Flood and Water Management Act 2010

What are the changes to the regional committees?

The Act provides for the replacement of the existing Regional Flood Defence Committees (RFDCs) by Regional Flood and Coastal Committees (RFCCs). In doing so it will reconcile the legal position with current practice and extend the remit of the committees to include coastal erosion as well as flooding. The Act allows for transitional arrangements and the new committees will continue much of the work of the RFDCs. They will play an important role in guiding the Environment Agency's flood and coastal erosion risk management activities in their region. It is intended that they will also have a wider role in assisting the scrutiny of local authority risk assessments, maps and plans required by the Floods Directive.

The Environment Agency will be required to obtain the consent of the RFCC for the regional programme. This will provide for continued local input to decisions and ensure that the committees will have the final say on implementation of the programme of works which the Environment Agency has determined and brought forward for that region.

Importantly, the committees will retain responsibility for raising the local levy, which enables additional schemes to be funded at a regional level. They will decide how these, and other funds raised locally (such as general and special drainage charges and contributions from internal drainage boards) will be spent.

Why the change of name?

The new name of these committees reflects an extension of their powers to cover coastal erosion, mirroring the extension of the Environment Agency's remit.

What are the provisions on raising the local levy – who will be able to vote on this?

The Act means that the consent of the RFCCs continues to be needed for the Environment Agency to raise funds through the local levy, and for spending this and other money raised locally. The Act provides for regulations (secondary legislation) to be made on the membership and functioning of the committees. It is intended to continue to require a majority of local authority representatives for decisions to raise the local levy. However, there will be potential for making changes in these arrangements if the role of the RFCCs evolves, without the need for primary legislation.

How will RFCC boundaries be determined?

The Act provides for the Environment Agency to establish committees for England and Wales and decide on their boundaries. This means that different boundaries can be set from those that we have at present and that these can be changed in the future. Ministers in England and Wales will have the power to set out in regulations the procedures which must be followed by the Environment Agency in setting these boundaries. Ministers may use these powers to ensure, amongst other things, that there is adequate consultation.

How will RFCC Chairs and members be appointed?

The Act does not set out the numbers of RFCC members or how they will be appointed. Instead it gives regulation making powers to the Minister to lay down requirements relating to eligibility for membership, and appointment and selection procedures. This leaves open a wide range of possibilities, including both appointment (by the Minister or some other body) as well as the election of RFCC members by the public or a group of people such as councillors.

The regulations will set out who will make the appointments of Chairs and members and how they will be made. No firm decisions have yet been taken but Ministers will take into account the views of the RFCCs and other stakeholders and consult further if necessary. Because the appointment procedures will be made by regulations, there is flexibility to change them. Alterations might be required, for example, to reflect changing needs in representation on these committees as well as to revise boundaries. Any proposed changes would be subject to consultation.

Flood and Water Management Act 2010

What does the Flood and Water Management Act mean for Local Authorities?

This factsheet summarises flood management provisions in the Act that affect local authorities in England.

Lead local flood authority

Sir Michael Pitt's review of the flooding in 2007 stated that "the role of local authorities should be enhanced so that they take on responsibility for leading the co-ordination of flood risk management in their areas". The Act provides for this through the new role of the lead local flood authority.

As set out in the Government's response to Sir Michael's Review, the Act defines the lead local flood authority for an area as the unitary authority or the county council. This will avoid any delay or confusion about who is responsible, but in no way prevents partnership arrangements to make full use of all capabilities and experience locally. The Act enables lead local authorities to delegate flood or coastal erosion functions to another risk management authority by agreement.

Local Partnerships

Sir Michael Pitt's Review recommended that the lead local flood authority should bring together all relevant bodies to help manage local flood risk. The important roles played by district councils, internal drainage boards, highways authorities and water companies are also recognised in the Act and these bodies, together with the Environment Agency, are identified as risk management authorities.

