



Draft Flood and Water Management Bill

April 2009



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



defra
Department for Environment
Food and Rural Affairs



Draft Flood and Water Management Bill

April 2009

Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs

By Command of Her Majesty
April 2009

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(note: each section is independently numbered)



Draft Flood and Water Management Bill

Consultation Paper

Flood and Water Management Bill

April 2009

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Foreword



The drought in South East England in 2004-06 and the nationwide floods of Summer 2007 brought home to us what climate change means. We need to be better prepared in future for both flood and droughts, and ensure that we manage our water resources sustainably.

The draft Flood and Water Management Bill, is an important part of the UK Government's response to Sir Michael Pitt's Report on the Summer 2007 floods. It also gives effect to a number of commitments in both the UK Government's 'Future Water' document and the Welsh Assembly Government's 'Environment Strategy' and 'Strategic Policy Position Statement on Water'. We are publishing our proposals in draft to enable public scrutiny and to encourage full debate on the measures proposed.

There are also two major independent reviews whose recommendations will need to be considered; these are Martin Cave's Review of competition and innovation in water markets and Anna Walker's Review of charging and metering for household water and sewerage services. We will consider recommendations arising from these reviews, including those which require primary legislation. We will also be consulting shortly on the options for time-limiting abstraction licenses which may also need to be reflected in legislation.

The aim of all this is to help protect ourselves better from flooding, to manage water more sustainably and to improve services to the public. We all share an interest in making this happen.



Hilary Benn
Secretary of State for Environment,
Food and Rural Affairs
Defra



Jane Davidson
Minister for Environment,
Sustainability and Housing
Welsh Assembly Government

Executive Summary

- i. This consultation paper seeks comments on a draft Flood and Water Management Bill and on other matters where we wish to seek views before drafting legislation. It sets out the main reasons why the UK and the Welsh Assembly Governments believe we need to change the law and how we propose to change it.
- ii. The draft Bill aims to give effect to the UK Government's response to Sir Michael Pitt's Review, 'Learning Lessons from the 2007 Floods' (June, 2008) published in December 2008 and 'Future Water' the UK Government's Water Strategy for England published in February 2008. The draft Bill also aims to give effect to the flood and water aspects of the Welsh Assembly Government's 'Environment Strategy' its 'New Approaches Programme' including addressing issues identified by Sir Michael Pitt's Review and the Welsh Assembly Government's 'Strategic Policy Position Statement on Water'.
- iii. The draft Bill will create a more comprehensive and risk based regime for managing the risk of flood and coastal erosion, which for the first time embraces all sources of flooding. It will also enable better management of water resources and quality. The Bill will help us to manage and respond to severe weather events such as flood and drought which are set to become more frequent as a result of climate change.
- iv. The draft Bill also ensures that those managing the risk of flood or coastal erosion will take account of other concerns such as sustainability, biodiversity and the whole water cycle.
- v. In addition to consulting on the issues covered by the provisions in the draft Bill, which are contained in Sections 2 and 4 of this document, we are also consulting in Sections 3 and 5 on the detail of how to implement a number of other policies to be included in the resulting legislation to be introduced into Parliament.
- vi. These include consulting on whether a case exists for wider reforms to the way in which flood and coastal risk activity is funded; reforms to Internal Drainage Boards; and the means for resolving neighbourhood disputes over flooding issues.
- vii. Matters of interest to the Welsh Assembly Government are set out in Annex A, which details their policy position and invites comments on a number of policy proposals for Wales.
- viii. In addition to the issues mentioned above, the UK Government and Welsh Assembly Government will each assess the recommendations of Martin Cave's Review of competition and innovation in water markets and Anna Walker's Review of charging and metering for household water and sewerage services. Where they believe it necessary to legislate to implement any changes as a result of these reviews they each intend to do so as part of this Bill. Defra will issue a consultation before the Summer Recess on the retail competition package. The UK Government and the Welsh Assembly Government will be consulting separately on the time limiting of abstraction licenses.

- ix. The draft Bill has several aims but they can be grouped under the three themes of security, service and sustainability. The draft Bill will provide:
- greater **security** for people and their property from the risk of flooding and coastal erosion by creating clearer structures and responsibilities for managing that risk, building on the Government's response to Sir Michael Pitt's Review. It will improve leadership on flood risk, and enable better planning for and prediction and warning of floods. It will introduce a targeted approach to reservoir safety based on risk. It will deliver greater security of water supply in the event of water company failure, and improve the protection of essential supplies during drought;
 - better **service** for people through new ways of delivering major infrastructure projects, better protection of essential water supplies during drought and improving complaints and enforcement procedures; and
 - greater **sustainability** by helping people and their communities adapt to the increasing likelihood of severe weather events due to climate change, encouraging sustainable drainage systems in new developments, protecting communities and the environment better from the risk of flooding, and protecting water resources and improving water quality.
- x. Publishing this draft Bill enables pre-legislative parliamentary scrutiny and public consultation. A full debate on the draft Bill and the other issues raised for consultation will help ensure the legislation is appropriate and can deliver the intended benefits as outlined in the summary Impact Assessment (see Part 4 of this document) which accompanies the draft Bill. The introduction of legislation to Parliament will depend on the availability of parliamentary time.
- xi. Further information on how to respond to this consultation paper is provided in Section 6 of Part 1, which is followed at Annex B by a complete list of the questions asked. The closing date for responses is 24 July 2009. We cannot guarantee that responses made after this date will be taken into account.
- xii. This document has four parts:
- **Part 1: The consultation paper** – this sets out the policy background and rationale for the proposals, summarises the provisions in the draft Bill and explains how they will be implemented;
 - **Part 2: The draft Bill** – the proposed legislative provisions;
 - **Part 3: The Explanatory Notes** – to help the reader in understand what the draft Bill does and how;
 - **Part 4: The summary Impact Assessment** – a summary analysis of the costs and benefits of the proposals contained in the draft Bill and consultation paper. This brings together the results of a series of more detailed impact assessments for separate parts of the policy covered by this document which are available on the Defra website¹.

¹ <http://www.defra.gov.uk/environ/fcd/floodsandwaterbill.htm>

Part 1 – The consultation paper

1. Introduction

1.1 Introduction

1. This document explains the context and rationale behind the draft Flood and Water Management Bill. It sets out the main reasons why the UK and the Welsh Assembly Governments believe we need to change the law in this area and what the legislation is intended to achieve. It outlines the background to the legislation proposed and explains how the key elements are expected to fit together.
2. Publishing this draft Bill enables pre-legislative parliamentary scrutiny and public consultation. A full debate on those measures and the other issues raised for the consultation will help ensure that the legislation is appropriate and can deliver the intended benefits as outlined in the summary Impact Assessment which accompanies the draft Bill.
3. We welcome your views on all parts of this document, and in particular your responses to the specific questions posed throughout Sections 2-5 and at Annex A. Some of these provisions in the draft Bill relate to England, some to Wales and some to both England and Wales. This is highlighted throughout the document. One particular provision applies to Scotland only.
4. This document has four parts:
 - **Part 1: The consultation paper** – this sets out the policy background and rationale for the proposals, summarises the provisions in the draft Bill and explains how they will be implemented;
 - **Part 2: The draft Bill** – the proposed legislative provisions;
 - **Part 3: The Explanatory Notes** – to help the reader understand what the draft Bill does and how;
 - **Part 4: The summary Impact Assessment** – a summary analysis of the costs and benefits of the proposals contained in the draft Bill and consultation paper. This brings together the results of a series of more detailed impact assessments for separate parts of the policy covered by this document which are available on the Defra website.
5. The closing date for responses is 24 July 2009. We cannot guarantee that responses made after this date will be taken into account. Further information on how to respond to this consultation paper is provided in Section 6 of Part 1, which is followed by a complete list of the questions asked at Annex B.

1.2 Why do we need a Flood and Water Management Bill?

6. There are several reasons why we need new legislation for managing flood and coastal erosion risk in England and Wales. These include:
 - our current flood and coastal erosion risk management and reservoir safety legislation reflects outmoded approaches and organisational structures, with its roots in the 1930s and 1940s;

- Sir Michael Pitt's Review of the Summer 2007 floods identified clear gaps in the way that flood risk is managed, particularly in relation to surface run-off and on the need for a more risk-based approach to reservoir safety;
 - the need to adapt to climate change which is predicted to increase flood and coastal erosion risks through rising sea levels, changing patterns of rainfall and flood flows in rivers, and increased risks from surface run-off;
 - the need to transpose new legal obligations such as those arising from the EU Floods Directive;
 - a range of outstanding commitments to legislate arising from water policy statements, and;
 - the need to enhance certain aspects of Ofwat's regulatory powers.
7. Although the current framework for water works well and is more up to date than current law on flood and coastal erosion risk management (the most recent Water Act was passed in 2003), there are several areas where we propose to update existing law to reflect the vision set out in 'Future Water' and the Welsh Assembly Government's 'Strategic Policy Position Statement on Water'.
8. In particular, we would like to ensure that our legislation can cope with the challenges of climate change by protecting our water resources for the long term. There are also important connections between management of flood risks and management of water quality and resources which can be addressed in a Bill covering this range of issues.
9. The draft Bill sets out how we would intend to change the law to deliver policies developed in public consultation over the past few years (e.g. in 'Making space for water' and 'Future Water' in England and the 'Environment Strategy for Wales'). Much of this has already been implemented within existing legislation and organisational frameworks but some changes to the law are now needed to deliver the full vision.

Current framework for flood and coastal erosion risk management

10. The law on flood and coastal erosion risk management was largely established in the 1930s and 1940s. Later legislation has consolidated and updated this earlier law but without fundamentally changing it and is still often concerned with improving the effectiveness of land drainage, for example, by a series of Internal Drainage Boards and other local bodies. Flood defence has come more to the fore but as part of the definition of 'drainage'. In particular current legislation does not fully reflect:
- the creation of the Environment Agency (and before it the National Rivers Authority) as a single, national body responsible for flood defence from main rivers and the sea, rather than a series of local or regional bodies;
 - climate change and other pressures which require a broader range of approaches to managing flood and coastal erosion risk rather than just 'defence';
 - a desire to integrate flood risk management with objectives such as environmental, cultural and social interests;
 - the fact that since April 2004 most funding for the EA's flood works now comes from direct Defra and Welsh Assembly Government grants rather than through levies on local authorities by Regional Flood Defence Committees;

- the risk of flooding from sources other than rivers and the sea;
- the need to implement recent European legislation on flood risk management and the Water Framework Directive; and
- the need for stronger local leadership on local flooding issues and more co-ordination and co-operation between the various operating authorities.

Foresight: Future Flooding (and Pitt Update)

11. The 'Foresight: Future Flooding Study'² (2004) assessed flood risk in the UK over a 30 to 100 year timescale to help inform long-term policy. This included an assessment of how the costs of flood damage and investment requirements were likely to increase over that period given different socio-political and climate change scenarios.
12. Sir Michael Pitt's Review commissioned work to update aspects of this study as part of their evidence gathering. The key message from that update was that the effects of climate change may be more significant than had previously been estimated. In particular:
 - the potential increases in rainfall volume, intensity and river flows are greater; and
 - there is a greater risk to people, property and society from future sea level rise.
13. The update also highlighted the increased risk that we will face from surface run-off in the future and how land use is an important tool in managing that risk. The update indicated that stronger governance at all levels and carefully targeted investment will be required to tackle the increased risks.

Making space for water

14. In 2004, the UK Government published 'Making space for water' which sought views on a range of flood and coastal erosion risk management issues. This was to inform the development of a strategy for managing future flood and coastal erosion risks in England which would:
 - build upon work to contribute to sustainable development and the Government's strategic priorities;
 - address the messages from the Foresight Future Flooding Report and lessons learned from recent floods;
 - address the challenges of climate change, housing development pressures, and rising levels of risk and cost; and
 - be integrated with the management of both the developed and natural environment, using a portfolio of measures including the better management of surface run-off.
15. Following that consultation, the Government published a First Government Response³ which set the agenda for how we would start to implement a new long term strategy. It involved taking account of all sources of flooding, embedding flood and coastal risk management across a range of Government policies, and reflecting other relevant Government policies in the policies and operations of flood and coastal erosion risk management.
16. A number of initiatives have followed in England, including:
 - developing an EA Strategic Overview for flood and coastal erosion risk management;

² <http://www.foresight.gov.uk/OurWork/CompletedProjects/Flood/index.asp>

³ <http://www.defra.gov.uk/environ/fcd/policy/strategy/firstresponse.pdf>

- running a series of pilot studies on how best to integrate management of surface water flood risk and other drainage issues;
 - developing a scheme to encourage adoption of resistance and resilience measures at a property level;
 - revising and updating Planning Policy Statement 25⁴ (PPS25) on development and flood risk;
 - developing a better understanding of different types of flooding (for example the feasibility of groundwater and pluvial flooding mapping);
 - looking at approaches to deliver more sustainable flood risk management on the ground and consider how Government can help individuals and communities adapt to the impacts of climate change;
 - changing how investment decisions are taken, including scheme appraisal, outcome measures and prioritisation; and
 - adopting new policies for managing flood risk assets, including dealing with third party assets and withdrawing from maintenance from uneconomic defences.
17. Much of this work has already been implemented as far as possible within the existing legislation and organisational frameworks but some changes to the law are now needed to deliver the full vision.

Future Water

18. In February 2008 the UK Government published 'Future Water'⁵, a new strategy for England which set out a coherent policy framework for water management and the UK Government's vision for the water sector for 2030. This vision included:
- sustainable delivery of secure water supplies;
 - an improved and protected water environment;
 - fair, affordable and cost-reflective water charges;
 - reduced water sector greenhouse gas emissions; and
 - more sustainable and effective management of surface water.
19. Policy on the issues identified in 'Future Water' has been developed over the past year and is being taken forward either through the draft Bill or by administrative action. The measures being taken forward through the draft Bill include:
- giving Surface Water Management Plans (SWMPs) a stronger role in coordinating development and investment planning (SWMPs will be flood risk management plans under the EU Floods Directive and will also be a tool more generally for local flood risk management);
 - ending the ability to automatically connect surface water drains and sewers to the public sewerage system;
 - encouraging take up of sustainable drainage systems (SUDS), including options for ownership and adoption of these systems; and
 - supporting the EA were to have strategic overview of all forms of flooding and coastal erosion risk management.

4 <http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement25.pdf>

5 <http://www.defra.gov.uk/environment/water/strategy/pdf/future-water.pdf>

20. 'Future Water' also discussed the issue of pollution from phosphorus compounds in domestic laundry cleaning products. In our River Basin Management Plans, under the Water Framework Directive, we are assuming that we will need to have phased out phosphorus in domestic laundry cleaning products by 2015. We are therefore considering a ban on domestic laundry cleaning products containing phosphorus, possibly on a UK wide basis. We consider, however, that if a ban were appropriate it should be taken forward through regulations made under Section 2(2) of the European Communities Act 1972 rather than the Flood and Water Management Bill.
21. In parallel to the publication of 'Future Water' the UK Government and Welsh Ministers commissioned two independent reviews into the water sector. Professor Martin Cave has led the Review of competition and innovation in water markets and Anna Walker is leading the Review of charging and metering for household water and sewerage services. The UK Government and Welsh Assembly Government will each assess their own policies in the light of these reviews. Where they believe it necessary to implement any changes as a result of these reviews they intend to do so as part of this Bill.

Welsh Assembly Government's policy on flood risk management and water

22. In May 2006, the Welsh Assembly Government published the 'Environment Strategy for Wales'⁶ which set out the Welsh Assembly Government's long term strategy for the environment in Wales, setting the direction for the next 20 years. The purpose of the strategy is to provide a framework within which to achieve an environment which is clean, healthy, biologically diverse and valued by the people of Wales. By 2026, the Welsh Assembly Government wants to see its distinctive Welsh environment thriving and contributing to the economic and social wellbeing and health of all the people of Wales.
23. In relation to flood risk management, the 'Environment Strategy' set out the following key outcomes:
 - appropriate measures will be in place to manage the risk of flooding from rivers and the sea and help adapt to climate change impacts; and
 - everyone who lives in a flood risk area will understand the flood risk they are subject to, the consequences of that risk and how to live with that risk.
24. In July 2007, the Welsh Assembly Government launched its 'New Approaches Programme' which aims to transform the way we manage flood and coastal erosion risk in Wales. The Programme has evolved to take account of the findings of the Sir Michael Pitt's Review. It is focused on ensuring that all sources of flood risk are managed effectively looking at both at immediate and longer term pressures, including climate change, that a seamless service is provided with all the relevant operating authorities, and that people at risk of flooding are at the heart of service design and response.
25. Several specific actions have been taken to implement improved flood risk management in Wales:
 - Technical Advice Note 15 – Development and Flood Risk (TAN 15), provides a precautionary framework which guides development away from the floodplain where this is possible and ensures that decisions that allow development on the floodplain must take into account the consequences of flooding over the lifetime of that development;
 - commissioning pilot studies following severe localised flooding in Wales in 2007. These projects, which are currently being evaluated, demonstrate how flood consequences can be managed through strong partnership working and close public engagement;

⁶ <http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/?lang=en>

- ensuring the mapping of critical surface water drainage areas across Wales; and
 - funding the establishment of a coastal monitoring centre which will provide a focal point for coastal data collection and will specifically support our coastal management functions.
26. However, the legislation in Wales now needs to be modernised. Annex A sets out in more detail the Welsh Assembly Government's proposed approach and seeks specific comments.
27. The 'Environment Strategy' sets out the key outcomes the Welsh Assembly Government wants to achieve across the range of environmental priorities including in relation to water. These are that:
- the high quality of our drinking water is maintained;
 - the quality of our groundwater, rivers, lakes and coastal waters is maintained and enhanced;
 - diffuse pollution is better understood and action is being taken to reduce and manage it;
 - water resources are managed sustainably meeting the needs of society without causing damage to the environment; and
 - water is used more efficiently across all sectors.
28. Implementation of the vision set out in the 'Environment Strategy' has been ongoing since 2006. A detailed action plan was published at the same time as the Strategy in 2006 and a second action plan, updating on progress and developing the next set of actions was published in 2008.⁷
29. The Welsh Assembly Government has also published its 'Strategic Position Statement on Water'⁸. It sets out the Welsh Assembly Government's core principles and policies on a number of key areas relating to water in Wales. It builds on the outcomes set out in the 'Environment Strategy' and reflects its priorities set out in 'One Wales'⁹ and the consultation on 'One Wales One Planet – the new Sustainable Development Scheme for Wales'¹⁰.
30. The core principles of the Statement are ensuring accessible safe drinking water, maintaining water and sewerage services at an affordable price and compliance with statutory obligations that drive all round water quality. It also sets out the Welsh Assembly Government's policy on adoption of private sewers, increased competition in the water industry and metering.
31. A wide range actions has been taken to achieve the outcomes set out in the 'Environment Strategy'. The consultation provides an opportunity to progress further. The Welsh Assembly Government's position on the proposals in the draft Bill in relation to water are set out in Sections 4 and 5 and are summarised in Annex A.

7 <http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/actionplans/;jsessionid=tryQJB3pwsGvYyF6twyJbDSkDQLfvvv6Y3BPGWwsJjyGCihphx1P!1614610361?lang=en>

8 <http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/policystatement/?lang=en>

9 <http://wales.gov.uk/about/strategy/publications/onewales/?lang=en>

10 <http://wales.gov.uk/consultations/closedconsultations/sustainable/onewal>

The Summer 2007 floods and Sir Michael Pitt's Review

32. A significant proportion of the damage caused by the Summer 2007 floods was a result of surface run-off in urban areas (i.e. rainwater running over the surface of the ground or ponding in low spots). It highlighted, the serious gap in our legislation and organisational arrangements for managing flood risk from sources other than rivers and the sea. A better understanding of surface water (and groundwater) flood risk also needs to be developed as current modelling techniques and technology are not designed to consider the complexities of this type of flooding.
33. Sir Michael Pitt's Review¹¹ identified 92 recommendations for change. In December 2008 the UK Government published their response¹² and committed to taking action on all of these recommendations. Most of the recommendations do not need legislation, but key recommendations which are being addressed in the draft Bill are:
- providing for flood and coastal erosion risk management, rather than simply 'defence' in England;
 - creating a strategic overview role for the EA for all flood and coastal erosion risk management in England. This includes developing tools and techniques for managing all forms of flood risk – whether by the EA or local authorities;
 - giving local authorities a local leadership role in England, including taking the lead in managing surface water and groundwater flood risk; and
 - replacing existing reservoir safety legislation with a new risk-based inspection and enforcement regime in England and Wales.
34. The Welsh Assembly Government considered the recommendations made by Sir Michael Pitt carefully. While the Review was primarily concerned with the floods in England in 2007 there were clear implications for Wales. Welsh Ministers felt that the findings were consistent with the work already underway in Wales in respect of flood and coastal erosion risk management and have committed to take the recommendations into Wales' future flood and coastal risk management systems and ensuring a more holistic and risk based approach.
35. A risk based approach to both flooding and coastal erosion has been advocated by Welsh Ministers for a number of years. The Welsh Assembly Government's 'New Approaches Programme' aims to move the existing systems from their traditional defence-based approach incorporating a wider range of risk management measures. The draft Bill provides the opportunity to further embed and strengthen many of the principles of the 'New Approaches Programme', in light of the findings of Sir Michael Pitt's Review, amongst other studies.

Climate change

36. The latest future climate change projections, UKCP09, due to be launched in early Summer, will provide up to date information on the potential changes in precipitation and other climate variables across the UK from a national to a local level. UKCP09's approach to managing uncertainties in the information will help us assess flood risks more effectively.

11 <http://www.cabinetoffice.gov.uk/thepittreview>

12 <http://www.defra.gov.uk/environ/fcd/floods07/Govtresptopitt.pdf>

37. With future UK climate likely to see rising temperatures, wetter winters, drier summers, more intense rainfall events and greater climate variability, we can expect to experience higher water demand, more widespread water stress with increased risk of drought, more water quality problems, as well as greater risks to people and property from flooding, increased sea levels and coastal erosion.
38. The Government has produced this draft Bill to respond to these challenges. and any potential impacts that future updates to UK climate modelling and science identify. The drought of 2004-06 was not a one off and pressures on water resources are set to increase. Public supplies were maintained as a result of restrictions on non-essential use and the excellent public response to the situation. Even so, a third dry winter could have caused serious problems for many and we now need to update legislation in this area to ensure that adequate measures are in place in the event of future problems.

EU Floods Directive

39. The Directive followed major flooding across Europe in recent years. The Directive requires member states to develop and update a series of tools for managing flood risk, in particular:
 - preliminary flood risk assessments;
 - flood risk and flood hazard maps;
 - flood risk management plans;
 - co-ordination of flood risk management at a strategic level;
 - improved public participation in flood risk management; and
 - co-ordination of flood risk management with the Water Framework Directive.
40. The draft Bill includes provisions that will transpose these requirements into law in England and Wales.

1.3 Territorial extent

41. The draft Bill is intended to lead to legislation which applies largely across England and Wales. The Welsh Assembly Government supports the need for a Flood and Water Management Bill to manage water resources better and minimise the risks of flooding and coastal erosion, and has been working with Defra throughout the development process to ensure that the proposed Bill is suitable for Wales.
42. Subject to the results of further consultation in several areas, many of the proposals for England will also apply in Wales. However the current position is that in several areas the draft legislation included in this document is drafted to implement new policy in England only. More information on the Welsh Assembly Government's proposals is set out in Annex A.
43. In general, where new powers are being created in England, it is intended that similar powers will also be created in Wales. The UK Government will have relevant functions for England and for water and sewerage companies wholly or mainly in England. The Welsh Assembly Government will have functions for Wales and for water and sewerage companies based wholly or mainly in Wales.

44. In addition to the questions raised throughout Sections 2-5 Welsh Ministers are seeking views in relation to both the delivery framework for Flood and Coastal Erosion Risk Management within Wales and wider issues on water policy in Wales, which are set out in Annex A.
45. The draft Bill also includes one specific provision which applies to Scotland only - a clause to abolish the Scottish Fisheries Committee. The clause does not trigger the Sewel Convention. The Fisheries Committee, which was set up under a pre-devolution enactment, remained a reserved matter post-devolution in 1999.

1.4 Cross Border Issues

46. Ofwat, the Environment Agency, the Drinking Water Inspectorate and the Consumer Council for Water cover both England and Wales. In producing the draft Bill, where appropriate their need to operate different policies for water companies wholly or mainly in Wales, and wholly or mainly in England has been borne in mind.
47. Two River Basin Districts, the River Dee and the River Severn, also cross the border between England and Wales. Where the draft Bill would require plans to be coordinated at a River Basin District level for the purposes of the Floods Directive, the Welsh Assembly Government and Defra have worked together to ensure that the systems introduced complement one another.

1.5 Regulatory burden

48. The impact assessments published on Defra's website provide analysis and justification of the costs and benefits of different intended policies. They also explain how a risk based approach has been used to ensure the draft Bill contains appropriate focussed proposals where regulation is necessary. We have taken steps to ensure that policy is in line with better regulation principles, so that it is:
 - **Proportionate:** Sir Michael Pitt's Review, 'Future Water', and 'Making space for water' are accepted main drivers for implementation, and impact assessments which have been scrutinised by across Government provide the rationale and cost benefit analysis for all these policies We are conscious of the need in all cases for any burdens to be fully justified by the circumstances and are consulting in this document on several areas where it might be possible to reduce burdens further;
 - **Accountable:** all impact assessments have been published on Defra's website, so that stakeholders and the public can see what evidence has been used to calculate the cost: benefit ratio of the various intended policies; specific notification and appeals mechanisms have been provided for where appropriate and all actions by regulators will be subject to judicial review in the normal way;
 - **Consistent:** Policies have been developed in line with better regulation guidance and HMT's standards for 'Managing Public Money'¹³. The detailed policy being brought forward to manage surface water more effectively is in line with the EU Floods Directive; the Government has ensured there is no 'gold plating' in its implementation of Directives;

¹³ 'Managing Public Money' http://www.hm-treasury.gov.uk/d/mpm_whole.pdf

- **Transparent:** Regarding floods, since the Government's response to Sir Michael Pitt's Review, Defra has written to all local authority Chief Executives in England to make them aware of the direction which flood risk management will be moving in, so that they can prepare for the changes in legislation. There will also be seminars held during Summer 2009 where reservoir owners can discuss the implications of the legislation with Defra officials;
- **Targeted:** In the current climate it is even more important to ensure that regulation is developed on a risk based approach. This is the main change – and benefit of our proposals for legislation on floods and reservoirs.

49. We will ensure that all regulatory elements of the Bill reflect these principles and consider whether there is merit in placing them on the face of the Bill.

1.6 Commencement

50. The Bill has been drafted so that each part of it will only come into effect when the relevant Minister makes an order to that effect. It has been drafted in this way to ensure that any regulatory measure will only come into effect when the circumstances are appropriate. Prior to introducing any Bill before Parliament we would make changes to ensure that insofar as that subject matter is devolved, or is to be devolved, the Welsh Ministers will determine when the Bill will come into force in Wales.

1.7 Queen's consent

51. At this stage, we do not anticipate the draft Bill will have significant impacts on the prerogative or on any interests of the Crown or the Duchies of Lancaster or Cornwall. We will ensure any implications for them are fully considered before the legislation is introduced into Parliament, and will seek their consent if it does affect them.

1.8 Offences and sanctions

52. Both the Hampton¹⁴ and Macrory¹⁵ reports identified the need to move away from inflexible enforcement regimes which restrict regulators to processes of criminal prosecution, toward more proportionate, risk-based civil sanctions regimes. At the moment most of these in the draft Bill remain criminal sanctions but we intend the resulting legislation to contain the power to enable appropriate civil sanctions to be introduced once sufficiently detailed proposals have been developed and consulted on.

53. The draft Bill contains a number of measures setting out offences and corresponding sanctions, which are most readily described in the Explanatory Notes to the draft clauses. The policy areas and Bill Parts in which these appear are:

- Environment Agency consenting and enforcement activity (Parts 1, 2 and 7)
- Designation of flood defence assets owned by third parties (Part 2)
- Reservoir safety (Part 3)
- Waste of abstracted water (Part 6)
- Non-essential uses of water during drought (Part 7)

¹⁴ 'Reducing Administrative Burdens' by Sir Philip Hampton (2005)

¹⁵ 'Regulatory Justice: Making Sanctions Effective', by Professor Richard Macrory (2006).

54. Depending on the outcome of this consultation exercise, other proposals in this document could require provision for offences and sanctions to be drafted. Any such requirement would be developed in conjunction with Ministry of Justice, Home Office and Department of Business, Enterprise and Regulatory Reform as appropriate.

1.9 The consultation process

55. The publication of the Bill in draft will allow for pre-legislative Parliamentary scrutiny and ensure a full debate on the measures proposed. In Sections 2 and 4 of this document we are consulting on the issues covered by the provisions in the draft Bill. As the Bill is a draft, it does not yet contain all the transitional and consequential provisions that will be necessary when it is introduced into Parliament for debate and eventual enactment.
56. We are also consulting on the detail of how to implement certain other policies so they can be incorporated into the resulting legislation. These are included in Sections 3 and 5 and Annex A of the document.

1.10 Style and accessibility of the draft legislation

57. Furthermore the Office of Parliamentary Counsel (OPC) which is responsible for drafting primary legislation is examining different methods of testing and gaining feedback on its output to confirm strengths and identify weaknesses. In conjunction with our consultation on the substance of the legislation OPC is seeking your views on the style of the legislation. We are therefore seeking your comments on presentation, structure and other drafting issues and seek your responses to the following questions:

1. How far, in general, would you say that the draft legislation is written in a reasonably clear style that is likely to be understood by readers?
2. In general, do you think the individual clauses are too long, too short or about the right length? How far is their overall order in the draft legislation reasonably logical and easy to follow?
3. In general, do you think the individual sentences in the draft are too long, too short or about the right length and is their structure too complex, too simple or about right?
4. Please give examples of anything in the style of the draft legislation that you particularly liked or disliked. Please also give your reasons.
5. Please give examples of provisions that you thought helpfully simple or well expressed or ones that could be made simpler or otherwise improved. Please also give your reasons.
6. Are there any drafting techniques (such as cross-references to other provisions of the draft legislation) that you would like to see used more or less?
7. Please suggest any improvements to the way in which legislation is drafted that you think would make it easier to understand and apply.

2. Flood and coastal erosion risk management: issues covered by draft Bill provisions

2.1 New approaches to flood and coastal erosion risk management (Clauses 2-14)

The Bill will put in place a new approach to flood and coastal erosion risk management. It will cover a wide range of sources of flooding and enable management of both the probability and the consequences of flood and coastal erosion risk.

Introduction

58. The provisions in the draft Bill would change the effect of the law in England only. The Welsh Assembly Government supports the principle of this change and the intention is to extend these provisions to include Wales. Welsh Ministers will determine how the powers will apply in Wales.

Current position

59. Current flood and coastal erosion legislation in England and Wales is narrow both in its coverage and the tools it provides to manage the risks. The legislation covers only flooding from rivers and the sea. Surface run-off, which caused much of the damage in the Summer 2007 floods, is not adequately covered and neither is flooding from groundwater sources.
60. Currently, the law is based on the concepts of flood defence, drainage and coastal protection. This reflects historic, essentially structural, approaches of stopping or controlling floods or erosion. The law does not provide the flexibility to adopt a broader range of approaches necessary to manage flood and coastal erosion risk in the face of current challenges, including the impacts of climate change. An approach of building ever higher and stronger defences is not sustainable. Moreover, the current legislation does not explicitly recognise that occasional flooding can be good for some natural habitats and bring wider biodiversity and amenity benefits.

Proposals in the draft Bill

All sources of flooding

61. The floods of Summer 2007 clearly demonstrated that flooding can be caused by a complex interaction of a range of sources, especially in urban areas. The Government therefore believes that the law needs to address all sources of flooding for management of flood risk to be effective.¹⁶

New approaches to flood and coastal erosion risk management

62. Risk is the combination of (a) the probability of an event and (b) its consequences. Risk management therefore includes measures to manage the likelihood of an event, and its impacts (which can be physical, cultural, psychological, environmental or economic). Often the impacts of floods can be harmful but in certain circumstances they may be beneficial (e.g. for some natural habitats).
63. In the past the focus was on steps to prevent floods, but in recent years measures to address the consequences have increasingly also been adopted. These reflect a recognition that flood and coastal erosion can never be absolutely prevented or predicted.

¹⁶ With the exception of that caused by a failure or blockage in the sewerage system which is covered by water and sewerage companies under a completely different organisational and regulatory framework

64. In the case of coastal erosion, for example, the presence of defences can lead to erosion problems being transferred further along the coast. In flood risk areas, there is also always the possibility of an event occurring that is more extreme than the defence structures were designed to cope with. In heavily urbanised areas only a small difference in where intense rainfall lands can make a big difference to the impact of the surface run-off, making this difficult to predict or plan for.
65. While protection can be maintained or improved in many areas, it may be necessary to let some places flood more frequently in future. It will be important to understand the potential consequences and help communities to become more resilient and adapt to changing levels of risk.
66. Government policy is therefore to manage flood and coastal erosion risks by a 'portfolio' of measures which are in addition to the traditional approaches of defence, drainage and protection. Such measures include risk maps, awareness campaigns, flood warnings, emergency planning and response management, community defences, resilience measures, installation of sustainable drainage systems (SUDs), changes to land management and support to individuals or communities to adapt to change. This includes help being given to individuals to make changes to their properties to help protect the fabric, fixtures and fittings from flooding, or to reduce the cost and time of recovering from flooding.
67. Both policy and, in many instances practice, have moved on since the existing legislation was created. A range of practices is already used to manage flood risk rather than simply defend or protect, but sometimes this is based on an extended interpretation of the legislation or through the use of pilots.
68. Currently, the EA, local authorities and Internal Drainage Boards have a number of powers allowing them to undertake various flood defence and coast protection works. These are picked up in the draft Bill as flood and coastal erosion risk management functions as set out in clauses 13 and 14. However, on their own, these powers would not enable those bodies to do all the things for flood and coastal risk management illustrated in clause 7(3).
69. We have therefore introduced new powers in the Bill which begin to achieve our aim of allowing those bodies to undertake a wider suite of flood and coastal risk management measures in the future. Clause 34 is part of this and will be developed further for the final Bill. These works powers will be accompanied by various protective measures, such as a requirement on those bodies to give notice of intended works, provisions for members of the public to make objections, appropriate compensation provisions and provisions that will enable the compulsory purchase of land. These protective measures, and others, are being worked on, and will be inserted for introduction.

Adaptation

70. The draft Bill does not explicitly make any provision to adapt to climate change. Instead we have set out an approach that provides scope to manage all risks, of which climate change is a key one. Adaptation as a management response includes a whole range of approaches: from building defences, providing complementary flood storage to extend the life of a scheme, to the provision of information and support to adapt to and live with risk and its potential impacts.
71. It also covers other approaches, such as avoiding inappropriate development in areas of flood risk, making buildings resilient to flooding, or moving assets out of risk areas where this is practicable and feasible. Thus the broadened approach of flood and coastal erosion risk management is also essentially about adaptation and building adaptive capacity.

72. The Climate Change Act 2008 addresses the issue of adaptation to the full range of climate change risks. It introduces a power for the Secretary of State to require public bodies and statutory undertakers (for example organisations such as water companies) to carry out their own risk assessments and make plans to address those risks. The Government will be consulting on its strategy for using this power later this year. In addition, the Government must report at least every five years on the risks to the UK of climate change, and publish a programme setting out how these impacts will be addressed.
73. In order to respond to challenges of climate change, bodies with direct responsibilities for managing flood and coastal erosion will need to work together to assess and manage these future risks. Several aspects of the Bill will help with this, including the expanded definition of risk management, and the focus on risk assessment, long term planning and duty to co-operate covered later in this document.

Resilience

74. Resistance refers to those household measures that prevent the water entering the building, such as door guards, and resilience refers to those measures that enable a property to recover more quickly from flooding, such as water proof fittings and wall linings.
75. A year after the Summer 2007 floods there were around 3,400 people either partially or wholly still out of their homes, mainly because they were waiting for either their properties to finish drying out or for repairs to be completed. Resilience, the ability of communities or buildings to cope better with the impacts of flooding, is therefore an important part of adaptation and the Government's policy is to encourage property level flood resilient measures and emergency planning responses in England and Wales.
76. The Government has already launched a grants scheme in England (through local authorities) for household level flood resistance measures. Existing legislation makes delivering local funding for measures that are considered to be for resilience purposes, difficult.
77. With the proposed new definition of risk management in the draft Bill, we could cover resilience measures as well, ensuring that the most appropriate combination of measures are chosen for any given property. For example, resilience measures may be appropriate in locations that are vulnerable to deep flooding or where little advance warning of flooding is available or possible (so making it difficult to install flood barriers in time before flooding starts).
78. In Wales, the Welsh Assembly Government has trialed a similar initiative using existing legislation to encourage household level improvements. However this has proved to be both bureaucratic and limited to resistance measures.

