whether or not this should be extended to the other operating authorities and specifically local authorities and Internal Drainage Boards. This would involve planning for risks, understanding the possible impacts and the appropriateness of management responses.

Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?

### **Oversight Role**

19. The Environment Agency currently has a general flood defence supervisory duty by virtue of section 6(4) of the Environment Act 1995. In moving towards a flood and coastal erosion risk management system we believe that this duty should be extended to allow the Environment Agency to more appropriately support the Welsh Assembly Government.

20. We propose to replace the current supervisory duty with an enhanced oversight role in respect of all flood and coastal erosion risk management issues. The Environment Agency will ensure the consistent implementation and monitoring of the flood and coastal erosion risk management system in Wales, in line with the strategic policies of the Welsh Assembly Government.

21. Using this proposed oversight role for flood and coastal erosion risk management in Wales the Environment Agency in its role as technical adviser on flood and coastal erosion risk to Government will assist Welsh Assembly Government in ensuring a coordinated service provision across all sources of flooding and coastal erosion.

22. They will:

develop the methods and tools required to assess all risk;

develop risk modelling and mapping processes;

develop forecasting and warning systems for all flood risks;

collect, store and share technical data relating to flood and coastal erosion risk management;

establish the format and content of risk management plans;

issue guidance on the format and content of risk management plans;

co-ordinate the risk management plans produced by all operating authorities in line with the requirements of the EU Flood Directive;

monitor and report compliance with risk management plans;

provide technical advice and support to other operating authorities;

undertake the regulator role for reservoir safety.

report to Welsh Assembly Government on flood and coastal risk and its management

Is the proposed allocation of an enhanced oversight role to the Environment Agency in Wales appropriate?

Will the scope of the proposed role allow the Environment Agency in Wales to adequately support the Welsh Assembly Government in driving forward a single overarching approach to flood and coastal erosion risk management?

## **Understanding the Local Risk**

23. The floods experienced in 2000 primarily affected non main rivers systems and resulted in pressure being placed on local authorities to address local flooding problems. This was echoed by the more recent recommendations of the Pitt Review which suggested that local authorities should take on responsibility for coordinating surface water flood risk management in tandem with improving their understanding of all local flood risks.

24. Our vulnerability to surface water flooding was highlighted by the flooding events in the summer of 2007. At present no single operating authority in Wales has overall responsibility for surface water, with the Environment Agency, local authorities, Internal Drainage Boards, water companies and others all having roles in respect of different aspects of surface water management and flooding. This results in confusion over who should be doing what and leads to gaps in coverage.

25. The Pitt Review recommended that Local Surface Water Management Plans, coordinated by local authorities, should provide the basis for managing local flood risk.

26. Welsh Ministers recognise the importance of mapping all local flood risks and of looking beyond the obvious risks posed by main rivers, ordinary watercourses and the sea. The Integrated Surface Water Management Group has been looking at these issues on behalf of Welsh Ministers, however, there is currently no obligation for Local Surface Water Management Plans to be produced in Wales. We would welcome views on their necessity, the issues they should cover if established and the appropriate operating authority to compile them. We would also welcome views on how we could integrate mapping work and plans for different sources of flood risk, for example mapping and plans relating to flooding from main rivers and the sea flooding, local surface water and reservoir inundation.

Is there a need for an enhanced understanding of all local flood risks in Wales, and if so which risks should be included?

Do we need to produce Local Surface Water Management Plans in Wales? If so, what form should they take and what should be included?

Do you agree that local authorities are best placed to lead on local flood risks and specifically surface water flood risk management?

How might different maps and plans for addressing different sources of flood risk be best integrated?

## **Roles & Responsibilities**

27. We are not proposing the removal of any of the existing operating authorities from the delivery framework for flood and coastal erosion risk management in Wales. Each of these organisations has valuable expertise that will be required and the delivery framework

needs to be clear particularly with regard to the plans and responsibility for delivery.

28. We are inviting comments on the following proposed split of responsibilities for the future flood and coastal erosion risk management framework in Wales.