The Act enables effective partnerships to be formed between the lead local flood authority and the other relevant authorities who retain their existing powers (with some enhancement), but it does not say what any local arrangements should look like. It requires the relevant authorities to co-operate with each other in exercising functions under the Act and they can delegate to each other. It also empowers a lead local flood authority or the Environment Agency to require information from others needed for their flood and coastal erosion risk management functions.

Guidance and examples of best practice arrangements for local partnerships will be made available to local authorities and, as recommended by the EFRA Select Committee, different bodies' roles can be varied if necessary.

Flood risk management strategies

The Environment Agency will be required to develop a national strategy for the management of coastal erosion and all sources of flood risk for England. This will need to be consulted on publicly before being approved by the Secretary of State and laid before Parliament.

The Act also requires a lead local flood authority to develop, maintain, apply and monitor a strategy for local flood risk management in its area. The lead local flood authority will be responsible for ensuring the strategy is put in place but the local partners can agree how to develop it in the way that suits them best. The Act sets out the minimum that a local strategy must contain, and the lead local flood authority is required to consult on the strategy with risk management authorities and the public.

Local flood risk includes surface runoff, groundwater, and ordinary watercourses (including lakes and ponds). Guidance may, amongst other things, set out in more detail how the national strategy and local strategies should interact and how local strategies will need to take account of plans to manage other sources of risk.

Local authorities will need to consider the full range of measures consistent with a risk management approach in developing their local flood risk strategy. Resilience and other approaches which minimise the impact of flooding are expected to be a key aspect of the measures proposed.

Duty to act consistently with local and national strategies

The Act will require local flood risk management strategies to be consistent with the national strategy. The local strategies will build on information such as national risk assessments and will use consistent risk based approaches across different local authority areas and catchments. The local strategy will not be secondary to the national strategy; rather it will have distinct objectives to manage local flood risks important to local communities.

Duty to investigate and to maintain a register

To ensure greater co-ordination of information and avoid situations where bodies do not accept responsibility, the lead local flood authority will:

- investigate flooding incidents in its area (where appropriate or necessary) to identify which authorities have relevant flood risk management functions and what they have done or intend to do. The lead local flood authority will then be required to publish the results of any investigation, and notify any relevant authorities.
- maintain a register of structures or features which they consider have a significant effect on flood risk in their area, at a minimum recording ownership and state of repair. The register must be available for inspection and the Secretary of State will be able to make regulations about the content of the register and records.

Ensuring progress

To avoid administrative burdens, the Act does not require routine reporting on performance, but allows information to be requested where necessary. Local authorities can bring matters to the Government's attention and if a risk management authority fails to exercise a flood or coastal erosion risk management function, the Secretary of State can direct another authority to carry out that function.

In addition, the Act will enable overview and scrutiny committees in lead local flood authorities to hold all the risk management authorities to account. In this way, the public can be actively involved in ensuring authorities perform.

Works powers

The Act provides the lead local flood authority with powers to do works to manage flood risk from surface runoff and groundwater. Powers to do works on ordinary watercourses remain with either district or unitary authorities, or internal drainage boards. All works must be consistent with the local flood risk management strategy for the area.

Designation of third party assets

The Act provides lead local flood authorities, district councils, internal drainage boards and the Environment Agency with powers to designate structures and features that affect flooding or coastal erosion. The powers are intended to overcome the risk of a person damaging or removing a structure or feature that is on private land and which is relied on for flood or coastal erosion risk management.

Once a feature is designated, the owner must seek consent from the authority to alter, remove, or replace it. If someone does make a change to a designated feature, then the authority may issue an "enforcement notice" which will set out any steps that must be taken to restore a feature. An individual may appeal against a designation notice, refusal of consent, conditions placed on a consent or an enforcement notice.

Sustainable drainage systems

The Act establishes a SuDS Approving Body (the "SAB") at county or unitary local authority levels. The SAB would have responsibility for the approval of proposed drainage systems in new developments and redevelopments, subject to exemptions and thresholds. Approval must be given before the developer can commence construction.