Land management and working with natural processes

79. The Government also wants to integrate management of flooding and coastal erosion to recognise the links and dependences between different policy areas and activities such as the impact that land management has on flood risk and the effects that flood management has on the environment. Understanding and working with natural processes to manage flood and erosion risk is fundamental to this approach. We want to work with natural processes of flooding and erosion at a local scale.
80. In March, Defra announced £1million funding for three projects designed to manage flood risk in places where traditional structural solutions are unaffordable or unsustainable. These demonstration projects are designed to illustrate the benefits and encourage the take-up of such integrated approaches to flood risk management.

81. We want to enable and encourage those who manage flood risk to achieve the benefits of doing so in the light of wider policy objectives such as maintaining good soil quality, landscape and healthy resilient natural environments. For example, the new approach to flood and erosion risk management in the draft Bill is intended to allow authorities to:
- increase the probability of flooding in one place where it is justified because it will lead to a net reduction in flood risk elsewhere;
 - increase flooding in specific areas where this is justified to gain social and environmental benefits; and
 - use their flood and erosion risk management functions to restore natural processes to meet environmental objectives and encourage land management practices which reduce run-off where this will reduce flood risk.
82. In certain circumstances, the EA or other bodies may wish to allow or create flooding solely to achieve environmental benefits. The environmental enhancement clauses in the draft Bill to enable this approach will be supported in any resulting legislation by protective measures comparable to those in paragraph 68.

8. Are you content with the definitions of ‘risk’ and ‘risk management’ in the draft Bill?
9. Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as resilience, and that it should be sufficiently flexible to accommodate new approaches may be developed in future?
10. Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation?
11. Does the proposed approach to flood and erosion risk management:
- facilitate and encourage authorities to make effective links between land management and flooding and erosion?
 - enable and encourage authorities to play an appropriate role in the delivery of wider multiple objective projects through the use of their flood and erosion management functions, including projects that are specifically required to achieve environmental, cultural and social outcomes?
12. Are there any approaches to flood and coastal erosion risk management that should be adopted but which the draft Bill would not allow?

Contribution to sustainable development

83. The Government’s aim for flood and coastal erosion risk management, as set out in ‘Making space for water’, is to deliver the greatest environmental, social and economic benefit, consistent with the Government’s sustainable development principles. The EA already has a duty to make a contribution to achieving sustainable development under the Environment Act 1995.
84. The Government considers that local authorities and Internal Drainage Boards should also contribute towards sustainable development in carrying out their flood and coastal erosion risk management activities. This would include planning for risk in both the short and long-term and understanding the possible impacts and appropriateness of management responses in the longer term.

85. The EA will be empowered to provide guidance to other flood and coastal erosion risk management operating authorities on how this should be achieved. This guidance relates to the application of the EA's national strategy for flood and coastal erosion risk management and operating authorities will be required to act in a manner consistent with the guidance and the strategy.

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

2.2 Future roles and responsibilities (Clauses 15-49)

The Bill will give the Environment Agency a strategic overview role, provide for a new local authority leadership role in local flood risk management and clearly set out which body is responsible for managing the risk.

Introduction

86. The provisions in the draft Bill would change the effect of the law in England only. The Welsh Assembly Government supports the principle of this change in policy and the wider clarification of roles and responsibilities for Flood and Coastal Erosion Risk Management (FCERM) for operating authorities. Welsh Ministers have yet to determine how best to meet the needs of Wales in relation to this issue and further details on Welsh Assembly Government policy proposals in this area are contained in Annex A.

Current Position

87. Flood risk management is a complex area and the responsibilities of different bodies are not currently clear. Defra has policy responsibility for flood and coastal erosion risk management in England, whilst delivery on the ground in relation to river and coastal flooding is the role of operating authorities – the Environment Agency (EA), local authorities and Internal Drainage Boards (IDBs). No organisation currently has any responsibility for flooding from surface run-off or groundwater.

88. The EA is also currently obliged to arrange for all of its flood defence functions to be carried out by Regional Flood Defence Committees (RFDCs). This creates problems of accountability, not least because Defra now provides most funding direct to the EA and holds its Board to account for its expenditure and delivery of targets and outcomes. On the other hand, the EA, through the RFDCs continue to raise levies on local authorities to support locally important flood management work that is not covered by Defra funding.

Proposals in the draft Bill

89. In developing proposals for the draft Bill, the Government has had four objectives:

- to provide the greatest possible clarity and accountability about who is responsible for what, including for leadership at a national and local level;
- that the roles and responsibilities of existing delivery organisations are retained wherever possible to ensure the continued engagement of local knowledge and expertise;
- to provide flexibility for different delivery organisations to deliver flood and coastal erosion risk management on the ground; and
- to promote the growth of effective local partnerships and to provide a strong duty on all bodies to cooperate and share information.

90. Figure 1 below sets out the proposed roles and responsibilities for all organisations under the draft Bill.

FIGURE 1 PROPOSED FUTURE ROLES AND RESPONSIBILITIES FOR FLOOD AND COASTAL EROSION RISK MANAGEMENT IN ENGLAND

<p style="text-align: center;">Environment Agency</p> <p style="text-align: center;">Strategic overview role</p> <ul style="list-style-type: none"> • Setting National Strategy for Flood and Coastal Erosion Risk Management. • Support and guidance to LAs, e.g in producing flood risk assessments and plans. • Develop modelling, mapping and warning systems. • National investment in flood and coastal erosion risk management measures. • Report to the Secretary of State on the state of the Nation’s flood risk assets. • Powers to instigate works on non-EA assets and channels when directed to do so by the Secretary of State. • Statutory consultee on flood (and possibly in future coastal erosion) planning applications. <p style="text-align: center;">Delivery/executive role</p> <ul style="list-style-type: none"> • Flood risk management on main rivers and the sea. • Coastal erosion risk management work (concurrently with local authorities). • Flood warnings for all sources of flooding. • Produce and contribute to strategic plans. • Consenting and enforcement powers for sea and main river flooding. • Category 1 responder under the Civil Contingencies Act 2004. 	<p style="text-align: center;">Local Authorities (LAs)</p> <p style="text-align: center;">Local leadership role (county councils in two tier areas)</p> <ul style="list-style-type: none"> • Setting Local Strategy for local flood risk management. • Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater. • Production of local flood risk assessments, maps and plans including an asset register. • Improved drainage and flood risk management expertise. • Co-ordinate Surface Water Management Plan production. • Drainage from non-Highways Agency roads • Prioritising local investment. • Consenting and enforcement powers for certain works affecting ordinary watercourses. • Promoting partnerships with local planning authorities to produce Strategic Flood Risk Assessments. <p style="text-align: center;">Delivery/executive role</p> <ul style="list-style-type: none"> • Powers to do works for surface run-off and groundwater flood risk. • Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies. • LFRM decision-making integrated into local asset management and investment programmes. • Category 1 responder under the Civil Contingencies Act including local delivery of flood warnings.
<p style="text-align: center;">EA’s Regional Flood and Coastal Committees (currently Regional Flood Defence Committees)</p> <ul style="list-style-type: none"> • Advisory/consultative role to EA and LAs on flood and coastal erosion approaches, priorities etc. • Consent to levies for local priority flood and coastal erosion risk management work with executive responsibility for work in this area. 	<p style="text-align: center;">Internal Drainage Boards, district authorities (in two-tier areas),highways bodies, water companies</p> <p style="text-align: center;">Executive/Delivery Role</p> <ul style="list-style-type: none"> • Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies. • We consult in section 3 on IDB structures, powers and levy raising options.

Environment Agency

The Bill will give the Environment Agency the tools to deliver its strategic overview role for flood and coastal erosion risk management.

Current Position

91. The Environment Agency (EA) was established as an England and Wales body under the Environment Act 1995, and inherited a range of responsibilities flood defence responsibilities principally in the Water Resources Act 1991. These relate to defending against flooding from main rivers and the sea, and related activity including providing flood warnings and flood mapping. These powers are limited to 'flood defence' activities rather than a wider range of activity for managing flood risk.
92. The EA also has certain statutory roles in relation to other bodies involved in flood defence – local authorities and IDBs – under the Land Drainage Act 1991 including a general flood defence supervisory duty under section 6(4) of the 1995 Act. The EA also has certain consenting and enforcement powers on ordinary watercourses for all land users, specified in the Land Drainage Act 1991.
93. In addition, the EA is required by section 106 of the Water Resources Act 1991 to arrange for all of its flood defence functions (except certain financial ones) to be carried out by regional flood defence committees.
94. The EA currently has no statutory roles or responsibilities for coast protection (coastal erosion and encroachment by the sea) under the Coast Protection Act 1949. This falls principally to maritime district and unitary local authorities.
95. However, from 1 April 2008, the EA adopted a strategic overview for the coast when they took responsibility for much of what were Defra's coast protection functions under Ministerial delegation. Under this approach the EA became the lead organisation for sea flooding risk while management of coastal erosion risk remained with local authorities under the EA overview. In taking the role on, the EA strongly influences the coast protection programme of works by being responsible for:
 - managing and quality assuring the production of all Shoreline Management Plans;
 - assessing all risk, prioritising risk management programmes, allocating and managing Government funding for work programmes; and
 - ensuring the effective procurement, delivery and future management, operation and maintenance of all capital works (with local authorities continuing to propose and deliver work on the ground).
96. Since 2004, Defra has directly grant-funded most of the EA flood defence functions. In England, RFDCs retained their levy powers and raise a 'local levy' on county and unitary authorities. Defra Ministers have also devolved more decisions to the EA on use of this funding, including funding decisions for coast protection projects. EA decisions in England are subject to a £100m cash threshold, above which decisions are required by Defra and HM Treasury.

EA strategic overview role

97. As trailed in "Making space for water" and reiterated in Sir Michael Pitt's Review, the EA strategic overview role will apply in relation to all sources of flooding – that is river (main river and ordinary watercourse), sea water, surface run-off and groundwater as well as coastal erosion and flood risk from reservoirs.

98. The draft Bill provides for the EA to take a full strategic overview role for all FCERM. Under this role the EA will now have duties and powers to:
- set out a national strategy for flood and coastal erosion risk management, with which all other bodies involved in FCERM will be required to act consistently;
 - be the lead Competent Authority under the EU Floods Directive (see Section 2.8);
 - develop the methods, framework and tools to understand and manage flooding from all sources and coastal erosion, and a centre of expertise on such matters. This means:
 - taking steps to understand the interaction between different forms of flooding and coastal erosion;
 - developing modelling and mapping for flood and coastal erosion risk;
 - investigating new ways of managing flood and coastal erosion risk;
 - developing forecasting and warning systems; and
 - producing risk assessments and plans for the management of flood and coastal erosion risk from the sea, main rivers and reservoirs;
 - support the roles of local authorities and others in FCERM, by providing them with information and guidance on fulfilling their roles. Assess flood and coastal erosion risk on a national basis and determine spending priorities to manage those risks as well as allocating relevant funding in accordance with the priorities;
 - have consenting and enforcement powers in relation to any works or activities by any person which may directly impact on flooding from main rivers and the sea;
 - have responsibility for flood warning for all forms of flood risk;
 - report periodically to the Secretary of State on the state of flood and coastal erosion risk management in England, and priorities for the forthcoming years;
 - be the enforcement authority for reservoir safety (see section 2.12 for the proposed amendments to the Reservoirs Act 1975); and
 - be a statutory consultee on planning applications that have any flood (and, possibly in future, coastal erosion) implications.
99. This will help ensure a more consistent, holistic and sustainable approach to risk management, with consistent and evidence based decision making, effective stakeholder engagement and the best use of technical and engineering resources.
100. The requirement for the EA to produce a National Strategy for FCERM will probably comprise a range of materials. Among other things, that will include flood risk management plans for different areas, the methods framework and tools that they develop for better understanding FCERM, and guidance on how to manage local and national flood risk.
101. The Bill requires the EA to publish a summary of their strategy and places a duty on FCERM operating authorities in exercising their flood and coastal erosion functions to act in a manner which is consistent with the EA's FCERM strategy and any supplementary guidance that they issue. It also places a duty on other listed bodies to have regard to the strategy and guidance.

102. In line with their strategic overview role, the draft Bill will give the EA powers to allocate grant to other bodies to fund FCERM projects. The EA would be able to make this subject to conditions and thresholds. This power will allow the EA to take a holistic view of funding needs and priorities, and allocate funds where benefits are greatest. As at present, the EA would still be required to achieve a set of outcome targets with the funding provided, to allow Ministers to set high level priorities and to ensure value for money.
103. The draft Bill also transfers to the EA the current Ministerial role for consenting to coast protection works being undertaken by maritime local authorities under section 5 of the Coast Protection Act 1949. This is something the EA currently undertake under delegation. Where objections are made then we propose that these should, as now, be submitted to the Secretary of State for Environment, Food and Rural Affairs for determination before the EA decides whether to consent. We consider that such arrangements are particularly necessary given the intention that the EA will themselves have concurrent powers to undertake coastal erosion risk management works.
104. Going beyond what is in the draft Bill, we are also seeking views on what should happen to the role, currently performed by maritime local authorities, for consenting to coastal erosion works that are undertaken by people other than coastal local authorities. Currently, on the coast the maritime local authorities are responsible for coastal erosion consenting, the EA is responsible for sea flooding consenting, and the Marine Management Organisation will issue marine licences for any depositing, or construction below the mean high water spring tide mark.
105. This clearly looks like a complicated arrangement and we wish to look at how to streamline the consenting arrangements. One simple step would be for the EA to take on the coastal consenting role so that only two bodies are involved. This would allow the EA to take on the coastal consenting role so that only two bodies were involved. This would allow the EA to develop a nationally consistent approach to such applications, and to consider them against the priorities and policies established in Shoreline Management Plans. Moreover, such works may still also need planning consent from the local authority anyway.

14. Are the component parts of the EA strategic overview clear and correct and do they achieve the objectives?
15. If not, what further changes should be made?
16. Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions?
17. Do you have any comments on the proposal that other bodies would have to have regard to the EA's National Strategy and guidance? Do you consider that any other bodies should be added to the list in clause 23? In particular, how should the sewerage industry be brought into the new framework?
18. Do you think that the EA should be required to consult as part of preparing or publishing its strategy?
19. Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable?

EA delivery and operational role

106. The EA will retain its current delivery and operational role for undertaking flood risk management works on main rivers and the sea, and for providing flood warnings for all sources of flood risk and supporting the emergency response to flooding.

107. There may be circumstances where a local authority or an IDB is unwilling or unable to undertake local flood risk management works. We are therefore seeking comments on our proposal that the EA should be empowered to act in such circumstances and with proposed safeguards.
108. The Government considers that such powers would be required very rarely for local flood risk management but it is possible that there will be circumstances where a significant risk of (say) surface run-off is not being addressed or a local authority is not complying with a requirement of the EU Floods Directive and so placing the UK at risk of infraction proceedings. In such circumstances the Government wishes to provide a fall-back position under which the EA would be able to act in default of the local authority or IDB.
109. However, to help ensure that these circumstances are appropriate we have made these powers exercisable only with the consent of Defra Ministers. Furthermore, in order to avoid an incentive for local authorities or IDBs to default, the draft Bill gives the EA powers to recover reasonable costs from the relevant body.
110. The draft Bill also gives the EA the powers to undertake coastal erosion works (concurrently with the powers which remain with maritime local authorities). This would allow the EA to undertake works in its own right. For example, some local authorities may lack the technical and other resources to undertake major coastal erosion projects.
111. Some projects involve a mixture of work to protect against sea flooding (on which the EA generally leads) and coastal erosion (on which the local authorities lead) and it may make sense for one organisation to manage the whole job, whether that be the local authority or the EA. There may also be efficiencies in local authorities using EA consultants and contractors for which all those involved would need the same powers.
112. The draft Bill allows for maritime local authorities to transfer their coastal erosion functions to other bodies by agreement on a case by case basis and with the consent of the EA. In order to make it clear which body will be using its flood management or coastal erosion powers on each length of coast, we propose that the EA be required to draw up and maintain a coastal map. We are seeking views on whether the arrangements for maintaining and amending the map should be the same as those outlined below in relation to the main river map and whether this should be reflected in the Bill.

20. Should the Secretary of State have the power to direct the EA to undertake local flood risk management work in default of local authorities, and recover reasonable costs?
21. Should the EA be able to undertake coastal erosion risk management works concurrently with local authorities where appropriate to support the delivery of the strategic overview role?
22. The EA is drawing up a coastal map showing which operating authority will exercise FCERM powers on each length of coast. Should the EA maintain this and should the procedure for amending the map be the same as for main river maps or should it be a non statutory process?

EA relationship with Regional Flood Defence Committees

113. The draft Bill will also make changes to the role, name and membership of the Regional Flood Defence Committees. A key change will be that the committees will become largely advisory. The EA will be required to consult the committees and take their representations into account. However, the EA will no longer be required to arrange for its flood related functions to be carried out by the Committees. See Section 2.7 for more details.

2.3 Main river mapping (Clauses 64-65)

The Bill will amend and update the arrangements for main river maps.

Introduction

114. The provisions in the draft Bill would change the effect of the law in England only, but the intention is to extend them to include Wales. Welsh Ministers will determine how those powers will apply in Wales. Further details on Welsh Assembly Government policy proposals are contained in Annex A.

Current position

115. For flood risk management purposes, all watercourses¹⁷ in England and Wales are either: “main rivers”, which are designated as such on main river maps and for which the EA has responsibility; or “ordinary watercourses”, which are all other watercourses and which are the responsibility of local authorities or, where they exist, Internal Drainage Boards (IDBs).
116. Clearly, this classification has important implications for the bodies involved. The classification of watercourses can be changed through a long established, legal process called “variation”. The need to make main river variations may occur from changed operational requirements and responsibilities, or from physical changes on the ground, where the alignment of the river moves, or is moved, and the map needs to be updated to reflect this.
117. Currently, the EA proposes amendments to the main river maps. These are submitted to Defra Ministers and, under a delegation from Defra, the EA then gives notice of the proposed changes, and consults those likely to be affected, and considers any objections to the variation. The Minister is responsible for determining any unresolved disputes, and for authorising any variation to the main river map. As the EA is operating under a delegation, and despite the EA already holding the authoritative maps electronically, it is the Minister’s legal responsibility to send hard copy maps to the EA when there is a change.

Proposals in the draft Bill

118. In the draft Bill we propose placing the EA under a duty to maintain the main river map, which may be kept in electronic format. The map would also show the boundaries of the regional Flood and Coastal Committees. The EA would also have to provide reasonable facilities for inspecting that map (and taking copies and extracts from it).
119. We also propose giving the EA the current role of the Defra Minister of owning, maintaining and consulting on changes to the main river map. The EA will make the legal changes to the map, own it, maintain it, and is responsible for undertaking the consultation process prior to amendments being made to it.
120. Where an objection is made that the EA cannot resolve, we intend to put in place a right of appeal to the Minister so that Defra can adjudicate between parties in these instances, with the Minister being able to make the ultimate decision.

23. Do you have any comments on the proposed changes to main river maps as set out above?

¹⁷ Water Resources Act 1991 defines a watercourses as any river, stream, ditch, drain, cut, culvert, dyke, sluice, sewer and passage through which water flows, except a public sewer

2.4 Local flood risk management (Clauses 19-22 and 42-49)

The Bill will ensure that, for the first time, one body is accountable for the delivery of coordinated local flood risk management so as to minimise the risk of a repeat of the floods in Summer 2007. Local flood risk covers flooding from an ordinary watercourse, surface runoff and groundwater.

Introduction

121. The provisions in the draft Bill would change the effect of the law in England only. Welsh Ministers have yet to determine how best to meet the needs of Wales in relation to this issue and further details on Welsh Assembly Government policy proposals in this area are contained in Annex A.

Current Position

122. Well established arrangements exist for managing flood risk from rivers and the sea but there are no mechanisms that enable an integrated approach to planning and managing the environmental impact of all forms of flood risk, as demonstrated below:

- the EA has powers to manage flood risks from main rivers and the sea, and has a general supervisory responsibility for coastal and river flooding. It also has duties to protect water resources and water quality;
- district and unitary local authorities have powers to manage flood risk from ordinary watercourses (in areas where no IDB exists). These councils may also manage sea flooding, concurrently with the EA;
- IDBs are responsible for land drainage and water level management within defined drainage districts, mostly in low-lying rural areas, and for ordinary watercourses in their areas;
- water companies have a duty (under Section 94 of the Water Industry Act 1991) to provide and maintain a system of public sewers so that the areas for which they are responsible are effectually drained; and
- the Highways Agency maintains drainage from the strategic road network (trunk roads and motorways) while county and unitary authorities undertake this work on local roads.

123. Each part of the nation's drainage infrastructure is managed by organisations with clear, yet differing, accountabilities who may plan their investments to different standards of protection and over different time horizons. Within the established standards of protection each individual organisation manages the risk from flooding.

124. However, no one organisation is required to carry out a comprehensive assessment of local flood risks, needs and priorities. Nor are there obligations on bodies to cooperate and share information to make this possible. As a result, decisions of these bodies on funding for new capital or maintenance are typically considered in isolation, and may not necessarily be targeted towards areas of greatest local flood risk.

The need for more effective local flood risk management

125. The impact of any flooding depends on the type of development in the flooded area, the depth and velocity of the water and how long the flood waters remain. As well as the immediate risks to life and health, the costs of flooding include the initial recovery operation, the cost of clean up, building repairs and alternative accommodation (whether insured or otherwise), and the longer term social, economic and environmental consequences.

126. Much of the attention has been focused on surface run-off as this was identified as a major factor in the Summer 2007 floods. However, it is estimated that groundwater flooding could affect a few hundred thousand properties in England and ordinary watercourse flooding can be locally damaging.
127. The risks posed by these flood types need to be fully understood together with the interaction with other types of flood risk and managed wherever feasible. The systems adopted for managing flood risk should not exacerbate risks to water resources or water quality from normal rainfall events.
128. The floods of Summer 2007 demonstrated the distress and damage that surface water flooding can cause. The EA, as part of its review of the Summer floods, estimated that two-thirds of the 57,000 properties affected were flooded from surface run-off overloading drainage systems and from minor watercourses. Insured damage from the June and July 2007 floods is estimated to have been in the region of £3 billion.
129. The problems caused by surface run-off will only worsen unless steps are taken to manage the risk effectively. The Government's 'Foresight: Future Flooding' report¹⁸ estimated that currently 80,000 properties are at very high risk from surface run-off (10% annual chance), causing on average £270 million of damage each year. With climate change these costs could increase from £0.46bn to £2.1bn per year over the period 2004 to 2050 depending on which economic scenario the model is based on.

Proposals in the draft Bill

130. The draft Bill contains provisions to implement recommendations from Sir Michael Pitt's Review to improve the management of local flood risk. Local authorities will have a leadership role for local flood risk management which includes ensuring that flood risk from all sources, including from surface run-off, groundwater and ordinary watercourses, is identified and managed as part of locally agreed work programmes.
131. This enhanced role for local authorities, leading new local partnerships and responsibility for sustainable drainage systems (SUDS), will be pivotal to the success of the much stronger and more comprehensive approach to flood risk management that we want to achieve following Sir Michael Pitt's Review (see Section 2.6 for further details). The proposed roles of the different organisations involved are set out below.

Role of county and unitary local authorities

132. The Government recognises that success will depend on greater co-ordination and co-operation between local partners working together closely to establish the most effective arrangements to meet local circumstances. The Government also believes that local flood risk management will be best if based on new partnership arrangements.
133. It wishes to see county, unitary and district local authorities, the EA, water companies and sewerage undertakers and other players including IDBs, working together to secure effective and consistent management of local flood risk in their areas. These organisations should work together to decide the best arrangements for delivery on an area by area basis, taking account of their current roles and capacities, underpinned by a new duty on all partners to co-operate and share information (as covered in Section 2.5).
134. Sir Michael Pitt also recommended that local authorities should collect information from private landowners or individuals on the flood and drainage assets for which they are responsible. That function could be underpinned by a similar duty to that described in the paragraph above.

¹⁸ <http://www.foresight.gov.uk/OurWork/CompletedProjects/Flood/index.asp>

135. The draft Bill places the leadership role in these partnerships on county and unitary local authorities. They will need to ensure that all relevant partners are engaged in developing a strategy for local flood risk management and securing progress in its implementation. This will build on the county and unitary authority leadership role in Local Area Agreements, and will allow them to develop centres of engineering and flood risk expertise alongside their existing highways functions, providing support to other partners and promoting collaboration across the whole area.
136. To fulfill this role the county or unitary local authority would need to ensure they have a strategy for local flood risk management. This will comprise a range of documents and working practices which, among other things, sets out how they will:
- convene and coordinate district local authorities, IDBs, water and sewerage companies, highways bodies and any others that they consider necessary to deliver a joined up management of local flood risk in their areas;
 - produce flood risk assessments and flood risk action plans (e.g. Surface Water Management Plans) for their areas. These should be consistent with the EA's FCERM strategy and any supplementary guidance use any existing relevant work and such as Strategic Flood Risk Assessments. In part this will deliver the EU floods Directive. However, we encourage county and unitary local authorities to produce assessments and plans throughout their areas which are not considered to have potential significant flood risk under the Directive, so that such assessments and plans can form part of the local authority's local flood risk management strategy;
 - develop local flood risk management work programmes (including works which they themselves intend to undertake or works which they consider that other bodies should undertake or works with other bodies are responsible for including water companies and the EA) for example within Surface Water Management Plans (SWMPs);
 - identify other bodies whose assets may be an important part of the effective management of flood risk or which may be contributing to flood risk and create an asset register of information on the ownership, location and, where available, the condition of those assets in the area¹⁹; and
 - investigate local flooding incidents with all relevant parties to identify the source of the problem and where responsibility lies for addressing it²⁰.
137. In the same way it does for the EA National Strategy, the draft Bill requires the county or unitary local authority to publish their strategy. It places a duty on the district local authority and IDBs to act in a manner which is consistent with that strategy and any supplementary guidance the local authority issues. It also places a duty on other listed bodies to have regard to the strategy and guidance.
138. Elements of planning or subsequent work could be delegated to other authorities (using the 'arrangements' clauses in the draft Bill) but responsibility for the strategy would remain with the county or unitary local authority.
139. As indicated, the draft Bill places the default local leadership role with county and unitary local authorities. These are defined in the draft Bill as 'lead local authorities' for these purposes.

¹⁹ This implements Recommendation 16 of Sir Michael Pitt's Review.

²⁰ This implements Recommendation 15 of Sir Michael Pitt's Review.

140. SWMPs will help local authorities and relevant delivery bodies understand and manage local flood risk as well as to influence land use planning and flood risk management investment decisions. They should deliver:
- coordinated and prioritised investment strategies and asset management;
 - clear of roles to reduce duplicated effort across different organisations;
 - support for greater use of SUDS to help avoid large investments in unsustainable hard infrastructure;
 - identification of design approaches that avoid and reduce flood risk to and from new development (PPS 25); and
 - information to improve emergency planning decisions for local authorities and awareness of surface water flooding when preparing for emergencies.
141. The UK Government is currently informally consulting on the draft Surface Water Management Plan (SWMP) Guidance which is available on the Defra website²¹. This guidance will provide the framework for local authorities to develop SWMPs. SWMPs will also fulfill requirements under the EU Floods Directive for flood risk management plans in areas of significant flood risk – see Section 2.8.

24. The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships?
25. Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions?
26. Do you have any comments on the proposal that other bodies would have to have regard to the local flood risk management strategy and guidance? Do you consider that any other bodies should be added to the list?
27. Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy?
28. Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out works of an emergency nature? If so, what powers would be needed?
29. Do you think that the EA and county and unitary local authorities should be able to gather information from private landowners and individuals about flood drainage assets related to their respective responsibilities? What if any sanction is needed to ensure information is provided?

²¹ <http://www.defra.gov.uk/environ/fcd/policy/strategy/firstresponse.pdf>

Overview and scrutiny

142. Responsibility for scrutiny and accountability will continue to lie locally, and local authorities are already required to have at least one overview and scrutiny committee to cover all of their services. These committees have powers to review and scrutinise decisions made by the authority or its executive, to make reports and recommendations to the authority/executive on the discharge of its functions, and on anything which might affect the authority's area or inhabitants.
143. Once the relevant provisions of the Local Government and Public Involvement in Health Act 2007 are in force, those bodies under a duty to co-operate in the development of Local Area Agreements will also be obliged to co-operate with overview and scrutiny committees. This list of bodies does not currently extend to Internal Drainage Boards and water companies.
144. The Government is considering whether all county and unitary local authorities should be required to produce annual reports by the local authority executive on local actions to manage flood risk. Any such report could then be reviewed by the relevant overview and scrutiny committee. We would welcome views on whether the production of annual reports should be a legal requirement on local authorities and whether the Regional Flood and Coastal Committees (as set out in Section 2.7) might be involved in peer-reviewing these reports and offering feedback to the councils.

30. Should county and unitary local authorities be legally required to produce reports on the way that they are managing local flood risk? Should this requirement be annual?
31. Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?
32. Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?
33. Should Regional Flood and Coastal Committees (or another body) be involved in peer-reviewing any annual reports produced by local authorities?

Local delivery - counties, districts and IDBs

145. County and unitary local authorities will have powers to plan, build, maintain, alter, operate and remove works to manage flood risk from surface run-off and groundwater. These authorities would also have powers to maintain or restore natural processes and manage water levels in relation to these sources of flood risk. More generally, in relation to all forms of flood risk in their areas, these councils would have powers to:
- provide public awareness campaigns;
 - provide support to individuals or communities in dealing with local flood risk management including financial support, advice or equipment;
 - facilitate changes to land management;
 - undertake measures to benefit the natural environment; and
 - develop and share techniques and tools to understand and manage local flood risk management.

146. Local authorities will have an increasing role in local flood risk management and ensuring that this is linked to the spatial planning process. County and unitary local authorities lead in ensuring the production of Strategic Flood Risk Assessments (SFRAs) covering all forms of flood risk, which will:
- provide the evidence to allow local planning authorities to factor flood risk into local development plans and individual decisions on new development proposals;
 - help the county and unitary local authorities to determine where they need to develop a surface water management plan for local flood risk management;
 - provide the evidence to allow local planning authorities to factor flood risk into local development plans and individual decisions on new development proposals; and
 - help the county and unitary local authorities to determine where they need to develop a surface water management plan for local flood risk management.
147. They also have responsibility for open spaces and parks and often roads, verges, housing and public buildings. They are often active in managing the local flood risk from ordinary watercourses. IDBs play a key role in managing the ordinary watercourse network in their areas and also in land drainage and water level management.
148. We therefore propose leaving these current powers intact subject to these bodies having to take account of (a) the local flood risk management strategy published by the county or unitary local authority for the area and (b) the national flood and coastal erosion risk management strategy published by the EA. The draft Bill will remove the requirement for EA consent to local authority works on ordinary watercourses under section 17 of the Land Drainage Act on the basis that local authorities and IDBs in undertaking works on the ordinary watercourse network will need to do so in a manner consistent with the EA and county and unitary local authority strategies.
149. We do not currently propose giving county local authorities any additional role on the ordinary watercourse network in terms of works and maintenance, apart from a proposed consenting role covered at Section 2.11.
150. County and unitary local authorities may, while remaining accountable for the overall quality of service, also want to use the expertise and capacity that exists in district local authorities and IDBs to help fulfill their new functions, including for example preparing SWMPs. To this end, the draft Bill provides powers for all relevant organisations to undertake flood and coastal erosion risk management functions at the request of another, and on terms (including payment) which may be agreed between them.
151. The draft Bill would enable authority A to make an arrangement with authority B to perform a function on behalf of authority A even though authority B might not ordinarily have the powers to do so. We see that works powers and elements within the EA or local authority strategy e.g. producing SWMPs could be delegated using these arrangements. However, we consider that overall accountability for the strategy should not be able to be delegated to another body. See also Section 2.2 in relation to possible powers for the EA to act in default of local authorities.
152. We are consulting on wider changes to IDB arrangements in Section 3.1 of this consultation document.

34. Should district local authorities IDBs continue to manage flood risk from ordinary watercourses, taking account of Local and National Strategies?
35. Should county and unitary local authorities have powers, concurrent with district local authorities and IDBs, to manage flood risk from ordinary watercourses in their areas? Or should they remain able to act only in default?
36. Should any sea flooding works that a local authority wants to undertake require the consent of the EA?
37. Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body?
38. Should the functions of consenting, and the production and coordination of the strategy (for both EA and county and unitary local authorities) remain as ones which cannot be carried out by another authority?

153. The impact assessment for local flood risk management²² assumes that local authorities will develop a suite of measures for managing local flood risk, for example, surface water mapping, appropriate development planning and collating information on flood risk and drainage assets. It assumes that:

- the average cost to develop a SWMP is £100,000;
- they will invest £100,000 annually in mitigation measures for surface run-off and groundwater which will produce a real benefit for local flood risk;
- by taking all the measures proposed including coordinating the flood risk management activities of other bodies (e.g. EA, Water Companies, IDBs) (including SUDS) it will reduce all local flood risk by 40% (over a 43 year period) based on the limited best information available at present.

39. Are these assumptions reasonable? Is further evidence available to improve the analysis? Are the measures detailed proportionate with the scale of benefits assumed?

2.5 Duty to cooperate and share information (Clauses 24-30)

The Bill will introduce new requirements on all relevant organisations to co-operate and share information, to help manage flood and coastal erosion risks.

Introduction

154. The provisions in the draft Bill would change the effect of the law in England only but the intention is to extend them to include Wales subject to the results of this consultation. Welsh Ministers have yet to determine how best to amend the roles and responsibilities of operating authorities in Wales to ensure the move to a risk based approach. Details on the proposals of Welsh Ministers are set out in more detail in Annex A.
155. Following Sir Michael Pitt's recommendation, the Government intends that all organisations involved in flood and coastal erosion risk management should be under duties both to cooperate with each other and also to share information with local authorities and the EA to facilitate the management of flood and coastal erosion risk. The organisations involved are listed in clauses 25 and 26 of the draft Bill.

²² <http://www.defra.gov.uk/environ/fcd/floodsandwaterbill.htm>

156. To understand an area's vulnerability to flood risk, the drainage and watercourse system of that particular area needs to be fully understood. By sharing and understanding data it will be possible for operating authorities to build up a much more comprehensive dataset for local flood risk. There will be a much greater need for information sharing under the new roles for the EA and, particularly, county and unitary local authorities. We need to ensure that such information is provided and therefore have included in the draft Bill a duty on all relevant authorities to provide information, documents or assistance to the EA or to the county or unitary local authority as may reasonably be requested in order for those bodies to fulfill their functions. This will also support the EA and county and unitary local authorities in meeting the requirements of the EU Floods Directive.
157. It is proposed that the EA, as part of their strategic overview role, would review existing data standards and have the power to set and manage standards for the information to be shared, to aid common understanding of the data sets and to facilitate use within databases. For example, where parties have a duty to share information on drainage assets and their condition, the EA would be able to produce guidance to set standards for the format and values that the data should take, to allow a shared or federated database of all assets to be created, and in doing so minimise the costs of data integration and management for all concerned.

40. As agreed in the Government response to Sir Michael Pitt's Review, there will be a duty on relevant organisations to cooperate and share information. Do you think the list of relevant authorities to whom this applies is comprehensive?
41. Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?

2.6 Sustainable Drainage Systems (Clauses 217-233)

The Bill will require developers to include sustainable drainage, where practicable, in new developments, built to standards which reduce flood damage and improve water quality. It will also amend section 106 of the Water Industry Act 1991 to make the right to connect surface water run-off to public sewers conditional on meeting the new standards. It will give responsibility for approving sustainable drainage systems in new development, and adopting and maintaining them where they affect more than one property, to a SUDS approving body, generally local authorities.

Introduction

158. The provisions in the draft Bill will apply in England and Wales. Welsh Ministers will determine how those powers will apply in relation to drainage systems which are or are to be wholly or mainly in Wales. Further details on Welsh Assembly Government policy proposals in this area are contained in Annex A.