#### Welsh Assembly Government

determine Welsh policy in relation to flood and coastal erosion risk;  
prepare guidance for the delivery of flood and coastal risk management policy  
allocate responsibilities to individual operating authorities across Wales;  
allocate funding in line with identified priorities;  
promote awareness of flood risk within the public; and  
promote and facilitate the implementation of the full range of risk management measures

#### Environment Agency

29. In taking forward their enhanced oversight role the Environment Agency will:

develop the methods and tools required to assess all risk;  
develop risk modelling and mapping processes;  
develop forecasting and warning systems for all flood risks;  
collect, store and share technical data relating to flood and coastal erosion risk management;  
establish the format and content of risk management plans;  
issue guidance on the format and content of risk management plans;  
co-ordinate the risk management plans produced by all operating authorities in line with the requirements of the EU Flood Directive;  
monitor and report compliance with risk management plans;  
provide technical advice and support to other operating authorities;  
undertake the regulator role for reservoir safety.  
report to Welsh Assembly Government on flood and coastal risk and its management

30. In addition to this operational overview, the Environment Agency will remain the lead body in relation to the risks of flooding from main rivers and the sea. As part of this role the Environment Agency will:

assess and manage flood risks from main rivers and the sea;  
prepare flood risk management plans for main rivers and the sea;  
produce flood risk maps for all types of flooding; and  
provide flood warnings for all types of flooding.

#### Local Authorities

assess and manage flood risks from ordinary watercourses;  
assess and manage coastal erosion risks;  
collect, store and share technical data relating to flood and coastal erosion risk management  
lead on all matters relating to local flood risk;  
prepare flood risk maps for all local flood risks;  
communicate the risks of flooding and coastal erosion to local communities;  
encourage the development of community resilience; and  
promote resilience in the built environment via the planning process.

#### Internal Drainage Boards

assess and manage flood risks from ordinary watercourses;

assess and manage local drainage issues;

undertake works to assist local authorities and the Environment Agency as required; and

collect, store and share technical data relating to flood and coastal erosion risk management

31. Other proposed changes to Internal Drainage Boards are contained in Section 3.1 of this consultation document. It is intended that those proposed changes apply in both England and Wales, with the Welsh Ministers having the relevant powers in relation to Wales.

Is the split of responsibility between the key operating authorities appropriate?

Does the suggested split of responsibilities make it easy to understand which operating authority is responsible for which risks of flooding?

Will the suggested split of responsibilities ensure that the gaps in coverage of the current systems are addressed and filled?

## **Flood Risk Management Wales**

32. In Section 2.6 above proposals are set out for changes to the Environment Agency Regional Flood Defence Committees (RFDC) in England. The RFDC in respect of Wales is Flood Risk Management Wales.

33. Flood Risk Management Wales was established in 2006 as a result of an initiative to streamline flood defence arrangements in Wales. That process swept away a complex structure of local and regional committees replacing it with a single Welsh body and since then the committee has developed a more strategic approach in Wales.

34. This has worked reasonably to date, but there is a risk that with the increased responsibilities proposed for the Environment Agency above, the requirements of the committee will become more time consuming and delays in processing work will be experienced.

Furthermore, given the proposed changes to the RFDC in England it is appropriate for us to consider both the role and future status of Flood Risk Management Wales.

### **Role & Remit**

35. The role of Flood Risk Management Wales is closely aligned to that of the Environment Agency. Currently an executive committee of the Environment Agency, Flood Risk Management Wales oversees all of the flood defence functions of the Environment Agency in Wales, but this may not be appropriate given the proposed changes to the role of the Environment Agency and WAG outlined above.

36. The remit of Flood Risk Management Wales could either:

remain as it is now;

expand to fit with the scope of the enhanced oversight role; or

be modified in some other way.

37. If the remit remains as it is now, the Environment Agency will still be required to conduct their flood risk management functions through Flood Risk Management Wales. Expanding the remit of Flood Risk Management Wales to encompass the scope of the enhanced oversight role would ensure consistency between the way the Environment Agency exercises its duties and monitors its own performance, and the way it monitors the performance of other operating authorities.

38. However, as the Committee currently meets quarterly an expansion in their responsibilities and a requirement for the Environment Agency to conduct their functions through Flood Risk Management Wales may lead to delays in the provision of advice or in the assessment of operating authorities' compliance with risk management requirements.