In order to be approved, the proposed drainage system would have to meet new national standards for sustainable drainage. Where planning permission is required applications for drainage approval and planning permission can be lodged jointly with the planning authority but the Approving Body will determine the drainage application. Regulations will set a timeframe for the decision so as not to hold up the planning process.

The SuDS Approving Body (SAB) would also be responsible for adopting and maintaining SuDS which serve more than one property, where they have been approved. Highways authorities will be responsible for maintain SuDS in public roads, to National Standards.

Sustainable drainage systems on private property, whether they are private or adopted, must be designated by the SAB under Schedule 1 to the Act as features that affect flooding risk. The SAB will also be required to place all approved sustainable drainage systems on the register of structures and features (as a separate category).

The National Standards will set out the criteria by which the form of drainage appropriate to any particular site or development can be determined, as well as requirements for the design, construction, operation and maintenance of SuDS. Local authorities are represented on the Project Advisory Board for the development of these National Standards.

The Act, in response to Sir Michael Pitt's Review, also makes the right to connect surface water drainage from new development to the public sewerage system conditional on the surface water drainage system being approved by the Approving Body.

Further information on sustainable drainage systems and drainage is covered in a separate factsheet for property developers.

Other powers

Local authorities will be able to use all their normal powers (in planning, regeneration, local investment, highways and to provide information and guidance) to support their new roles under the Act.

They will take over the Environment Agency's role in deciding whether to allow works by third parties that may affect water flows to take place. They will also continue to be members of Regional Flood and Coastal Committees. These Committees will decide on the local levy raised and how this is spent and will be consulted on all relevant Environment Agency proposals.

Sustainable development duty and environmental works

The Act includes a duty for local authorities, highways authorities, and internal drainage boards to contribute to sustainable development in discharging their flood and coastal erosion risk management (FCERM) functions. This is similar, to the existing duty that the Environment Agency already has.

The Act also provides environmental powers for works that a) have a net beneficial impact, b) are consistent with the national FCERM Strategy and, c) are deemed by the relevant authority to be desirable for the natural environment, the historic environment, landscape, or have amenity or leisure benefits.

Levies

The Act will enable the Environment Agency to issue levies to the lead local flood authority for an area in accordance with section 74 of the Local Government Finance Act in the same way that they could previously raise levies under Section 133 of the Water Resources Act 1991, which will be repealed.

Funding

Defra is committed to funding all net new burdens on local authorities resulting from the new Act, and will monitor the situation as implementation proceeds.

There is a separate factsheet on funding.

The EU Floods Directive

Alongside the Act, the Flood Risk Regulations 2009 have been made to implement the Floods Directive in England and Wales. These regulations outline the roles and responsibilities of the various authorities consistent with the Flood and Water Management Act and provide for the delivery of the outputs required by the Directive:

- Preliminary Flood Risk Assessments (PFRAs), which will allow the identification of areas of potential significant risk.
- Maps showing impact and extent of possible future significant flood events.
- Flood risk management plans, identifying how significant flood risks are to be mitigated.

It is envisaged that initially the local and national strategies (which will take on board work to date in putting together catchment flood management plans, shoreline management plans, and surface water management plans amongst other things) will help to shape the work to be done on the Floods Directive outputs. Over time the maps and plans under the Directive will in turn shape the national strategy and the local strategies.

Flood and Water Management Act 2010

Funding for local authorities

Defra is committed to fully funding net new burdens, and will keep the situation under review

Government is currently undertaking a full Spending Review. It is not possible to pre-empt the outcome of the Spending Review. However, Defra recognises that the Act will place significant extra responsibilities and burdens on lead local flood authorities (county and unitary councils) and is committed to funding local authorities for their flood and coastal erosion risk management .

Net new burdens have been assessed and agreed with the Department for Communities and Local Government (CLG), and estimates and assumptions will be kept under review as implementation takes place. As part of this a joint Defra/LGA review panel has been meeting since March to advise Defra Ministers and LGA Members on resource, capacity, skills and training issues relating to the uptake and implementation of the new powers and duties by local authorities as set out in the Flood and Water Management Act and Flood Risk Regulations.

