

# Sustainability Committee

SC(3)-15-09 (p3): 21 July 2009

## Report into the implications of the Draft Flood and Water Management Bill in Wales""

### 1 Introduction

1.1 The Draft Flood and Water Management Bill was Published on 21 April 2009. The Draft Bill seeks views on the UK Government's response to the issues highlighted in the Pitt Review of the floods of summer 2007, the transposition of EU regulations on flood risk and water management issues.

1.2 The Draft Bill is in eight parts. The majority of clauses in Part 1 of the Bill, dealing with flood and coastal erosion risk management does not implement new policy in Wales. The proposals for flood and coastal erosion risk management in Wales are contained in a consultation document at Annex A of the draft Bill consultation.

### 2. Background

2.2 The Sustainability Committee agreed to undertake an inquiry into the implications of the Draft Flood and Water management Bill in April 2009.

2.2 The Committee issued a limited call for written evidence to organisations with an interest in flood and water management. A list of the responses received can be found at Annex A.

2.3 The Committee agreed to take oral evidence from two key stakeholders, the Environment Agency Wales and Welsh Water as well as from the Minister for Environment, Sustainability and Housing.

2.4 The Committee held two evidence sessions on the Bill, which took place on 10 and 24 June 2009.

### 3. Issues Raised in Evidence

3.1 A number of key issues were raised by the evidence and several discussed with the Minister.

3.2 The Environment Agency raised concerns about the consultation process. In their evidence they said that Wales was 'one step behind' England. They were concerned that, as part 1 of the draft Bill for Wales was only a consultation on policy and not specific clauses as in the draft for England, the Welsh clauses would not be subject to the same scrutiny as the English ones. The minister highlighted the need to avoid consulting twice on the same policies and assured the Committee that the Welsh clauses in the final Bill would be subject to the same scrutiny as the English clauses.

3.3 We are unhappy with the Minister's response as the current Welsh consultation on Part 1 of the Draft Bill is on policy direction. There have already been consultations on the policy direction in England and the clauses in part 1 are a result of those consultations. There is currently no opportunity for public consultation on the Welsh clauses of the Bill as there is of the English clauses.

3.4 One of the aims of the Draft Bill is to simplify and clarify the roles and responsibilities of agencies involved in flooding. Concerns were raised by several of those who gave evidence about the roles proposed for the Environment Agency and local authorities in the Draft Bill and whether the proposals will actually result in differences for the people affected by flooding.

3.5 We share the concerns raised by the evidence. Throughout our inquiry into flooding in Wales, one of the most commonly raised issues is that of organisations 'passing the buck' and victims of flooding being passed between them before any of them accepting responsibility. We are not convinced that the explanation of the intentions in the Draft Bill given by the Minister that:

"The Environment Agency has the enhanced function for flooding that is not local and local authorities have the function for local flooding"

will help to clarify the situation for flood victims when flooding actually occurs.

3.6 We welcome the Draft Bill's intention to clarify roles and responsibilities in relation to surface water drainage.

3.7 We share the concerns of Welsh Water and other contributors that local authorities may not be the most appropriate bodies to operate and maintain Sustainable Drainage Systems (SUDS) as proposed in the Draft Bill. We welcome the Minister's clarification that she intends that bodies other than local authorities would be able to be named as appropriate bodies in the context of SUDS schemes.

3.8 Welsh Water highlighted the fact that they are not statutory consultees for planning applications. The implication of this is that planning permission could be granted for developments which would overload the existing water drainage and sewerage system. They said that, in practice, they are consulted and their advice is taken in about 95% of cases.

3.9 It is the intention of the Welsh Assembly Government to retain a key role in strategic direction setting and the allocating of funding for flooding. In England these roles are being delegated to the Environment Agency.

3.10 We are concerned about capacity within the Welsh Government to fulfil this role. We have already voiced concerns about capacity issues in relation to the functions being taken on by the Welsh Assembly Government under the Marine Bill (functions which are being performed by the Marine Management Organisation in England).

3.11 We consider that capacity issues related to powers under new primary legislation being transferred to Welsh Ministers rather than arms length organisations could compromise the implementation and delivery of key parts of the legislation.

#### **4. Issues not in the Bill**

4.1 We are concerned about two issues that are not currently contained in the Bill.

4.2 All the evidence we received expressed concern that the findings of the Cave Review had not been included in the Draft Bill and that it would therefore miss out on the vital pre legislative scrutiny stage.

4.3 Great concern was expressed by Welsh Water about the contents of the Cave Review report and their recommendations on competition in the water supply market for non domestic customers.

4.4 We share the serious concerns of our contributors about the implications of the Cave Review for the water market in Wales and especially the potential impact on the Welsh Water not for profit model. We are concerned that the Minister did not go as far as to say that she would not introduce competition into the water market in Wales saying:

"I can assure you that the Assembly Government remains cautious about retail competition, and that we will not take any action that will threaten the Glas Cymru model."

4.5 We are also concerned that the Draft Bill refers to the future inclusion of the recommendations from the Walker Review on water pricing which has not yet been published.

4.6 During our scrutiny of the Draft Bill, a potential anomaly appeared concerning the granting of planning permission to water infrastructure projects in Wales to companies operating in England.

4.7 We are pleased that the Minister has investigated the anomaly and found that it is a drafting error in the Planning Act. We welcome her intention to discuss it with the Secretary of State as soon as possible to resolve the issue.

4.8 There is also an anomaly in the wording of the Draft Bill in relation to planning in Wales, which refers to water companies based "wholly or mainly in Wales" whereas the Planning Act 2008 refers to water companies "wholly or partly" in Wales.

4.9 Despite the Minister's reassurances we are still concerned about the potential for confusion caused by the use of two different terms.

#### **5. Recommendations**

5.1 In the light of the evidence and discussion above, we make the following recommendations about the Draft Bill.

Recommendation 1 - That the Welsh clauses relating to Part 1 of the Draft Bill are subject to the same pre legislative process as the English ones and that there is a separate consultation on the before the final Bill is published.

Recommendation 2 - That draft statutory guidance for England and Wales is produced for consultation at the same time as the Bill clearly outlining the roles and responsibilities of each organisation covered by the Bill and how these roles and responsibilities are to be discharged.

Recommendation 3 - That the Welsh Assembly Government include water companies operating in Wales as statutory consultees in planning applications

Recommendation 4 - The Welsh Assembly Government publishes a detailed assessment of the financial and other resource implications of the additional powers they will be given under the Draft Bill.

Recommendation 5 - That a full public consultation is carried out before any clauses are added to the final Bill based on the recommendation of the Cave and Walker reviews.

Recommendation 6 - That the Welsh Assembly Government clarifies its position on the recommendations of the Cave and Walker Reviews and clarifies its ability to implement different arrangements to England in the water market.

Recommendations 7 - That when the Draft Flood and Water Management Bill is introduced it includes a clause to rectify the anomaly relating to planning permission for reservoirs in Wales.

The Pitt Review: Lessons learned from the 2007 floods - [http://archive.cabinetoffice.gov.uk/pittreview/thepittreview/final\\_report.html](http://archive.cabinetoffice.gov.uk/pittreview/thepittreview/final_report.html)

Independent Review of Competition and Innovation in Water Markets: Final report - April 2009

<http://www.defra.gov.uk/environment/water/industry/cavereview/pdf/cavereview-finalreport.pdf>