Current Situation

159. In February 2008, the UK Government consulted stakeholders on 'Improving Surface Water Drainage'²³. This included questions on how to increase uptake of sustainable drainage systems (SUDS) as the preferred option instead of connecting surface water rainfall runoff to sewers. It also reviewed the right of new developments to connect surface water flows to the public sewerage system, which is seen as a barrier to the use of SUDS. The Welsh Assembly Government has yet to consult on these aspects of SUDS adoption.

²³ Improving Surface Water Drainage – Consultation to accompany proposals set out in the Government's Water Strategy, Future Water – February 2008

160. A summary of responses to the consultation was published in September 2008²⁴. Subsequently, Sir Michael Pitt's Review put forward a number of recommendations which included action by the Government to determine which organisation should own and maintain SUDS. The Welsh Assembly Government's 'Strategic Policy Position Statement on Water' sets out its commitment to support further research and development of sustainable drainage systems to alleviate the pressure on the sewerage network and help reduce flood risk.
161. Conventional drainage systems, i.e. pipes and sewers, are designed to take surface water quickly away from properties and roads discharging it to watercourses and sewers. During intense or prolonged rainfall, drainage systems can become overwhelmed by surface run-off and result in a greater risk of fluvial flooding down-stream, or flooding of properties with sewage.
162. As more properties are built, and at higher densities, urban areas will increase and the proportion of impermeable surfaces will grow. Coupled with predicted increases in the intensity of rainfall, this will lead to more drainage systems failing to cope. The impacts and costs of surface run-off are expected to rise sharply.
163. Surface run-off from urban areas carries a range of pollutants from roads, roofs, and misconnections of foul sewage to the surface water drainage system can also result in pollution of watercourses. These pollutants affect water quality, amenity and biodiversity and are very difficult to remove.

Sustainable Drainage

164. A more sustainable approach to draining surface water (called sustainable drainage systems or SUDS) is needed to better manage the future likelihood of flooding and water quality issues caused by these pressures. Sustainable drainage systems mimic natural drainage, managing more water above-ground, close to the source, to reduce the volume of waters flowing into sewers and watercourses resulting from storms.
165. The nature of SUDS with their 'soft engineering', low velocities and storage characteristics means that normal and extreme levels of rainfall can be better managed, and pollutants can be retained and where possible broken down within the system, improving water quality. There are a wide range of SUDS techniques, including permeable paving (including roads), swales, ponds and wetlands which can create attractive multi-functional green spaces in urban areas. In areas where space is very restricted, more engineered solutions such as attenuation tanks may also be part of the solution.
166. The current planning and building control requirements identify SUDS as a way of reducing flood risk and gives priority to their use. However, currently SUDS are seldom incorporated within new developments.
167. At present, SUDS are adopted by a range of bodies including local authorities, water companies, private companies and sometimes by a combination of bodies. A number fall through the system. The absence of a clear adoption and maintenance process often results in developers implementing conventional systems.
168. There is also currently a right to connect surface water drainage from buildings and related property (Section 106 and Section 115 of the Water Industry Act 1991) to public surface water and combined sewers where these exist. This provides an easy and well-understood option for developers.

²⁴ Summary of response to the consultation on improving surface water drainage 7 February to 30 April 2008 – September 2008

169. Most respondents to the 2008 'Improving Surface Water Drainage' consultation agreed that, subject to funding availability, local authorities should take responsibility for adopting and maintaining SUDS in the public realm. The UK Government's response to Sir Michael Pitt's Review agreed with this approach and the proposals on which we are now consulting will take it forward.
170. Finally, Sir Michael Pitt's Review concerned only England. However, the Welsh Ministers generally support the recommendations on improving surface water drainage. Welsh Ministers have not previously consulted on how to improve the uptake of SUDS or where responsibility for adoption should rest. Therefore, in addition to the proposals and questions set out in this section, Welsh Ministers are seeking views on questions specific to Wales, which are set out in Annex A.
171. In October 2008, the UK Government introduced legislation in England removing householders' rights to lay impermeable surfaces on front gardens. Amendments were made to the Town and Country Planning (General Permitted Development) Order 1995 so that householders who wish to lay impermeable surfaces in their front gardens, where the surface area exceeds five square metres, will need to obtain specific planning permission.
172. There is also read-across between this section of the draft Bill and the Government's proposals on misconnections (see Section 4.8), which will allow sewerage companies as well as local authorities to address misconnections to the sewer. This should reduce the likelihood of sewage discharge to SUDS, or watercourses or surface water from SUDS being connected to a foul sewer.

Proposals

173. The following provisions relate to new surface water drainage systems from buildings and roads in England and Wales. They do not require any retro-fit of SUDs, or deal with groundwater or foul water.
174. The main proposals are as follows:
- National Standards governing the way in which surface water drainage systems must be constructed, and operate. These will reflect the need to mitigate flood damage, improve water quality, protect the environment, protect health and safety, and ensure the stability and durability of drainage systems;
 - an approval system for the surface water drainage systems of the majority of new developments, including roads, in line with the National Standards;
 - a requirement on unitary and county local authorities in England and county or county borough authorities in Wales (or other bodies selected by the Secretary of State in England or Welsh Ministers in Wales), to adopt and maintain new SUDS which affect the drainage of other properties; and
 - a requirement on developers to demonstrate that they have met national standards for the application of SUDS techniques before they can connect any residual surface water drainage to a public sewer (amending section 106 of the Water Industry Act 1991).

These proposals are outlined in more detail below.

Proposal 1: National Standards

175. The Government will publish National Standards governing the construction and operation of surface water drainage for new developments and re-developments. It is intended that they will be developed with representatives of the key interests and that the Secretary of State and Welsh Ministers will issue the standards in 2011, following extensive consultation.

176. These standards will cover the need to:
- mitigate flood damage;
 - improve water quality;
 - protect and improve the environment;
 - protect health and safety;
 - ensure the stability and durability of drainage systems; and
 - address the cost-effectiveness of such solutions in different situations.
177. The National Standards will need to reflect the many different physical circumstances of development sites. In particular, where land is contaminated or unstable, the approach to SUDS will be to slow down water run-off, encouraging water to evaporate off, whilst not mobilising pollutants in the soil or destabilising the ground. The standards will be developed in the light of requirements under the Groundwater Directive.
178. The National Standards will also need to reflect the many scales of development from a single property on a brownfield site with limited access to land, where de minimis considerations will need to be applied, to a large greenfield site with planning permission for many hundreds of houses.
179. These standards will become a material consideration in local authorities' planning decisions. This means that the standards will become the underlying approach to surface water drainage, except in those cases where other local planning considerations outweigh them.
180. The standards will also provide the basis for approval, adoption and connection to the public sewer. The SUDS approving body will be required to adopt and maintain the majority of surface water drainage systems within the public realm, so the systems need to be robust. If plans for the surface water drainage do not meet the required standard, there would be no automatic right to connect to a public sewer. There will also be an added incentive for developers to achieve the required standard for surface water drainage through an arrangement whereby the developer may be required to deposit a financial bond with the SUDS approving body.
181. The National Standards will be developed by the Secretary of State and the Welsh Ministers and relevant key stakeholders, for example, local authorities, the EA, Ofwat, water and sewerage companies, developers and trade associations. The National Standards will be developed so that flood mitigation, improvement of water quality and protection of the environment should be balanced with the need for certainty and clarity about future requirements, in a cost-effective and workable manner.
182. The main benefits for taking this approach are:
- reduced flood risk, improved water quality, and reduced maintenance costs;
 - clarity about national requirements, whilst retaining local planning discretion, thus avoiding unnecessary costs for house builders and developers; and
 - streamlined design and increased uptake of SUDS.

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| 42. | Do you agree that national design, construction and performance standards for sustainable drainage of new developments and redevelopments should be developed and approved by the Secretary of State and Welsh Ministers? |
| 43. | Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned? |

Proposal 2: The Approval Process

183. It is important to ensure that surface water drainage systems mitigate the environmental impact of run-off, and are sufficiently robust.
184. Therefore, the Government proposes to require developers to seek approval for all new surface water drainage associated with a new development or redevelopment.²⁵ The application will be made to the SUDS approving body (SAB), and approval for the surface water drainage will be needed before development can begin. This approval will form the basis for adoption where appropriate and there will be no right to make a new connection to surface water sewer without approval of the SUDS proposals. The SAB may only approve an application if it is in line with the National Standards.
185. The approving body may inspect the construction of the SUDS and will issue a certificate of satisfactory construction when completed.
186. Sustainable drainage should always be considered at an early stage of the planning process. Therefore, in two tier areas in England, the county council will liaise with the district council to ensure that planning requirements enable an appropriate SUDS solution. The UK Government intends to make the county council a statutory consultee in England for relevant planning applications.
187. The Government will work closely with developers, local authorities, and the EA to develop an application process that dovetails neatly with the planning and building control processes, and any requirements flowing from the Groundwater Directive.

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| <p>44. Are there examples where this form of approval, for the surface water drainage system associated with a new development, is not appropriate?</p> <p>45. Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?</p> |
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Proposal 3: Adoption and Maintenance

188. Sir Michael Pitt's Review recommended that the Government should resolve the issue of which organisations should be responsible for the ownership and maintenance of sustainable drainage systems. The UK Government proposes to require county and unitary authorities to take responsibility for adopting and maintaining new build SUDS in the public realm in England. We also propose that the Secretary of State and Welsh Ministers will be able to vary this approach where appropriate.
189. This approach is consistent with other new roles and responsibilities proposed for county and unitary authorities in England, e.g. coordinating action to prevent and mitigate surface water flooding. The county or unitary local authority is already responsible for adopting, draining and maintaining highways – roads, pavements and verges. In new developments, permeable paving, swales or French drains should take the place of traditional impermeable roads and pavements draining to sewers.
190. In Wales, there has been no consultation on where the responsibility for adoption of SUDS should rest. The Welsh Assembly Government is therefore using this consultation to seek views on this. The situation in Wales is simpler, as all local authorities in Wales are unitary. Three additional questions, which are specific to Wales, are included in Annex A.

²⁵ This would include sundry pieces of pipe, connecting a SUDS to a watercourse.

Role of SUDS approving body

191. The Government proposes that most surface water drainage systems accompanying new developments and redevelopments should be adopted and then maintained by the SAB, to avoid the problems of inadequate maintenance of private communal drainage that have been seen with private sewers.
192. The Government proposes that wherever new SUDS are operating in line with the national standards and affect the operation of drainage of other properties they should be adopted and maintained by the SAB. For example, this proposal would include a trench or swale that runs through back gardens even when it is on private land. Systems which are completely within the curtilage of, and serve only, a single property will remain the responsibility of their owner.
193. Exceptions are likely to be needed to cover unusual circumstances, and the Government welcomes views on what these are likely to be.
194. We do not intend to specify maintenance standards for SUDS in legislation, because local conditions can vary. Instead the national standards for the sustainable drainage of new sites and re-developments would provide stakeholders and the courts with a guide on acceptable standards for maintenance so that SUDS remain 'fit for purpose' throughout their lifetime.

Financial bond

195. We propose that the SAB should have the ability to insist on a financial bond before work can begin on the SUDS. On satisfactory completion of the SUDS the bond would be released. This is similar to the current arrangements for adopted surface water sewers and highways. The benefits of such an approach are:
 - it provides an incentive to the developer to complete SUDS to the required standards promptly, so the bond can be released;
 - developers are already familiar with this mechanism; and
 - a bond also provides insurance against the developer becoming bankrupt or being unable to complete the SUDS, enabling the SUDS approving body to use the bond to bring the SUDS up to the required standard and adopt it if needed.

46. Are there examples where a communal SUDS should not be adopted by the SAB?
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Proposal 4: Connection to a public sewer

196. The automatic right to connect surface water run-off to a surface or combined public sewer granted under section 106 of the Water Industry Act is one of the key reasons why there has been such a slow uptake of SUDS. In some circumstances there may be no alternative to connecting to a public sewer. However, many techniques can be used to manage and reduce the flow, before the connection to the sewer is made.
197. The overwhelming majority of respondents to 'Improving Surface Water Drainage' in 2008 agreed there was a need to amend the automatic right to connect. The UK Government has also accepted Sir Michael Pitt's recommendation to end the automatic right to connect.
198. The Welsh Assembly Government has not previously consulted on removing the right to connect but recognises the benefits in amending this right. It is therefore seeking views on amending the automatic right to connect to a public sewer for new sites and re-developments as proposed in this section and set out in Annex A.

199. The Government proposes to require that new surface water drainage systems be approved in line with the National Standards before any connection to the sewer can be made under section 106 of the Water Industry Act 1991. The form and extent of that connection will be set out within the approval. The right to connect foul drainage to the public foul sewerage system will remain.
200. By preference surface water should drain to land, with drainage to either a watercourse or to a sewer providing successively less desirable solutions. Well designed surface water drainage for developments on large greenfield sites will rarely need to connect to the public sewer system, as there will be sufficient space to apply a range of SUDS techniques.
201. However, on a more constrained site, the National Standards will set requirements for reducing peak run-off of surface water. These will require the developer to incorporate SUDS techniques within the drainage design before approval can be given. Only then will any connection be permitted for residual surface water flows.

The role of water and sewerage companies

202. Currently, water and sewerage companies must be notified of any proposed connection to the public sewer in order to ensure that the construction of the drain or sewer is adequate, before a new connection to sewer is made permanent. This enables the sewerage company to exercise the right to make the connection itself.
203. The draft Bill proposes modifying this process in three ways:
 - the approval of the SUDS design is to be a necessary pre-requisite to seeking connection to the sewer under section 106;
 - the sewerage company will be a statutory consultee for the purposes of approval; and
 - the National Standards will be a material consideration when considering whether to agree that a road can be drained to sewer under section 115 of the Water Industry Act 1991.
204. Approval of the plans will confer the right to connect any residual flows from the approved SUDS, as designed, to the public sewer. As now, the person proposing to make connection would need to notify the sewerage company. As long as the notification is accompanied by a copy of the SUDS approval then the sewerage company will have no grounds to refuse connection.
205. The Government has considered proposals to allow the sewerage company to decide whether a connection can ultimately be made. However, it is considered that the proposals as set out offer sufficient protection to the sewerage company.
206. Sewerage companies take account of housing growth forecasts as part of their business planning process undertaken as part of Ofwat's quinquennial reviews of water price limits, and as part of their obligations to provide for connection to the sewer and to meet housing growth needs. They are also encouraged to engage early with regional and local planning processes, advising on any capacity and locational issues which affect the costs and practicality of drainage so that these can be taken into account in the development of regional and local planning documents.
207. Decisions on housing and other developments are then taken in accordance with these documents. These arrangements taken together should ensure that planning documents are realistic and that water and sewerage companies have sufficient advanced warning of their investment needs.

208. The Government proposes that the sewerage companies should be consulted about new drainage systems. However, we do not consider it appropriate for the sewerage company to have discretion over connection to the sewer where required standards have been met. In some circumstances, for instance during construction, or in line with advice from the SAB, it may be appropriate for some limits to be placed on flows into the sewer, for example, by the use of a flow restriction device, to ensure the proper operation of SUDS.

Drainage of roads to sewers

209. Section 115 of the Water Industry Act 1991 sets out the circumstances under which, by agreement, the Highways Authority may drain a road to a combined or surface water sewer. Under the Government's new proposals the drainage of new roads must be approved in line with the National Standards. However, in addition, if there is a dispute about whether either party has 'unreasonably refused' to enter into an agreement to drain a highway to a public sewer, the National Standards will be a material consideration.
210. Whilst this proposal goes beyond the options considered in the 2008 consultation, it recognises that roads add considerably to the impermeable area of new development and increase the risk of flooding and poor water quality. Within high density developments, roads can be the largest area of land in the public realm. Permeable roads could provide sustainable drainage not only for the roads themselves, but also for adjacent buildings.

47. Do you agree with how the envisaged arrangements for replacing the automatic right to connect will work?
48. Can the use of National Standards as a material consideration for the purposes of s115(4) of the Water Industry Act 1991 provide sufficient legal certainty to prevent inappropriate agreements to drain highways to sewer?

Funding of SUDS maintenance

211. At present the majority of surface water sewer maintenance is funded by water customers through water and sewerage bills. Where there is no connection to the sewer, property owners can apply for a rebate. Currently, there are several different mechanisms for funding maintenance of existing SUDS. These include:
- commuted sums from the developer to a maintenance firm or local authority;
 - the revenue support grant; and
 - water and sewerage bills.
212. As county and unitary local authorities in England will adopt newly built SUDS, it is important to identify how the maintenance of SUDS will be funded in the future. From April 2011, local authorities are expected to benefit substantially from savings arising from the transfer of private sewers to the sewerage companies.
213. Local authority funds released by the transfer of private sewers, together with savings from better local flood risk management, are expected to more than cover the additional activities that local authorities will be required to perform in this and other areas covered by the Bill and the Government's response to Sir Michael Pitt's Review. It is estimated that this would include local authority costs for maintaining new SUDS for at least 10 years, after which the costs may begin to exceed the amount available from the savings. These long-term pressures will need to be considered as part of future Spending Reviews alongside other Government priorities and pressures.

Additional issues for consultees' views

214. The issues identified below have not been included as provisions in the draft Bill. However we would welcome views on relevant questions, so that a decision can be taken about whether further measures are needed before legislation is introduced into Parliament or in the longer term. The additional issues are:
- ensuring that SUDS can work with the lie of the land;
 - ensuring that local authorities can work together and with others;
 - enforcement; the maintenance / redevelopment of private SUDS;
 - impediments to the adoption of existing SUDS; and
 - local authority performance on SUDS.

Ensuring that SUDS can work with the lie of the land

215. SUDS have to work with the natural slopes of the land. So there will be cases where water from a public realm SUDS will need to pass over private land, for example in order to drain to a watercourse. In most cases this work will be carried out by agreement with the landowner.
216. However, there will be cases where it is in the public interest for the SAB to compulsorily purchase land or buy an easement allowing access, maintenance and the right to drain to watercourse or to land. This will enable development that could otherwise pose an unacceptable surface water flood risk.
217. The Government believes that this could be done under existing legislation using compulsory purchase powers such as s226(1) of the Town and Country Planning Act 1990 and s13 Local Government (Miscellaneous Provisions) Act 1976. However, it has been suggested that these may not always be appropriate for small scale projects.
218. An alternative approach is to introduce a more specific power for the SAB, enabling them to construct SUDS which cross third party land. This would mirror provisions in section 100 of the Highways Act 1980. Under that section, the Highways Authority may construct a highway drain (including a gutter or soak away) in land near the highway, and must pay compensation to any owner of the land who suffers damage as a result. This is a more straightforward approach for the SAB but may not offer the same protection to land owners.

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| <p>49. What is the appropriate balance to enable good SUDS designs that work with the lie of the land, can discharge to watercourse, and can be accessed for maintenance and inspection, whilst protecting the rights of land-owners?</p> |
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Ensuring that local authorities can work together and with others

219. Sir Michael Pitt's Review recommended that there should be clear responsibility for the maintenance of SUDS and the UK Government and Welsh Assembly Government agree with that recommendation. In England, the unitary or county local authority will be responsible for adopting and maintaining SUDS. The decision has yet to be made for Wales.
220. However, it will be important to use the existing skills and processes of other organisations in both adoption and maintenance, in order to ensure that the adoption process is streamlined, that maintenance is not split between authorities unnecessarily, and that skills are shared and built upon.

221. In particular, in England, district councils have an interest in SUDS as they are the planning and building control authority, and they manage and maintain much of the fabric of the public realm. Moreover, county and unitary local authorities will often wish to work together where one or other authority is small. We wish to encourage a collaborative approach between the tiers of local government as well as with bodies such as National Park Authorities, sewerage companies, IDBs, EA, and other relevant public and private sector bodies. This may involve new powers for the SAB to delegate functions to other bodies.

50. How wide should the SABs ability to delegate be?

Enforcement

222. The Government's proposals will require approval for a surface water drainage system associated with a new development before any work can start, in order to ensure that any bond which is needed is in place before work starts. If work starts without the approval, the SAB may order it to stop.
223. However, construction of the SUDS in accordance with the approved plans is likely to be a condition attached to the planning permission for the development. Any failure to fulfil such a condition would therefore be liable to enforcement action by the local planning authority. Some SUDS fall within the scope of the Building Regulations and, where this is the case, building control enforcement will be possible. Whether the SAB should also have an independent power of enforcement for the original approval of the SUDS is not certain.

51. Are additional enforcement powers needed – in particular, should the SAB have an independent power to enforce the approved SUDS? How would this work?

The maintenance/redevelopment of private SUDS

224. Although SUDS which are shared by different properties will be adopted and maintained by the SAB, those that are on a single property will not be adopted.
225. There is little to stop home owners or businesses making changes to features on their property, and no obligation on them to maintain sustainable drainage features so they work as they were designed to do. If the owner built over a feature or altered it, this could cause damage and increase the risk of local flooding and increased run off. Damage could also be caused through lack of proper maintenance.
226. At present local authorities could seek to prevent damage to or redevelopment of private sustainable drainage features, using an Article 4 Direction under the Town and Country Planning (General Permitted Development) Order 1995.
227. They could do this in areas of flood risk where properties have incorporated sustainable drainage features. This will be easier in the future in England as a result of legislation due to be brought into force under the Planning Act 2008. The Act protects local authorities from liability to compensate owners provided sufficient notice is given.
228. In principle, this approach could be attractive in some areas, and for certain categories of change such as surfacing in back gardens. However, it could mean that home owners have to submit planning applications for minor changes to their property which did not in practice have an impact on sustainable drainage, with the associated burdens for them and their local authority.

229. Alternatively, local authorities could designate private SUDS as part of the new system of designating structures and features which affect flood and coastal erosion risk under Part 2 of this Bill. Under this system, a unitary or county local authority could designate elements of a private SUDS if they think that the feature in question affects the risk of surface run-off. Once designated, it would be unlawful for any person to remove, alter or replace the feature without the local authority's consent.
230. This could restrict the redevelopment of private SUDS but would not require owners to actively maintain them. We are consulting separately on the case for alternative funding mechanisms, including whether there should be a duty on landowners to maintain designated structures or features (see Section 3.2).
231. Alternative approaches include:
- local authorities could provide advice to home owners about maintenance of features on their property; or
 - new obligations could be placed on SUDS owners as part of development control, not to redevelop SUDS or to seek permission before making alterations to that asset. This approach could be attractive for larger features that form part of the local register of flood risk management assets, and would have the advantage of communicating directly with the owner and making clear the types of work that would require permission.

52. Views are welcomed on how best to ensure the maintenance of private SUDS, and ensure that they are not redeveloped.

Impediments to the adoption of existing SUDS

232. There are several existing SUDS where it is not clear who has the responsibility to maintain them. Discretionary powers already exist for local authorities²⁶ to adopt these SUDS where these are offered for adoption by their current owners. The SUDS may not meet the same standards as for new build SUDS adoptions. For example, there may be a case for adoption where the performance of the SUDS has been identified, through surface water management planning, as having a significant influence on a local flood risk. However, use of the permissive powers would be up to the local authority.

53. Is there any legal impediment to prevent a SAB from adopting an existing SUDS?

Local authority performance on SUDS

233. The Government intends to manage local authority performance on SUDS in England through the Local Government Performance Framework, in particular through Indicator 188 on Planning to Adapt to Climate Change and Indicator 189 Flood and Coastal Erosion Risk Management. Assessment of performance against all the indicators is carried out by the Audit Commission.

54. Do you agree that performance management of SUDS maintenance should be included within the local government performance framework, as part of their climate change adaptation function?

²⁶ Part 1 of the Local Government Act 2000 provides local authorities with a discretionary power (the Well Being power) to undertake any action to promote or improve the social, economic and environmental well being of their area

2.7 Regional Flood Defence Committees (Clauses 66-73)

The Bill will create new Regional Flood and Coastal Committees which will provide democratic input into local decisions and help coordinate flood and coastal erosion risk management.

Introduction

234. The provisions in the draft Bill on this issue would change the effect of the law in England only. Welsh Ministers have yet to determine how best to amend roles and responsibilities in Wales. Further details on Welsh Assembly Government policy proposals in this area are contained in Annex A.

Current Position

235. Regional Flood Defence Committees (RFDCs) are committees of the EA through which the EA is currently required to arrange for all of its flood risk management activities (excluding certain financial functions such as formally issuing levies) to be carried out. This requirement reflects the fact that RFDCs previously provided the great majority of the EA's flood risk management funding through levies imposed on the constituent councils (i.e. county and unitary local authorities) who have a statutory majority on the RFDC. RFDC's currently have no statutory role in managing the risk of either coastal erosion or sea flooding.

236. Since April 2004, levies raised through RFDCs have largely been replaced by direct funding from Defra and the EA's role has changed further since then with their approving and allocating funding to projects undertaken by local authorities and IDBs on behalf of Defra.

237. Currently, the EA allocates Defra funding to the RFDCs according to the EA's national priorities and targets, in light of the RFDC's priorities for works in the region. In line with the requirement in the Water Resources Act 1991, final decisions on the works that will go ahead to deliver Defra policy, with the available funding, are taken by the RFDC.

238. Since April 2004, when this direct Defra funding was introduced, Defra has left in place the power for EA to raise levies on constituent councils, through RFDCs. Through these continuing levy arrangements, RFDCs are also able to raise money to fund locally important works that are not included in the EA's funding programme, usually because they have insufficient national priority. These continuing levy arrangements raise about £25 million annually.

239. The requirement for the EA to carry out its flood defence functions through RFDCs pre-dates the creation of the EA as a single national body and means in effect that any decisions by the EA need to be ratified by the Committees. This can create blurred responsibility and potential conflict when it comes to allocation of funding by the EA and the achievement of targets.

Proposals in the draft Bill

240. RFDCs provide real benefits. They ensure local democratic input into the decision making process, help set the overall strategic direction for the region, provide an important challenge function within the EA, and support effective delivery by the EA in the region. This is clearly an important role but we believe, their role, responsibilities and membership should evolve to reflect the recent and proposed changes to the EA's role. We therefore propose changes in the Bill to:

- replace the RFDCs with new Regional Flood and Coastal Committees (RFCCs) with an extended role and membership to cover coastal erosion;

- have statutory schemes of membership to set out the size and shape of the committee membership subject to retaining a local authority majority. Ministers would continue to appoint the committee chair; local authorities and EA would appoint the other members;
- provide for the committees to advise the EA on investment decisions, priorities etc.;
- retain executive powers for the committees to set levies and deciding where levy funding should be spent; and
- extending the levy power to cover coastal erosion risk. These changes are discussed in more detail below.

Change of title

241. In parallel with extending the EA's role in relation to coastal erosion we want the RFDCs also to have a role in coastal erosion risk management. We therefore propose renaming RFDCs to become the Regional Flood and Coastal Committees (RFCCs). This would more accurately reflect the committees' remit.

55. Do you agree that Regional Flood Defence Committees should be renamed as Regional Flood and Coastal Committees?

Advisory status

242. The essential change proposed is to remove the RFDCs' overarching 'executive' function (i.e. to remove the current requirement under Section 106 Water Resources Act for the EA to carry out its functions through the RFDC). While RFCCs will remain committees of the EA, we believe they should advise the EA Board on how FCERM should be pursued in their region. This advice will cover all the work done by the EA on flooding from main rivers and the sea, and coastal erosion as well as on its other functions of providing flood warning, its strategic overview role, and the prioritisation of work and allocation of funding.

243. The key strengths of RFDCs are their local knowledge, representation of local interests, and an ability to question and challenge the EA Board. Our proposal will retain these strengths to inform the EA's national priorities. However, the EA will itself take final decisions on spending Defra funding on national priorities, for which the EA's Board is accountable to Defra, rather than the RFCC.

244. We also propose that RFCCs should in future consider and comment on the local flood risk management work of county and unitary local authorities to ensure a fully joined up and coordinated service. See Section 2.4 for more information regarding this proposal.

245. RFCCs would be on a similar footing to the EA's other statutory advisory committees – the REPACs and RFERACs²⁷.

56. Should RFCC status be predominantly advisory rather than executive?

57. Should the focus and roles of RFCCs be as described in above? If not, do you have any other proposals?

²⁷ Regional Environment Protection Advisory Committees (REPACs) and Regional Fisheries, Ecology and Recreation Advisory Committees (RFERACs) exist in each EA region to advise on the operational performance of EA's functions, regional issues of concerns and regional implications of national policy proposals. Committee members are appointed under statutory membership schemes designed to achieve representation from a wide range of our stakeholders

RFCC membership

246. We propose changes to the way that members are appointed to the RFCCs. Currently the RFDCs consist of a bare majority of local authority representatives, two members appointed by the EA, with the Secretary of State appointing the remainder including the Chair. We propose to allow for the EA to produce a scheme of membership for each RFCC which will be approved by the Secretary of State.
247. This would reflect how other EA statutory advisory committees are appointed and would bring in representatives from a wider range of stakeholders. However, the need for a local authority majority will remain. The draft Bill includes provision for the SoS to provide guidance to the EA on the sort of interests to be represented on each of the individual committees.

58. Do you agree that the membership of RFCCs' should be appointed as outlined above in future? If not, do you have any other proposals?

Levy raising powers

248. To support the RFCCs' extended role to embrace coastal erosion, Defra also considers that the existing power for the RFDC to consent to levies proposed by the EA for flood risk management activity should be extended to coastal erosion risk management.
249. The RFCC members drawn from the county and unitary local authorities through a majority vote, would have to agree whether a levy should be placed on local authorities, to fund locally important activities that are not included in the nationally funded programme before the EA could issue a levy. This would effectively continue existing flood risk management arrangements, allowing a single levy funded programme covering both flooding and coastal erosion risk management activities to be established and managed by the EA. RFCCs would have the final say on what these levies should be spent on, subject to them conforming to relevant national or local strategies.

59. Should RFCCs' levy-consenting powers be extended to coastal erosion issues?

60. Are there any other issues that you wish to raise in regard to RFCCs?

2.8 EU Floods Directive (Clauses 50-63)

The Bill will transpose the EU Floods Directive in England and Wales by placing new duties on the Environment Agency and local authorities and a duty on other relevant organisations to cooperate and share data.

Introduction

250. The provisions of the draft Bill discussed in this section of the consultation paper would change the effect of the law in England only but the intention is to extend them to include Wales, with powers conferred on Welsh Ministers, subject to the resolution of certain matters as part of this consultation. The Welsh Assembly Government is committed to transposing the requirements of the EU Floods Directive in relation to Wales through the draft Bill. Welsh Ministers have yet to determine how best to amend the roles and responsibilities of operating authorities in Wales to ensure the move to a risk based approach and further details on the proposals of Welsh Ministers are set out more detail in Annex A.

Background to the Directive

251. The Floods Directive²⁸ aims to reduce and manage the risk floods pose to human health, the environment, cultural heritage and economic activity. The Directive entered into force on 26 November 2007 and Member States have two years in which to transpose its provisions into domestic legislation, though the first requirements of the Directive do not begin until the end of 2011.

Directive requirements

252. A key objective of the Floods Directive is co-ordinated flood risk management on shared international river basins, avoiding measures that might increase flood risk in a neighbouring country. Although not an international boundary, we propose to apply this principle to any river basin district shared between England and Scotland or Wales.

253. The Directive requires Member States to develop an evidence base for flood risk, to map that risk, and then to produce plans to manage that risk. By December 2011 Member States need to prepare a Preliminary Flood Risk Assessment showing the impact of historic flooding and the potential impact of a repeat event. We must then define areas of potentially Significant Flood Risk.

254. For these areas of significant risk we must, by 22 December 2013, prepare flood hazard maps and flood risk maps. Flood Hazard Maps should show high, medium and low probability floods and include extent, water depth and, where appropriate, flow velocities. Flood Risk Maps cover the consequences which include number of inhabitants, types of economic activity and possible pollution causes. These maps need to be coordinated with, and possibly integrated into, the reviews of River Basin Districts under the Water Framework Directive.

255. Finally, by 22 December 2015 Member States must establish Flood Risk Management Plans that aim to reduce the potential adverse consequences of flooding and/or reduce its likelihood. These must also be co-ordinated with river basin management plans and involve public participation. In fact all assessments, maps and plans must be made available to the public. So in summary the Directive requirements are as follows:

Output	Purpose	By
PFRA - Preliminary Flood Risk Assessment	To review historic flooding and its potential future impact drawing on available or readily derivable information	22 December 2011
PFRA - Significant risk areas	To identify areas that are at potentially significant flood risk	No formal deadline, but need to allow sufficient time for mapping
FHM – Flood hazard maps	To show the possible extent of flooding under different scenarios in significant risk areas	22 December 2013
FRM - Flood risk maps	To show the potential impact in significant risk areas	22 December 2013
FRMP – Flood Risk Management Plan	Defining objectives and measures to decrease the likelihood or impact of future flooding	22 December 2015
PFRA/FRM/FHM/FRMP	Updates including impact of climate change	Every 6* years thereafter

*The first review of the PFRA is due in 2018, but then every 6 years after that.

²⁸ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

Approach to transposition and implementation of the Directive

256. The Directive reflects practice in England and Wales. The EA already maintains flood risk maps for main rivers and the sea, and Catchment Flood Management Plans and Shoreline Management Plans set out longer term objectives for managing these risks.
257. As part of the development planning process, local authorities in England already assess local flood risk by preparing Strategic Flood Risk Assessments (SFRAs) while Regional Planning Bodies prepare Regional Flood Risk Appraisals (RFRAs). For specific development proposals, site-specific Flood Risk Assessments should be carried out by those seeking planning permission in flood risk areas.
258. Our main aim is to reduce burdens by delivering the Floods Directive using existing outputs or those already under development.
259. We propose transposing the Floods Directive into domestic law in England and Wales through the draft Bill. This will create new roles and responsibilities for the EA and local authorities and ensure maximum clarity. However, should the timing of the Bill's introduction into Parliament create significant risks of missing the Directive's timetables, we would instead transpose via regulations under Section 2(2) of the European Communities Act 1972.

Sewer flooding

260. In transposing the Floods Directive, Member States may opt to exclude flooding from sewerage systems. Sewers do not themselves create significant flooding except when overwhelmed by high rainfall or river levels. Such events will be covered by the steps taken to manage other flood risks. Although sewer flooding is unpleasant it is unpredictable and affects very few people. Water companies are required to investigate such instances and, under the terms of the Price Reviews, invest to reduce this risk.
261. Therefore, following informal consultation with Ofwat and Water UK, we propose that flooding caused entirely by a failure in the sewerage system as opposed to excess loading (e.g. from heavy rain) should be excluded.
262. This is the position set out in the Flood Management (Scotland) Bill and similar provisions are expected in Northern Ireland.

61. Should flooding from sewerage systems caused solely by system failure be excluded from transposition of the Floods Directive? If not, how might such flooding be integrated?
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Primary roles and responsibilities

263. We propose that the EA and county and unitary local authorities should be the competent authorities for implementing the Directive. The EA, fulfilling its strategic overview role, will lead on co-ordinating maps and plans (the EA is responsible for maps, reports and plans in relation to the sea, a main river or a reservoir) and making them available to the Commission.
264. County and unitary local authorities will be responsible for local flood risk assessment, mapping and planning (in relation to ordinary watercourses, surface run-off and groundwater), and they in turn will rely on information from other public and private bodies, such as IDBs, water companies and emergency services. There will be a duty for all relevant authorities to co-operate and share information which will help meet the requirements of the Floods Directive.

62. Should the EA and county and unitary local authorities assume responsibility for implementing the Floods Directive, with the EA focussing on national mapping and planning and local authorities having specific responsibilities in relation to local flood risk? If not, what other arrangements would you suggest?

Preliminary Flood Risk Assessments

265. The Directive requires Member States to prepare Preliminary Flood Risk Assessments (PFRAs) based on available or readily derivable information. These assessments, help determine those areas where there is a 'significant risk' for which further maps and plans will be required.
266. PFRAs must be carried out for all sources of flooding, except where flood maps and plans have already been produced. In England and Wales, maps and plans already exist for main river and coastal flood risk and, by December 2010, will have been prepared for reservoirs, so the only new PFRAs required will be for local flood risk i.e. from surface run-off, groundwater and ordinary watercourses.
267. We propose that county and unitary local authorities should be responsible for preparing PFRAs for ordinary watercourses, surface run-off and groundwater flood risk.
268. Local authorities will be able to meet both the requirements of the planning system, as set out in PPS25 and its Practice Guide, and Directive PFRAs by completing their level one Strategic Flood Risk Assessments (SFRAs). Level one SFRAs will cover all forms of flooding. In two tier areas, district authorities will work with the county authority to produce a SFRA that sets out flood risk across the county area. This will underpin the planning system and guide the location of future development to avoid and minimise flood risk whilst also meeting the requirements of the Floods Directive.