Authorities are set to receive an extra £36 million a year to fund the leadership role

Following comments on the draft Bill, Defra commissioned additional evidence gathering to estimate the costs of the lead local flood authority. Overall, the evidence suggests there needs to be between £30m and £42m spent by authorities a year, in preparing local strategies and surface water management plans, on capital improvement works, designating third party assets, and resourcing in-house teams, etc. Maintenance of SUDS is considered separately, see below.

The spending review will determine the total amount of funding available to local authorities for flood and coastal erosion risk management, including the new burdens under the Flood and Water Management Act 2010 and the Flood Risk Regulations.

Defra is already funding early action amongst at least half of all lead local flood authorities

As evidence of Defra's commitment to the new role and to provide the necessary resources, the department will spend a total of £16m before commencement to allow at least half of all county and unitary authorities to take early action. An additional £1m is being provided to support local authority flood risk management apprenticeships.

In addition, the need for local authorities to spend more on flooding and coastal erosion was anticipated at the last Comprehensive Spending Review in 2007. As a result the local authority formula grant settlement for the current period to March 2011 included additional funds to spend on flood and coastal erosion risk management, including in levy payments to the Environment Agency and internal drainage boards.

As formula grant is unringfenced, it is for local authorities to decide how much to spend on each of their priorities. So far, local authorities are not spending as much on flood and coastal erosion risk management as expected. We will monitor the situation to see if this continues, before and following commencement of the new legislation.

Other new burdens will also be funded in full, such as SuDS adoption

As well as funding the lead flood authority role, Defra will also make sure that the ongoing costs of maintaining Sustainable Drainage Systems (SuDS), adopted as a result of the new duty, will be funded in full. These costs will be near zero in the first year following commencement but will rise as more and more SuDS are built by developers and adopted by authorities.

As a result of concerns raised by local authorities, Ministers have committed to publish a clear way forward on long-term funding for SuDS maintenance prior to implementation of the Act. This will take account of circumstances faced by local authorities and developers, Whichever option is adopted, local authorities will be able to promote SuDS implementation in full certainty that there will be no shortfall in funding.

The Act will also extend the role of the Regional Flood Defence Committees, to become Regional Flood and Coastal Committees, and as a result allow them to raise funds through the existing 'local levy' for locally important works to manage coastal erosion. Assuming this means the levy will increase by 10%, to reflect the national split between flooding and erosion work, county and unitary authorities will be provided with an extra £2.7m a year in their settlement[1i] . Local authorities may vote as members of the committees to spend more or less than this.

Roles will be paid for by reducing local authority involvement in private sewerage

Private sewerage has been a problematic issue for many years, with individual home and property owners usually unaware of their responsibilities unless something goes wrong and they face a potentially large bill to put things right. Issues can drag on, and if they affect more than one home it can be even more difficult to resolve.

Local authorities, as well as owning property themselves, have historically stepped in to sort out many such issues on behalf of householders. In some cases they have charged householders and recovered their costs, but in many others it has not been possible or appropriate to do that, or councils have seen this as part of a service they provide on behalf of the community. As a result, local authorities have been amongst those calling for the Government to do something about private sewerage, citing it as a significant call on their time and resources.

After a long period of consultation, Government announced in December 2008 that it would transfer responsibility for private sewers to the water and sewerage companies. To inform the earlier consultation stages and the final decision, the Government compiled evidence on the potential costs and benefits of the transfer. Included in this was a survey that assessed local authority involvement in private sewerage, and captured cost data. A third of local authorities responded to the survey and 41 provided cost information. It is likely that some local authorities found it hard to provide numeric data as the costs of dealing with private sewerage are not routinely recorded, and are typically spread across a number of authority budgets such as drainage, highways, housing, etc.

The data that was provided suggested local authority costs could be as high as £125 million a year. For the final estimate, costs recovered from property owners and the proportion of sewerage within ownership of housing associations were removed from the analysis. As a result, the Department's best conservative estimate of local authority savings from the transfer is £50 million a year. The highest cost estimates were also removed from the analysis to suggest, if anything, this may be an underestimate.