39. Details on the proposals for RFDC in England are set out in Section 2.6 above. In summary Defra are proposing that the RFDC become Regional Flood and Coastal Committees with their remit extended to encompass coastal erosion and flooding from the sea.

Should the role and remit of Flood Risk Management Wales remain limited to the risks of flooding from main rivers and the sea regardless of the role and remit of the Environment Agency?

If the remit of the Committee is to be changed then what should be the extent of the Committee role?

If the role and remit of Flood Risk Management Wales is extended, how often should the Committee meet?

### **Status**

40. Flood Risk Management Wales is currently an executive committee of the Environment Agency. All of the other committees hosted by the Environment Agency are advisory committees. It would be possible to convert Flood Risk Management Wales to an advisory committee, placing it on an equal footing to all other Environment Agency committees.

41. Retaining the current executive status of the committee would be retaining the status quo, which has worked reasonably well to date.

42. As an advisory committee Flood Risk Management Wales would consider Environment Agency proposals and policies in respect of flood risk management and, depending on the allocation of an enhanced oversight role, coastal erosion risk management. They would advise on the content of plans, maps and guidance but would not be required to endorse or authorise action. The Environment Agency would no longer be required to conduct their activities through Flood Risk Management Wales.

43. Whether Flood Risk Management Wales remains an executive committee or becomes an advisory committee it would retain its current responsibilities in respect of levies. We are also considering extending them to include coastal erosion risk management.

44. Details on the proposals for RFDC in England are set out in Section 2.6 above. In summary Defra are proposing that the RFDC become advisory committees, in line with other committee's of the Environment Agency.

Should Flood Risk Management Wales remain an executive committee of the Environment Agency, or should it become an advisory committee and why?

Should Flood Risk Management Wales' existing levy raising powers in respect of flood risk management be extended to encompass coastal erosion risk management.

#### Membership & Appointments

45. Under section 16A of the Environment Act 1995, Welsh Ministers may specify the membership of Flood Risk Management Wales by order made by statutory instrument. The current arrangements allow for a Committee of eighteen members; eight members including the Chair are appointed by Welsh Ministers, eight members are appointed by local authorities and two members are appointed by the Environment Agency in Wales.

46. Welsh Ministers are not proposing any changes to the current arrangements in respect of the membership of Flood Risk Management Wales.

#### Risk Management Planning

47. An effective flood and coastal erosion risk management system requires a robust planning framework. That framework must include a strategic plan which locates the risk areas through a detailed assessment process, defines local policies for managing risks in those areas and identifies strategic actions to delivery those policies.

48. The Flood Directive was developed in response to the major, damaging floods suffered in Europe between 1998 and 2004, it encourages the development of comprehensive flood risk management systems across Europe and applies to both inland and coastal waters. Transposition must be complete by November 2009 and Member States are required to draw up a series of documents as follows:

preliminary flood risk assessments by 22 December 2011;

flood hazard maps and flood risk maps by 22 December 2013; and

flood risk management plans by 22 December 2015.

49. More details on the specific requirements of the Flood Directive are contained in Section 2.7 above. Welsh Ministers are committed to the transposition of the EU Flood Directive into statute via this Bill, and to ensuring that the arrangements in Wales are complementary to those in England. However, there are some differences in the mapping and planning arrangements currently in place in England and Wales which need to be addressed.

#### Current Position

50. The current mapping and planning system in respect of flooding and coastal erosion is centred on the production of Catchment Flood Management Plans and Shoreline Management Plans which include historic observations, detailed surveys, analysis and mathematical modelling carried out primarily by the Environment Agency and local authorities. The system has developed over many years and provides our current understanding of risks.

51. Based on this data the Environment Agency has prepared maps of areas of Wales at risk from flooding from rivers and the sea and, since 2001, this information has been made available on the Agency's website for public scrutiny. On the coast, maritime local authorities have been monitoring coastal processes and this data has been used to underpin understanding of coastal risk.

52. There is currently no equivalent to Catchment Flood Management Plans or Shoreline Managements Plans in respect of other sources of flooding, specifically the local flood risks such as surface water and ground water.