63. Should county and unitary local authorities be responsible for delivering PFRAs for local flood risk as described above? If not, who should be responsible?

Determining significant risk

269. On the basis of information contained in the PFRA, Member States must identify areas that are considered at 'potential significant risk' of flooding. Risk is the product of probability and consequence (including social, economic and environmental impact).
270. The factors to be taken into account could include:
- social factors such as the number of people affected, their vulnerability, impact from the loss of essential services;
 - economic factors including the temporary loss of transport infrastructure, contingency provision and repair, and loss of agricultural production; and
 - environmental impact including loss or damage to designated sites, cultural heritage and major sources of pollution.
271. We propose that the EA should provide local authorities with guidance on the conduct of PFRAs and criteria for the assessment of significant local flood risks based on regulations to be made by the Secretary of State.

272. To ensure consistency, prioritise investment and minimise the impact of a dispute, we propose that there should be external involvement in the final selection of significant risk areas. This is in addition to the process defined in the draft Bill. This could follow a similar approach to that envisaged for SWMPs with a quality assurance panel made up of the Local Government Association (LGA), EA and independent drainage experts producing a summary for submission to Ministers.
273. For any dispute that does arise, we will set out a proposed mechanism in secondary legislation under powers provided in the Bill (on which we would consult separately). The process should be sufficiently rapid so as not to compromise the timescale allowed by the Directive for subsequent mapping.

64. Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?
65. Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?
66. Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above?

Responsibility for preparing Flood Hazard Maps and Flood Risk Maps

274. For areas of 'significant risk' Member States are required to prepare Flood Hazard Maps and Flood Risk Maps by 22 December 2013. Flood hazard maps should show flood extent and provide information on depth and velocity or flow under low (extreme event), medium (likely return period ≥ 100 years) and high probability flooding scenarios. Flood Risk Maps should show the potential adverse consequences, including numbers of inhabitants, economic activity, industrial installations and areas protected by the Water Framework Directive.
275. We propose that responsibility for all national scale mapping and provision of tools and techniques should rest with the EA. The EA could, delegate this to competent organisations, such as county and unitary local authorities, if required. The EA would not be required to produce additional maps where these are already in place for the whole of England.
276. In relation to local flood risk, once significant risk decisions have been agreed, local authorities will be required to produce maps and plans. Where local flood risk is exacerbated by flooding from a main river, the sea, a reservoir or catchment scale surface run-off, local authorities should map the combined consequences, consulting with the EA as appropriate. We propose that the EA should produce guidance and a detailed mapping specification to help local authorities do this.
277. Local authorities in England would fulfil their local flood risk mapping requirements by extending their level two SFRA to look at the impact of flooding on the environment and cultural heritage.
278. Planning Policy Statement 25 'Development and Flood Risk' and the accompanying Practice Guide has already set out the need for a Level 2 SFRA where more detailed information on all types of flood risk is required to map areas of significant risk from local flooding. This approach not only meets the requirements of the Directive but avoids duplicating work on local flood risk.
279. Level 2 SFRA in areas of significant risk would directly inform Directive flood maps. These local flood risk maps will then inform the production of local flood risk management plans, such as SWMPs.

67. Do you agree with the proposed mapping arrangements set out above? If not, what alternative arrangements do you suggest?

Content of Flood Maps

280. The Floods Directive provides some flexibility in determining which flooding scenarios need to be mapped. For example, it states that in coastal areas where adequate protection is in place or where groundwater flooding is the only risk, mapping may be limited to low probability scenarios. The draft Bill provides powers for the Secretary of State to make regulations about the form and content of maps and we will use this flexibility to allow the EA and local authorities to exercise such discretion.

68. Should the EA and local authorities have the discretion to determine whether or not to produce flood maps, as described above? If not, what other arrangement should apply?

Responsibility for preparing Flood Risk Management Plans

281. Flood risk management plans (FRMPs) need to draw together evidence from the flood risk and hazard maps in order to determine a range of measures to manage and reduce flood risk. To be effective they should be developed in partnership with all relevant flood risk management stakeholders. This will also make it easier to agree an appropriate action plan and subsequent deployment of resources.

282. There are several types of flood risk management plan already produced or in development, which would meet the purposes of the Directive (including stakeholders' involvement). These are:

- Catchment Flood Management Plans (produced by the EA for all main rivers in England and Wales);
- Shoreline Management Plans (produced in coastal areas by a lead authority which can either be the EA or a local authority);
- Surface Water Management Plans (produced by county and unitary authorities – in areas of significant risk they should include all forms of local flood risk including from groundwater and ordinary watercourses); and
- Reservoir flood plans – inundation maps (currently being commissioned by EA) and emergency plans (to be prepared by emergency responders).

283. These will need to be co-ordinated to ensure that measures and objectives set are consistent. We propose that the EA in its strategic overview role should perform this task.

284. A FRMP should be considered complete once it has been adopted by the EA or relevant local authority as appropriate. The draft Bill provides powers for the Secretary of State to make regulations about consultation procedures.

285. County and unitary local authorities will be required to develop strategies for local flood risk management, and all relevant authorities will be required to act in a manner consistent with these strategies when exercising their flood risk management functions. FRMPs will be a key part of those strategies.

69. Should the arrangements for FRMPs be as set out above? If not, what alternative arrangements do you suggest?

Co-ordination with the Water Framework Directive

286. The various maps and plans will need to be coordinated. We propose that the EA will lead the coordination, given its strategic overview and lead role for both the Floods Directive and Water Framework Directive. Article 9 of the Floods Directive requires Member States to co-ordinate application of this Directive with the Water Framework Directive focussing on opportunities for improving efficiency and information exchange. The first review of River Basin Management Plans is due in December 2013, which will tie in with the first cycle of flood maps for the Floods Directive. We propose to leave it to the EA to decide how best to achieve this necessary coordination.

70. Do you agree with the co-ordination arrangements set out above? If not, what alternative arrangements do you suggest?

Ensuring public participation

287. Article 10 of the Floods Directive requires all the maps, plans and assessments under the Directive to be made available to the public. Local authorities and the EA will need to take the necessary action to deliver this.

The reporting and review cycle

288. All Directive appraisals, maps and plans need to be reviewed and, if necessary, updated every six years (taking into account the likely impact of climate change on the likelihood and impact of floods). The only exception is the first review of PFRAs which is due seven years after the first appraisal, but then every six years after that.

289. Given that the area of 'significant risk' may change with each cycle, and additional mapping may be required, we propose that the deadline for the first review of PFRAs is brought forward by one year to 22 December 2017 to align with the reporting cycle for all other maps and plans. This means that the EA and county and unitary local authorities would have to review and, if necessary, update maps and plans according to the following timetable:

Map/Plan	Review by	Then...
PFRA	22 December 2017*	22 December 2023, 2029...
Flood maps	22 December 2019	22 December 2025, 2031...
PFRAs	22 December 2021	22 December 2027, 2033...
*Directive deadline is 22 December 2018		

290. Where, during the review of the PFRA, the area identified as at 'significant risk' is enlarged, the relevant body will need to expand the existing Flood Risk Management Plan or produce a new one.

291. To allow sufficient time for quality assurance, we propose that any map or plan prepared by county and unitary local authorities should be made available to the EA six months before the EU deadline. So the first maps and plans should be prepared by 22 June 2013 and 2015 respectively.

71. Should the first cycle PFRA be brought forward one year, as proposed above, to enable mapping to take up to two years in common with the rest of the mapping and planning cycle?

72. Do you agree with the other proposals set out above for reporting and review? If not, what alternative arrangements do you suggest?

Other changes to flood and coastal erosion risk management legislation

2.9 Water Framework Directive (Clause 15)

The Bill will provide for the Environment Agency to specify in the national strategy that all FCERM operational and consenting activities must be consistent with the requirements of the Water Framework Directive.

292. FCERM operational and consenting activities can have significant positive and negative effects on the water environment and on the achievement of the environmental objectives set by the Water Framework Directive (WFD). The WFD recognises that undertaking new modifications to the physical characteristics of a water body may cause unavoidable deterioration in status or failure to achieve the relevant status objectives for that water body. In such cases Member States will not be considered in breach of the WFD provided that certain conditions are met.

Current position

293. The EA has a duty to exercise its flood risk management functions so as to secure the requirements of the WFD. This means that it must ensure either that FCERM operational and consenting activities either do not cause deterioration or that they comply with the conditions for allowing deterioration. At present this duty does not apply to other FCERM authorities.

294. Under proposals outlined in Section 2.11, FCERM authorities would be empowered to impose reasonable conditions on flood risk management consents to take greater account of environmental impacts. The amended flood risk management consenting power would enable FCERM authorities to act, where possible, to ensure that consenting activities did not cause deterioration in water body status or otherwise prevent the achievement of WFD status objectives.

295. Among other things the amended consenting power would specifically allow these authorities to place conditions on consents to prevent, limit or mitigate damage to the physical characteristics of water bodies in light of WFD requirements. However, the availability of this power for use by FCERM authorities does not guarantee that it will be applied equally by all such authorities since, at present, there is no consistent duty placed on FCERM authorities to secure compliance with the WFD.

Way forward

296. In light of these limitations it is considered necessary to place a duty on all FCERM authorities to exercise their FCERM functions so as to secure compliance with the requirements of the WFD. This will ensure that the operational and consenting activities of these authorities are subject to the same obligation with respect to the WFD as is currently placed on the EA. This new duty would relate to the new FCERM functions assigned to these authorities by the draft Bill, when enacted, and any existing functions that are retained in other legislation.

297. The new duty on FCERM authorities would ensure that assessment of the potential impacts on the water environment is carried out for all relevant operational and consenting activities, in order to show that the activity would not cause deterioration in water body status or, if it would, that the conditions for allowing deterioration were met.

73. Do you agree that the duty to act in accordance with WFD requirements should apply equally to all FCERM authorities?

298. The draft Bill sets out an approach to ensuring that all FCERM authorities act consistently with the WFD in the exercise of their functions. The general duty requires the EA to develop and maintain a national flood risk management strategy. In developing the strategy, the EA is required to take account of the need to minimise the adverse effects of FCERM activities on the water environment.
299. This provision would allow the EA to specify that all FCERM operational and consenting activities must be consistent with the requirements of the WFD. All FCERM authorities would have to comply with this requirement from the effective date of the strategy. It does not place a direct duty on these authorities to comply with the relevant requirements of the WFD or oblige the EA to impose any such requirement.

74. Do you think this approach provides a satisfactory mechanism for ensuring that the relevant bodies deliver the requirements of the WFD?

2.10 Third party assets (Clauses 75-97)

The Bill will enable operating authorities to identify and designate – and so safeguard - things that assist in managing flood and coastal erosion risk.

Introduction

300. The provisions in the draft Bill below will apply equally in England and Wales. Welsh Ministers will determine how these powers will apply in Wales.

Current situation

301. Some 60% of the assets which help manage the risk of flood or coastal erosion, as defined by the EA, are not maintained or operated by them. It is relatively rare that these 'Third Party' assets lead to flooding, but when they do, the effects can be devastating. The most extreme examples were in 1998 at Northampton and in 2000 at Mythlomyrd.
302. Additional legal powers for the EA, local authorities and IDBs to formally designate FCERM assets will give greater regulatory control of these assets. This will include assets that affect surface water flooding and is expected to reduce the risk of defences and systems being compromised, and thus should deliver benefits to the wider public.
303. The EA's definition of a third party asset is any structure that forms an integral part of one of their systems where there is no record of it having been improved or maintained by the EA and its predecessors.
304. Typical EA maintained assets are earth embankments, flood storage reservoirs, flood walls, pumping stations, barriers, river outfall structures and, flood gates. Typical third party assets are highways, railway and other embankments, boundary and garden walls, culverts, buildings etc.. Many local authority and IDB FCERM systems also rely on third party assets. In the case of surface water flooding third party assets might also include flow pathways (such as roads or footpaths) and drainage infrastructure.
305. Local authorities and IDBs have powers to build and maintain existing flood defences. The EA inspects all systems on main rivers and the coast using a risk-based approach, with time intervals between inspections based on the consequence of failure. These inspections include EA maintained and third party assets.

306. In most cases third parties maintain their assets to an acceptable standard and the preference is that this continues. However, not all third party defences are well maintained and owners can currently alter or remove them without any regulatory approval and without having to inform anyone first. This can lead to 'gaps' in the defences compromising protection and significantly reducing the benefits delivered from wider FCERM systems.
307. The National Audit Office report in June 2007 'Building and maintaining river and coastal flood defences in England'²⁹ highlighted third party assets as an issue. In considering this report the Public Accounts Committee concluded
- "The EA does not routinely notify third party owners of flood defences of any defects found. The EA should formally notify all third party owners of the remedial action needed to maintain defences in appropriate condition and follow up whether necessary action has been taken. In the wake of the floods this summer, the EA should also consider whether there is a case for extending its powers to compel third party owners to take action."

Proposals in the draft Bill

308. The draft Bill includes powers for the EA, local authorities and IDBs to formally designate assets integral to flood and coastal erosion risk management that are owned, maintained and/or operated by third parties. Third parties could not then remove, alter or damage these assets without prior consent, and the consenting process would enable any approved works to be carried on in line with any reasonable conditions imposed.
309. The lead body that designated the asset would normally grant its consent for any reasonable proposals, but unauthorised works on designated structures, may lead to an enforcement notice to remedy the situation, and failure to comply with this notice would amount to an offence.
310. The concept of designation would be similar in principle to the Listed Buildings classification used by English Heritage. The EA, local authorities or IDBs would have the option to introduce designation only if and when appropriate in relation to the flood or coastal erosion risk in the area. Structures or natural man-made features with an impact on the risk of flooding or coastal erosion could be identified by the relevant body and the asset owner or other responsible person would be informed in writing (through a provisional designation notice) of the intention to designate the asset. This would set out information about the asset and flood risk and would provide a period for receipt of any representations.
311. After considering representations the relevant body would be able to confirm the designation by issuing a designation notice and registering a Local Land Charge. If a person was to remove or alter a designated asset (either provisional or confirmed) without prior consent from the body that had designated it an enforcement notice would be issued. Failure to comply with the notice would be an offence. There will be an appeals process and designations can be cancelled if it is demonstrated to be inappropriate or no longer required.
312. An express duty upon an owner to keep their structures in a reasonable state of repair is not currently proposed but see Section 3.2 where we are inviting views from stakeholders on the merits of this in comparison with other options for funding local flood risk.

²⁹ http://www.nao.org.uk/publications/0607/building_and_maintaining_river.aspx

75. Should we introduce a system of third party asset identification and designation, as set out above?
76. Is there a case for greater powers on third party assets than we have suggested?
77. Are there assets that are not 'structures or natural/man-made features' that should also be designated?

Maintenance of third party assets

313. In addition to those defences for which the EA, local authorities or IDBs are responsible, some FCERM systems are dependent on third party assets. A process for these bodies to formally designate such assets is described in Section 2.10 but this will not ensure that the assets are maintained in good condition. It has been suggested that there should be an express duty on those responsible for third party assets to keep them in a reasonable state of repair. We would welcome views on the merits of this and how it might link to other options for funding local flood risk management.

78. Should there be a duty on those responsible for third party assets in England and Wales to maintain them in a good condition?

2.11 Consenting and enforcement (Clauses 46-48)

We will update the arrangements for consenting and enforcement to match the new roles and responsibilities in the Bill.

Introduction

314. The provisions in the draft Bill would change the effect of the law in England only, but the intention is to extend them to include Wales subject to the resolution of certain matters as part of this consultation. Welsh Ministers have yet to determine how best to amend the roles and responsibilities of operating authorities in Wales to ensure the move to a risk-based approach. Details on the proposals of Welsh Ministers are set out in more detail in Annex A.

Current position

315. Flood risk management authorities need to be able to control the activities of others that might have an impact on flood risk and the water environment. With no regulation, rivers and watercourses might be blocked or constrained by these activities, leading to flooding that might not have happened otherwise, or inland or coastal defence structures might be damaged with the same effect. Regulation can also allow the physical environment to be protected and improved, for example, to ensure that works are done respecting nature conservation, and that public access is protected.
316. Consenting involves granting a permit to carry out specific works (usually some form of construction or structural alteration), while enforcement is carried out to rectify the effects of unsuitable works resulting from either failure to comply with a consent or failure to obtain a consent.
317. The aim is to manage potential flood risk that might arise as a result of works affecting watercourses, flood plains and flood defence structures. Often the works proposed are not specifically aimed at influencing flood risk, e.g. a new bridge or an outfall, but could have an impact if not suitably designed and built.

318. Currently, where there are IDBs, they are responsible for consenting to third party works on the ordinary watercourse network. Where there are no IDBs, the EA is responsible for this consenting role. There is currently no role for local authorities in consenting on the ordinary watercourse network.

Proposals in the draft Bill

319. The consenting provisions within the draft Bill are not seeking any significant extension of regulatory powers; instead we are seeking to ensure that accountability and processes fit with the new arrangements for flood and coastal erosion risk management elsewhere in the Bill.

320. We propose that no IDB, county and unitary local authorities will take responsibility for consenting and enforcement of work on ordinary watercourses for works undertaken by third parties. As previously stated the requirement for a local authority to get EA consent on ordinary watercourses is to be removed. County and unitary local authorities will assume powers to enforce obligations to maintain ordinary watercourses, drainage works etc. (under section 21 of the Land Drainage Act 1991), and their consent will be needed for construction of culverts, flow control structures and other works (under sections 23 and 24 of the Land Drainage Act 1991).

321. As stated above, these consents are currently the responsibility of the EA. However, with the EA's focus being on the broader issues, and the creation of a new local leadership role for county and unitary local authorities, this change allows effective management of the local drainage network by those local authorities. It could equally sit with district and unitary local authorities in the future, however, alongside their continuing role on the ordinary watercourse network, and we would welcome views.

322. To enable local authorities and IDBs to effectively manage works approved through consents, and to allow inclusion of Water Framework Directive requirements, the draft Bill would amend the law to allow consents to be issued subject to reasonable conditions imposed by the local authority. The ability to impose conditions may allow more works to be approved than could be the case where the only options were unconditional 'yes' or 'no' decisions.

323. This approach means that we should review further changes in any resulting legislation (see Section 3.4), including a thorough review of the existing consent regimes, as between the EA, local authorities, IDBs and others.

79. Should regulation of the ordinary watercourse network (where there are no IDBs) transfer to county and unitary local authorities? Or should this role in future sit with the district and unitary authorities?

80. Should it be possible to make consents subject to reasonable conditions?

2.12 Reservoir safety (Clauses 98-192)

The Bill will introduce a more risk-based approach to reservoir safety which better reflects the danger that reservoir failures may pose to human life.

Introduction

324. The provisions in the draft Bill will apply equally in England and Wales. Welsh Ministers will determine how these powers will apply in Wales. Panels of engineers appointed for the purpose of the provisions in the draft Bill will be established on a joint England and Wales basis; the clauses do not yet accommodate this position.

Current position

325. The safety of reservoirs above a certain volume in England and Wales is currently governed by the provisions contained in the Reservoirs Act 1975, which aims to reduce the risks posed to public safety from a reservoir or dam failure which may lead to severe flooding. The essential features of the legislation have not changed significantly since the Reservoirs (Safety Provisions) Act was passed in 1930 following several notable dam failures in the 1920s which led to loss of life.
326. The Reservoirs Act 1975 provisions currently only apply to “Large Raised Reservoirs” (LRRs) which hold, or are capable of holding, more than 25,000 cubic metres of water above the natural level of any part of the land adjoining the reservoir. The current regime is not risk based and provides for all LRRs to be subject to the same level of statutory engineering supervision, even if they do not pose a danger to human life. The legislation does not provide for smaller reservoirs to be appropriately supervised through their construction or operational phases even though uncontrolled releases of water from some of these smaller reservoirs could also have serious consequences for people living immediately downstream.
327. Although the likelihood of water escaping from any reservoir may be low, our principal aim is to ensure that all reservoirs which pose a threat to human life are subject to a proportionate level of control to reduce and manage these risks.
328. Responsibility for enforcing the Reservoirs Act 1975 was initially placed on local authorities, but these functions were transferred to the EA in relation to England and Wales following the introduction of the Water Act 2003.

Proposals in the draft Bill

Changes to the overall regime

329. As announced in our response to Sir Michael Pitt’s Review and in keeping with Better Regulation principles we intend to update existing reservoir safety legislation to introduce a more proportionate, targeted, and risk-based approach which better reflects the danger that reservoir failures may pose to human life.
330. We are therefore seeking to implement the following main changes to the Reservoirs Act 1975:
- to place a requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be included on an EA register;
 - to require the EA to classify each relevant reservoir according to whether they pose a threat to human life, or meet technical conditions (to be specified) which in effect mean the risk is negligible;
 - to specify the duties of managers; and
 - to specify panel engineers’ duties in relation to these reservoirs based on the level of risk.

Application of revised reservoir safety regime

331. Raised reservoirs with a capacity of less than 25,000 cubic metres potentially pose similar dangers to people living immediately downstream as those posed by LRRs. We are therefore including within the revised regime those raised reservoirs above a new minimum capacity which pose a danger to downstream populations.

332. It has been suggested that the new minimum capacity be reduced to 5,000 cubic metres. But discussions with the industry and the engineering profession have resulted in a figure of 10,000 cubic metres as a more appropriate new minimum. This is supported by the EA and is the figure included in the draft Bill. We propose, however, that there should be the ability to include others below the new minimum figure should significant risks become apparent and to raise the minimum if it appears too low. We also need to consider how a series of reservoirs in a cascade would be dealt with.
333. We propose to set out in secondary legislation the particular types of reservoir which might be exempted from the full regulatory requirements. For example, whilst a reservoir might be categorised as high risk, the detailed requirements might be varied according to the type of construction or other objective criteria. In this way we will be able to ensure the controls are proportionate to the risks for that type of reservoir. This would be subject to further consultation.

81. Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.
82. Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.

New registration requirements

334. Currently the EA is required to maintain a register of all LRRs for England and Wales. We are proposing that all reservoir managers (as defined in the Bill) should be required to register their reservoirs by a specific date, which, together with the registration requirements will be set out in secondary legislation.
335. At this stage we envisage that the requirement to register would involve the provision of the following information:
- details of how the reservoir manager monitors the reservoir's safety, the frequency of this monitoring and the details of the person(s) responsible for carrying out this monitoring;
 - an inundation map in relation to the reservoir (i.e. a map showing the area that would be flooded in the event of an uncontrolled release of water – the Government has given a commitment to provide these maps in respect of existing reservoirs in response to a recommendation from Sir Michael Pitt's Review);
 - where a manager is not also the owner, details of the owner including his/her name and address; and
 - limited key technical information (likely to include, for example, grid reference, dam height, volume, type of construction etc.).
336. This information will be necessary to assess whether the reservoir is likely to be classified as a high risk reservoir, or, on the other hand, to assess a reservoir's eligibility to be exempted from full regulation on grounds of its construction design or materials, for example.
337. The impact assessment for this policy also assumed that for all registered reservoirs we would require a statement of each manager's current financial resources and the maintenance of an information board in a conspicuous place for emergency response purposes. The information board would clearly set out the up to date details of the reservoir's registration number, the name of the reservoir and the manager(s) emergency contact telephone number(s).

338. However, it might be that some of these requirements can be waived for the lowest risk reservoirs, or those which are on private land to which the public have no access. That would reduce the costs implied by registration set out in the impact assessment. We may also be able to facilitate registration and reduce costs for owners such as smaller businesses by using online tools, for example.

83. Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?

Reservoir classification

339. Reservoirs are currently categorised on a non-statutory basis. We want to classify all reservoirs subject to the revised regime according to whether they pose a threat to human life or not. This classification would be determined by the EA as enforcement authority by reference to, in particular, the inundation map for each reservoir and in consultation with local authorities. A prescribed methodology for the production of inundation maps in England and Wales is currently under development.

340. We are proposing that some reservoirs should be classified as high risk reservoirs – this classification would apply to any relevant reservoir which, if it failed, could result in the loss of life to downstream populations (day time and night time). The Bill will also provide for detailed rules to be drawn up which would specify types of reservoirs which, regardless of closeness to populations, are unlikely to give rise to other than negligible risks. These would not be treated as high risk and the regulatory provisions would be reduced accordingly.

84. Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?

Relationship of classification system to risk

341. Our aim is to classify reservoirs according to the consequences for people of an uncontrolled release of water. It is acknowledged that this is only one component of risk – the other being the likelihood of an uncontrolled release of water. However in very few cases is it possible to prescribe criteria for judging the likelihood of an uncontrolled release of water for any reservoir although as noted above we propose to set out in secondary legislation the types of reservoirs which might be exempted from the full regulatory requirements. Likelihood is not, however, ignored in these proposals since it would be judged on a case by case basis by qualified engineers.

342. Managers of high risk reservoirs will be required to ensure that they are monitored for any indication that safety is being, or could be, affected. They will also be required to inform the relevant supervising engineer in writing of any such signs.

Insurance

343. It could be argued that the market could deliver protection based on insurance for non-regulated facilities and that this could be either a replacement for, or adjunct to, the proposed risk-based regulatory regime. Whilst we believe that the regime proposed in the draft Bill is a major step forward in delivering reservoir safety effectively and proportionately, we intend to explore with relevant interests, including the insurance industry, whether insurance-based approaches might also have a role.

85. Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?

Reducing the burden

344. The Government's proposed changes will be a lessening of regulation for many reservoirs. Our impact assessment is based on the assumption that 40% of LRRs could have much lighter touch regulation than now. However, they also bring within the potential scope for regulation those smaller reservoirs which do represent a risk. The Government will seek to keep that burden to a minimum proportionate to that risk.
345. It can achieve this through several means. Those reservoirs below a threshold volume (we currently propose 10,000 cubic metres, see above) will not be required to register at all. Furthermore, the legislation includes a power to exempt reservoirs that have been required to register from full regulation. Such exemptions could be based on low impact of inundation, the reservoir's purpose, its construction methods and/or materials, its maintenance regime etc.. The Government's proposals are firmly based on managing risk.
346. Finally, it is possible that whilst they would be one-off charges, a charge for registration might be burdensome against the income available to the owners of the reservoir and, potentially, disproportionate to the level of risk their facility might present. We have asked above for views on how to minimise administrative and other burdens arising from the registration scheme.
347. The Government does not want to create disincentives to register nor to unduly burden small organisations. It would therefore like to explore whether there are ways of reducing this burden for such bodies. Possible approaches might be to set lower information and other requirements for registered reservoirs which are classified as low risk, to recover costs of registration from those reservoirs which are classified as high risk, or simply to spread the costs of registration over a number of years.

<p>86. Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?</p>

Detailed changes to the new regime

348. In addition to the broad changes outlined above, we are also seeking to make a number of minor amendments to the existing provisions of the Reservoirs Act 1975. These are summarised below.

Panels of Engineers

349. As currently drafted the clauses enable both the Secretary of State and Welsh Ministers to appoint a panel or panels of engineers for this purpose. There is currently no explicit provision for panels to be appointed jointly, i.e. for a single panel established jointly by the Secretary of State and Welsh Ministers. Subject to the outcome of this consultation we propose to include such a provision.

Proposed new enforcement powers

350. We intend to provide for the EA to have access to a range of civil sanctions to enable it to respond flexibly and proportionately to cases of non-compliance. The aim will be for the Bill to enable appropriate civil sanctions to be introduced in secondary legislation.
351. All offences under this Part of the Bill will become strict liability offences. The power to issue enforcement notices for non-compliance will be retained. Fines for all summary offences will be up to level 5.

Charging

352. Currently, the EA has powers to impose charges as a means of recovering the costs it incurs in performing a wide range of its functions. It does not, however, have any power to charge to recover any of the costs and expenses it incurs from carrying out its non-enforcement functions under the Reservoirs Act 1975. We are therefore seeking a power for the EA to introduce a charging scheme in line with those it already has under the Environment Act 1995.

87. Again, we welcome views on how to ensure charges within a scheme can be made proportionate.

Maintenance and operational issues to be binding on the manager

353. Currently, Inspecting Engineers are required to note in their report any recommendations they see fit as to measures that should be taken in the interests of safety. We want to ensure that this includes, where appropriate, details of what maintenance should be carried out and how particular parts of the reservoir should be maintained.

354. As maintenance would generally be an on-going requirement, it will not normally be possible for the qualified civil engineer to certify that any measures of this kind have been put into effect. We are therefore proposing that Supervising Engineers should be required to include in their annual statements information of the action they have taken to deal with any maintenance issues, highlighted by the Inspecting Engineer, which require ongoing action.

Reservoir Flood Plans

355. Section 12A of the Reservoirs Act 1975 (inserted by section 77 of the Water Act 2003) enables the Secretary of State and Welsh Ministers to direct undertakers to prepare a flood plan setting out what action they would take in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

356. No direction has yet been issued by the Secretary of State or Welsh Ministers under this section, although considerable work has been carried out to identify what flood plans would need to comprise. We envisage that a flood plan would have two main components:

- an on-site emergency action plan, which would also include a communications plan, setting out, for example, how the manager and his staff would respond to an incident and contact the relevant Category 1 Responders (as set out in Part 1 of Schedule 1 to the Civil Contingencies Act 2004) in an emergency. The communications plan would reflect the provisions of Civil Contingencies Act 2004. The reservoir manager would need to consult the relevant Category 1 responders on its draft communications plan before finalising it. This would include the inundation map (see above);
- an off-site plan for use by the emergency services in the event of an actual or potential uncontrolled release of water. (This is not provided for in the Reservoirs Act 1975 but powers to prepare such plans exist in the Civil Contingencies Act 2004).

357. The preparation of flood plans will require technical input. We want reservoir managers to obtain a certificate in the prescribed form from the Supervising Engineer for that reservoir, or where none is required another qualified civil engineer, before the flood plan is finalised. The purpose of the certificate would be to obtain the Supervising Engineer's confirmation that the plan met any technical aspects of the direction.

358. We want to ensure that flood plans are kept under review and updated as and when this is necessary, and that reservoir managers test their flood plans at suitable intervals and take reasonable steps to arrange for Category 1 responders to participate in these tests to the extent necessary. Where a Category 1 responder wants to test its off-site emergency plan in relation to a relevant reservoir, the reservoir manager should cooperate with that Category 1 responder.
359. We also want Supervising Engineers to include in their annual statement advice as to whether any matters in the flood plan for the reservoir in question need reviewing and updating; and to explain any action that the manager has taken to fulfil any requirements of the flood plan (such as improvements to emergency exit routes) or to test the plan.
360. To ensure that reservoir managers are in a position to implement their flood plans in an emergency, we propose to place a duty on them to put their plans into effect without delay where an incident which is likely to result in an uncontrolled escape of water from their reservoir either occurs, or could reasonably be expected to occur.
361. Under section 2(2) of the Civil Contingencies Act 2004, Category 1 responders are required to prepare and maintain plans in relation to emergencies. We want Category 1 responders to be able to recover any costs and expenses that they reasonably incur in relation to any off-site emergency plan which they are required to prepare in relation to a relevant reservoir from the managers for that reservoir. Regulation 13 of the Control of Major Accident Hazards Regulations 1999 (S.I. 1999/743) (as amended) contains a similar power in relation to off-site emergency plans which local authorities are required to prepare under regulation 10 of those Regulations, which we think may be broadly suitable for our purposes. The Bill does not currently include this provision.

88. No decision has yet been made about making use of the existing power to give Directions contained in the Reservoirs Act 1975 (as amended by the Water Act 2003). Views are invited on whether to proceed ahead of enactment of the proposals in the draft Bill. Points to bear in mind are:

The existing power to give a Direction would apply only to LRRs; and the costs of off-site planning would not be borne by the undertaker;

The power to give a Direction under the new Bill proposals could apply to all high risk reservoirs above the minimum volume criterion; and could provide for the reservoir manager to meet the costs of off-site planning should a specific emergency response plan be needed. Views are sought on whether the Bill should provide for this.

Mandatory incident reporting

362. Following direction from Defra, in 2007, the EA instituted a voluntary system of post-incident reporting to encourage managers to notify it of serious incidents at their reservoirs which had implications for the reservoir's safety. The type of incident that the voluntary system is intended to cover include dam embankment slippage, cracks in reservoir walls, leakage from reservoir pipe work, as well as actual uncontrolled releases of water. The purpose of this is to enable the EA to gather information on how an incident occurred; to disseminate any lessons learned; and to promote appropriate research and development.
363. We agree with Sir Michael Pitt's recommendation in his report on the summer 2007 floods that such reporting is an important aspect of reservoir safety in general. We therefore intend to place duties on all reservoir managers and engineers to report any incident to the EA within a specified period. We intend to set out in secondary legislation the form of those reports and the particular kinds of incidents to be reported, while ensuring requirements are well-designed and proportionate to risk.

3. Flood and Coastal Erosion Risk Management – policy issues not covered by draft Bill provisions

The Government is considering whether there is a case for wider reforms to the way in which flood and coastal risk management activity is funded, how money flows through the system, and to the future role of Internal Drainage Boards within the delivery landscape. Proposals on these issues are not included in the draft Bill.

3.1 Possible reforms to the role and governance of Internal Drainage Boards

364. This section of the consultation document deals with Internal Drainage Boards in England and Wales. Both the UK Government and the Welsh Assembly Government are interested in your views and will take forward any resulting changes.³⁰
365. Internal Drainage Boards (IDBs) are independent statutory bodies responsible for land drainage in areas of special drainage need; they cover 1.2 million hectares of lowland England. They are long established bodies operating predominantly under the Land Drainage Act 1991. They have powers to undertake work to secure drainage and water level management of their districts, including flood defence works on ordinary watercourses. Much of their work involves the improvement and maintenance of rivers, drainage channels and pumping stations. There are now some 160 IDBs in England and Wales, concentrated in East Anglia, Yorkshire, Somerset and Lincolnshire.
366. There have been concerns in recent years that some IDBs operate solely or primarily for the benefit of farmers focusing on effective land drainage, and hence agricultural efficiency, to the detriment of nature conservation and other wider Government policies. Their accountability and accessibility has also been questioned, for example in terms of not holding public meetings, or officers not being available outside normal office hours to deal with emergencies (a number of these concerns have been addressed by the IDB Review). However, IDBs do have the benefit of having a local focus and understanding and are trusted by the farming community.
367. For some years, Defra has pursued a process of modernising IDBs. To increase accountability we brought them under the jurisdiction of the Local Government Ombudsman in April 2004. We have also sought to amalgamate Boards to rationalise their number and reduce administration costs.
368. Since February 2008, Defra has encouraged Boards to group or amalgamate into sub-catchment units. This is in line with the concept of water level management and on managing water levels throughout a whole catchment to provide a holistic and strategic flood risk management service and protection environmentally sensitive areas. Although Defra produced a suggested approach, it has been left to Boards to consider if it is appropriate to adopt this approach in their respective areas.
369. The draft Bill will provide for IDBs to:
- have additional powers to undertake work on surface water and groundwater at the request of the county or unitary local authority (and on main river and sea flooding and coastal protection at the request of the EA);

³⁰ Welsh Ministers have yet to determine how best to amend the roles and responsibilities of operating authorities in Wales to ensure the move to a risk based approach. Details on the proposals of Welsh Ministers are set out in more detail in Annex A.

- continue to lead on managing water levels and flood risk in their areas, but subject to a duty be consistent with any strategy or supplementary guidance issued by the county or unitary local authority; and
- be required to co-operate and share information with the EA and local authorities.

370. However, it is possible to consider several other structural changes to IDBs.

IDB's 'supervision and regulatory roles

371. Section 1(2)(a) of the Land Drainage Act 1991 states that IDBs shall “exercise a general supervision over all matters relating to the drainage of land within their district”. The history of this provision dates back to 1930 and empowers them to respond, advise and, where appropriate, control matters within that district. IDBs currently use these powers to enable them to give advice, mediate, respond to consultations and respond to planning applications and queries etc..

372. County and unitary local authorities will be taking on the ‘local leadership’ role within their area. If IDBs were to retain their general supervision over all matters relating to drainage in their area, this would seem to be inconsistent with the new local authority local leadership role.

373. The draft Bill will amend section 23(8)(b) of the Land Drainage Act 1991, so that county and unitary local authorities (rather than the EA) will be responsible for consenting to works on ordinary watercourses (outside of IDB districts). Within IDB districts this role currently rests with IDBs. We are seeking views on whether, to ensure a consistent approach within the area of a county or unitary local authority, the current consenting functions of IDBs should pass to that local authority.