As the potential transfer has been known for many years, local authorities may already be making savings by reducing their involvement and postponing work they would historically have undertaken. Separately, Ofwat estimates that water companies could need to spend an extra £130 million a year once transfer takes place, as well as invest over £1 billion in the early years to tackle existing problems with sewerage they will inherit.

The Government has a duty to reflect the estimated savings in future local authority budgets as otherwise taxpayers would be paying for an activity no longer performed. Based on recent outturn data, accounting for the transfer is expected to affect the relevant local authority funding provision by less than 1%.

Other benefits of additional local authority action

It should also be recognised that local authorities are likely to save money as a result of their additional risk management work, and investment by central government and agencies, in that there should be fewer and less severe floods occurring than otherwise. Expenditure on preventing floods is highly beneficial, given that responding and reinstating buildings, roads and repairing other damages can be extremely expensive.

Such savings could be significant in the long-term given projections of climate change. However, the savings are not needed to offset authorities' extra costs until at least 2014/15. If the ongoing maintenance of SuDS becomes funded by other means, as intended the savings will not strictly be needed at all.

It is important to recognise the savings available to local authorities resulting from the additional investment at both national and local levels. This is to prevent activity being paid for twice by the taxpayer and to encourage an "investment to save" culture amongst authorities. Risk management activity should only be funded if the costs are outweighed by the expected benefits.

For the Environment Agency's national investment programme, the benefits of improved defences outweigh the costs on average by 8 to 1 over the long-term. Local authorities should take a benefit/cost approach to everything they do to make sure the costs of plans and investments are well justified.

Ultimately, on top of the risk management activity paid for by taxpayers in general, local authorities can decide for themselves - as part of local strategies - whether extra up-front money should be raised and spent locally to further reduce future flood costs and damages in their area. This would be to avoid costs authorities themselves will otherwise bear, but more importantly, to help mitigate the costly and traumatic impact of flooding on local residents and businesses.

---

[i] *The value of the RFDC local levy was £27.2m in England in 2007/08. This is due to increase to around £30m by 2010/11. Defra is therefore providing for this to increase to approximately £33m a year from commencement.*

Flood and Water Management Act 2010

What does the Flood and Water Management Act mean for internal drainage boards (IDBs)?

The Act recognises and builds on the key role of IDBs in managing flood risk. It received Royal Assent on 8th April 2010. But it will not be in force until commenced by way of a Commencement Order. It is intended that some parts of the Act are brought into force this year, and most other parts in April 2011.

A duty to act consistently with local and national strategies

The Act will require the Environment Agency to develop a national strategy for managing coastal erosion and all sources of flood risk for England. This will need to be consulted on publicly before being approved by the Secretary of State and laid before Parliament. Local authorities and IDBs must act consistently with this national strategy in developing and implementing the local flood risk strategies, and then also act consistently with those local strategies.

IDBs will also have a duty to have a regard to these strategies when performing wider functions.

A duty to co-operate and provide information

All flood risk management authorities will be required to co-operate with any other flood risk management authority, including Welsh Ministers, when they are exercising flood risk management functions. This includes sharing information where it may be useful even if not requested. IDBs must also comply with reasonable information requests from the Environment Agency or lead local flood authorities.

Scrutiny by lead local flood authorities

IDBs will be subject to scrutiny by lead local flood authority overview and scrutiny committees when they are addressing flood and coastal erosion risk management. This will mean that they will need to provide information and respond to reports, and have regard to the recommendations of those committees. Ministers will be able to decide the procedure, which may be laid down in regulations, and this may include allowing local authorities to require the attendance of IDBs at scrutiny meetings.

Power to delegate functions

The Act allows all relevant organisations to undertake flood and coastal erosion functions at the request of another body. IDBs will play a key role in local partnerships led by local authorities. Local authorities will be able to delegate work to IDBs, with their agreement. This will enable arrangements that best suit local needs and circumstances, making the most effective use of capabilities and resource available, to be put in place.