#### Competent Authority

53. Section 2.7 above contains more information on the requirements of the Flood Directive. Within that section it is proposed that the Environment Agency should be the lead competent authority for implementing the Flood Directive, taking the lead on national flood risk matters including main rivers and flooding from the sea, supported by local authorities in relation to local flood risk mapping and planning.

54. Welsh Ministers concur with this approach and intend that the provisions in respect of the competent authority in Wales mirror

those in England, with relevant regulatory powers conferred on Welsh Ministers. We would be interested in your responses to the questions posed in section 2.7.

#### Incorporation of all Flood and Coastal Erosion Risks

55. As is outlined in section 2.7 above, in many respects the Directive's requirements reflect existing and developing practice in England and Wales. However, we acknowledge that there is a requirement to enhance current arrangements in respect of local flood risks.

#### Preliminary Flood Risk Assessments (PFRAs)

56. Welsh Ministers believe the requirement to produce PFRAs only applies in respect of local flood risks, such as surface water and ground water. In line with section 2.7 above we believe that local authorities should be responsible for their completion.

57. In England, Defra are proposing that Strategic Flood Risk Assessments as required by PPS25 would form the basis of the PFRA for local flood risks. Welsh national planning policy in TAN 15 Development and Flood Risk is accompanied by Development Advice Maps which are largely based on Environment Agency Flood Zones, and these form the basis for identifying significant fluvial or coastal flood risks. Flood consequences assessment, which demonstrates that flooding risks are understood and can be managed in an acceptable way, should be undertaken where preferred development options include areas at risk.

58. It is a matter for local planning authorities in Wales, in conjunction with local partners, to consider whether any further work in relation to localised flooding and/or flooding from other sources is required. For specific developments the situation is similar to that in England and site specific Flood Consequences Assessment may be carried out by those seeking planning permission.

59. As Wales does not have SFRAs as operated in England, we need to consider alternative approaches to meeting the PFRA requirements. In paragraphs 23 to 26 above we are consulting on methods for improving our understanding of local flood risks and have asked whether or not we need to produce Surface Water Management Plans. Subject to the views of respondents in relation to those points, we could expand Surface Water Management Plans to meet the requirements of the Flood Directive.

60. Such an expansion would prevent the need to introduce a further planning or mapping requirement in respect of PFRAs for local flood risks. It would ensure that each local authority completed a PFRA in respect of their local flood risks in an easily accessible format that complements the existing arrangements on respect of fluvial flooding and coastal flooding; each source would be subject to a dedicated planning and mapping format.

61. Alternatively, we could seek to either incorporate the PFRA for local flood risks within existing documentation. One example could be to expand the remit of Catchment Flood Management Plans for example. However, this approach would result in one document covering many sources of flooding and would require significant inputs from two or more operating authorities, which could make the process administratively burdensome.

Do you agree that local authorities should be responsible for the production of PFRAs for local flood risks?

Subject to your views in relation to Surface Water Management Plans in paragraphs 23 to 26 above, do you consider them to be a suitable format for the completion of PFRAs in respect of local flood risks?

If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet the requirements of the Flood Directive in respect of local flood risks?

#### Determining Significant Risk

62. Section 2.7 above contains more information on the Flood Directive. Within that section it is proposed that the Environment Agency should lead on determining which areas are considered to be at significant risk of flooding and thus require in need of Flood Hazard Maps and Flood Risk Maps. This consideration will be undertaken in line with the relevant framework with the final selection of areas at significant risk moderated by a quality assurance panel.

63. As local authorities will be required to produce the maps and plans for areas facing significant local flood risks, it is proposed that they will be able to challenge the findings of the Environment Agency under a process to be set out in secondary legislation.

64. Welsh Ministers concur with this approach and intend that the provisions in Wales mirror those in England, with relevant regulatory powers conferred on Welsh Ministers.

### **We would be interested in your responses to the questions posed in section 2.7**

#### Flood Hazard Maps and Flood Risk Maps

65. Section 2.7 above contains more information on the requirements of the Flood Directive. Within that section it is proposed that the Environment Agency should lead on the production of national scale maps, with local authorities leading on the production of maps in respect of local flood risks.