89. Do you consider that there is a direct conflict or inconsistency between the IDB's supervisory role, with the local leadership role of the county and unitary authority?

90. If the IDBs supervisory role was repealed, what would IDBs no longer be able to do that they currently can?

91. Should regulation of the entire ordinary watercourse network (including within IDB watercourses) transfer to county and unitary authorities in order to provide a consistent approach?

Allow IDBs to form consortia, private companies and other innovative delivery models

374. There is a limited basis for consortium arrangements in the Land Drainage Act 1991, and unlike the position for amalgamation, there is no detailed procedure for forming these. An IDB or a group of IDBs may in principle arrange for a private company or a consortium to provide them with management services. However under the current law, one IDB cannot provide another IDB with management services in return for a fee, and IDBs do not have powers to set up limited companies or separate corporate bodies.

375. An express power to form and participate in limited companies would not allow IDBs to delegate control over the exercise of their statutory powers to other corporate bodies. But it would allow them to set up a corporate body through which management services can be provided to themselves and others, subject to there being no cross subsidisation. The participating IDBs would therefore be shareholders of such a company and as such would be able to appoint directors to run the company (for example the Chairman and Vice Chairman of each IDB in the Consortium).

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| 92. | Do you think that IDBs should have specific powers to share services and form/participate in consortia? |
| 93. | Do you think that IDBs should have specific powers to form/participate in limited companies/limited liability partnerships for the purposes of sharing services? |
| 94. | What negative impacts might there be from providing IDB's with these specific powers? |

Simplification of the Order Making Process for boundary alteration and amalgamation

376. While we wish to retain the current power to re-organise IDBs (including boundary alteration, amalgamation, abolition, constitution etc), we would like to see the current complex procedure streamlined. A typical amalgamation can take at least nine months to come into force due to the need to have a series of four one-month statutory advertising periods. This is not cost-effective as four rounds of advertising have to be paid for, and is also a very time consuming process for all involved.
377. We propose to streamline these procedures to two notification periods. We also propose to remove the requirement for these notices to be placed in newspapers but to say that they should be 'published in such manner as it is considered best adapted to informing persons affected' or equivalent. (For example, they could be published on IDB and parish notice boards and brought to the attention of affected landowners).

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| 95. | Do you agree the proposals outlined are the best way to simplify these procedures? If not, what alternative approaches should be considered? |
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Change the title of IDB to 'Local Flood Risk Management Board'

378. One of the main drivers of the Bill is to move away from land drainage and flood defence to an approach of flood risk management. In the future IDBs will be a key deliverer of local flood risk management, and we therefore want to focus their activity on flood risk management as opposed to drainage.
379. We therefore propose changing their title to 'Local Flood Risk Management Boards'. The definition of flood risk management within the draft Bill includes traditional flood defence, drainage, and water level management, so the term 'Flood Risk Management Board' would encompass all the current main roles of an IDB.

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| 96. | Do you agree that the title of IDBs should change in the future to reflect the wider approaches that IDBs will undertake now and in the future? |
| 97. | Do you agree that 'Local Flood Risk Management Board' is an appropriate new title, or is there a better alternative? |

Relax the restrictions currently imposed by the "Medway Letter"

380. The principle commonly followed in determining the area of an IDB is to include within a drainage district agricultural land up to 8 feet above the highest known flood level, and in urban areas up to flood level. In tidal areas, urban property up to the level of ordinary spring tides is normally included and agricultural land up to 5 feet above that level.

381. Land above these levels may be included in a drainage district if the circumstances justify it e.g. if access to that land depended on/benefited from drainage works. These general principles are set out in what has become known as the 'Medway Letter'³¹. The limitations of IDB boundaries have caused increasing difficulty as IDBs are required to deal with water that falls on land outside their district and flows down into IDB managed watercourses – this does not allow for strategic and holistic management of the catchment.
382. We propose that IDBs should, working with county and unitary local authorities, be able to expand their boundary where this is sensible for the strategic management of flood and coastal erosion risk management locally.
383. We would not want an IDB to be able to do so unless it was the best decision for the local area and provided a clear benefit. We propose an IDB seeking to alter its boundary to have regard to any guidance issued by the Secretary of State. That guidance would require the IDB to provide a detailed analysis showing what the change in Special Levy and Agricultural Drainage Rate payments would be (of course this would depend on any changes to the funding structures).
384. In addition, these changes could not be taken forward without consultation and agreement with the relevant local authorities. We would expect this to happen now, but in lifting the restriction currently imposed by the Medway letter we would expect a more thorough cost benefit analysis to be produced for such a move with the relevant local authorities.

98. Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas?
99. Do you agree that there should be a specific requirement for IDBs to produce an impact assessment demonstrating the cost benefit implications of a boundary expansion?

Move the supervision of IDBs from the EA to county and unitary local authorities

385. Current legislation puts the EA in a supervisory position over IDBs. In future, the county and unitary local authorities will be responsible for overseeing local flood risk management, which includes local drainage, surface water management, and ordinary watercourses that the IDBs have within their boundaries.
386. It would therefore make sense for the county and unitary local authorities in their new local leadership role to supervise IDBs. They will have oversight of all local flood risk management within their areas, and IDBs are one of the main delivery bodies. In addition, the county and unitary local authorities will need to grow their expertise and potentially use the expertise of district authorities and IDBs to deliver works on the ground.
387. By placing IDBs squarely under the remit of the county or unitary local authority, they would be better able to deliver on their 'local leadership' role more effectively. These local authorities would be able to work with the new 'Local Flood Risk Management Boards', set their boundaries and establish what roles they want them to play to suit local needs and circumstances. This would be unrestricted by the 'Medway letter' as set out above but would need to be consistent with any Ministerial guidance or other explanation as proposed above.

³¹ Letter sent by the Minister of Agriculture and Fisheries to the Clerk of the River Medway Catchment Board on 28 June 1933 as a response to the public inquiry into schemes prepared by the Board for the Upper Medway and Lower Medway Drainage Districts under Section 4(1)(b) Land Drainage Act 1930. The text of the letter appears as an appendix to A.S.Wisdom Land Drainage (1966).

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| 100. | Do you agree that the future supervision of IDBs would fit better with county and unitary local authorities rather than the EA in the future? |
| 101. | Do you think that county and unitary local authorities should take over the lead on amalgamation (etc.) schemes from the EA in the future under this supervisory role? |

Adjust the membership of IDBs

388. IDBs need to reflect the needs of all relevant stakeholders, and reflect modern expectations of a public body, whilst also delivering the FCERM functions expected of them. The current membership is a combination of local authority appointed members, and landowner votes are allocated on the basis of land ownership, up to a fixed limit. The number of members appointed by charging authorities is in proportion to the amount of levy payable of total rate and levy income. However, it is currently limited to a majority of one.
389. Put simply, however much money local authorities prioritise for IDBs, their representation can never outstrip that of local landowners, however little the latter the IDB, by more than one vote.
390. Although it is still very much appropriate to have agricultural interests represented on the Boards, the current rules can have the effect of giving them disproportionate influence. The current membership can very much direct the works and attitudes of the IDBs, with farming members exerting a strong influence on IDB policies and practices.
391. The Government therefore proposes to repeal the limit of the number of local authority representatives on IDB boards. This would deliver representation on the IDB more in line with its expenditure profile, and very much follows the principle of he who pays gets the say.

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| 102. | Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future? |
| 103. | Are there other models of membership that you think would be more appropriate? |

Allow the Secretary of State to make regulations determining the structure of IDBs

392. For a number of years the Government has been encouraging IDBs to amalgamate or group into fewer, bigger units to gain efficiency savings and allow for more strategic FCERM. The current approach is to encourage Boards to reorganise on a sub-catchment basis and so reduce their numbers from some 160 down to around 30 or fewer. It has expressed the wish that this would be achieved by 2013, but progress has been slow.
393. This is in line with the concept of managing water levels throughout a whole catchment to provide a holistic and strategic flood risk management service for all and to preserve environmentally sensitive areas. Although Defra produced a suggested approach, it has been left very much up to Boards to consider if it is appropriate to adopt this approach in their area.
394. These proposals continue to fit well with the new 'local leadership' role foreseen for county and unitary local authorities because by having fewer, bigger Boards across the country, better engagement and management with those authorities will occur, and local authorities in general will need to attend fewer IDB meetings. The table below shows that many IDBs are concentrated in relatively few counties. For these authorities, fewer IDBs would make their local leadership role much easier.

Distribution of IDBs by County

County	Number of IDBs	Total IDB Area (hectares)	IDB Area as % of County
Lincolnshire	20	294,619	48.2%
Cambridgeshire	57	116,011	38.0%
Nottinghamshire	12	53,057	24.5%
Norfolk	39	125,872	22.9%
North Yorkshire	26	121,425	15.1%

Notes:

1. IDB districts based on those existing April 2005.
2. Top 5 only shown.

395. Catchment-based IDBs would be able to advise and work on a holistic basis, but on the other hand, may have to work with several local authorities. Nevertheless, this would be a significant improvement on current arrangements and more closely map out other important things such as catchment or river basin plans.
396. In the light of the new local Leadership role for county and unitary local authorities, it could be that the best option would be to map IDB boundaries on to county boundaries. In any event IDBs should be encouraged to discuss any structural changes with the relevant local authorities.
397. We propose that the Secretary of State should have powers to set the appropriate shape, size and structure of IDBs in the future. This is so that, in consultation with IDBs, local authorities and other relevant stakeholders, Defra could ensure that the reformed structure will be in place by 2013.
398. Relying on the current voluntary process for wide scale rationalisation is unlikely to result in many amalgamations taking place.
399. Defra would consult all parties fully on the regulations to ensure that the future structure of IDBs was the best possible approach.
400. The move to larger Boards should reduce operating costs and add resilience to the management of flood risk within every catchment. The new and improved IDBs will be able to access greater resources, which will enable them to do more work and manage their area more strategically and cost effectively.

104. Do you agree that the Secretary of State should have powers to determine the size, shape and structure of IDBs in the future?
105. What consultation would need to occur before individual changes in size, shape and structure of IDBs were to take place? What sort of powers would be most appropriate?

401. The analysis for the proposed changes to IDBs contained in the impact assessment need a link to this document makes a number of assumptions about the efficiency savings that would be made by expanding the boundaries of an IDB, or reducing the total number of IDBs across the country.

106. Views are sought on whether the assumptions are reasonable. Can further evidence be made available to improve the analysis? Are the measures proportionate with the scale of benefits assumed?

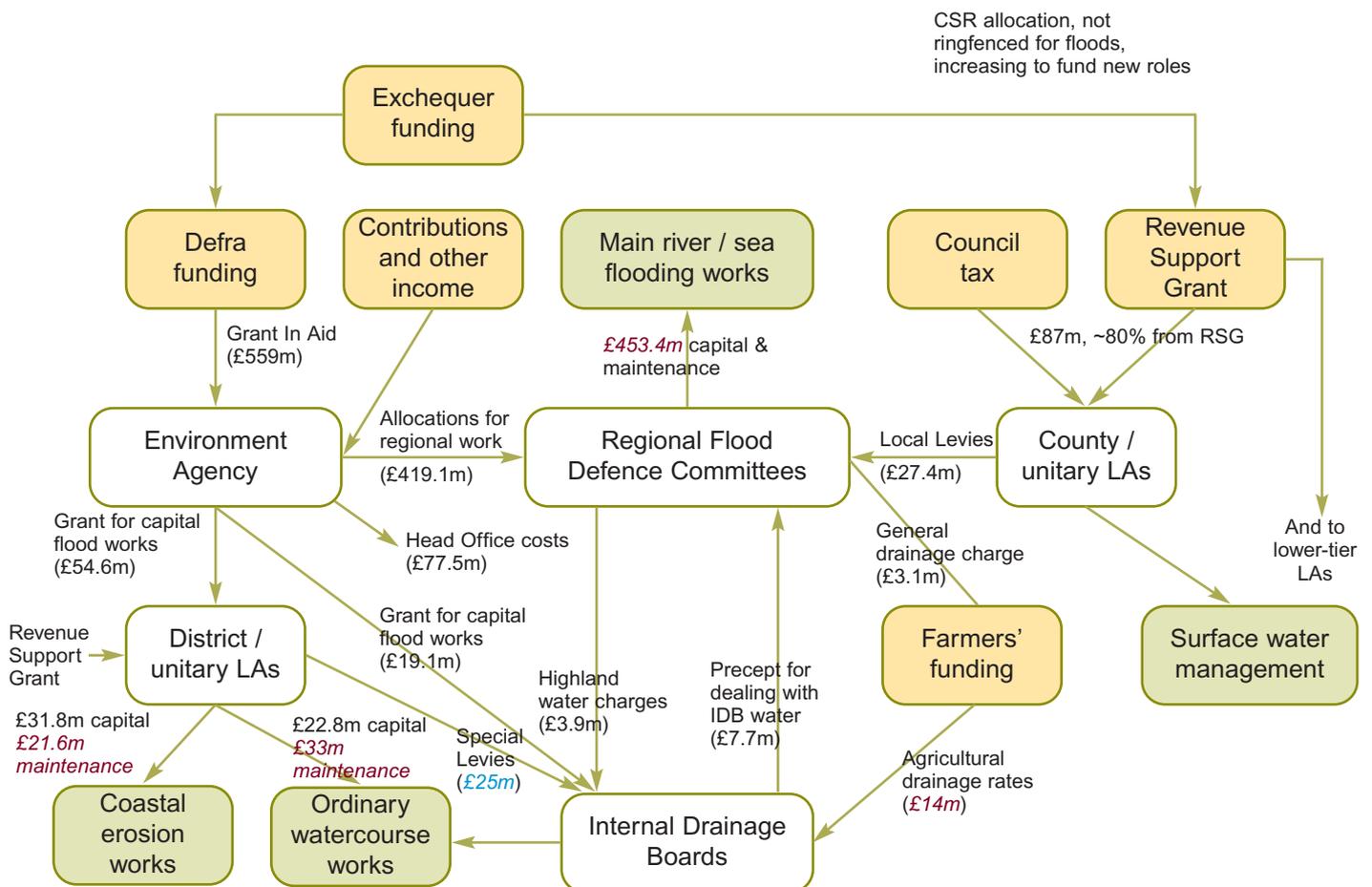
3.2 Current funding structure

402. The proposals set out below would apply to England only. However, the Welsh Assembly Government is also interested in views on how such changes might apply in Wales.

403. A simplified model of how money flows through the delivery landscape in England is presented beneath. Numbers are provided for illustrative purposes only.

Figure 2
FCERM funding arrangements

Figures are forecasts for 2008/09 apart from **2007/08 outturns & estimates**



404. Grant-in-Aid from Defra to the EA is the main source of funding, supported also by Revenue Support Grant to local authorities. In addition to funding of Exchequer-origin (which makes up approximately 94% of the total), the agricultural sector contributes towards funding in the form of drainage charges and rates. This is because farmers benefit directly from the activity this money funds, and because farmers are exempt from business rates that help fund works more generally.
405. By far the greatest investment made by the EA relates to main rivers and sea/tidal flooding. The EA also allocates capital grant for flood works and coastal erosion works to local authorities and to IDBs. The EA's main source of income is Grant-in-Aid from Defra, but the EA can also raise funds through a combination of local levies on upper-tier local authorities, drainage charges, and a precept for dealing with water flowing in to main rivers from IDB districts.
406. Although the sources of funding tend towards lesser amounts than those provided as Grant-in-Aid to the EA, IDBs have powers to raise funding through drainage rates made on agricultural land and buildings, to levy local authorities, and to charge the EA in relation to the costs of handling water that arrives in an IDBs catchment from surrounding higher ground.

Proposals on which we are consulting now

Role of charges and rates on agricultural land owners and farmers

407. There are three statutory mechanisms that allow charges to be made in relation to the agricultural benefits received from flood risk and water level management.
- The General Drainage Charge levied by the EA (currently only used in their Anglian region);
 - The Special Drainage Charge (powers rest with EA but are not currently used); and
 - Agricultural Drainage Rates (charged by IDBs for water level management services that benefit agricultural land within the IDB district).
408. It is proposed that the legislation underpinning the Special Drainage Charge should be repealed, in relation to both England and Wales as it is no longer used. However, we consider that there is a case to retain both the General Drainage Charge and Agricultural Drainage Rates as they provide valuable funding streams that help pay for flood risk management and water level management benefits for agriculture that would otherwise not be delivered.
409. However, an option would be to transfer these powers to county and unitary local authorities so that they could decide what flood risk and water level management activity would be beneficial in totality within the local authority boundary, whether within an IDB district or not, and to what extent agricultural land owners and farmers should contribute towards the benefits they receive.
410. The contributions could relate to the total cost of works conducted by all local authorities, the EA and IDBs with the funding raised passed as appropriate to the body incurring the cost. In this way there would be local democratic accountability over the contributions required.
411. In practice, county and unitary local authorities could ask IDBs to recommend the level of payments to be paid by land owners within their boundary, to allow current practices to continue if agreed by the county or unitary local authority and IDB.

108. Do you agree that there is a case to retain powers for the EA to levy (a) general drainage charges, and for IDBs to retain similar powers to levy (b) agricultural drainage rates in England and Wales?
109. Do you agree that EA's current powers to levy special drainage charges should be repealed?

Local authority prioritisation of funding

412. While the EA has overall responsibility for overseeing and supervising the management of FCERM, the draft Bill gives county and unitary local authorities in England local responsibility for local flood risk management (i.e. from surface run-off, groundwater and ordinary watercourses) in their area. Under proposals within the draft Bill they will be heavily reliant on district authorities and IDBs to perform their current executive roles and manage risk from ordinary watercourses.
413. A duty to co-operate is proposed, and for districts and IDBs to have regard for strategies and plans determined by the county or unitary authority. But at present district and unitary local authorities and IDBs would retain powers and funding to determine their own delivery plans as long as they are consistent with the county strategy.
414. Good practice suggests that funding should be aligned with responsibilities, to make sure those accountable for delivery have the resources to achieve what is required. It would therefore make sense to channel all relevant funding for local flood risk management to county and unitary local authorities, for them to allocate, in line with priorities within their boundary, to areas that would achieve best value for money.
415. To make this work, the county authority would be responsible for agreeing a local flood risk management plan with all other relevant bodies, and then deciding how to spread available funds to each element of the local plan, and the bodies that would do the work on the ground. This arrangement would strengthen county authorities' role, and allow them to prioritise funding to operating authorities based on the benefits that can be achieved.
416. District authorities would be particularly affected by this as IDB 'special levies' (£25.4m in 2007/08 – includes funding by unitary authorities) and maintenance of ordinary watercourses and other local flood risk management activities (estimated at £31m in total in 2007/08) are amongst the services they provide that are supported by a formula grant. On top of the funding that would be provided to them by the county under this arrangement, district authorities and IDBs would still be free to allocate any other funds available to them to the management of local flood risk, if they are not funded by the county or unitary local authority to pursue their particular priorities, and as long as the works are not inconsistent with the agreed local flood risk management plan.

110. Do you agree that only county and unitary local authorities should be funded for local flood risk management to allow them to prioritise funding based on where benefits would be greatest?

Local authority funding for IDBs

417. IDBs in England and Wales are currently funded by two main mechanisms: agricultural drainage rates as mentioned earlier, and a 'special levy' that requires money to be paid by the local district or unitary local authority to each IDB in relation to the benefits of water level management for non-agricultural land.

418. Local authorities' expenditure on these payments is supported through their revenue support grant allocations from central government, and hence the majority of the funding comes ultimately from the Exchequer. In some areas, such as Lincolnshire the special levy is a substantial proportion of a district or unitary local authority's total budget.
419. IDBs set the value of the levy by preparing a business plan together with funding options to be voted upon by members. Membership is made up of agricultural and local authority representatives, with local authorities potentially having a majority (of no more than one) on the board. Authorities therefore have some control over the value of levy, and could, if they chose to and all agreed, vote for the option that entailed the lowest levy payments. But they could be outvoted by agricultural interests on the board, and even if not, better value for money could be gained by the local authority investing the special levy monies on flood risk management activity outside of the IDB boundary. The levy powers deny local authorities this option.
420. The existence of the levy provides IDBs with some certainty over future funding, allowing them to make long-term investment decisions. If the levy-making powers were to be replaced with agency or contractual arrangements with the local authority (potentially the county local authority in two tier areas), IDBs would need to continue to have some certainty over future funding as part of an agreed business plan to allow them to continue to operate, and service any debt they have.
421. Breaking the link between the IDB's boundary and its funding mechanisms would allow the IDB to operate outside of its former boundary on any aspects of local flood and coastal erosion risk management requested and funded by the EA and/or local authorities.
422. There are other potential approaches that might address issues with the special levy including:
- (a) making the levies payable by county rather than district local authorities;
 - (b) requiring decisions on the special levy to require majority consent of the local authority representatives on the IDB (in the same way that EA levies on local authorities require majority consent of the local authority representatives on RFDCs).

111. Do you think that replacing the IDB special levy in England and Wales with agency or contractual arrangements between IDBs and the relevant local authorities would improve the delivery and prioritisation of local flood risk management?

112. Are there other arrangements that would remove or reduce the problems associated with the special levy in England and Wales?

Reviewing the circular payments between IDBs and the EA

423. There are two charging regimes in place that result in funds being passed between the EA and IDBs to pay for the management of water that flows into and out of IDB districts. IDBs are required to pay a 'precept' to the EA to reflect water flowing from IDB districts, and in to main rivers managed by the EA. In the opposite direction, the EA is required to pay 'highland water charges' to reflect IDB costs in relation to water flowing in to IDB districts.
424. These two regimes cost money to administer, and from a national perspective to an extent cancel each other out. In 2008/09 the balance appeared to be in the EA's favour, with IDBs having to pay £3.7m more to the EA than in the other direction (so IDBs and their customers, including local authorities, would benefit from the payments ceasing).

425. The existence of these mechanisms allows IDBs and the EA to be compensated to some extent for the actions taken by each other, and therefore provides an incentive to minimise such impacts. The Government would be interested in views on whether this mechanism is still useful, whether the means of determining payment levels are transparent, and whether the costs involved in administering charges and payments are worthwhile.
426. The option to end these arrangements would appear particularly relevant if the restrictions within the Medway letter are relaxed and IDBs are allowed to extend their boundaries upstream to include the areas of highland water, allowing the flood risk to be managed more holistically.

113. Is there a case to end both IDB highland water charges and the EA's precept on IDBs in England and Wales?

114. If the Medway letter were retained, would there still be a case to end the payments?

Developments should fund the additional pressure they put on future budgets

427. As a principle, we consider new development in flood risk areas should compensate the public purse for any additional long-term costs resulting from there being additional people and property placed in areas at risk of flooding or coastal erosion, in accordance with what is set out (in England) in national planning policy on development and flood risk - Planning Policy Statement 25 (PPS25).
428. Where it is necessary to permit development in high flood risk areas that requires the provision of flood risk management, PPS25 generally requires developers to fund the necessary flood defence and mitigation works. Developers cannot normally call on public resources to provide defences and other measures, except where they have already been programmed for the protection of existing development. Where publicly funded defences have already been provided, these may also provide opportunities for new development, provided this does not increase flood risk elsewhere.
429. Flood defence or mitigation measures arising from new development are often secured through planning obligations under section 106 of the Town and Country Planning Act 1990, which can involve payments to local authorities to pay for any additional, unprogrammed, defences that are required, either to safeguard the new properties to an acceptable standard, or to prevent other properties being subjected to an increased flood risk. A commuted sum is also sometimes sought to compensate for the need to maintain the new defence in the future. The Department for Communities and Local Government is preparing secondary legislation that will determine how the new Community Infrastructure Levy (CIL) will work, which can help fund flood risk management in the area.
430. However, funds raised by the CIL will be needed for a number of competing priorities – such as roads, schools, parks and playgrounds. It cannot be assumed that any receipts from CIL will be spent on flood risk management.
431. There are also other flood defence asset and non-asset costs that will arise from having more people and property in at-risk areas that may not be covered fully by Section 106 or the CIL. These may include:
- flood modelling, forecasting and warning systems and services need to be extended to the new areas, together with local emergency and evacuation plans;
 - the infrastructure built as a result of the development, such as the new schools and roads, will need to be repaired at the local authority's (or central Government's) own expense if floods occur; and
 - flood defence assets need to be maintained, not just at the crest levels as constructed,

but potentially at heightened levels over time to maintain a standard of protection despite increased risk from climate change.

432. A new development built in an area that is already defended to an acceptable standard will at present not usually contribute towards FCERM costs. However, additional people and property put behind a defence will increase the costs of a flood event, and so increase the need and the justification to maintain the standard of protection in the future. This will be at the taxpayers' expense unless developers are required to cover these costs.

115. What additional steps or measures could be taken to make sure developers in England and Wales contribute towards the pressures new developments place on future local and central government budgets?

Issues to be considered at a later stage – local discretion to supplement national funding for flood and coastal erosion risk management

433. Damages from flooding amount to an average of £1.1 billion each year in England³². These costs are borne by individual home owners in having to dry out and refurbish their properties, by businesses in bearing similar costs and in lost sales, by local government in responding to flooding and in refurbishing public buildings and infrastructure, and by central government. There are substantial benefits for individual property and land owners, and individual businesses, as well as for the Government and society as a whole, in reducing the risk of flooding and coastal erosion.
434. Central government currently funds more than 90% of total investment by the EA, local authorities and IDBs in reducing the risk of flooding and coastal erosion. It chooses to invest as otherwise the average annual economic, social and environmental damages from flooding would be far higher than £1.1 billion.
435. Every £1 currently being invested in new and improved defences reduces the long-term costs of flooding by on average £8³³. Delivering a national programme of flood and coastal risk management through the EA has delivered significant benefits in recent years; it means consistent approaches are applied across the country, and helps maximise value for money from taxpayers' investment.
436. However, the amount of taxpayer funding available to the EA need not limit the amount of beneficial flood risk management activity happening on the ground. Local areas are free to consider whether to invest more than can be afforded by the EA alone, to deliver additional direct benefits to local householders, businesses, land owners and others. The Government's response to Sir Michael Pitt's Review signalled that county and unitary local authorities should work closely with the EA to consider whether there is a case to invest in additional local priority projects, and determine the fairest way of raising the money to pay for them³⁴.
437. The forthcoming long-term investment strategy, to be published later this Spring, will present an assessment of funding needs in England for the next 25 years taking into account the latest evidence on climate change. Calling for a long-term investment strategy, Sir Michael Pitt concluded:

³² Source: Environment Agency National Flood Risk Assessment (NaFRA), 2006

³³ The average benefit to cost ration of community schemes funded by the Environment Agency is currently 8 to 1.

³⁴ See Recommendation 24 - The Government's Response to Sir Michael Pitt's Review

‘This long term approach should not assume that the costs of flood risk will be met centrally. There are direct beneficiaries from flood defence work, and aligning those who benefit with those who pay will bring greater efficiency and greater responsiveness from those carrying out the work.’

438. Following publication of the investment strategy the Government would be interested in views on whether the current local funding mechanisms outlined in the Government response to Sir Michael Pitt’s Review, together with the RFDC levy as proposed in the draft Bill, provide sufficient local discretion to invest in projects beyond those that the EA is able to fund themselves.
439. The Welsh Assembly Government is considering arrangements in relation to long term funding commitments and more information on this is in Annex A.

3.3 Reducing property owners’ and occupiers’ impact upon local flood risk

Introduction

440. The proposals outlined below would apply in both England and Wales. Welsh Ministers have no functions in relation to Agricultural Land Tribunals, though they do operate in Wales. In all other cases, relevant powers would be conferred on Welsh Ministers and it would be for them to determine how those powers will apply in Wales.
441. In his Review, Sir Michael Pitt recommended that local authorities should positively tackle local problems of flooding by working with all relevant parties, establishing ownership and legal responsibility.
442. Although the draft Bill concentrates, on the role that can be played by public authorities in managing flood risk, individual property owners and occupiers also have a part to play. Section 2.10 concerns control of private assets important to flood risk management. This section looks at flood and drainage problems and their resolution at the most local level.
443. This section deals with those situations in which the probability of flooding is high, but in which the areas affected and the scale of the damage are relatively small. As a result of the small scale of the impacts, such risks are unlikely to be picked up by the strategic-level planning mechanisms discussed elsewhere in this consultation, such as PFRAs and SWMPs. For the same reason, when considered against other local authority spending priorities, they might not always be considered a sufficiently high priority to attract investment.
444. This section of the consultation, therefore, considers how people who are affected by these very localised floods, and their local authorities, can be empowered to change the behaviour of local property owners and occupiers who contribute to the probability and extent of those floods.
445. The consultation looks at three such sources of local flood risk:
- the risk from obstructed watercourses;
 - the aggravation of run-off flood risk by land covered with hard surfaces; and
 - run-off flooding from agricultural land resulting from particular land management practices.

Local flooding from watercourses

446. Under common law, the owner of a river’s banks also owns the river bed up to the centre line of the watercourse. This is known as riparian ownership. In the case of tidal rivers,

landowners are considered riparian if their land is in contact with water during ordinary high tides.³⁵

447. Riparian owners are responsible for ensuring that obstructions do not hinder the flow of water. Although legislation gives various bodies powers to maintain watercourses, these powers do not affect riparian owners' own responsibilities.
448. The key local authority planning processes for managing local flood risk operate at a relatively strategic level and are unlikely to identify flood risk at this very local level. We therefore consider that some mechanism is needed by which local people can prompt riparian owner's action to reduce the risk.

Riparian owners' awareness of their responsibilities

449. In the case of most designated main rivers³⁶ this oversight does not normally have implications for flood risk management. For most of these watercourses, the EA exercises its powers and conducts the necessary maintenance itself.
450. For 'ordinary' watercourses the case is generally different. In areas where there are IDBs, the Boards usually engage actively in the management of most ordinary watercourses. Local authorities also have permissive powers on ordinary watercourses but their involvement in such work is generally focussed on the more strategic watercourses than the smaller watercourses and ditches which we are considering here.
451. As a result, the management of ordinary watercourses relies more heavily on the active involvement of riparian owners, who therefore need to play an active part in ensuring the proper flow of water through watercourses on or adjoining their properties.

Increasing riparian owners' awareness of their responsibilities

452. It is therefore important for riparian owners to be aware of their responsibilities. There are several opportunities when a property is bought, for example through conveyancing solicitors, local authorities and the EA. Other opportunities might include when people take out household insurance.
453. In the longer term, changing the standard questions that sellers are asked as part of the Seller's Property Information Questionnaire in Home Information Packs (HIPs) could be considered. However, the Government has no immediate plans to make changes to HIPs because of the possible costs of such changes, and the need for a period of stability following the introduction of HIPs.

116. How can people be made aware of their riparian responsibilities when they first buy properties that include riparian land?

454. At the national level, information on riparian rights and responsibilities is provided by the EA's booklet, *Living on the Edge*³⁷. We will ask the EA to consider any necessary changes to this guidance in the light of responses to this consultation.

117. What else could be done to improve existing riparian owners' awareness and understanding of their responsibilities?
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118. What examples are there of strategies that have succeeded in increasing the engagement of riparian owners and improving their contribution to maintenance?

³⁵ See Howarth, William (2002). *Flood Defence Law*. Crayford, Kent: Shaw and Sons.

³⁶ These, in the main, are the larger strategic watercourses that are key to managing the risk of flood and coastal erosion and for which the EA is responsible.

³⁷ A guide to the right and responsibilities of riverside occupation", 3rd edition, April 2007, Environment Agency, Bristol. <http://www.environment-agency.gov.uk/homeandleisure/floods/31626.aspx>

Existing law on the obstruction of watercourses

455. There are several potential mechanisms for enforcing property owners' and occupiers' responsibilities for keeping watercourses free from obstructions.
456. Under Section 259 of Public Health Act 1936, local authorities have a duty to investigate complaints of public nuisances. Where they find such a nuisance to exist, they have the duty to issue an abatement notice against the person responsible.
457. However, this legislation is ill-fitted for cases relating to flood risk for two reasons: firstly, case law has interpreted the legislation as applying only to artificial watercourses or artificial obstructions in natural watercourses and, secondly, the legislation was intended to prevent public health nuisances from stagnant waters and cannot, therefore, easily be used in situations of nuisance from flooding.
458. Any person who feels adversely affected by flood risk resulting from the failure of a riparian owner to keep a watercourse clear of obstructions also has recourse to the civil courts, where they can bring a case under the law of private nuisance. This, however, is an expensive and complex route to take. As a result, few such cases are brought.
459. Under section 25 of the Land Drainage Act 1991, drainage bodies (local authorities and IDBs) are able to issue notices obliging work to be carried out to remedy any obstruction. These can be issued to bodies that have control over the watercourses or to people who caused the obstruction, but they can also be issued to riparian owners.
460. We are aware that there have been difficulties using this power, for example, for filled ditches and un-consented culverts. Cases in which land is not registered and the owner cannot be traced are also problems. Furthermore, where landowners fail to comply with notices, it appears that some drainage bodies are reluctant, because of the financial demands involved, to carry out the works themselves and charge the landowner for the costs.

119. How could the powers provided to drainage bodies by section 25 of the Land Drainage Act 1991 be improved?
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Agricultural Land Tribunals

461. Sections 28 to 31 of the Land Drainage Act 1991 also provide a remedy for owners and occupiers of any (not just agricultural) land affected by flood risk resulting from obstructed ditches. Under these provisions, an application can be made by an owner or occupier to the Agricultural Land Tribunal (ALT) for an Order requiring remedial work to be undertaken on the obstructed ditches.
462. Although their main role is under agricultural legislation and concerns disputes over agricultural tenancies, the tribunal also has a role in land drainage under the Land Drainage Act 1991. In its land drainage function, the ALT has jurisdiction over disputes in urban as well as rural areas.
463. The Land Drainage Act 1991 also makes it clear that the ALT has no jurisdiction over main rivers. Similarly, whilst it is a matter of interpretation, it is also likely that cases regarding obstructions to large watercourses, or watercourses that have not been artificially created, cannot be brought to the ALT. Finally, the Land Drainage Act 1991 also states that the ALT does not have jurisdiction over any watercourse that is 'vested in, or under the control of, a drainage body'³⁸. This is taken to mean that no case can be brought to the ALT concerning any stretch of ditch that is being managed by a drainage body.

³⁸ See the Land Drainage Act, 1991 (section 28, 5).

464. On drainage cases, the ALT asks for a technical report on the issue by an independent drainage engineer. Unless the application is withdrawn, or the parties to the proceedings agree with any recommendations in the report, there will be a formal hearing by the ALT.
465. After taking evidence from the parties, experts and any other witnesses, the ALT may decide to issue notices that either: (a) oblige landowners or occupiers to carry out works to clear obstructions to ditches or (b) allow the applicant or their contractor access to other land not in their ownership or occupancy in order to perform works to improve drainage on their own land.
466. The legislation also enables the Secretary of State to arrange for work to be carried out if the land owner fails to comply with an order made by the ALT and for the cost of such work to be recovered from the person named in the ALT order.

Examples of recent ALT cases

In one recent case, the ALT ruled that a piped section that had been inserted into a roadside ditch by a previous owner had restricted the flow of water away from a neighbouring smallholding, causing the property to flood. The riparian owners of the ditch, also smallholders, were ordered by the tribunal to remove the existing pipe and any filling material and to clear the area of the ditch that the backed-up water had caused to silt up.

In a second example, the ALT ruled that inadequate culverts belonging to a county council had caused a home and a commercial enterprise to flood during heavy rain. The ALT ordered the local authority to replace one culvert with a larger box culvert and to supplement another with two parallel conduits.

467. The work of the ALT has been identified by the Government as a candidate for transfer into the single, unified tribunal currently being set up by the Tribunals Service (an Agency of the Ministry of Justice). Such a transfer would be likely to happen in 2011/2012. Discussions with the Ministry of Justice indicate that this possibility need not preclude the introduction of changes to the ALT's processes and rules.

Options for amending the existing powers for enforcement

468. We consider there to be a number of drawbacks to the ALT as a mechanism for resolving disputes over flood risk from ditches.

The formal and contested nature of the ALT process

469. One feature of the ALT is the formality of its processes and the contested nature of the hearings. These processes have the advantages associated with the law, but they can close off opportunities for applicants and respondents to resolve issues informally. As most applicants and respondents will be neighbours, it is important to foster a positive ongoing relationship if possible.
470. We therefore suggest that all applicants and respondents should be offered an option for resolving their disagreements informally. To this end, we propose a form of mediation known as Early Neutral Intervention (ENI).
471. Mediation is unlikely to be successful until the technical facts are known, so we suggest that it is offered after the technical report has been produced. The ENI process would be conducted by the member of the tribunal with drainage expertise. He or she would explain the technical facts of the case, advise on the likely outcome of a full tribunal hearing and provide the opportunity for parties to reach an agreement. Although such agreements would have no legal power, experience in other areas suggests that they are normally honoured by the parties.