District local authorities and IDBs will continue to manage ordinary watercourses. The Act now allows consenting powers to be delegated. This will mean county local authorities will be able to delegate direct responsibility for consenting of third party works, enabling district councils and IDBs to have effective control of the watercourses they manage.

Powers of direction – defaulting authorities

The Secretary of State and the Welsh Minister will have powers to direct any flood authority to act in default of another flood authority. This is only intended to be used where that authority has failed to deliver and has been given a reasonable opportunity to improve.

Designation of third party assets

The Act provides lead local flood authorities, district councils, internal drainage boards and the Environment Agency with powers to designate structures and features that affect the risk of flooding or coastal erosion. These may include (but are not restricted to) things such as embankments and walls. The powers are designed to overcome the risk of a person damaging or removing a structure or feature that is on private land and which is relied on for flood or coastal erosion risk management.

Once a feature is designated, the owner must seek permission from the authority to alter, remove, or replace it. If someone does make a change to a designated feature, then the authority may issue an "enforcement notice" which will set out any steps that must be taken to restore a feature. An individual may appeal against a designation notice, refusal of consent to remove, alter or replace a feature, any conditions placed on such a consent, or an enforcement notice.

Sustainable development duty and Environmental Powers

The Act includes a duty to contribute to sustainable development for local authorities and IDBs in discharging their flood and coastal erosion risk management (FCERM) functions. This complements the existing duty that the Environment Agency has under section 4 of the Environment Act.

It also provides environmental powers to local authorities, IDBs and the Environment Agency to carry out works that:

a) have a net beneficial impact, taking into account all effects (both positive and negative);
b) are consistent with the national FCERM strategy; and
c) are deemed by the relevant authority to be desirable for the natural environment or other aspects of the environment, such as the historic environment, landscape, amenity or leisure benefits. This is in the context of ensuring that the overall programme of FCERM contributes to all three pillars of sustainable development.

The specific provision for drainage authorities to form consortia

The Act includes a provision to allow IDBs to work in consortia. This will enable IDBs to share administrative, professional or technical services as well as perform flood risk management functions for one another. We see this as a progressive next step towards full amalgamation of IDBs based on sub-catchments by 2013.

Statutory consultees to the SUDS Approving Body on sustainable drainage

The Act introduces a requirement for proposals for drainage systems in new developments to be approved by a unitary or county council SUDS Approving Body. This will ensure sustainable drainage systems are employed where possible, and that they are designed and built to National Standards. The Act enables the Minister to define what requires approval, and to set exemptions, which can be used to make clear the arrangements for construction of IDB drainage assets.

The Act now makes Internal Drainage Boards statutory consultees to the approval process in appropriate circumstances. The Approving Body must consult the relevant IDB if it thinks that the drainage system proposed may directly or indirectly involve the discharge of water into an ordinary watercourse within that board's district.

What is not changing as a result of this Act?

The consultation package, issued alongside the draft Bill in April 2009 included a number of possible wider reforms for IDBs which are not included in the Flood and Water Management Act.

Responses to the consultation identified a number of key issues which we need to explore before any decision on the future supervision of IDBs and associated activities can be made.

In the meantime, the Environment Agency will continue to supervise IDBs and consent to works they undertake. The Government will continue to consider the results of the consultation in deciding which authority should lead on this.

Working with stakeholders on further legislative changes

We are grateful for the consultation responses provided in 2009, and the contribution that different bodies and organizations have made to our workshops over the past year. We will continue to work closely with Association of Drainage Authorities, Natural England, Local Government Association and other key organizations to address the issues raised and develop policies for inclusion in future legislation. **It is not anticipated at this stage that any legislation in the near future will provide for compulsory amalgamation of IDBs.**

Flood and Water Management Act 2010

What does the Flood and Water Management Act mean for reservoir owners?