66. Defra are proposing that the requirements for Flood Hazard Maps and Flood Risk Maps within England would be met through the completion of Level 2 SFRAs. As outlined above, SFRAs are not applicable in Wales and we are seeking views on how best to complete PFRAs in respect of local flood risks.

67. Subject to the views of respondents in relation to those points, we could expand Surface Water Management Plans, or whatever

documentation is used to meet the PFRA requirements, to meet the requirements of the Flood Hazard Maps and Flood Risk Maps

68. Welsh Ministers concur with the split of responsibilities for mapping of flood risks and intend that the provisions in Wales mirror those in England, with relevant regulatory powers conferred on Welsh Ministers.

We would be interested in your responses to the questions posed in section 2.7 as well as the ones below.

Do you agree that local authorities should be responsible for the production of maps for local flood risks?

Subject to your views in relation to Surface Water Management Plans in paragraphs 23 to 26 above, do you consider them to be a suitable format for the mapping required in respect of local flood risks?

If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet the mapping requirements of the Floods Directive in respect of local flood risks?

Flood Risk Management Plans (FRMPs)

69. Section 2.7 above contains more information on the requirements of the Flood Directive. Within that section it is proposed that the various flood risk management plans already produced or in development should be coordinated to meet the requirements of the Flood Risk Management Plans under the Directive. These include:

- Catchment Flood Management Plans;
- Shoreline Management Plans; and
- Reservoir flood plans.

70. These would also need to be supported by and coordinated with the plans produced in respect of local flood risks outlined above. Section 2.7 proposes that the Environment Agency should lead on coordinating the various documents, and that the Flood Risk Management Plan will be considered completed once adopted by the Environment Agency.

71. Welsh Ministers concur with this approach and intend that the provisions in Wales mirror those in England, with relevant regulatory powers conferred on Welsh Ministers. This includes the power for Welsh Ministers to call in an FRMP for approval where this is considered necessary.

### **We would be interested in your responses to the questions posed in section 2.7.**

Coordination with the Water Framework Directive

72. Section 2.7 above contains more information on the requirements of the Flood Directive. Within that section it is proposed that the Environment Agency should lead on the coordination of the requirements of the Floods Directive and the Water Framework Directive in its capacity as competent authority for both areas.

73. Welsh Ministers concur with this approach and intend that the provisions in Wales mirror those in England.

Reporting and Review Cycle

74. Section 2.7 above contains more information on the requirements of the Flood Directive. Within that section a timetable for reviews is set out, with a six yearly cycle proposed. Welsh Ministers concur with this approach and intend that the provisions in Wales mirror those in England.

75. The reporting and review cycle provides an opportunity to not only review existing documentation and extend provisions to cover areas newly identified as being at significant risk of flooding, but also provides an opportunity to refine mapping and planning arrangements. Welsh Ministers are committed to reviewing existing arrangements within the six-yearly cycle to ensure that the requirements of the Directive and the requirements of Wales are being met.

76. The Welsh Assembly Government is seeking flexibility to alter the mapping and planning framework for flood and coastal erosion risk management over time, to allow us to take into account future developments and enable us to adapt to the challenges posed by climate change.

Do you agree that the legislation should include flexibility to change the planning and mapping requirements over time to take account of future developments?

### **Funding of Flood and Coastal Erosion Risk Management Activities**

77. In Wales flood and coastal risk management services are funded primarily by the Welsh Assembly Government with funds directed to the Environment Agency and the 22 Welsh local authorities through a mixture of grant in aid and a series of dedicated grant schemes.

78. In addition to the funding provided by the Welsh Assembly Government, the operating authorities in Wales also have some discretion in raising funds for flood and coastal erosion risk management.

79. The Environment Agency has certain levy raising powers in respect of flood defence. These are not in use at present, but as per



paragraph 42 above, we intend to retain them. Local authorities have the freedom to increase investment in local flood risk management already as this is not a ring-fenced aspect of their budgets. Such decisions do, however, involve a process of prioritisation.

80. Funding for the four Internal Drainage Boards in Wales comes from a mixture of special levies on local authorities, agricultural drainage rates and Welsh Assembly Government grants for approved capital schemes. Internal Drainage Boards also have borrowing powers under the Land Drainage Act and may receive contributions from the Environment Agency.