472. A fee of about £500-£700 is normally charged for such a service. To provide parties with an incentive for using the service, this cost would be deducted from the fee for any subsequent hearing (see below).

120. Do you agree with the suggestion that ENI be offered to applicants and respondents in all ALT land drainage cases?

The absence of fees

473. To deter people from applying to the tribunal without due prior reflection and without first attempting to resolve disputes directly with their neighbours, we are considering the introduction of a fee of perhaps £100 for all drainage applications. This would have no impact on other cases brought to the tribunal.

121. Do you agree with the introduction of a fee for all applications to the Agricultural Land Tribunal that concern land drainage? (This would not affect hearings for agricultural tenancies).

122. If an application fee were introduced, at what level should it be set?

474. We estimate that each ALT drainage case that goes all the way to a full hearing costs, on average, a total of £10,000. At present, all of this cost is borne by the tax payer. This is not consistent with other approaches to dispute resolution, such as the civil courts, in which some kind of charge is made.

475. We therefore suggest the introduction of a hearing fee. We also suggest that it should be paid by the losing party in any case. However, it is also possible to leave this issue to the tribunal to decide in the light of the particular case.

476. The charging of a hearing fee would also provide an incentive for people to use the mediation service, ENI, described above. The fee would therefore only be charged after the production of the technical report and in the event of the applicant requesting a hearing of the tribunal. For those who opted for ENI but then continued on to a hearing, the fee would be reduced by the amount paid for the ENI.

477. We propose setting the fee at £1,000, which we estimate, is about a quarter of the cost of an average ALT hearing. This would leave the tax payer still bearing some of the other costs of the process.

123. Do you agree that a fee should be charged for an ALT hearing on drainage? Should that fee be paid by the losing party or should this be decided by the ALT?

124. If a hearing fee were introduced, at what level should it be set?

Expanding the remit of the ALT

478. Currently, the powers of the ALT on drainage extend only to ditches. We propose that they should be expanded to include all ordinary watercourses and perhaps main river also.

479. At present, people who are affected by flooding from such watercourses can ask the local authority to issue a notice under Section 25 of the Land Drainage Act 1991 but their only other course of action is to go to the civil courts. Access to the ALT would provide an additional, and simpler, course of action in such cases.

125. What cases are you aware of where people might have made use of the ALT had its remit extended beyond ditches and included all ordinary watercourses?
126. Do you think that it would be a good idea to extend the remit of the ALT to include all ordinary watercourses? Do you think that it should also be extended to cover the main river network?

Other improvements to the work of the ALT in drainage issues

480. Although we have identified a number of ways in which we believe the work of the ALT in drainage cases could be improved, we are keen to hear other suggestions.

127. In what other ways, if any, could the regulations and processes of the ALT be improved as regards cases involving drainage issues?

The name of the tribunal

481. We consider the name of the tribunal, the ALT, to be a possible cause of confusion and a barrier to people looking for a resolution to disputes over flood risk from ditches – especially those not on agricultural land. Bearing in mind that the main jurisdiction of the ALT relates disputes about tenancies of agricultural holdings, if the role of the tribunal in flood risk management is to be retained, we suggest that it should be renamed the ‘Drainage and Agricultural Land Tribunal’.

128. Do you think the ALT should be renamed? If so, what name do you suggest?

Creating a new statutory nuisance

482. Our preferred option at present is to amend the process by which the ALT resolves disputes and perhaps to extend its remit. An alternative option, however, might be to set up a new dispute resolution mechanism by creating a statutory nuisance of ‘obstructing a watercourse’.

483. The law on statutory nuisance puts responsibilities on residents and businesses to conduct themselves in such a way that they do not create any threat to the health or convenience of their neighbours. Existing statutory nuisances include, for example, noise and smoke. Creating a new nuisance of ‘an obstructed watercourse’ would establish a legal responsibility that was not dependent on existing common law.

484. This option would have the advantage of harmonising the law on flood risk with that on other risks to health that can be caused by neighbours. It would therefore simplify the overall pattern of laws, making it more easily understood and, therefore, more accessible.

129. Do you believe that failure to maintain the flow of water through watercourses should be described in law as a statutory nuisance?

485. The body with responsibility for dealing with statutory nuisance cases would be able to issue Notices in much the same way as the ALT currently does. Failure to comply with a legal notice regarding a statutory nuisance is a criminal offence.

486. New nuisances could be administered either by the ALT or by local authorities. We currently favour enforcement by district and unitary local authorities, for the following reasons:

- the ALT is a primarily judicial body. District and unitary local authorities, on the other hand, already have responsibility for the maintenance of ordinary watercourses, so are likely to have the necessary technical expertise;
- district and unitary local authorities have wide experience in dealing with complaints between neighbours and, in particular, in administering statutory nuisance law. The ALT, which deals in the main with certain disputes relating to agricultural tenancies, has less experience and skills in this area;
- district and unitary local authorities are more likely to have knowledge of the social and land drainage contexts. For some cases, this knowledge will enable them to come to quicker or better decisions; and
- district and unitary local authorities already use a range of mediation processes for resolving disputes and would therefore be better placed to employ such processes for land drainage issues.

130. If a statutory nuisance were created concerning 'obstructed watercourses', should it be administered by the ALT, by district and unitary local authorities or by some other body/bodies?

Local flooding from surface run-off

487. In some areas, the resurfacing of land by property owners, farmers' decisions over land management and the absence of effective land drainage systems can create or exacerbate risks of surface run-off. In such areas, property owners and tenants need to be aware of how they can reduce that risk and mechanisms need to be provided that enable better practices to be imposed if necessary.

Case study

One elderly woman complained that since her neighbour had resurfaced his front drive, the water flowed from his land toward her home, causing it to flood twice during heavy rain. She had asked the neighbour to re-profile his drive, but to no avail, and she knew of nothing she could do to resolve the situation.

Create a new statutory nuisance to reverse actions that aggravate surface run-off risk

488. To provide a mechanism of enforcement, we suggest the creation of a new statutory nuisance for run-off risk.

131. Do you agree that a new statutory nuisance should be created to tackle the risk of run-off flooding?

489. This new statutory nuisance could be administered either by the ALT or by local authorities. We believe that local authorities are best positioned for this task.

490. District and unitary authorities are responsible for both building and development control. For that reason, and for those set out above on the proposal for a statutory nuisance relating to watercourses, it could be argued that they should take on this responsibility. On the other hand, it is unitary and county local authorities who will have the statutory role for managing the risk of surface water flooding more generally.

- 132. If a statutory nuisance were created for run-off risk, which public bodies should be responsible for its administration and enforcement – the ALT, unitary and district local authorities, or unitary and county local authorities?
- 133. What is the range of costs involved in conducting expert investigations into potential surface run-off statutory nuisance?
- 134. What sized reductions in damages can be expected when run-off risks are eliminated?
- 135. Should the owners of properties that cause a surface run-off statutory nuisance have to pay the entire cost of eliminating the nuisance? What would happen if the owner was unable to afford the work? How else could the works be paid for?

Prevent actions that increase surface run-off risk

- 491. Whereas a statutory nuisance law could be used to reduce the risk of surface run-off flooding by reversing actions that had already been taken, wherever possible, such actions should be prevented from being taken in the first place.
- 492. Article 4 of the Town and Country Planning Act (General Permitted Development) Order 1995 allows local authorities to impose local restrictions on works that would reduce the water retention of back gardens and private roads. It specifies which types of development do not require specific planning permission and are deemed ‘permitted’. Since changes made on 1 October 2008, these rights do not include the hard surfacing of front gardens with impermeable materials where the area in question exceeds five square metres. They continue to include the impermeable paving of back gardens and privately owned roads. However, Article 4 directions allow local authorities to introduce local restrictions on these activities.

- 136. Should local authorities be encouraged to make more use of their Article 4 powers to reduce the growth in surface run-off risk?

The creation of Run-Off Reduction Zones

- 493. No equivalent powers exist to enable restrictions to be placed on farming practices that cause or aggravate run-off floods. We recommend that, alongside the powers available under Article 4 of the Town and Country Planning Act, local authorities should be able to create designated Run-Off Reduction Zones in which they can introduce restrictions on land management practices for particular portions of land. These could include restrictions on permitted development described above but could also include restrictions on management practices and compulsory improvements to drainage in portions of land implicated in run-off flooding.

A report from a householder suffering from run-off flooding

“In June last year my home was flooded following torrential rain. The water built up in the field at the back of my home and, during the evening, overflowed into my garden and then into the house. I contacted the farmer and he contacted his land agent who paid me a visit and suggested a ditch would help. The land agent has since informed us that if we want a ditch then we will have to pay for it and that the farmer will not admit to any liability or agreement to maintain the ditch.”

137. Please tell us of any recent occasions you are aware of in which run-off from farmland caused substantial disruption or damage to neighbouring property.
138. Do you agree that local authorities should, in areas of high risk of run-off flooding, be given powers to impose restrictions on management practices and oblige landowners to make improvements to drainage in particular portions of land implicated in run-off flooding?

494. The restrictions to be applied to farming practices would be selected from a nationally agreed list. These might preclude, for example: ploughing across contours, leaving land bare during seasons of high flood risk or growing crops that are associated with high rates of run-off.

139. If you do agree with the above proposition what land management practices should be included in the national list of possible restrictions?
140. What would be the administration costs of working with a landowners to convince them to change the way they managed their land and support them with doing so?

495. Any decision to designate an area as a Run-Off Reduction Zone would be open to appeal to Defra Ministers.

496. Once a designation had been approved, enforcement of the restrictions would be by means of the proposed new statutory nuisance.

3.4 Single Unifying Act

497. In his Review, Sir Michael Pitt recommended that forthcoming flooding legislation should be a single unifying Act that addresses all sources of flooding, clarifies responsibilities and facilitates flood risk management. The Government accepted Sir Michael's recommendation subject to the availability of Parliamentary time.

498. The draft Bill partly addresses some of these issues. It deals with flooding from all sources; clarifies responsibilities among the different organisations; and contains a wide definition of flood and coastal erosion risk management, with correspondingly wide powers to undertake works and other related activity.

499. While the draft Bill replaces substantial parts of current legislation, it would still leave in place flood and coastal erosion related provisions in existing legislation, including the Coast Protection Act 1949, the Land Drainage Act 1991, the Water Resources Act 1991, and the Environment Act 1995. The draft Bill therefore falls short of the "single, unifying Act" that Sir Michael Pitt called for in his Review and which the Government agrees is a highly desirable objective.

500. We therefore intend carrying on work with a view to identifying the changes that are necessary to create a single unifying Act. This falls into the following broad areas:

- making changes as a result of issues on which we are consulting elsewhere in this document, including on internal drainage boards and funding arrangements and on the ALT etc.;
- considering the other flood and coastal erosion provisions that will remain in existing legislation and whether they should be retained, amended or revoked in the light of changes being made elsewhere in resulting legislation. This is likely to reveal some provisions that have remained unused for many years and whose future usefulness is doubtful;

- cross-cutting issues such as consenting and enforcement provisions, works powers, powers of entry and related provisions we want to consider and revise these to provide: a fully consistent approach to organisational arrangements, roles and responsibilities and a better fit with the principles of modern regulation.

501. We therefore intend that the resulting legislation will contain further amendments or repeals to existing legislation and would want to work directly with stakeholders in developing such proposals. Because of the uncertain nature of what additional provisions would be included in the resulting legislation, no impact assessment can be completed at this time.
502. We intend to take forward this work, and a review of relevant Local Acts, in the coming months and to consult directly with those affected as appropriate.

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| <p>141. Do you agree that any proposed changes to the existing legislation, not contained in the draft Bill or covered elsewhere in this consultation document, should be discussed directly with relevant organisations in England and Wales so that changes might be introduced in the resulting legislation, without the need for further general consultation?</p> <p>142. If so, are there any particular or general issues on which you would want to involve you in this way?</p> |
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4. Water: issues covered by draft Bill provisions

4.1 Hosepipe bans (Clause 254)

These provisions provide an enabling power to allow the Secretary of State and Welsh Ministers to extend water company hosepipe ban powers. This will enable the water companies to ban a wider range of discretionary uses of water and so take action to conserve water at an early stage of a drought.

Introduction

503. This part of the Bill is intended to apply to both England and Wales. Welsh Ministers will determine how these powers will apply to water companies³⁹ wholly or mainly in Wales.

Current position

504. Currently, under section 76 of the Water Industry Act 1991, a water company may temporarily ban or restrict the use of hosepipes for watering private gardens or washing private motor vehicles, if its view is that there is, or could be, a serious deficiency of water for it to distribute to its customers.

505. The power has not been updated since it was created in 1945. It is limited to the uses above, whilst other uses, such as filling of private swimming pools or cleaning down patios cannot be prohibited under this power.

506. In March 2007, Defra and the Welsh Assembly Government consulted⁴⁰ on various changes to the scope of the powers to impose temporary hosepipe bans and the summary of the responses⁴¹ was published in October 2007.

Proposals in the draft Bill

507. As a result of that consultation, we propose to put in place a power to widen the non-essential uses of water that can be controlled by water companies. Additional uses of water that may be prohibited would be added to the legislation through an Order, approved by Parliament or the National Assembly for Wales as appropriate and supported by an impact assessment of the costs and benefits. This arrangement would ensure that impacts on both individuals and small businesses can be fully considered before any extension of this power.

508. Widening the scope of bans on discretionary use bans would enhance the ability of water companies to manage demand in times of water shortage, particularly in the early stages of a drought. This could be particularly important where supplies of water available for distribution deteriorate rapidly. They would be better equipped to maintain essential water supplies, whilst reducing the impact on the environment of further abstraction to supplement the available supply.

³⁹ A "company" in this section is a water undertaker, a licensed supplier or an inset appointee as defined under Chapter 1 or 1A of the Water Industry Act 1991 (as amended)

⁴⁰ Defra and the Welsh Assembly Government 'Consultation on proposed changes to powers to restrict non-essential uses of water', issued March 2007.

⁴¹ Defra and the Welsh Assembly Government 'Summary of responses to the consultation, between 23 March and 15 June 2007, on proposed changes to powers to restrict non-essential uses of water', issued October 2007.

Both documents are published on the Defra website at:

<http://www.defra.gov.uk/environment/water/resources/drought/index.htm#consultation>

509. We will do further work to determine the non-essential uses that it might be most beneficial, both in financial and water resources terms, to enable water companies to control in these circumstances. The impacts on different groups and the benefits in terms of water conserved will be assessed for each such potential new control before it is made available to water companies. To support this work we are seeking further information through this consultation exercise.

143. What non-essential uses of water do you think should be restricted in order to save water in times of drought?
144. For those domestic uses of water which are not covered by the existing hosepipe ban powers, but which may be prohibited as a result of any changes, for example the cleaning of patios with a hosepipe or pressure washer or filling of domestic swimming pools, how can the cost of inconvenience to the householder be measured? Are you able to provide an assessment of the impacts?
145. Some businesses could be affected at an earlier stage in a drought if further uses are prohibited. Are you able to provide any assessment of the likely impact and costs for businesses should they be unable to use water supplied through a hosepipe or similar apparatus?

Discretion/Flexibility

510. We want to ensure that water companies can use their powers to ban or restrict non-essential uses of water flexibly. Therefore, we propose that, to the extent and in the manner that it considers necessary or appropriate, a water company would be able to:

- apply some or all of the prohibitions or restrictions, to differing degrees and for differing periods;
- apply any prohibitions or restrictions in respect of the whole or any part of the area which the water company has the duty to supply;
- exclude individual customers or groups of customers from any prohibitions or restrictions;
- exclude any practices in relation to the use of water for any purpose which is prohibited or restricted; and
- exclude any apparatus, that would be included in a definition of hosepipes in regulations, used in relation to the use of water for any purpose which is prohibited or restricted.

Publicity requirements

511. We propose to update the existing publicity requirements, currently contained in section 76(2) of the Water Industry Act 1991, by requiring the water company to publish any notice creating, changing, or lifting a ban or restriction in both at least two local newspapers and on the company's website. One purpose of this is to enable any representations to be made before the ban comes into effect. It is necessary to balance this with the need for swift action in these circumstances for the benefit of all water users locally. The Government therefore believes that any notice period should be short and that it should leave it to the courts to decide whether sufficient notice has been given in a particular case.

146. Do you agree that the legislation should not set a standard notice period? If not, what period would you suggest?

Legislative route

512. The affirmative resolution process will apply to Orders to extend the range of discretionary uses that can be restricted by water companies. Regulations providing the detailed definition of the uses covered by the restrictions and certain exemptions would be subject to the negative resolution procedure.

4.2 Environmental Permitting Programme (Clause 238)

The provisions will enable the Secretary of State and Welsh Ministers to make regulations for the abstraction and impoundment of water to be licensed as part of a single environmental permitting regime.

Introduction

513. The provisions in the draft Bill below apply equally in England and Wales. Welsh Ministers will determine how these powers will apply in Wales.

Current position

514. Under the Pollution Prevention and Control Act 1999 (the PPC Act), the Secretary of State and Welsh Ministers have powers to make regulations bringing pollution control systems together. However, they lack the power under the Act to place abstraction and impoundment licensing within that system, as these do not relate to emissions into the environment but extractions from it, and therefore relate to resource management rather than to pollution prevention and control.
515. Historically, environmental permitting and compliance systems developed largely in isolation from each other, adopting a variety of approaches to the same aspects of permitting and compliance to achieve similar outcomes. This led to an overall regulatory system that was too complex and sometimes contradictory for industry and regulators.
516. As a first step in addressing this issue, Defra and the Welsh Assembly Government put in place the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3528), using powers contained in the PPC Act, the separate permitting systems for waste management licensing and pollution prevention and control.
517. Defra is currently proposing to extend this common system by incorporating a number of additional permitting regimes. A public consultation is underway, proposing the integration of water discharge consenting, groundwater authorisation, and radioactive substances regulation into EPP. Other regimes - waste carriers and brokers, mining waste and battery recycling - are also being integrated following separate public consultations.

Proposals in the draft Bill

518. Our intention is to create an enabling power that will allow licensing for water abstraction and impoundment to be included in a common system of environmental licensing, modelled upon the precedent of the Environmental Permitting (England and Wales) Regulations 2007.
519. The proposed power allows for the Secretary of State and Welsh Ministers to regulate the use of water resources. The aim of reducing burdens will be achieved by allowing regulations to be made to control the use of water resources that are consistent with, and combined with, regulations covering pollution; and that replicate or have similar effect to any provision in the Water Resources Act 1991 or the Water Act 2003 (whose provisions would be repealed).

520. The use of water resources includes taking, diversion or impoundment of water but not drawing it from the public water supply system. Water regulations have to be specific about the water resources to which they apply. The draft Bill therefore allows for provisions in the PPC Act to be applied equally to water regulations, including the legislative scrutiny procedures set down in section 2 of the PPC Act.

4.3 Power of entry – water resources functions (Clause 257)

The provisions in the draft Bill will extend the EA's powers of entry, to allow it to install monitoring equipment where these are necessary to the EA's water resources management functions.

Introduction

521. The provisions in the draft Bill apply equally in England and Wales.

Current position

522. The EA operates and maintains an extensive network of monitoring points including rainfall gauges, gauging stations and other apparatus or installations to support its role in managing water resources (including groundwater).
523. This represents a significant capital investment of over £200 million. For example, it has fixed assets to monitor or measure at specific points (e.g. above or below a point of abstraction or discharge on a river reach).
524. The majority of these installations are relatively minor in scale and cause little disturbance. Once installed, access would normally be limited to repairs and maintenance. Measurement or readings can often be collected remotely or using telemetry.
525. Accurate measurement at a gauging station depends on finding a suitable stretch of river or watercourse with a straight, smooth and stable profile. The same logistical issues arise with boreholes that are used to monitor groundwater aquifers. Accurate continuous records are also becoming increasingly important to the detection and monitoring of climate change in the long term.
526. These factors mean the choice of suitable sites adjacent to inland waters or other key points can be limited and gaining access to them can be problematic. A power of entry is key to enable the EA to carry out this role and to provide vital data and information to: the general public, water companies, the Centre for Ecology and Hydrology, the Meteorological Office and relevant emergency services.

Proposals in the draft Bill

527. We therefore propose to amend section 172 of the Water Resources Act 1991 to provide a power of entry for the EA to install and keep monitoring works or apparatus or carry out experimental borings in connection with its statutory functions to measure and manage water resources. The proposed power would be consistent with the power the EA already has in relation to its pollution control functions. Those affected would be entitled to compensation for any loss or damage caused. The existing powers of the Secretary of State and the Welsh Ministers are amended to the same as those of the EA.

147. Do you agree that a power of entry should be introduced to cover the EA's functions to measure and manage water resources?

4.4 Minor amendments to the Water Resources Act 1991 and the Water Industry Act 1991 (Clauses 255, 256 and 258)

The Bill will allow the EA to treat all forms of irrigation in the same way with respect to charging agreements, to remove its duty to maintain a register of waterworks, and to prevent waste of water abstracted from surface waters.

Introduction

528. The provisions in the draft Bill apply equally in England and Wales.

Proposals in the draft Bill

529. We propose to make a number of minor amendments to the Water Resources Act 1991 (as amended by the Water Act 2003) and one minor change to the Water Industry Act 1991.
530. The first of these amendments concerns special charge agreements under section 127 of the Water Resources Act. Annual charges are normally paid according to the amount of water authorised to be abstracted under a licence.
531. This provision recognises the special problem faced by spray irrigators in predicting their demands during unpredictable weather patterns and the likelihood that in some years the quantities abstracted by them may fall far short of the quantities authorised or, in extreme conditions, abstraction might be suspended. This provision allows spray irrigators to pay a fixed fee in relation to the amount of water that they are authorised to use, but also to reduce their annual charge by up to 50% depending on the amount of water that they actually use.
532. This type of agreement was established when licence control was first introduced in 1963, but it is currently limited to spray irrigation. Other forms of irrigation did not require charging agreements because they were not charged. When implemented, changes made by the Water Act 2003 will also bring other forms of irrigation under licence control, and they will be liable for charges. To ensure equal treatment under the law for similar activities, we propose to amend Section 127 to allow other non-spray irrigators to start paying charges.
533. To make the transfer and trading of licences easier, the Water Act 2003 has already removed the requirement that all new abstraction licences must specify the land on which the water is to be used. Similar land restrictions apply to special charge agreements under section 127 of the Water Resources Act 1991. These restrictions are no longer needed, so we propose to remove them.
534. Section 195 of the Water Resources Act 1991 places an obligation on the EA to keep separate records of maps showing its resource mains and waterworks. Any information that exists, can now be provided on request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (SI 2004/3391). We believe that the need to keep separate records of this information is an unnecessary burden and we propose to repeal the provisions.
535. We propose to amend section 71 of the Water Industry Act 1991. Currently this makes it an offence to allow water abstracted from a borehole to run to waste. We propose to extend the offence to cover water abstracted from surface water (such as streams or rivers).

4.5 Water Administration Regime (Clauses 193-216)

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

Introduction

536. The provisions in the draft Bill apply equally in England and Wales, with powers conferred on Welsh Ministers in relation to water and sewerage undertakers wholly or mainly in Wales.

Current position

537. In common with other regulated sectors, there is a special administration regime for the water industry in England and Wales which is used in the event of one of the following water companies experiencing financial difficulties:

- water undertakers;
- sewerage undertakers; or
- licensed water suppliers that hold a combined licence and owns a strategic water supply (i.e. a supply provided by a licensee that would impact on an undertaker's ability to supply its customers if it was withdrawn).

538. All other water companies (i.e. retail-only licensed water suppliers and combined licensees that do not input a strategic supply) are subject to the general regime under the Insolvency Act 1986, as amended by the Enterprise Act 2002.

539. The interests of customers are very much central to the special administration regime for water (now called the 'water administration regime' in the draft clauses). The provisions in the Water Industry Act 1991 allow the Secretary of State, Welsh Ministers or Ofwat to override ordinary insolvency proceedings by preventing a winding up order from being issued.

540. In normal insolvency this could possibly mean that the assets and infrastructure could be closed down or sold off in order to save costs or pay off debts. This would not be an appropriate outcome for water and sewerage customers who will need to be assured that they will continue to receive essential services. However, in the case of insolvent water companies covered by the special administration regime, the special administrator is required to transfer the water company to one or more new water companies instead of winding up the company.

541. The special regime for water is unique in that it can also be used as an ultimate enforcement tool if a water company is failing to such an extent that transferring to one or more new owners is seen as the only way to protect the interests of customers.

542. 'Future Water' included a commitment to review the special administration regime and to bring it into line with regimes for other sectors. Since then the UK and Welsh Assembly Government have consulted on draft Water Industry (Special Administration) Rules of Court that lay down the procedures that parties to a Special Administration must follow.

543. Ofwat published a review of competition in water markets in December 2007 which included a recommendation that a correction should be made to the Water Industry Act 1991, as it was amended by the Water Act 2003. As currently drafted a retail-only licensed water supplier is not included in the definition of a water company's customers which could mean that a retailer's requirement and those of its customers are not taken into account when Ofwat designates whether an introduction of water by a licensed water supplier should be designated as strategic (see above). The UK Government accepted this recommendation and this correction will be taken forward in the Bill to be introduced into Parliament.

544. The most significant change in recent years has been the new approach to administration introduced by the Government in the Enterprise Act 2002. The main impact of this legislation was to make administration more efficient and accessible to support the rescue of viable companies.
545. There has subsequently been a special administration regime introduced for the energy sector which shares some common characteristics to the water industry. The draft Bill proposes to update the special administration regime for the water industry in line with those for unregulated businesses and some energy companies.

Proposals in the draft Bill

The Rescue Objective

546. A principle feature of the recent changes was a greater emphasis on the rescue of viable companies that experience financial difficulties. In these regimes the company may go into administration to protect itself from its creditors and to gain some breathing space to allow the administrator to bring the company back into profitability.
547. Currently the regime for water only allows the special administrator to transfer the appointment and assets of a failing water company onto one or more new owners. This is not consistent with the Government's current approach to company insolvency. While we are satisfied that the regime will ensure continuity of service for customers, the absence of a rescue objective limits the ability of the water administrator to pursue other options that may result in a better outcome for creditors, shareholders, members, and, ultimately, customers.
548. Clearly if a water company failure is down to poor management, lack of investment in infrastructure or it is no longer viable, a transfer would be the best option. However, if an otherwise viable water company gets into difficulties because of problems with refinancing debt or because of escalating costs outside of its control then an alternative approach may be appropriate.
549. A rescue package pursued by a special administrator in consultation with directors and creditors might include one or more of the following actions:
- business stabilisation;
 - financial restructuring and refinancing;
 - operational turnaround; or
 - a partial transfer of parts of the business.
550. If a rescue is not achievable, the special administrator would seek new owners to take over the business.

148. Should the special administrator be required to pursue the rescue objective for viable water companies that experience financial difficulties?

The Transfer Objective

551. Currently the special regime requires the special administrator to find one or more new owners to take over the business when a water company is put into special administration. The Government proposes to improve the transfer objective provisions by:
- allowing for the transfer of the business to a new owner to be effected by hiving down the business to a new subsidiary, to the new owner of the water company and then transferring the subsidiary to the new owner; and
 - removing a requirement for relevant undertakers to give their consent before a transfer can take place.
552. Currently the special administration regime does not allow a water company's business to be transferred to a new subsidiary of the water company and the subsidiary to be transferred to the new owner. Allowing the special administrator more flexibility in the way it transfers a water company's business will bring the special administrator's options when arranging the disposal of a water company's business more into line with an ordinary administrator.
553. The current regime does not allow the business to be transferred in this way which means that the new owner has to take on these liabilities. This may mean that the special administrator may not obtain the full market value for the water company.

149. Should a hive-down provision be available in the water administration regime to make the transfer process more efficient?
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554. Transfer schemes are an important feature of the current regime. These are used to transfer the properties, rights and liabilities of the old owner onto the new one. These can include the appointment and assets needed to provide essential services, but can also include other things that might not normally be included in a company sale (e.g. contracts that the old owner negotiated but would be needed by the new owner to ensure delivery of key services).
555. Currently the transfer scheme must be approved by the Secretary of State, the Welsh Ministers or Ofwat to ensure that any transfer is in the public interest. The consent of other undertakers, such as an undertaker receiving a bulk supply from the undertaker in special administration or a water undertaker that operates in the area of a sewerage undertaker that is in special administration, is required before the transfer scheme can be approved.
556. Obtaining the consent of other interested undertakers could in practice delay a transfer. We are therefore proposing to remove this right of veto for all transfer schemes (not just those relating to special administration). The interests of undertakers will continue to be taken into account under the regime – both as customers and stakeholders – through the public interest duty on ministers and Ofwat. The revised transfer scheme is not included in the draft Bill but could be added to the legislation introduced into Parliament.

150. Do you agree that we should remove the right of an undertaker to veto a transfer?
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4.6 Drinking Water Inspectorate Recovery of Charges (Clause 237)

The Bill will introduce a new power within the Water Industry Act 1991 to enable drinking water inspectorate to impose a charging scheme which will recover the cost of its regulatory functions from water companies.

Introduction

557. The provisions in the draft Bill will apply equally in England and Wales, with powers conferred on Welsh Ministers in relation to water undertakers wholly or mainly in Wales and licensed suppliers using their supply systems.

Current position

558. The Drinking Water Inspectorate (DWI) was established in 1990 as the drinking water quality regulator for the privatised water industry. The Secretary of State and Welsh Ministers have responsibility under the Water Industry Act 1991 (as amended by the Water Act 2003) for regulating the quality of public drinking water supplies in England and Wales respectively.

559. The Water Industry Act 1991 allows the Secretary of State and Welsh Ministers to appoint persons to act on their behalf as technical assessors. Welsh Ministers have currently chosen to appoint the Chief Inspector of Drinking Water for England to also be the Chief Inspector of Drinking Water for Wales and is referred to as the Chief Inspector of Drinking Water in both capacities.

560. Amendments made under the Water Act 2003 meant that technical assessors were to become 'inspectors' and any proceedings under the Water Industry Act 1991 by the Secretary of State or Welsh Ministers can be initiated in the name of the Chief Inspector of Drinking Water (or, in the case of proceedings initiated by Welsh Ministers, in the name of the Chief Inspector of Drinking Water for Wales if one is designated).

561. DWI undertakes a range of statutory and non-statutory roles. The work of DWI can be broadly divided into activities that stem from its role in ensuring water companies meet their regulatory requirements, and those that support policy functions. In addition to the regulatory activities listed below, DWI also undertakes enforcement and prosecution action in relation to Section 18 and Section 70 of the Water Industry Act 1991 and Regulation 33 of the 2000 and 2001 Water Supply (Water Quality) regulations.

The regulatory functions of the DWI are:

- technical audits involving the inspection and assessment of water companies, water supply arrangements (s. 86 of Water Industry Act 1991);
- investigation of water quality events and incidents (s. 86 of the Water Industry Act 1991);
- providing guidance on the Drinking Water Quality Regulations and Standards;
- technical evaluation of water companies' water quality data;

- investigations of complaints relating to drinking water quality as notified by members of the public, local authorities or businesses to establish whether any regulatory breach has occurred (s. 86 and s. 18 of the Water Industry Act 1991);
- statutory reporting on drinking water quality (s. 86 of the Water Industry Act 1991); and
- commissioning and management of research as evidence base for regulatory action including the requirements to maintain a wholesome water supply.

The policy functions of the DWI are:

- commissioning and management of research programme on drinking water quality and health (as evidence base for technical advice roles listed below);
- providing scientific and technical advice to Ministers and officials in Defra and the Welsh Assembly Government on drinking water issues, policies and standards;
- statutory reports as required by Ministers (s. 86 Water Industry Act 1991);
- assisting with Parliamentary and Welsh Assembly Government questions on drinking water quality issues;
- involvement with national, European and international organisations in the development of guidelines and standards for drinking water quality and measures to improve drinking water safety; and
- co-ordinating role with other UK Drinking Water Regulators.

562. DWI differs from other parts of Defra in that its role is recognised in statute, and it exercises powers delegated directly to it by the Secretary of State.
563. However, it is similar to other divisions in that it sits in organisational terms alongside other divisions, is accountable to a Defra Director and its staff are civil servants employed by the Crown. The relationship between the DWI and the Welsh Assembly is identical in respect of powers and duties under section 86 of the 1991 Water Industry Act but the Welsh Assembly Government has no direct day to day role in managing the Inspectorate.
564. The Secretary of State is ultimately responsible for allocating resources to DWI and is accountable to Parliament for that expenditure. Therefore, currently, tax payers fund both DWI regulatory and policy functions.
565. DWI currently has 27 appointed Inspectors and a small support team which regulate 26 statutory water companies and 5 licensed water suppliers. DWI's total costs for 2007/08 were £3.01m (consisting of £2.302m operating costs and £708K on research). The DWI budget for 2008/09 is £3.249m (consisting of £2.349m operating costs and £900K on research).

Proposals in the draft Bill

566. Currently, all activities undertaken by DWI are funded by Defra. However, Defra and the Welsh Assembly Government are proposing to introduce a new power within the Water Industry Act 1991 to enable DWI to put in place a charging scheme which will enable DWI to recover the costs of its regulatory functions from water companies. Costs will not include DWI enforcement and prosecution activities.
567. The draft Bill provisions seek to bring the DWI in line with standard regulatory practice. The new power will enable DWI to recover costs from water undertakers (including inset appointees) and licensed water suppliers. The new power will require the Secretary of State and Welsh Ministers to specify the range of DWI activities that are subject to charges by order.

568. The Cave Review into competition in the water industry is expected to lead, over time, to an increase in the number of water suppliers, and therefore an increase in the work faced by DWI. It is anticipated that this along with increased numbers of inset appointees throughout England and Wales will increase the extent of DWI regulation in these sectors. Enabling DWI to recover the cost of their regulatory activities directly from water undertakers (including inset appointees) and licensed water suppliers will provide a fair system that ensures that regulatory costs are recovered in proportion to the relative regulatory burden.
569. It is proposed that DWI will charge water companies and licensed water suppliers for the cost of delivering their regulatory functions. Water companies and water suppliers would then be under a duty to pay these charges and would be able to include these charges in customer's water bills. It is proposed that DWI will develop a system to identify the costs of their regulatory activities in relation to individual water companies and licensed water suppliers which will allow cost recovery to be apportioned to individual water companies.

Reasons for the proposed changes

570. The Hampton Review of 2005 identified ways in which the Government could reduce the administrative burden of regulation on businesses, while maintaining or improving regulatory outcomes and increasing operational efficiency. Among the recommendations was the consolidation of regulators into a smaller number of thematic bodies.
571. The Government is considering whether DWI should merge with another body or whether it should remain within Defra. The Government will consult separately on this matter before the end of the first quarter next year.
572. However, the Hampton Review also included a specific recommendation that regulators should be more accountable for the way in which they undertake their delivery functions. Defra and the Welsh Assembly Government consider that providing a mechanism for DWI to recover the costs of its delivery functions from the water industry will help make DWI funding more transparent and enable DWI to be more directly accountable for the way it delivers its regulatory functions.
573. DWI already has its own budget and accommodation and produces an independent annual report. The Chief Inspector of Drinking Water, appointed by the Secretary of State and Welsh Ministers, has specific independent powers on enforcement and prosecution. Enabling DWI to put in place a charging scheme to recover the cost of its regulatory functions from water companies will increase this independence further.

Justification for proposed changes

574. The overall rationale for charging is that where an industry undertakes an activity that causes an adverse effect on others (such as pollution or risk of disease) which requires regulation, it should face the cost of enforcing and implementing the regulation. In this respect, the water supply industry is regarded as managing a risk of disease due to the fundamental link between safe water supplies and public health.

575. The water industry already meets the cost of the statutory direct monitoring (water sampling and analysis) that is required by the Water Supply (Water Quality) Regulations 2000 and 2001. However, a significant proportion of DWI activity relates to monitoring how water companies meet their regulatory requirements through technical audit and associated activities. As it is the water industry who benefits from these regulatory services, they should bear the cost of providing that service.
576. By introducing a charging scheme, DWI will come into line with the related water regulators Ofwat, the Consumer Council for Water and the EA who all charge for the delivery of their regulatory activities.

151. Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies and licensed water suppliers in line with other water regulators?
152. Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent?

4.7 Introduction of a mandatory build standard for sewers (Clause 252)

The Bill will 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.

Introduction

577. The provisions in the draft Bill will apply equally in England and Wales, with powers conferred on Welsh Ministers in relation to sewerage companies wholly or mainly in Wales.

Current position

578. Defra announced on 15 December 2008 its intention, from 2011, to transfer all existing privately-owned sewers and lateral drains in England that connect to the public sewerage system into the ownership of the water and sewerage companies. To ensure that, over time, no future stock of such sewers and lateral drains develops to replace them, Defra also proposes to introduce a minimum design and construction standard for all new sewers and lateral drains that it is intended to connect to the public system and to make their adoption by water and sewerage companies automatic.
579. In February 2007, Welsh Ministers announced their decision to transfer private sewers into the ownership of water and sewerage companies. On 31 March 2009 the Welsh Assembly Government announced their Strategic Policy Position Statement on Water which highlights its intention to pursue the development of regulations in 2011 to facilitate the transfer of private sewers. The Welsh Assembly Government will work closely with the water and sewerage company operating within Wales to identify where action on private sewers is most needed.

Proposals in the draft Bill

580. It is proposed that connection to the public system should be dependent on new sewers and lateral drains having been designed and constructed to a standard ‘approved’ by the Secretary of State or Welsh Ministers as appropriate.

581. The approved standard will be updated from time to time, as design and construction standards and practices change through innovation. This will ensure that new sewers and lateral drains that are to become part of the public system are always built in accordance with the water and sewerage industry's latest and best practices.

4.8 Misconnections (Clause 253)

The provisions in the draft Bill aim to reduce pollution of the water environment resulting from misconnected sewers.

Introduction

582. The provisions in the draft Bill will apply equally in England and Wales.

Current position

583. Misconnected sewers cause pollution in watercourses, groundwater and coastal waters and can result in sewer overloading. The proposals in the draft Bill focus on improving the way we resolve misconnections from households which can cause pollution. Our aim is to reduce pollution of the water environment caused by misconnected sewers.
584. Many areas have two separate drainage systems. One is the surface water sewer which takes rainwater coming off roofs, drives and roads and drains into rivers and streams. The other is the foul sewer, which collects waste water and drains to a sewage treatment works where the waste water is treated and cleaned before being discharged to the environment.
585. A misconnection occurs when a drainage pipe for one type of water is connected to the wrong sewer system; for example, when a foul drain is connected to a surface water sewer. This will cause pollution as the waste water passes into a surface water system. If surface run-off is connected to a foul sewer pipe it can overload both the sewers, triggering flooding and overflows of untreated sewage into rivers and coastal waters and the sewage treatment plant.
586. An estimated 0.6% to 2% of households are misconnected. We believe that approximately 300,000 households are currently misconnected in England and Wales. This number is expected to rise and is predicted to reach close to 500,000 by 2015.
587. A campaign to tackle misconnections is being developed by the EA, working with a wide range of stakeholders, including water companies. This will focus on education in order to ensure that householders, plumbers and builders understand the problem and know what to do to avoid making the problem worse. The proposed change in the powers to deal with mis connections will contribute to this campaign.
588. Typically, the existence of a misconnection causing pollution will be detected through visible effects of pollution in a river or failure of a water quality objective. The water company concerned must then pinpoint the source of the misconnection. This can be a difficult, expensive and time consuming process due to the complexity of sewer systems and the inconsistent pattern of misconnections.
589. Currently, water companies have the power to disconnect misconnections, but are not able to redirect them into the correct sewer. So once a misconnection is located the water company must liaise with the local authority to rectify it. Local authorities are the only bodies with the powers to require a householder to correct the misconnection. If the householder does not put things right within a specified time then the local authority can have the repair work carried out and require the householder to pay the costs.

Proposals in the draft Bill

590. We propose to give sewerage companies similar powers that those local authorities have to rectify a misconnection. This will cut out one step in the process because water companies will be able to deal with problems directly rather than through local authorities, making it cheaper and more efficient to deal with misconnections. Discussions with water companies indicate that it is likely to result in an increase to the number of misconnections that are addressed within the existing budgets for this work.
591. Though the proposed changes in the draft Bill are principally aimed at misconnections from households, the changes would enable water companies to deal with either type of misconnection (to surface sewer or to foul sewer) from any property.

153. Do you agree that powers should be given to sewerage companies to require householders to rectify misconnections as described above? Are there alternatives?

4.9 Development of a project based delivery approach for large infrastructure projects in the water sector (Clauses 239-246)

The Bill will introduce a framework for the development of regulations that would require, following consultation, that an infrastructure project meeting criteria set out in the regulations, be put out to tender to be financed and carried out by a specialist third party infrastructure provider.

Introduction

592. The provisions in the draft Bill apply equally in England and Wales, with powers conferred on Welsh Ministers in relation to infrastructure to be used by water and sewerage companies⁴² wholly or mainly in Wales. Welsh Ministers will determine how these powers will apply in Wales. Prior to introducing any Bill before Parliament, we would need to make further provision about what arrangements would apply where infrastructure serves more than one water or sewerage company which are located on opposite sides of the England/Wales border.

Current position

593. By 2010, the water and sewerage sector will have delivered around £80 billion of investment since privatisation in England and Wales. A transparent regulatory approach, with price limits reset every five years has enabled the water industry to be perceived as relatively low risk with a consequently relatively low cost of capital.
594. Since privatisation, the significant majority of investment projects have been on a relatively small scale; there have been few major long term projects. The challenges of the future mean that large individual projects including those straddling several areas may be required. The challenges include increased focus on long term planning, ever greater focus on environmental quality, water as a valuable resource, the impact of climate change, weather volatility and carbon impacts.
595. These projects may raise issues of planning, financing, interface and construction risk that are greater than those normally associated with water company capital investment programmes and are likely to require construction over two or more planning periods. They may also straddle existing company areas of appointment. Such projects may have a very different risk profile to the programmes of investment undertaken by the sector to date. An example of such a project is set out below.

⁴² A "company" in this section is a water undertaker, or an inset appointee, but not a licensed supplier, as defined under Chapter 1 or 1A of the Water Industry Act 1991 (as amended).

Example: Reservoir project

There is an opportunity to exploit a mountainous river system by constructing a reservoir and canals leading from it down to lowland regions. The reservoir could add to the water supplies of several areas, and which are currently served by different water undertakers.

It would be too costly and economically inefficient for any single undertaker to take on the project itself. The water supply would far exceed that required for a single area. However, there would be economies of scale if a single entity could provide strategic water supplies from the proposed reservoir to several undertakers areas.

596. The current regime would not permit competition for the right to provide the finance and ownership of large projects in the water and sewerage sector without introducing new risks for customers. The current regime regulates the geographic monopolistic structure of the industry. It does not easily support the provision of specific infrastructure services that would normally be regarded as a function of a water company to one or more water companies or the delivery of investments that cover different areas.
597. In the methodology paper on the framework and approach for setting price limits for the current review of price limits, covering the period 2010-2015 (PR09) (March 2008)⁴³, Ofwat said that it thought there may be a case for adopting a different approach to regulating the investment associated with very large, discrete, long-term capital projects with a different risk profile.

Proposals in the draft Bill

598. The provisions in the draft Bill allow for the possibility of the creation of regulated project-based companies responsible for the funding and delivery of suitable infrastructure projects in the future. We describe what this approach might involve but recognise that we are in the early stages of the development and application of this regime and our thinking will evolve as we consult on the issues identified. We are proposing the creation of a class of regulated activity – infrastructure service provision – to be regulated under a revised legal framework using the existing provisions of the Water Industry Act 1991 and a new type of licence.
599. The intended effect is to achieve cost-effective funding and delivery solutions for large projects to meet the requirements of community obligations and other investment drivers in the water sector. The overall cost of investment paid for by customers in their water bills could be lower either because of a lower cost of finance over the life of the project or from greater protection from cost overruns.
600. It offers a framework to maximise competition in the tendering process for finance costs as well as the cost of construction and operation. It permits competition by debt and equity providers in the willingness to price and bear risks in the project. It should reveal a market tested project cost of finance and the single project focus offers greater certainty of outturn cost and project timetable, which will reduce the risk of major cost overruns and ease financial concerns.

154. Do you agree that a project-based approach would reveal optimal funding structures?
155. Are there alternative approaches to securing effective and properly regulated collaborative projects that could be explored?
156. Do you agree that consumers would benefit from a project-based approach to suitable large projects?

43 http://www.ofwat.gov.uk/pricereview/pap_pos_pr09method080327.pdf

601. The legislation gives the Secretary of State and Welsh Ministers the power to develop regulation that would require companies to engage in a competitive tendering exercise to procure the services of a specialist third party infrastructure service provider ('ISP') in certain circumstances. Under these regulations, the Secretary of State, Welsh Ministers and Ofwat would have the power to specify that a particular infrastructure project should be financed and carried out by a third party infrastructure service provider instead of the company itself.
602. The tendering exercise would lead to the selection of a specialist third party owning and financing the large project and delivering the service provided by the new infrastructure to the existing company or companies. It is likely that the infrastructure service provider could consist of a consortium including construction companies, investors and associates of the company. Following selection the infrastructure service provider would be granted a licence governing the delivery of the project.
603. The duties and functions of the new regulated ISP would be subsets of the existing duties/functions of company but these would require precise definition depending on the specific characteristics of the project.
604. Before exercising these powers in relation to a specific project or a class of infrastructure project, a detailed consultation exercise would be carried out to understand the cost and benefits of alternative options in light of all the evidence in respect of the specific project that is available at that time. This would involve a full consultation process on the options for delivery of the specific project which may include other options as well as the project-based approach.
605. Only following this consultation process would a decision be made on the approach to delivering the project. A project-specific licence may then be needed to implement the approach to enable the project to be regulated properly. This will require a decision on whether to apply the new approach to be made well in advance of the procurement timetable for the project.
606. This approach would require all aspects of the provision of large infrastructure projects, including asset ownership, to be considered for competitive tendering. It is envisaged that the competitive procurement process would normally be best managed by the water company.

157. Do you agree that existing water companies would normally be best placed to manage the procurement exercise?

607. The contractual arrangements established between the ISP and the undertaker would be market tested and would govern in most circumstances the delivery of the project. However, the benefits of the project-based approach are strengthened because the ISP would be granted a licence by Ofwat. This licence would be consistent with the specific functions and activities that the ISP has responsibility for given the specific nature of the large project.
608. The regulation of the ISP would be developed to reflect the specific characteristics of the project but it is envisaged to be 'light touch' given the competitive process by which the ISP is appointed. Regulation of the ISP is important because it:
- allows the ISP to exercise certain powers conferred by the Water Industry Act 1991;
 - means in the event of financial difficulty that the ISP would be subject to the special administrations provisions;
 - clarifies responsibilities and accountability should things go wrong;

- allows Ofwat to adjudicate if necessary to vary the contractual terms between the ISP and the water company; and
- enable greater certainty around the ISP's cash flows and therefore maximise the potential financing benefits of a project-based approach.

What projects might be captured?

609. The draft Bill requires the regulations to include the criteria that will be used by Ofwat, the Secretary of State and Welsh Ministers in identifying projects that should be put out to tender. The criteria would refer to a non-exhaustive list of factors that should be considered, including for example: cost, technical complexity, risk profile, timeframe for delivery and the geographic area the project serves. Ofwat will also be required to publish guidance on how it will exercise its powers as set out in the regulations.
610. Particular delivery options that may be feasible at any one time will be dependent on many factors including the scale of the project required, the possible engineering and operational solutions and the specific project risks (and the funding environment). However, there is a strong rationale for the proposed regulations to allow the full range of approaches to be available in the future.

158. What types of projects should be covered by the regime?

4.10 Complaint handling powers (Clauses 247-251)

The Bill will introduce a new provision for the most appropriate organisation to deal with complaints against water and sewerage companies.

Introduction

611. The provisions in the draft Bill will apply equally in England and Wales.

Current position

612. The current regime for handling water consumers' complaints involves the water companies, the Consumer Council for Water (CCWater) and Ofwat.
613. Water companies handle the majority of complaints and are required to have a complaints procedure which is approved by Ofwat.
614. If a consumer is unable to resolve their complaint with their company, they can refer it to CCWater. CCWater has a duty to investigate complaints that water and sewerage companies do not resolve themselves to the satisfaction of the complainant. CCWater does not have powers to impose a resolution of a complaint on either the consumer or company it works with.

Ofwat deals with:

- allegations of breach of duty or licence condition by the companies;
- issues where it has specific powers to determine disputes;
- complaints about work by companies on their pipework in private land; and
- complaints about Ofwat policy.

Ofwat received approximately 1,400 complaints and disputes in 2007-08.

Proposals in the draft Bill

615. The current legislation, the Water Industry Act 1991, assigns to Ofwat a role in handling certain complaints and disputes that would be more appropriate for other organisations to handle. Transferring responsibility from Ofwat for the complaints identified below would enhance the effectiveness and efficiency of the process for complainants.
616. In addition, we are aware that at present landowners seeking the diversion of company infrastructure currently have no means of resolution of disputes about the costs incurred for such work. We consider that it would be appropriate for Ofwat to have powers to determine such disputes as set out below.
617. Such changes would enable Ofwat to focus on complaints and disputes of a regulatory nature only.
618. The four proposed changes are independent of each other, but all require changes to primary legislation to reassign responsibilities to an organisation other than Ofwat. Whilst it would be possible to make only one or more of the changes, making all four changes would ensure that the aggrieved party in each case could pursue their complaint with the most appropriate organisation.

Disputes about whether it is impracticable or unreasonably expensive for a water company to give effect to a measured charges notice (that is installation of optional meter)

619. Under section 144A of the Water Industry Act 1991, household consumers are entitled to require their water company to charge by reference to the volume of water supplied. This is effected by the installation of a meter free of charge to the consumer. Water companies are not obliged to do so if it would be impracticable or unreasonably expensive.
620. Section 144A(4) of the Water Industry Act 1991 provides that any dispute about whether it is impracticable or unreasonably expensive for a water company to give effect to install a meter and charge by volume may be referred to Ofwat under section 30A of the Act.
621. Ofwat issued guidance to companies in September 1999 about installing meters under these provisions (Approval of companies' charging schemes 2000-01). Where a company concludes, or Ofwat has determined, that it would be impractical or unreasonably expensive to install a meter, Ofwat has required the companies to offer an assessed charge that should broadly reflect the charges that a consumer might pay if a meter were installed.
622. Since 2000, Ofwat has typically dealt with such disputes on an informal basis and have issued only one formal determination. We understand that CCWater also deals with a number of complaints from consumers about their water charges, level and/or method of charging, where companies have initially refused to install meters and the complaint is resolved by the installation of a meter. There is therefore duplication of roles in handling these complaints.
623. Consumers will benefit if disputes about the installation of meters are dealt with by the same organisation that deals with complaints about charging, which will providing greater clarity and efficiency. The Government is therefore seeking a change in the Water Industry Act 1991 that would allow (rather than require, as now) CCWater to refer cases to Ofwat if it is not able to resolve them itself. However, we also propose that customers still have the right to directly approach Ofwat.

Complaints about the way in which companies exercise their powers to work in private land under section 181 of the Water Industry Act 1991.

624. Water and sewerage companies have rights to lay, maintain, etc. their infrastructure in private land under section 159 of the Water Industry Act 1991. They are required to have

a code of practice setting out the way in which they will carry out such powers under section 182 of the Water Industry Act 1991. Companies' codes were drafted in accordance with a standard code drawn up and reviewed by Ofwat and are subject to approval by the Secretary of State and Welsh Ministers.

625. Ofwat has a statutory duty to investigate complaints about failure to consult and/or the exercise of the above powers in an unreasonable manner under section 181 of the Water Industry Act 1991. Ofwat has powers to require a company to make payments of up to £5,000 (in respect of each of two counts), in addition to any award made by the Lands Tribunal in respect of losses for diminution in value of land and/or loss due to disturbance.
626. These complaints, which are about the behaviour of the companies towards land owners, as judged against a statutory code of practice, would more appropriately be dealt with by an arbitrator appointed by the Royal Institution of Chartered Surveyors.

Appointment of an arbitrator in certain disputes about compensation payable in respect of loss or damage, where arbitration is considered the appropriate route for resolution but the parties cannot agree appointment of the arbitrator under schedule 12 of the Water Industry Act 1991.

627. Schedule 12 of the Water Industry Act 1991 provides for the payment of compensation, etc, in respect of pipe-laying and other work powers.
628. Schedule 12 gives Ofwat the role of appointing an arbitrator in certain (but not all) disputes about compensation payable in respect of loss or damage, where arbitration is considered the appropriate route for resolution but the parties cannot agree appointment of the arbitrator. This applies to:
- disputes about the payment of compensation in respect of street work powers;
 - disputes about the payment of compensation in respect of sewerage works, unless the amount claimed does not exceed £5,000, in which case Ofwat may determine the matters of fact, liability for and amount of compensation; and
 - disputes about the payment of compensation in respect of metering works.
629. Paragraph 6 of Schedule 12 of the Water Industry Act 1991 provides for the President of the Institution of Civil Engineers (ICE) to appoint an arbitrator where parties in dispute about compensation in respect of discharges for work purposes cannot agree the appointment of an arbitrator. This provision is similar to arrangements for arbitration of disputes under sections 42 and 100 of the Water Industry Act 1991 prior to amendments under the Water Act 2003.
630. Ofwat receives very few requests to appoint an arbitrator (up to 6 per year), but considers that arrangements for the appointment of an arbitrator, in the absence of agreement between the parties for such appointment, should be consistent and that the ICE would be better placed to do so than the economic regulator.

Disputes about the reasonable costs for diverting infrastructure under section 185 of the Water Industry Act 1991.

631. Under section 185 of the Water Industry Act 1991, companies have a duty to remove/move their apparatus if asked to do so by affected landowners, unless it would be unreasonable to have to do so. Under section 185(4) the company may require a security as a condition for carrying out the work and under section 185(5) is entitled to recover any reasonable costs in carrying out the work from the landowner making the request.
632. Developers who want to divert company infrastructure in sites proposed for development disputes about the provision of new infrastructure for connection to the company networks.

However, diverting parts of the network remains the sole responsibility of the company. Landowners either reluctantly pay costs they consider to be too high or have to revise development plans leading to a less efficient use of land. With increased redevelopment of brownfield sites for development, particularly for residential purposes, this issue is likely to become more significant.

633. In the absence of competition in work on companies' existing networks, landowners should have an effective route for the resolution of disputes about the costs of diversionary works recoverable by the companies.

159. Do you agree that these changes provide for the most appropriate body to handle complaints?

634. All water and sewerage companies have conditions of appointment that set out their obligations. Currently, Ofwat may only make changes to an individual company's conditions of appointment by agreement with that company. Where an industry-wide change is required, Ofwat must secure agreement from all companies, and a single company can effectively block a proposed change.
635. The proposed changes will allow for standardisation of existing conditions of appointment. They will also introduce a simplified procedure for changing the conditions of appointment of all water and/or sewerage companies where no more than a specified minority of companies object to the changes.

4.11 Securing compliance (Clauses 234-236)

The Bill will enhance Ofwat's enforcement powers in order that it is better able to protect consumers' interests.

Introduction

636. The provisions in the draft Bill will apply equally in England and Wales, with powers conferred on Welsh Ministers in relation to water undertakers wholly or mainly in Wales and licensed suppliers using their supply systems.

Current position

637. Water companies have a duty to meet their statutory obligations and to comply with conditions set out in their appointment. Where they fail to meet their statutory obligations Ofwat can take enforcement action.
638. In April 2005, Ofwat gained powers to impose financial penalties on companies where they contravene any condition of appointment or fail to achieve any standard of performance. Ofwat has imposed eight financial penalties on five companies. Ofwat has also accepted voluntary undertakings and additional investment from companies where they have contravened their duties or obligations.
639. Ofwat has recently published its approach to enforcement. In determining what sanctions to impose on companies that have contravened their obligations Ofwat is informed by the Macrory principles⁴⁴.
640. In the light of Ofwat's enforcement experience, the Government is seeking a number of changes to Ofwat's powers to enhance its ability to secure compliance in order that consumers' interests are protected.

⁴⁴ Regulatory Justice: Making Sanctions Effective, Professor RB Macrory, BRE (November 2006)

Proposals in the draft Bill

641. When taking enforcement action, Ofwat has a power to require information from a company that is or may be breaching its obligations. At present Ofwat's power does not extend to information where a company may be failing to achieve the minimum standards of performance set out in the Guaranteed Standards Scheme (GSS).
642. The Government is seeking a uniform approach to the use of the power to require information. The Government proposes to extend the power to require information to ensure that the regulator and Ministers can seek information from companies where they have or are failing to achieve any standard measure of performance.
643. In the case of the most serious contraventions, Ofwat is only able to impose a financial penalty for a contravention that occurred in the twelve months prior to Ofwat serving notice on a company setting out that a contravention has occurred. Ofwat sets price limits for water companies every five years for the following five-year period. By extending the time period for which Ofwat can impose a penalty from one year to five years, Ofwat will be able to capture the full extent and scope of any contravention (including any impact on regulated price limits) in any penalty that it imposes.
644. The proposed change will allow Ofwat to impose financial penalties that fully reflect the duration of the contravention and the full extent of any detriment to customers that has occurred. This extension to Ofwat's powers will also place an added incentive on companies to comply with their obligations as well as offering greater protection for consumers.

160. Do you agree that these changes will enhance Ofwat's ability to protect customers?

645. All water and sewerage companies have conditions of appointment that set out their obligations. Currently, Ofwat may only make changes to an individual company's conditions of appointment by agreement with that company. Where an industry-wide change is required, Ofwat must secure agreement from all companies, and a single company can effectively block a proposed change.
646. The proposed changes will allow for standardisation of existing conditions of appointment. They will also introduce a simplified procedure for changing the conditions of appointment of all water and/or sewerage companies where no more than a specified minority of companies objects to the changes.

4.12 Scottish Fisheries Committee (Clause 259)

647. The Bill includes a provision to will abolish the Fisheries Committee in Scotland. The Committee was originally appointed under section 5(2) of the Electricity (Scotland) Act 1979 and now is governed by the Electricity Act 1989 Schedule 9 paragraph 5 ('the Committee'). There is no equivalent for England or Wales.
648. The Committee, set up in 1943 to reflect the major hydro-generation schemes developed in Scotland at the time, is a Non Departmental Public Body appointed by and responsible to Scottish Ministers for certain specific statutory functions concerned with giving advice and assistance on the effect in Scotland on fisheries or on the stock of fish in any waters of hydro-generation. Applicants under Section 36 of the 1989 Act to construct, extend or operate a hydro-generation scheme have to consult with the Committee.

649. The Committee has power to make recommendations to the applicant copied to Scottish Ministers in connection with the application. Scottish Ministers have power to refuse an application for consent if the applicant is not prepared to give effect to the Committee's recommendation. The 1989 Act empowers the Ministers to pay the Committee's expenses.
650. The Scottish Environmental Protection Agency (SEPA) is Scotland's environmental regulator and adviser, responsible to the Scottish Parliament through Ministers. As well as its role in controlling pollution, it works with others to protect and improve Scotland's environment.
651. Abolition of the Fisheries Committee will remove a burden on business. It will eliminate the scope for duplication of controls on the abstraction, impoundments, etc of water by hydro-generators now that the obligations under the European Water Framework Directive are implemented for Scotland. The proposal reflects the current capacity within SEPA to have full regard to the effect on fisheries and fish stocks of proposals for, and ongoing operation of, hydro-generation in Scotland.

5. Water: policy issues not covered by draft Bill provisions

652. The issues covered in this section are not included in the draft Bill but subject to consultation, could form part of any Bill introduced into Parliament to become law. In particular, it does not address the final recommendations of the Cave and Walker Reviews as they have not yet reported.

5.1 Time Limiting of abstraction licenses

Current position

653. It is expected that the negative environmental impacts of water abstraction may increase significantly to 2050 and beyond with climate change, population and demand pressures. There are few ways for the EA to respond to these challenges as most abstraction licences are not time limited.

654. Time limiting all licences would enable the EA to respond to Catchment Abstraction Management Strategies (CAMS) assessments in future decades by allowing licences to be amended and adapted periodically to ensure that the environment is adequately protected. The UK and Welsh Assembly Governments believe that there is a need to ensure that water resources are allocated efficiently in order to cope with the anticipated impacts of climate change and to achieve water quality objectives, as set out in 'Future Water' and the Welsh Assembly Government's 'Strategic Policy Position Statement on Water'.

Proposals on which we are consulting

655. Defra and the Welsh Assembly Government will shortly be publishing a separate consultation and supporting impact assessment on time limiting of abstraction licences.

656. The consultation will set out the following three proposed policy options for time limiting: 'do nothing' and use existing voluntary measures to encourage time limiting of licences; targeted time limiting using existing legislative powers; and the preferred policy option of universal time limiting using new legislative powers.

5.2 Water Efficiency

657. 'Future Water' stated that the UK Government would consider whether some form of water efficiency obligation on the water industry was required in light of the experience of Ofwat's targets. Ofwat set activity-based water efficiency targets for water companies for 2010-2015 last November. Water companies are piloting the targets in 2009-10.

658. In preparing the draft Bill, the UK Government considered whether to use this opportunity to seek an enabling power for the Secretary of State to place a water efficiency commitment on water companies in England, the level of which could be set at a later date in the light of Ofwat's experience. It has decided not to include such a clause in the draft Bill, pending the recommendations related to water efficiency that emerge from the independent Walker 'Review of household charging and metering for water and sewerage services'.

659. The Welsh Assembly Government's 'Environment Strategy for Wales' sets out a commitment to ensure that water is used efficiently across all sectors. The Strategic Policy Position Statement on Water states the importance of using water wisely and encourages the efficient use of water. Welsh Ministers will consider the recommendations that emerge from the final report of the independent Walker 'Review of household charging and metering for water and sewerage services'.

5.3 Hydromorphology powers

Introduction

660. 'Hydromorphology' refers to the physical characteristics of water bodies such as the shape, width and depth of the channel, structure of the beds, banks, riparian zone, intertidal zone and shores, quantity and dynamics of flow.
661. Changes to these characteristics such as channel straightening and construction of artificial banks can damage, or prevent access to, the habitats of aquatic animals and plants, alter flow conditions, disturb and alter the distribution of sediment, and exacerbate chemical or nutrient pollution by reducing available dilution.
662. These effects can reduce the ability of the water body to maintain a healthy ecology. Physical alteration of the water environment can therefore be considered a form of pollution or damage to the natural resource. Unlike other forms of pollution, such as the discharge of pollutants, physical alterations have not historically been regulated for the purpose of protecting the environment.
663. Rivers, lakes, estuaries and coastal water bodies across England and Wales have been extensively modified and altered over centuries. Many such modifications served, and continue to serve, a useful purpose, but many past modifications were poorly planned or executed or are no longer needed to deliver their original purpose. In some cases these modifications have had unintended consequences which require continued expenditure to mitigate.
664. Assessments carried out by the EA indicate that changes to hydromorphological conditions are one of the most significant factors contributing to the risk of failing to achieve good ecological status for many water bodies in England and Wales.

Current position

665. The EA currently undertakes a wide range of activities to improve the hydromorphological condition of waters, either on the back of capital flood risk management schemes, through the spatial planning process, or in partnership with conservation groups. However, these are opportunistic activities that do not allow for the strategic planning and delivery of a programme of improvements targeted toward delivery of our environmental objectives.
666. This limits the ability of the EA to target improvement activities (and resources) to locations where they are most needed or will deliver the most cost-effective or sustainable solutions to the range of pressures impacting upon hydromorphological conditions. This could affect our ability to meet our obligations under the Water Framework Directive (WFD).
667. Improvement activities could include, for example, modifications to weirs and sluices etc, the removal of redundant structures or physical improvements to the beds, banks and riparian zones of controlled waters. These activities would be undertaken to create or improve the quality (and availability) of existing habitat or else minimise the adverse effects of existing modifications for the purpose of improving the ecology of those waters.

Way forward

668. We are proposing to provide a power for the EA to enter land and to carry out works to improve the hydromorphological condition of controlled waters where necessary to achieve established environmental objectives. Such a power to carry out works would be established through an amendment to the Water Resources Act 1991.

161. Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why.

Criteria for the use of the power

669. The EA would consider use of this power in cases where:

- River Basin Management Plans identified waters that were failing to achieve their WFD status objectives and hydromorphological pressures were the sole or significant cause of the failure;
- the EA was reasonably certain that the proposed improvement activities would help deliver cost-effective improvements to the ecological status of the water bodies concerned;
- the existing suite of voluntary initiatives and other delivery mechanisms had failed to secure agreement from landowners and delivery on the ground; and
- resources were available to address the problem.

670. The EA, when considering use of the power for modification or removal of historic structures, would take into consideration the cultural and heritage value of these past alterations in line with its general duties⁴⁵.

162. Do you agree with these criteria for the use of the power?

Key features of the proposed power

671. The power would apply to all controlled waters (as defined in the Water Resources Act 1991) since there may be circumstances where it will not be possible to achieve WFD objectives for a water body without first addressing hydromorphological pressures elsewhere in the river basin, for example in headwaters that are beyond the limits of a water body.

672. Limitations and requirements in relation to this power are that the EA:

- could not use the proposed power to require others to carry out or pay for the improvement works;
- would be required to notify landowners and interested third parties of its intention to enter their land to carry out works to improve the water body;
- would have to seek a warrant if a landowner refused entry and show that there were reasonable grounds for the exercise of the power;

⁴⁵ Section 7 (1)(c)(i) Environment Act 1995 requires the Environment Agency to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest

- would have to pay compensation if, in the exercise of the power, it caused any damage to property, or allowed damage to be caused by failing to secure property. (Similar arrangements apply to the EA's existing powers of entry relating to their flood risk management and pollution control functions under the Water Resources Act 1991 and Environment Act 1995 respectively); and
- could not interfere with the legitimate operations and activities of other statutory bodies through the exercise of this power.

673. Under this proposal the Secretary of State and Welsh Ministers would be empowered to issue statutory guidance on the use of the power.

163. Do you think this proposal provides an appropriate mechanism to enable improvement of hydromorphological conditions?

674. The proposed power would not add to the costs of implementing the WFD. Individual measures will be included in River Basin Management Plans, and a separate impact assessment prepared for each plan.

5.4 Cave Review of Competition and Innovation in Water Markets

675. Professor Martin Cave is leading an independent review of competition and innovation in water markets as commissioned by the Secretary of State for Defra, Welsh Ministers and the Chancellor.

676. This review fulfils a commitment to bring forward a review of the eligibility threshold for customers to choose suppliers introduced as part of the Water Act 2003. At the same time the review team has also looked at the wider review of the competition and innovation framework. The aims of the review are to:

- deliver benefits to both business and household customers. This could be through lower bills, better service and more responsive products; and
- increase the efficiency and sustainability of water use.

677. Professor Cave published an interim report in November 2008 that included a number of recommendations to improve the regime:

- an initial lowering of the eligibility threshold to 5 megalitres;
- the replacement of the cost principle with a framework of regulated access and a power for Ofwat to set charges;
- extension of the scope of the regime to cover sewerage services; and
- placing a requirement on undertakers to legally separate the retail side of their business from the rest of the business.

678. The UK Government's pre-budget report accepted the recommendations to improve the competition framework for business customers and was strongly minded to accept the recommendation on retail separation. The UK Government response, which was published in the pre-Budget report also said that the UK Government would keep the special merger regime under review.

679. 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.
680. Publication of Professor Cave's final report is imminent. Professor Cave has made a commitment to consider the appropriateness of his recommendations in Wales. The UK Government and Welsh Assembly Government will each assess their own policies in the light of Professor Cave's final recommendations and will then consult on implementation of any changes. Where they believe it necessary to legislate to implement their policies, they each intend to do so as part of this Bill.

5.5 Walker Review of Charging and Metering for Water and Sewerage Services

681. Both the UK Government and Welsh Assembly Government have committed to undertake an independent review of household charging and metering for water and sewerage services in England and Wales. Anna Walker, Chief Executive of the Healthcare Commission, was appointed to lead this review in August 2008. The review will report to Defra Ministers and Welsh Ministers.
682. The interim report is expected to be published shortly. The final report is expected in the summer. The intention is for the resulting legislation to consider the application of any appropriate recommendations arising from this review, which the UK Government and Welsh Assembly Government accepts and that require primary legislation.

6. Next steps and how to respond to this consultation

683. The draft Bill is being made available for Parliamentary pre-legislative scrutiny. Further information on this process if available in a note by the House of Commons library⁴⁶.
684. The publication of this draft Bill is intended to enable a full debate with all interested parties on the overall package of reforms and on the detail of the specific proposals.
685. You are welcome to comment on all aspects of this document but there are some specific issues on which we would particularly value your input and these are highlighted by questions throughout the document. It would be helpful, if when you respond, you indicate clearly the specific questions to which your answers relate.
686. To aid you in responding, a complete list of questions asked in this document is presented at Annex B.
687. The consultation period runs from 21 April 2009 until 24 July 2009. Please ensure that your response reaches us by 24 July 2009. We cannot guarantee that responses made after that date will be taken into account. If you would like further copies of this consultation document it can be found at <http://www.defra.gov.uk/envirom/fcd/floodsandwaterbill.htm>
688. When responding to this consultation please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make clear who the organisation represents and where applicable, how the views of members were assembled.

Please submit comments in writing to:

Flood and Water Management Bill Team
Department for Environment, Food and Rural Affairs
Area 2C, Ergon House
London
SW1P 2AL

Alternatively, you may submit comments electronically to:

FloodsandWaterBill@defra.gsi.gov.uk

If your comments are specifically in relation to Wales, please copy your response to:

Water Policy Branch
Climate Change and Water Division
Assembly Government
Cathays Park 2
Cardiff
CF10 3NQ
deshccwd@wales.gsi.gov.uk

Or electronically to: water.consultation@wales.gsi.gov.uk

⁴⁶ <http://www.parliament.uk/commons/lib/research/notes/snpc-02822.pdf>

Code of practice on written consultations

689. This consultation paper has been produced in accordance with the Better Regulation Executive guidance on written consultations as set out at <http://www.berr.gov.uk/files/file47158.pdf>. This includes:

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Confidentiality

690. In line with Defra and the Welsh Assembly Government's policy of openness, at the end of the consultation period copies of the responses we receive will be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, London SW1P 3JR and the Welsh Assembly Government Publications Centre, Cathays Park, Cardiff, CF10 3NQ. The information they contain will also be published in a summary of responses.

691. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

692. The library will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel. 020 7238 6575, email: defra.library@defra.gsi.gov.uk). Where possible, personal callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

693. For any comments made specifically in relation to Wales, the Welsh Assembly Government will make available all responses to this consultation paper or deposit them in the Welsh Assembly Government Publication Centre (029 2082 3683, assembly-publications@wales.gsi.gov.uk). If you do not wish to be identified as the author of your response, please indicate in writing, to the Welsh Assembly Government, why you wish your response to be published anonymously. Anonymised responses will be included in any statistical summary of numbers of comments received or views.
694. If you have any comments or complaints about the consultation process, as opposed to the content of the consultation paper, please address them to Marjorie Addo, Defra's Consultation Co-ordinator, Area 7B Nobel House, 17 Smith Square, London SW1P 3JR, or email: consultation.coordinator@defra.gsi.gov.uk

Annex A – 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 Sir Michael Pitt's 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 Sir Michael Pitt's 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 in Wales currently comes via the Welsh Assembly Government and is directed primarily towards the EA and the 22 local authorities across Wales⁴⁷. Dwr 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.

⁴⁷ all local authorities in Wales are unitary authorities.

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 Sir Michael Pitt's 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 Floods 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 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 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 the provisions do not currently implement new policy in relation to Wales, 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;
 - 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 among the general population; and
 - promote and facilitate the implementation of the full range of risk management measures.
17. Working through the Wales Resilience Forum and the Local Resilience Forum 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 EA 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 IDBs. This would involve planning for risks, understanding the possible impacts and the appropriateness of management responses.

164. 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 EA 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 EA 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 EA 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 EA 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 Floods 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; and
 - report to Welsh Assembly Government on flood and coastal risk and its management.

165. Is the proposed allocation of an enhanced oversight role to the EA in Wales appropriate?
166. Will the scope of the proposed role allow the EA 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 in Sir Michael Pitt's Review which suggested that local authorities should take on responsibility for coordinating surface run-off 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 EA, local authorities, IDBs, 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. Sir Michael Pitt's 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 sea flooding, local surface water and reservoir inundation.