The Act introduces new arrangements for reservoir safety based on risk rather than the size of the reservoir. For the first time, reservoirs with a capacity between 10,000 and 25,000 cubic metres will be brought within the scope of the Reservoir Act 1975. However, where a reservoir does not represent a risk to public safety, routine supervision and inspection requirements under that Act will not apply.

Regulatory and other burdens will be proportionate to the risk. The Act will require all reservoirs which are 10,000 cubic metres or more to register, but there will be no charge for registration and the information required will be kept to a minimum.

Ministers will have the power to amend the proposed 10,000 cubic metres threshold figure upwards or downwards in light of the evidence which will be collected by the us and the Environment Agency as the first stage in the implementation of the Act as it affects reservoirs.

A reservoir which presents no risk to the public (even if very large) would be subject to lighter regulation than a smaller reservoir which does represent such a risk. While some reservoirs will be regulated for the first time, others will benefit from a lighter form of regulation than they are currently subject to.

The regulatory impact of the Act's provisions as they affect reservoirs will be reviewed within one year of the main necessary secondary legislation coming into force

We will ensure that controls are proportionate to the risks and justifiable. In doing this we can specify what control regime each reservoir needs according to the risk assessment; we can vary the minimum threshold up or down according to the acquisition of knowledge; and we can make exemptions.

We will aim to begin implementation from 2011, starting with the reservoirs already within the 1975 Act. Extending it to those between 10-25,000 cubic metres will be later, so people who are worried about being brought within the Act have plenty of time see what is proposed before making decisions about the future of their reservoirs.

Fishing Clubs and other recreational users

We have taken account of representations made during consultations and adjusted the definition of reservoir undertaker to ensure that the burden on recreational users of reservoirs is proportionate. If, for example, a club's lease is only for fishing rights, they won't be caught at all. However, if their lease brings with it responsibilities for reservoir maintenance for example then they will have a share of the undertaker's responsibilities.

From our discussions with the Angling Trust and Fish Legal we anticipate that many recreational users of small reservoirs will have short term arrangements (vast majority for less than 7 years, with many only for 2 or 3) for use, which do not involve them in the responsibilities of undertakers as now defined in the Act.

Farmers

Many farm reservoirs are low structures remote from built up areas. Reservoirs which pose no risks to public safety will not be designated as high-risk and they will be exempt from the routine supervision and inspection requirements, regardless of their size. We are working on guidance to farmers about irrigation reservoirs to help them judge the effects of the amended Act at the time they are thinking about new builds.

What are we doing outside the scope of the Act

Reservoir legislation and flood authorities

The Environment Agency has produced inundation maps for larger reservoirs, which will feed into flood risk assessments and emergency planning by Local Resilience Fora (emergency services, local authorities, Environment Agency).

Revised spatial planning guidance, which is currently being discussed, will also take account of the mapping capability

The need for inundation maps for the smaller reservoirs covered by the Act will be assessed once they have been registered with the Environment Agency.

Flood and Water Management Act 2010

What the Flood and Water Management Act means for property developers

Encouraging sustainable drainage as part of new developments

Using Sustainable Drainage Systems (SuDS) to manage surface water has a number of benefits, such as improving water quality and the local environment. However, they also provide an important function in reducing the risk of flooding of homes and businesses, as well as adjacent or downstream properties, as a result of heavy rainfall.

The Flood and Water Management Act encourages the use of sustainable drainage in new developments and re-developments. It does this by requiring drainage systems to be approved, against a set of National Standards, before building can commence and a connection to the sewer can be allowed (if needed). It also makes local authorities responsible for adopting and maintaining SuDS.

These measures are necessary because despite positive planning policies, few SuDS are built as part of new developments, even though they can often be more practical and cheaper than conventional surface water drainage. There are powers to exempt some developments from the requirement to have their drainage systems approved, which can allow for a phased implementation, for example.

How these measures will work in practice

National Standards for sustainable drainage

National Standards for the design, construction, operation and maintenance of SuDS are being drafted. These standards will set out the criteria on which the forms of drainage appropriate to any particular site or development can be determined. The National Standards will allow for local conditions to be taken into account, and will consider the costs and benefits of sustainable drainage approaches – including cost to developers.