81. The current annual budget for flood and coastal risk management in Wales amounts to approximately £40m and this is split between capital and revenue projects. Funding has increased by more than 50% since 2002, and this trend continues with a recent announcement of additional European Structural Funds support of £30 million.

82. Despite this increase it is apparent that there exists a shortfall between identified investment need and existing budgets. Given the prospect of climate change and the associated increase in pressure on communities at risk from increasing flood and coastal risks, we need to explore alternative funding sources.

83. Proposed changes to the funding arrangements for flood and coastal erosion risk management are contained in Section 3.2 above. Welsh Ministers believe that similar amendments are required to the arrangements in Wales and we would be interested in your responses to the questions posed in section 3.2.

84. Work to consider the longer term funding implications for Wales is underway within the Welsh Assembly Government and more information on proposals and considerations will be made available later in the year.

## **Sustainable Drainage Systems**

85. Section 2.5 above outlines proposals for increasing the uptake of sustainable drainage systems. There are five key aspects to those proposals including:

- the development of national design, construction and performance standards for SUDS;
- a requirement for new developments to demonstrate that they have met national standards for application of SUDS techniques before they can connect any residual surface water drainage to a public sewer;
- a requirement for the appointment of a SUDS Adopting Body to be responsible for SUDS within the public realm;
- a right for the SUDS Adopting Body to drain water from SUDS to discharge water across third party land to watercourses; and
- differentiating SUDS from natural drainage features, controlled waters and sewers.

86. Welsh Ministers concur with the proposals set out in Section 2.5 and intend that the provisions in Wales mirror those in England, with relevant regulatory powers conferred on Welsh Ministers. However, Welsh Ministers have yet to consult on where the responsibility for adoption of SUDS should rest.

In addition to the questions in section 2.5 Welsh Ministers are seeking views on the following questions, which are specific to Wales

### Questions

Which is the most appropriate organisation to take responsibility for adoption and management of SUDS in Wales: local authorities; sewerage undertakers; or another body (please specify)?

Should there be flexibility within the system to appoint different organisations as SUDS Adopting Bodies in different areas?

Should the automatic right to connect to a public sewer be amended for new sites and re-developments as proposed in section 2.5 above?

## **Other Issues**

### Third Party Assets

87. Proposed changes to the designation and management of third party assets are contained in Section 2.10 above. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### Main River Variations

88. Proposed changes to the process for amending the classifications of watercourses and the storage and production of main river maps are contained in Section 2.3 above. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### Consenting and Enforcement

89. Proposed changes to the regulatory arrangements in respect of works on watercourses in England are contained in Section 2.11 above. Welsh Ministers believe that similar amendments are required to the regulatory arrangements in Wales.

90. In paragraphs 19 to 22 above we are consulting on the allocation of an enhanced oversight role to the Environment Agency in Wales, which would embrace all aspects of flood and coastal erosion risk management. Subject to the views of respondents, we would like the Environment Agency in Wales to be responsible for consenting to any works conducted in relation to sea and main river flooding and for coastal erosion, and for the enforcement of any conditions set out in the consents.

91. Defra are proposing that county and unitary authorities and Internal Drainage Boards would take on responsibility for consenting to any works conducted on ordinary watercourses and for enforcing any provisions granted therein. We are consulting on responsibility for local flood risk management in paragraphs 23 to 26 above. Subject to the views of respondents, we would like to make similar arrangements in relation to ordinary watercourses in Wales as are proposed in Section 2.11 above.

#### Reservoir Safety

92. Proposed changes to the designation and management of reservoirs are contained in Section 2.12 above. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

#### Structural Changes - Internal Drainage Boards

93. Proposed changes to the role and governance of Internal Drainage Boards are contained in Section 3.1 above. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

#### Reducing the contribution of Private Property

94. Proposed changes to the contribution owners of private property make to flood risk are contained in Section 3.3 above. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

#### Single Unifying Act

95. Information on the recommendation to create a single unifying Act in respect of flooding legislation contained within Sir Michael Pitt's review of the summer 2007 floods is contained in Section 3.4 above.

## **Water**

### **Introduction**

96. The Welsh Assembly Government provides the strategic direction for water policy in Wales, framed within a complex set of regulatory and operational responsibilities. "One Wales: One Planet - the consultation on a new Sustainable Development Scheme for Wales" together with our Environment Strategy for Wales and its action plans, provide the backdrop for the Welsh Assembly Government's water policy. The Strategic Water Policy Position Statement sets out the Welsh Assembly Government's position on aspects of water policy that have been revised or developed since the publication of the Environment Strategy for Wales in 2006.

97. The Welsh Assembly Government recognises the value of our water environment, its protection and enhancement and is committed to ensuring that we fully meet the requirements of legislation aimed at its protection.

98. The Welsh Assembly Government believes that citizens should be at the heart of water services, within a framework that reflects the unique nature of the water resource and the social dimension within Wales.

### **Background**

99. Water is highly regulated in terms of the requirements that govern the operation of the industry, that ensure that the environmental quality and the quality of drinking waters are maintained and that ensure effective and sustainable management of water resources. European obligations are significant, particularly in relation to water quality.

100. Water legislation is complex and the territorial application of provisions varies. On some issues the Welsh Ministers are responsible for provisions relating to Wales and in others they are responsible for provisions in relation to the area covered by 'water and sewerage undertakers wholly or mainly in Wales'. There is also an important cross-border dimension and in some cases the Welsh Ministers and the Secretary of State need to work together across the border reflecting the physical reality of river basins or catchment areas.

### **Issues to be addressed**

101. Legislation on water, unlike that in relation to flood risk management, has been subject to regular updates. Nevertheless, there are important policy priorities which require primary legislation to take forward and this Bill is intended to provide the vehicle to address these.

102. The water issues to be addressed in Wales are consistent with the areas to be addressed for England. The major areas covered, as set out in the main body of this consultation document, include:

- Hosepipe bans

- Environmental Permitting Programme
- Power of entry - water resource functions
- Minor and consequential amendments to the Water Resources and Water Industry Act
- Water administration regime
- Drinking Water Inspectorate recovery of charges
- Introduction of a mandatory build standard for sewers
- Misconnections
- Development of a project based approach for infrastructure projects in the water sector
- Securing compliance
- Complaint handling powers

103. The consultation document also highlights a number of additional areas where proposals may be brought forward subsequently for inclusion in the final Bill. These include:

- Time limiting of abstraction licenses
- Water efficiency commitment
- Hydromorphology
- Cave Review of Competition and Innovation in Water Markets
- Walker Review of Household Charging and Metering for Water and Sewerage Services

### **Legislative Focus**

104. The Welsh Assembly Government's position on the provisions in the draft Bill are set out in the main body of the consultation document, but this is summarised below for ease of reference.

105. In most areas the Welsh Assembly Government concurs with the proposals and, having made appropriate provision for the Welsh Ministers in the final Bill, that they should apply in Wales (or in relation to water companies wholly or mainly in Wales, if appropriate).

106. There are a small number of areas where the Welsh Assembly Government either has a distinctive position or wishes to seek specific comments. These are addressed in the relevant sections above and the questions set out there apply equally to Wales and England.

### **Proposals in the draft Bill**

#### **Hosepipe bans**

107. Section 4.1 above sets out proposals in relation to hosepipe bans which would widen the scope of existing powers in Section 76 of the Water Industry Act 1991 and allow a wider range of discretionary uses of water to be banned.

108. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers. The draft clauses do not reflect this position.

#### **Environmental permitting**

109. Section 4.2 above sets out proposals in relation to an enabling power that will allow licensing for water abstraction and impoundment to be included in a common system of environmental permitting.

110. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

#### **Power of entry - water resources**

111. Section 4.3 above sets out proposals to amend section 172 of the Water Resources Act 1991 to provide a power of entry for the Environment Agency to install and keep monitoring works or apparatus or to carry out experimental borings in connection with its statutory functions to measure and manage water resources.

112. Welsh Ministers concur with this approach.

#### **Minor and consequential amendments to the Water Resources Act 1991 and the Water Industry Act 1991**

113. Section 4.4 above sets out details of a number of minor and consequential amendments to the Water Resources Act 1991 and the Water Industry Act 1991.