Approval of drainage plans

The plans for the drainage system would need to be approved, before construction could start, by the SuDS Approving Body (SAB) which will be the unitary or county council for the area. This applies to both permitted developments and those that require planning permission. This will ensure that SuDS are also included in construction that may cover large surface areas, but does not require planning permission.

Where both planning permission and SuDS approval are required, the processes will run together. Applications for the drainage system and for planning permission will be submitted together to reduce burdens for the applicant. The planning authority will notify the developer of the outcome of both the planning permission and drainage approval at the same time, including any conditions of approval. Regulations will set out a timeframe for the approval of drainage application by the SAB, so the planning process is not delayed.

This will encourage pre-application discussions – ideally between developers, planners, highways authorities and the SAB - to ensure that delays to the approval system can be avoided as far as possible. Pre-application discussions should ensure that SuDS are considered at the earliest stages of site design in order to maximise their use on the development and ensure a smooth approval process. SuDS will become a routine feature of new construction.

Non-performance bond

As part of the approval process, the SAB can require a non-performance bond to be paid. This bond will be refunded in full if the work is completed to the satisfaction of the approving body. The size of the bond would not be greater than the cost to build the drainage system. This approach offers buyers reassurance by ensuring that the home owner or local taxpayer does not have to bear the cost of bringing drainage up to standard where a developer has failed to complete a SuDS, or not built it to the approved plan. The Government may provide advice to local authorities on what amounts may be required for bonds.

Adoption of SuDS

Developers have long called for clear arrangements for the long-term maintenance of SuDS. The Act delivers this by placing a duty on local authorities to adopt and maintain SuDS. This gives developers a further incentive to incorporate sustainable drainage in developments. SuDS assets that serve more than one property will be adopted and maintained by the local authority when it has been completed to their satisfaction. Highways authorities will be responsible for maintaining SuDS in roads to National Standards. The drainage system must function as approved, including any conditions, in the plans for the drainage system.

This also gives property owners certainty that the SuDS that serve their property will be maintained, and will continue to provide effective drainage for their homes and businesses.

The right to connect to the public sewerage system

The automatic right to connect surface water to the public network will cease. Connection of surface water to surface water or combined sewers will be dependent on the drainage system being approved by the SAB as meeting the new National Standards. The provisions amending the right to connect applies only to surface water and do not apply to the connection of foul water to the sewerage system - the right to connect newly built foul sewers to the public network remains, but an adoption agreement must be in place with the relevant Water and Sewerage Companies (WaSC).

Appeals

The Act enables appeals against decisions on approval, including where proposals for drainage systems have not been approved, and appeals against use of the bond if the SuDS have not been built to standard.

Agreements on new non-SuDS drainage systems

WaSCs will be obliged to adopt and maintain new foul sewers connecting to the public system, and those (very few) surface water sewers with no SuDS alternative connecting to the public system. This provides assurance for developers and householders that sewers serving new developments will become part of the public sewerage network.

Adoption agreements will be required before connecting into the public sewerage system. The agreements may contain approaches that promote site flexibility and not stifle innovation but must contain provisions to ensure that:

a) New sewers are built in accordance with the proposed Government Build Standard, or, if preferred, alternative standards the developer chooses to agree with the WaSC;

b) and that the WaSC adopts the new sewers.

These particular provisions would not come into force until the Government Build Standard is published by the Secretary of State. The Government is committed to working with stakeholders, including developers, on the Build Standard. The Build Standard will harmonize current different WaSC adoption criteria into one unified national standard, and will be consulted on prior to introduction.

Developers will be able to appeal to Ofwat about agreements on a wider range of issues than they currently can – including disputes on the execution of the build standard.

The Act gives the Secretary of State the power to make regulations on when an agreement is needed and on its contents, e.g. about the Build Standard, bonds and guarantees etc. The Secretary of State may also publish general guidance to which WaSCs (and therefore Ofwat) should have regard.