114. Welsh Ministers concur with the approach and intend that the provisions apply in relation to Wales [with any relevant Ministerial functions being conferred on the Welsh Ministers.]

#### **Water Administration Regime**

115. Section 4.5 above sets out proposals to amend the special administration regime in the Water Resources Act 1991 to bring it in line

with modern insolvency practice and to streamline the procedures for transferring a failing company to new owners.

116. Welsh Ministers concur with the approach and intend that similar provisions are included for water companies wholly or mainly in Wales, with the relevant functions being conferred on the Welsh Ministers.

### **Drinking Water Inspectorate Recovery of charges**

117. Section 4.6 above sets out proposals to introduce a new power within the Water Industry Act 1991 to enable Drinking Water Inspectorate to impose a charging scheme which will enable them to recover the cost of their regulatory functions from water companies.

118. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Introduction of a mandatory build standard for sewers**

119. Section 4.7 above sets out proposals to introduce a requirement that all new sewers and lateral drains connecting to the public sewerage system are built to an 'approved' standard to facilitate their automatic adoption by water and sewerage companies.

120. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Misconnections**

121. Section 4.8 above sets out proposals to give water companies the same powers as local authorities to rectify a misconnected sewer to help reduce pollution of the water environment. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Development of a project based delivery approach for large infrastructure**

122. Section 4.9 sets out proposals to enable the creation of regulated, project-based companies responsible for the funding and delivery of infrastructure projects.

123. As section 4.9 notes, these proposals are in the early stages of development and further consultation will be required as thinking develops.

124. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Complaint handling powers**

125. Section 4.10 sets out proposals for assigning responsibility for dealing with complaints against water companies to the most appropriate organisation.

126. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Securing compliance**

127. Section 4.11 sets out proposals in relation to Ofwat's enforcement powers. In particular it proposes that Ofwat's powers to require information from a company that is or may be breaching its obligations should be extended to cover information from companies when they have or are failing to achieve any standard of performance. It also proposes to extend the time limit for the period for which Ofwat can impose a penalty from one to five years.

128. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers.

### **Water proposals beyond the scope of the draft Bill**

#### **Time limiting of abstraction licenses**

129. Section 5.1 above confirms the intention of Defra and the Welsh Assembly Government to publish a joint consultation and impact assessment on time limiting abstraction licenses.

130. Depending on the outcome of that consultation, proposals to take forward time limiting of abstraction licenses may be brought forward as part of the final Bill.

#### **Water efficiency**

131. Section 5.2 above highlights that the Welsh Ministers will consider the recommendations related to water efficiency, that emerge

from the independent Walker Review of Household Charging for Water and Sewerage Services.

### **Hydromorphology**

132. Section 5.3 above sets out proposals to enable the Environment Agency to require access to land in order to carry out improvements to hydromorphological conditions where necessary to maintain or achieve good ecological or chemical status under the Water Framework Directive and other related provisions.

133. The Welsh Ministers concur with the position set out in this section and would welcome views on the proposals contained. If, following the consultation, these provisions are included in the final Bill, the Welsh Ministers would expect any relevant functions to be conferred on the Welsh Ministers.

### **Cave Review of Competition and Innovation in Water Markets**

134. Section 5.4 sets out the UK Government's position on the recommendations of the Cave Review of Competition and Innovation in Water Markets.

135. The Welsh Ministers reserved their position on the recommendations contained in the Interim report and asked the Cave Review team to conduct further analysis considering the impact of possible changes on the generality of bill payers, the unique water company model currently operating in Wales and to examine a broader range of mechanisms for driving innovation in the water sector.

136. The Welsh Ministers will consider the recommendations set out in the final report and then make a decision on what, if any, changes are needed in Wales and consult as appropriate to inform the contents of the final Bill in relation to water companies wholly or mainly in Wales and licensed water suppliers.

### **Walker Review of Charging and Metering for Water and Sewerage Services**

137. Section 5.5 sets out the proposed approach to addressing the recommendation of the Walker Review of Charging and Metering for Water and Sewerage Services.

138. The Welsh Ministers will consider the recommendations set out in the final report and then make a decision on what, if any, changes are needed in Wales and consult as appropriate to inform the contents of the final Bill.