167. Is there a need for an enhanced understanding of all local flood risks in Wales, and if so which risks should be included?
168. Do we need to produce Local Surface Water Management Plans in Wales? If so, what form should they take and what should be included?
169. Do you agree that local authorities are best placed to lead on local flood risks and specifically surface water flood risk management?
170. How might different maps work 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

In taking forward their enhanced oversight role the EA 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 Floods 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; and
- report to Welsh Assembly Government on flood and coastal risk and its management.

29. In addition to this operational overview, the EA will remain the lead body in relation to the risks of flooding from main rivers and the sea. As part of this role the EA 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 risk;

- 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.
30. Other proposed changes to IDBs 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.

171. Is the split of responsibility between the key operating authorities appropriate?
172. Does the suggested split of responsibilities make it easy to understand which operating authority is responsible for which risks of flooding?
173. Will the suggested split of responsibilities ensure that the gaps in coverage of the current systems are addressed and filled?

Flood Risk Management Wales

31. In Section 2.7 above proposals are set out for changes to the EA Regional Flood Defence Committees (RFDC) in England. The RFDC in respect of Wales is Flood Risk Management Wales.
32. 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.
33. This has worked reasonably to date, but there is a risk that with the increased responsibilities proposed for the EA 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

34. The role of Flood Risk Management Wales is closely aligned to that of the EA. Currently an executive committee of the EA, 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 EA and WAG outlined above.

35. 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.
36. 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 EA exercises its duties and monitors its own performance, and the way it monitors the performance of other operating authorities.
37. However, as the Committee currently meets quarterly an expansion in their responsibilities and a requirement for the EA 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.
38. Details on the proposals for RFDC in England are set out in Section 2.7 above. In summary Defra are proposing that the RFDC become Regional Flood and Coastal Committee's with their remit extended to encompass coastal erosion and flooding from the sea.

174. 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?
175. If the remit of the Committee is to be changed then what should be the extent of the Committee role?
176. If the role and remit of Flood Risk Management Wales is extended, how often should the Committee meet?

Status

39. Flood Risk Management Wales is currently an executive committee of the EA. All of the other committees hosted by the EA 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 EA committees.
40. Retaining the current executive status of the committee would be retaining the status quo, which has worked reasonably well to date.
41. As an advisory committee Flood Risk Management Wales would consider EA 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 EA would no longer be required to conduct their activities through Flood Risk Management Wales.
42. 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.

43. Details on the proposals for RFDC in England are set out in Section 2.7 above. In summary Defra are proposing that the RFDC become advisory committees, in line with other committee's of the EA.

177. Should Flood Risk Management Wales remain an executive committee of the EA, or should it become an advisory committee and why?
178. 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

44. 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.
45. Welsh Ministers are not proposing any changes to the current arrangements in respect of the membership of Flood Risk Management Wales.

Risk Management Planning

46. 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 deliver those policies.
47. The Floods Directive⁴⁸ 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.
48. More details on the specific requirements of the Floods Directive are contained in Section 2.8 above. Welsh Ministers are committed to the transposition of the EU Floods 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

49. 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.

⁴⁸ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

50. 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.
51. 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

52. Section 2.8 above contains more information on the requirements of the Floods Directive. Within that section it is proposed that the EA should be the lead competent authority for implementing the EU Floods 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.
53. 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 2.8.

Incorporation of all Flood and Coastal Erosion Risks

54. As is outlined in Section 2.8 above, in many respects the EU Floods Directive 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)

55. 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 2.8 above we believe that local authorities should be responsible for their completion.
56. 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 EA 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.
57. 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.
58. As Wales does not have SFRAs as operated in England, we need to consider alternative approaches to meeting the PFRA requirements. In paragraph's 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 EU Floods Directive.

59. 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.
60. 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.

179. Do you agree that local authorities should be responsible for the production of PFRAs for local flood risks?
180. 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?
181. If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet the requirements of the Floods Directive in respect of local flood risks?

Determining Significant Risk

61. Section 2.8 above contains more information on the EU Floods Directive. Within that section it is proposed that the EA should lead on determining which areas are considered to be at significant risk of flooding and thus 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.
62. 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 EA under a process to be set out in secondary legislation.
63. 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 2.8.

Flood Hazard Maps and Flood Risk Maps

64. Section 2.8 above contains more information on the requirements of the EU Floods 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.
65. 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.
66. 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.

67. 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 2.8 as well as the ones below.

182. Do you agree that local authorities should be responsible for the production of maps for local flood risks?
183. 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?
184. 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)

68. Section 2.8 above contains more information on the requirements of the EU Floods 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 FRMPs under the EU Floods Directive. These include:
- Catchment Flood Management Plans;
 - Shoreline Management Plans; and
 - Reservoir flood plans.
69. These would also need to be supported by and coordinated with the plans produced in respect of local flood risks outlined above. Section 2.8 proposes that the Environment Agency should lead on coordinating the various documents, and that the FRMPs will be considered completed once adopted by the Environment Agency.
70. 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 2.8.

Coordination with the Water Framework Directive

71. Within section 2.8 it is proposed that the Environment Agency should lead on the coordination of the requirements of the EU Floods Directive and the Water Framework Directive in its capacity as competent authority for both areas.
72. Welsh Ministers concur with this approach and intend that the provisions in Wales mirror those in England.

Reporting and Review Cycle

73. Within Section 2.8 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.

74. 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.
75. 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.

185. 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

76. 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.
77. 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.
78. 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.
79. 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.
80. 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.
81. 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.
82. 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.**
83. 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

84. Section 2.6 above outlines proposals for increasing the uptake of sustainable drainage systems. There are four key aspects to those proposals including:
- The development of National Standards governing the way in which surface water drainage systems must be constructed, and operate. These will reflect the need to mitigate flood damage, improve water quality, protect the environment, protect health and safety, and ensure the stability and durability of drainage systems;
 - An approval system for the surface water drainage systems of the majority of new developments, including roads, in line with the National Standards;
 - A requirement on unitary and county local authorities (or other bodies selected by the Secretary of State in England or Welsh Ministers in Wales), to adopt and maintain new SUDS which affect the drainage of other properties; and
 - A requirement on developers to demonstrate that they have met national standards for the application of SUDS techniques before they can connect any residual surface water drainage to a public sewer (amending section 106 of the Water Industry Act 1991).
85. Welsh Ministers concur with the proposals set out in Section 2.6 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 2.6 Welsh Ministers are seeking views on the following questions, which are specific to Wales

186. 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)?
187. Should there be flexibility within the system to appoint different organisations as SUDS Adopting Bodies in different areas?
188. Should the automatic right to connect to a public sewer be amended for new sites and re-developments as proposed in Section 2.6 above?

Other Issues

Third Party Assets

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

Main River Mapping

87. 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.
88. Welsh Ministers concur with the approach and intend that these provisions apply in relation to Wales with the relevant functions being conferred on 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 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 Welsh Ministers.

Reducing property owners' and occupiers impact upon local flood risk

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 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 Wales⁴⁹ together with our Environment Strategy for Wales⁵⁰ 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 them 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 Section 4 of this consultation document, include:
 - Hosepipe bans
 - Environmental Permitting Programme
 - Power of entry – water resource functions
 - Minor amendments to the Water Resources and Water Industry Act
 - Water administration regime
 - Drinking Water Inspectorate recovery of charges

49 <http://wales.gov.uk/topics/sustainabledevelopment/susdevnews/1wales1planet/?lang=en>

50 <http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/?lang=en>

- 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 at Section 5 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
 - Hydro morphology
 - 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 and sewerage undertakers whose area is wholly or mainly in Wales. Further detail on the jurisdiction of Welsh Ministers' powers under these proposals is set out in Section 4).
106. There are a small number of areas where the Welsh Assembly Government either has a distinctive position or wishes to seek specific comment. These are addressed in the relevant sections above and the questions set out there apply equally to England and Wales.

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.

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

Minor 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 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 and sewerage undertakers 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 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 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.

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 noted in Section 4.9 notes, these proposals are in the early stages of development and application of this regime and thinking will evolve as we consult on the issues identified.

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

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 and metering 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 hydro morphological 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 resulting legislation, 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 resulting legislation 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 resulting legislation.

Annex B – List of consultation questions

Consultation questions are asked in Sections 2-5 of this document and at Annex A. To aid you in responding, a complete list of the questions asked is presented below, referenced by question number.

1.10 Style and accessibility of draft legislation

1. How far, in general, would you say that the draft legislation is written in a reasonably clear style that is likely to be understood by readers?
2. In general, do you think the individual clauses are too long, too short or about the right length? How far is their overall order in the draft legislation reasonably logical and easy to follow?
3. In general, do you think the individual sentences in the draft are too long, too short or about the right length and is their structure too complex, too simple or about right?
4. Please give examples of anything in the style of the draft legislation that you particularly liked or disliked. Please also give your reasons.
5. Please give examples of provisions that you thought helpfully simple or well expressed or ones that could be made simpler or otherwise improved. Please also give your reasons.
6. Are there any drafting techniques (such as cross-references to other provisions of the draft legislation) that you would like to see used more or less?
7. Please suggest any improvements to the way in which legislation is drafted that you think would make it easier to understand and apply.

2.1 New approaches to Flood and Coastal Erosion Risk Management

8. Are you content with the definitions of “risk” and “risk management” in the draft Bill?
9. Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as resilience, and that it should be sufficiently flexible to accommodate new approaches which may be developed in future?
10. Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation?
11. Does the proposed approach to flood and erosion risk management:
 - facilitate and encourage authorities to make effective links between land management and flooding and erosion?
 - enable and encourage authorities to play an appropriate role in the delivery of wider multiple objective projects through the use of their flood and erosion management functions, including projects that are specifically required to achieve environmental, cultural and social outcomes?
12. Are there any approaches to flood and coastal erosion risk management that should be adopted but which the draft Bill would not allow?
13. Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?

2.2 Future roles and responsibilities

14. Are the component parts of the EA strategic overview clear and correct and do they achieve the objectives?
15. If not, what further changes should be made?
16. Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions?
17. Do you have any comments on the proposal that other bodies would have to have regard to the EA's National Strategy and guidance? Do you consider that any other bodies should be added to the list in clause 23? In particular, how should the sewerage industry be brought into the new framework?
18. Do you think that the EA should be required to consult as part of preparing or publishing its strategy?
19. Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable?
20. Should the Secretary of State have the power to direct the EA to undertake local flood risk management work in default of local authorities, and recover reasonable costs?
21. Should the EA be able to undertake coastal erosion risk management works concurrently with local authorities where appropriate to support the delivery of the strategic overview role?
22. The EA is drawing up a coastal map showing which operating authority will exercise FCERM powers on each length of coast. Should the EA maintain this and should the procedure for amending the map be the same as for main river maps, or should it be a non-statutory process?

2.3 Main River Mapping

23. Do you have any comments on the proposed changes to main river maps as set out above?

2.5 Local Flood Risk Management

24. The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships?
25. Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions?
26. Do you have any comments on the proposal that other bodies would have to have regard to the local flood risk management strategy and guidance? Do you consider that any other bodies should be added to the list?
27. Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy?
28. Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out works of an emergency nature? If so, what powers would be needed?

29. Do you think that the EA and county and unitary local authorities should be able to gather information from private landowners and individuals about flood drainage assets related to their respective responsibilities? What if any sanction is needed to ensure information is provided?
30. Should county and unitary local authorities be legally required to produce annual reports on the way that they are managing local flood risk? Should this requirement be annual?
31. Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?
32. Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?
33. Should Regional Flood and Coastal Committees (or another body) be involved in peer-reviewing any annual reports produced by local authorities?
34. Should district local authorities and IDBs continue to manage flood risk from ordinary watercourses, taking account of Local and National Strategies?
35. Should county and unitary local authorities have powers, concurrent with district local authorities and IDBs, to manage flood risk from ordinary watercourses in their areas? Or should they remain able to act only in default?
36. Should any sea flooding works that a local authority wants to undertake require the consent of the EA?
37. Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body?
38. Should the functions of consenting, and the production and coordination of the strategy (for both EA and county and unitary local authorities) remain as ones which cannot be carried out by another authority?
39. Are these assumptions reasonable? Is further evidence available to improve the analysis? Are the measures detailed proportionate with the scale of benefits assumed?

2.5 Duty to cooperate and share information

40. As agreed in the Government response to Sir Michael Pitt's Review, there will be a duty on relevant organisations to cooperate and share information. Do you think the list of relevant authorities to whom this applies is comprehensive?
41. Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?

2.6 Sustainable Drainage Systems

42. Do you agree that national design, construction and performance standards for sustainable drainage of new developments and re-developments should be developed and approved by the Secretary of State and Welsh Ministers?
43. Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned?
44. Are there examples where this form of approval, for the surface water drainage system associated with a new development, is not appropriate?
45. Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?

46. Are there examples where a communal SUDS should not be adopted by the SAB?
47. Do you agree with how the envisaged arrangements for replacing the automatic right to connect will work?
48. Can the use of National Standards as a material consideration for the purposes of s115(4) of the Water Industry Act 1991 provide sufficient legal certainty to prevent inappropriate agreements to drain highways to sewer?
49. What is the appropriate balance to enable good SUDS designs that work with the lie of the land, can discharge to watercourse, and can be accessed for maintenance and inspection, whilst protecting the rights of landowners?
50. How wide should the SABs' ability to delegate be?
51. Are additional enforcement powers needed – in particular, should the SAB have an independent power to enforce the approved SUDS? How would this work?
52. Views are welcomed on how best to ensure the maintenance of private SUDS, and ensure that they are not redeveloped.
53. Is there any legal impediment to prevent a SAB from adopting an existing SUDS?
54. Do you agree that performance management of SUDS maintenance should be included within the local government performance framework, as part of their climate change adaptation function?

2.7 Regional Flood Defence Committees

55. Do you agree that Regional Flood Defence Committees should be renamed as Regional Flood and Coastal Committees?
56. Should RFCC status be predominantly advisory rather than executive?
57. Should the focus and roles of RFCCs be as described in above? If not, do you have any other proposals?
58. Do you agree that the membership of RFCCs should be appointed as outlined above in future? If not, do you have any other proposals?
59. Should RFCCs' levy-consenting powers be extended to coastal erosion issues?
60. Are there any other issues that you wish to raise in regard to RFCCs?

2.8 EU Floods Directive

61. Should flooding from sewerage systems caused solely by system failure be excluded from transposition of the Floods Directive? If not, how might such flooding be integrated?
62. Should the EA and county and unitary local authorities assume responsibility for implementing the Floods Directive, with the EA focussing on national mapping and planning and local authorities having specific responsibilities in relation to local flood risk? If not, what other arrangements would you suggest?
63. Should county and unitary local authorities be responsible for delivering PFRAs for local flood risk as described above? If not, who should be responsible?
64. Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?

65. Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?
66. Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above?
67. Do you agree with the proposed mapping arrangements set out above? If not, what alternative arrangements do you suggest?
68. Should the EA and local authorities have the discretion to determine whether or not to produce flood maps, as described above? If not, what other arrangement should apply?
69. Should the arrangements for FRMPs be as set out above? If not, what alternative arrangements do you suggest?
70. Do you agree with the co-ordination arrangements set out above? If not, what alternative arrangements do you suggest?
71. Should the first cycle PFRA be brought forward one year, as proposed above, to enable mapping to take up to two years in common with the rest of the mapping and planning cycle?
72. Do you agree with the other proposals set out above for reporting and review? If not, what alternative arrangements do you suggest?

2.9 Water Framework Directive

73. Do you agree that the duty to act in accordance with WFD requirements should apply equally to all FCERM authorities?
74. Do you think this approach provides a satisfactory mechanism for ensuring that the relevant bodies deliver the requirements of the WFD?

2.10 Third Party Assets

75. Should we introduce a system of third party asset identification and designation, as set out above?
76. Is there a case for greater powers on third party assets than we have suggested?
77. Are there assets that are not 'structures or natural/man-made features' that should also be designated?
78. Should there be a duty on those responsible for third party assets in England and Wales to maintain them in a good condition?

2.11 Consenting and enforcement

79. Should regulation of the ordinary watercourse network (where there are no IDBs) transfer to county and unitary authorities? Or should this role in future sit with the district and unitary authorities?
80. Should it be possible to make consents subject to reasonable conditions?

2.12 Reservoir safety

81. Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.
82. Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.

83. Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?
84. Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?
85. Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?
86. Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?
87. Again, we welcome views on how to ensure charges within a scheme can be made proportionate.
88. No decision has yet been made about making use of the existing power to give Directions contained in the Reservoirs Act 1975 (as amended by the Water Act 2003). Views are invited on whether to proceed ahead of enactment of the proposals in the draft Bill. Points to bear in mind are:
 - The existing power to give a Direction would apply only to LRRs; and the costs of offsite planning would not be borne by the undertaker.
 - The power to give a Direction under the new Bill proposals could apply to all high risk reservoirs above the minimum volume criterion; and could provide for the reservoir manager to meet the costs of off-site planning should a specific emergency response plan be needed. Views are sought on whether the Bill should provide for this.

3.1 Possible reforms to the role and governance of Internal Drainage Boards

89. Do you consider that there is a direct conflict or inconsistency between the IDBs' supervisory role and the local leadership role of the county and unitary local authorities?
90. If the IDBs' supervisory role was repealed, what would IDBs no longer be able to do that they currently can?
91. Should regulation of the entire ordinary watercourse network (including within IDB watercourses) transfer to county and unitary authorities in order to provide a consistent approach?
92. Do you think that IDBs should have specific powers to share services and form/participate in consortia?
93. Do you think that IDBs should have specific powers to form/participate in limited companies/limited liability partnerships for the purposes of sharing services?
94. What negative impacts might there be from providing IDBs with these specific powers?
95. Do you agree the proposals outlined are the best way to simplify these procedures? If not, what alternative approaches should be considered?
96. Do you agree that the title of IDBs should change in the future to reflect the wider approaches that IDBs will undertake now and in the future?
97. Do you agree that 'Local Flood Risk Management Board' is an appropriate new title, or is there a better alternative?

98. Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas?
99. Do you agree that there should be a specific requirement for IDBs to produce an impact assessment demonstrating the cost benefit implications of a boundary expansion?
100. Do you agree that the future supervision of IDBs would fit better with county and unitary local authorities rather than the EA in the future?
101. Do you think that county and unitary local authorities should take over the lead on amalgamation (etc.) schemes from EA in the future under this supervisory role?
102. Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future?
103. Are there other models of membership that you think would be more appropriate?
104. Do you agree that the Secretary of State should have powers to determine the size, shape and structure of IDBs in the future?
105. What consultation would need to occur before individual changes in size, shape and structure of IDBs were to take place? What sort of powers would be most appropriate?
106. Views are sought on whether the assumptions are reasonable. Can further evidence be made available to improve the analysis? Are the measures proportionate with the scale of benefits assumed?

3.2 Current funding structure

108. Do you agree that there is a case to retain powers for the EA to levy (a) general drainage charges, and for IDBs to retain similar powers to levy (b) agricultural drainage rates in England and Wales?
109. Do you agree that EA's current powers to levy special drainage charges should be repealed?
110. Do you agree that only county and unitary local authorities should be funded for local flood risk management to allow them to prioritise funding based on where benefits would be greatest?
111. Do you think that replacing the IDB special levy in England and Wales with agency or contractual arrangements between IDBs and the relevant local authorities would improve the delivery and prioritisation of local flood risk management?
112. Are there other arrangements that would remove or reduce the problems associated with the special levy in England and Wales, including those referred to above?
113. Is there a case to end both IDB highland water charges and EA's precept on IDBs in England and Wales?
114. If the Medway letter were retained, would there still be a case to end the payments?
115. What additional steps or measures could be taken to make sure developers in England and Wales contribute towards the pressures new developments place on future local and central government budgets?

3.3 Reducing property owners' and occupiers' impact upon local flood risk

116. How can people be made aware of their riparian responsibilities when they first buy properties that include riparian land?
117. What else could be done to improve existing riparian owners' awareness and understanding of their responsibilities?
118. What examples are there of strategies that have succeeded in increasing the engagement of riparian owners and improving their contribution to maintenance?
119. How could the powers provided to drainage bodies by section 25 of the Land Drainage Act 1991 be improved?
120. Do you agree with the suggestion that ENI be offered to applicants and respondents in all ALT land drainage cases?
121. Do you agree with the introduction of a fee for all applications to the Agricultural Land Tribunal that concern land drainage? This would not affect hearings for agricultural tenancies.
122. If an application fee were introduced, at what level should it be set?
123. Do you agree that a fee should be charged for an ALT hearing on drainage? Should that fee be paid by the losing party or should this be decided by the ALT?
124. If a hearing fee were introduced, at what level should it be set?
125. What cases are you aware of where people might have made use of the ALT had its remit extended beyond ditches and included all ordinary watercourses?
126. Do you think that it would be a good idea to extend the remit of the ALT to include all ordinary watercourses? Do you think that it should also be extended to cover the main river network?
127. In what other ways, if any, could the regulations and processes of the ALT be improved as regards cases involving drainage issues?
128. Do you think the ALT should be renamed? If so, what name do you suggest?
129. Do you believe that failure to maintain the flow of water through watercourses should be described in law as a statutory nuisance?
130. If a statutory nuisance were created concerning "obstructed watercourses", should it be administered by the ALT, by district and unitary local authorities or by some other body/bodies?
131. Do you agree that a new statutory nuisance should be created to tackle the risk of run-off flooding?
132. If a statutory nuisance were created for run-off risk, which public bodies should be responsible for its administration and enforcement – the ALT, unitary and district local authorities, or unitary and county local authorities?
133. What is the range of costs involved in conducting expert investigations into potential surface run-off statutory nuisance?
134. What sized reductions in damages can be expected when run-off risks are eliminated?
135. Should the owners of properties that cause a surface run-off statutory nuisance have to pay the entire cost of eliminating the nuisance? What would happen if the owner was unable to afford the work? How else could the works be paid for?

136. Should local authorities be encouraged to make more use of their Article 4 powers to reduce the growth in surface run-off risk?
137. Please tell us of any recent occasions you are aware of in which run-off from farmland caused substantial disruption or damage to neighbouring property.
138. Do you agree that local authorities should, in areas of high risk of run-off flooding, be given powers to impose restrictions on management practices and oblige landowners to make improvements to drainage in particular portions of land implicated in run-off flooding?
139. If you do agree with the above proposition, what land management practices should be included in the national list of possible restrictions?
140. What would be the administration costs of working with a landowner to convince them to change the way they managed their land and support them with doing so?

3.4 Single Unifying Act

141. Do you agree that any proposed changes to the existing legislation, not contained in the draft Bill or covered elsewhere in this consultation document, should be discussed directly with relevant organisations in England and Wales so that changes might be introduced in the resulting legislation, without the need for further general consultation?
142. If so, are there any particular or general issues on which you would want to be involved in this way?

4.1 Hosepipe bans

143. What non-essential uses of water do you think should be restricted in order to save water in times of drought?
144. For those domestic uses of water which are not covered by the existing hosepipe ban powers, but which may be prohibited as a result of any changes, for example the cleaning of patios with a hosepipe or pressure washer or filling of domestic swimming pools, how can the cost of inconvenience to the householder be measured? Are you able to provide an assessment of the impacts?
145. Some businesses could be affected at an earlier stage in a drought if further uses are prohibited. Are you able to provide any assessment of the likely impact and costs for businesses should they be unable to use water supplied through a hosepipe or similar apparatus?
146. Do you agree that the legislation should not set a standard notice period? If not, what period would you suggest?

4.2 Power of entry – water resources functions

147. Do you agree that a power of entry should be introduced to cover the EA's functions to measure and manage water resources?

4.5 Water Administration Regime

148. Should the special administrator be required to pursue the rescue objective for viable water companies that experience financial difficulties?
149. Should a hive-down provision be available in the water administration regime to make the transfer process more efficient?
150. Do you agree that we should remove the right of an undertaker to veto a transfer?

4.6 DWI Recovery of Charges

151. Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies and licensed water suppliers in line with other water regulators?
152. Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent?

4.8 Misconnections

153. Do you agree that powers should be given to sewerage companies to require householders to rectify misconnections as described above? Are there alternatives?

4.9 Development of a project based delivery approach for large infrastructure projects in the water sector

154. Do you agree that a project-based approach would reveal optimal funding structures?
155. Are there alternative approaches to securing effective and properly regulated collaborative projects that could be explored?
156. Do you agree that consumers would benefit from a project-based approach to suitable large projects?
157. Do you agree that existing water companies would normally be best placed to manage the procurement exercise?
158. What types of projects should be covered by the regime?

4.10 Complaint handling powers

159. Do you agree that these changes provide for the most appropriate body to handle complaints?

4.11 Securing compliance

160. Do you agree that these changes will enhance Ofwat's ability to protect customers?

5.3 Hydromorphology powers

161. Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why.
162. Do you agree with these criteria for the use of the power?
163. Do you think this proposal provides an appropriate mechanism to enable improvement of hydromorphological conditions?

Annex A – The policy position in Wales

Flood and Coastal Erosion Risk Management

164. Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?
165. Is the proposed allocation of an enhanced oversight role to the EA in Wales appropriate?
166. Will the scope of the proposed role allow the EA 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

167. Is there a need for an enhanced understanding of all local flood risks in Wales, and if so which risks should be included?
168. Do we need to produce Local Surface Water Management Plans in Wales? If so, what form should they take and what should be included?
169. Do you agree that local authorities are best placed to lead on local flood risks and specifically surface water flood risk management?
170. How might different maps work and plans for addressing different sources of flood risk be best integrated?

Roles & Responsibilities

171. Is the split of responsibility between the key operating authorities appropriate?
172. Does the suggested split of responsibilities make it easy to understand which operating authority is responsible for which risks of flooding?
173. Will the suggested split of responsibilities ensure that the gaps in coverage of the current systems are addressed and filled?

Flood Risk Management Wales

174. 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?
175. If the remit of the Committee is to be changed then what should be the extent of the Committee role?
176. If the role and remit of Flood Risk Management Wales is extended, how often should the Committee meet?
177. Should Flood Risk Management Wales remain an executive committee of the EA, or should it become an advisory committee and why?
178. Should Flood Risk Management Wales' existing levy raising powers in respect of flood risk management be extended to encompass coastal erosion risk management.

Risk Management Planning

179. Do you agree that local authorities should be responsible for the production of PFRAs for local flood risks?
180. 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?
181. If there is no requirement to produce Surface Water Management Plans in Wales, what should be done to meet the requirements of the Floods Directive in respect of local flood risks?
 - We would be interested in your responses to the questions posed in Section 2.8 as well as the ones below.
182. Do you agree that local authorities should be responsible for the production of maps for local flood risks?

183. 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?
184. 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?

Sustainable Drainage Systems

In addition to the questions in Section 2.6 Welsh Ministers are seeking views on the following questions, which are specific to Wales

186. 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)?
187. Should there be flexibility within the system to appoint different organisations as SUDS Adopting Bodies in different areas?
188. Should the automatic right to connect to a public sewer be amended for new sites and re-developments as proposed in Section 2.6 above?

Annex C – Glossary of terms and abbreviations

Adaptation – changing our behaviour to respond to the impacts of climate change. Adaptation to climate change involves making decisions that are sustainable, made at the right time, maximising the benefits and minimising the costs. Adaptation needs to be built into planning and risk management now to ensure the continued and improved success of businesses, Government policies and social operations.

Aquifer – a permeable geological formation of rock, mud or gravel containing or conducting water.

Building Regulations – the UK Building Regulations are rules of a statutory nature to set standards for the design and construction of buildings, primarily to ensure the safety and health for people in or around those buildings, but also for purposes of energy conservation and access to and about other buildings.

Catchment – an area that serves a river with rainwater, that is every part of land where the rainfall drains to a single watercourse is in the same catchment.

Category 1 responder – a person or body listed in Part 1 of Schedule 1 to the Civil Contingencies Act (CCA) 2004. These bodies will be at the core of the response to most emergencies. As such, they are subject to the full range of civil protection duties in the CCA.

Category 2 responder – a person or body listed in Part 3 of Schedule 1 to the Civil Contingencies Act 2004. These are Cooperating responders who are less likely to be involved at the heart of multi-agency planning work across the board, but will be heavily involved in preparing for incidents affecting their sectors. The CCA requires them to cooperate and share information with other Category 1 and 2 responders.

Civil Contingencies Act (CCA) 2004 – legislation that aims to deliver a single framework for civil protection in the United Kingdom. The CCA is separated into two substantive parts: local arrangements for civil protection (Part 1) and emergency powers (Part 2).

Coastal erosion – the wearing away of coastline, usually by wind and/or wave action.

Coastal flooding – occurs when coastal defences are unable to contain the normal predicted high tides that can cause flooding, usually when a high tide combines with a storm surge (created by high winds or a deep depression).

Community Infrastructure Levy – powers introduced by The Planning Act 2008 for a new charge under which local authorities in England and Wales will be empowered, but not required, to introduce a charge on most types of new development in their area to fund local and sub-regional infrastructure.

Community resilience – the ability of a local community to prepare for emergencies and to respond and recover from them.

Consequence – the outcome of an event. This can be expressed qualitatively or quantitatively to direct or indirect losses and gains.

Controlled Waters – under section 104 of the Water Resources Act 1991 controlled waters include all inland waters (other than enclosed ponds) and ground waters.

Cost-benefit analysis – a decision-making technique that analyses and evaluates the implications of alternative courses of action by assigning a quantified monetary value for each Positive criterion (benefits) and negative criterion (costs).

Culvert – a covered structure under road, embankment etc, to direct the flow of water.

Climate change – the change in average conditions of the atmosphere near the Earth's surface over a long period of time.

Dams – a barrier constructed across flowing water that obstructs, directs or Slows down the flow, often creating a reservoir.

Draft Bill – a Bill published in draft before Introduction.

Emergency (in the UK) – an event or situation that threatens serious damage to human welfare in a place in the UK or to the environment of a place in the UK, or war or terrorism that threatens serious damage to the security of the UK.

Emergency management – the process to deal with the initial or acute phase of an emergency.

Emergency planning – development and maintenance of agreed procedures to prevent, reduce, control, mitigate and take other actions in the event of an emergency.

Environment Agency Coastal Strategic Overview – the Strategic Overview was introduced in April 2008 as a result of Making space for water and is a way of working between Government, the Environment Agency, Local Authorities and coastal flooding groups to improve the sustainability, prioritisation and management of all work on the coast. Whilst the Environment Agency has the overview, close collaborative working with Local Authorities on the coast is essential to ensure vital skills and expertise is used effectively for communities in need.

European Commission – an institution of the European Union, located in Brussels with 27 members (Commissioners). It is responsible for proposing new policies, implementing existing policies, and ensuring that EU rules are obeyed by Member States.

Flash flooding – a rapid increase in water levels, leading to flooding, occurs when excessive rain falls over a short period of time.

Flood – temporary covering by water of land not normally covered with water.

Flood risk – product of the probability of Flooding occurring and its consequences of happening.

Fluvial flooding – same as river Flooding.

Floodplain – low-lying area adjacent to a watercourse and prone to flooding.

Generic plan – a single plan designed to cope with a wide range of emergencies.

Geographic Information System (GIS) – a mapping system to display geographic information.

Government Offices – 9 offices represent 11 Whitehall departments in English regions.

Green roof – a roof purposely covered in vegetation to reduce and treat water run-off.

Greenhouse gas – a gas that absorbs infrared radiation in the atmosphere.

Home Information Pack (HIP) – a pack containing a set of documents that aims to provide house buyers with some of the information that they need to make an informed choice about a property they wish to buy.

Hive down – a well established mechanism that involves the transfer of a viable part of a business to a wholly-owned subsidiary of the insolvent company.

Hydrology – the scientific study of water, including its properties, movement and effects on the Earth's Surface, underground and in the atmosphere.

Impact Assessment – is both a Continuous process to help the policy-maker fully think through and understand the consequences of possible and actual Government interventions in the public, private and third sectors; and a tool to enable the Government to weigh and present the negative effects of such interventions, including by reviewing the impact of policies after they have been implemented.

Infrastructure Service Provider – specialist third party owning and financing a large project and delivering the service provided by the new infrastructure to the water companies or companies.

Inset Appointment – allows one or company to replace another as the statutory water and/or sewerage undertaker for a specific geographic area.

Internal Drainage Board (IDB) – independent statutory bodies responsible for land drainage in areas of special drainage need that extends to 1.2 million hectares of lowland England. They are long established bodies operating predominantly under the Land Drainage Act 1991 and have permissive powers to undertake work to secure drainage and water level management of their districts.

Inundation – the flooding of an area with water.

Land management – this includes the way land is drained, used and farmed in the rural environment.

Land use planning – branch of public policy encompassing various disciplines seeking to order and regulate the use of land.

Lead responder – a Category 1 responder charged with carrying out a duty under the Civil Contingencies Act 2004 on behalf of a number of responder organisations, so as to coordinate its delivery and to avoid unnecessary duplication. by the Secretary of State. Through these, different localities can channel public resources towards the priorities of their own areas, alongside national outcomes and targets.

Local Area Agreement (LAA) – are three-year agreements, developed by local councils with their partners in a local strategic partnership (LSP). Each LAA is negotiated with the Government Office for the region, before being agreed and signed off.

Local Government Association (LGA) – voluntary lobbying organisation to promote the interest of English and Welsh local authorities.

Local Resilience Forums (LRF) – a forum for bringing together all of the Category 1 and 2 responders within a facilitating cooperation in fulfilment of their duties under the Civil Contingencies Act 2004.

Local Planning Authority – the statutory authority (usually the local council) whose duty it is to carry out the planning function of its area.

Main river – is a watercourse shown as such on a main river map and for which Environment Agency has responsibility.

Ordinary Watercourse – all Watercourses that do not form part of a main river, and which are the responsibility of local authorities or, Where they exist, internal drainage boards.

Operating authorities – is a term we use to describe the Environment Agency, local authorities and Internal Drainage Boards (IDBs) who have powers to carry out flood risk management and land drainage works.

Planning Policy Statement 25 (PPS25) – government policy planning statement relating to development and flood risk.

Pluvial flooding – same as surface water.

Precipitation – for example, rain, snow, hail and sleet.

Primary legislation – the general term used to describe the main laws passed by the legislative bodies of the UK, for example Acts of the UK Parliament. These types of legislation are sometimes referred to as ‘statutes’.

Probability – a relative measure of the likelihood or chance that something is the case or will happen, typically expressed as a number between zero and one or as a percentage.

Permeable – allowing liquids or gasses to pass through.

Permissive powers – the statutory granting of impact, authority (not a duty).

Phosphorus pollution – phosphorus is a nutrient that is used by plants. If it is present in the environment in excessive amounts it can lead to rapid undesirable plant growth which is called eutrophication. This can lead to disturbance of the ecological balance and, in severe cases, a reduction of oxygen in the water which could cause fish kills.

Recharge period – a period of time during which groundwater is absorbed into geological formations below the surface.

Recovery – the process of rebuilding, restoring and rehabilitating the community following an emergency.

Reservoir – a natural or artificial lake where water is collected and stored until needed. Reservoirs can be used for irrigation, recreation, providing water supply for municipal needs, hydroelectric power or controlling water flow.

Resilience – the ability of the community, services, area or infrastructure to withstand the consequences of an incident.

Resilience measures – resilience Measures aim to reduce the consequence of flooding by, for example, facilitating the early recovery of buildings, infrastructure or other vulnerable sites following a flooding event or by ensuring that key infrastructure such as power distribution centres, telecommunication control centres and key emergency access routes have enhanced levels of protection or other mitigation measures.

Resistance measures – are designed to keep out, or at least minimise, the amount of water that accommodation of evacuees from an incident enters a building, or other area of adverse in times of flood.

Return period – this is the measure of the rarity of a flood event and is the average time interval between occurrences of a flood event of a similar magnitude.

Riparian ownership – owning shoreline land or land on the boundary of a river or watercourse.

Risk – measures the significance of a potential event in terms of likelihood and Impact. In the context of the Civil Contingencies Act 2004, the events in question are emergencies.

Risk assessment – a structured and auditable process of identifying potentially significant events, assessing their likelihood and impacts, and then combining these to provide an overall assessment of risk, as a basis for further decisions and action.

River flooding – occurs when water levels in a channel overwhelms the capacity of the channel.

River Basin Management Plans – plans for the integrated management of whole body water systems, from areas of surface run-off through to estuaries and the sea. It is designed to provide a detailed account of the objectives that have been set for the water bodies within the river basin district, and explain how these are to be achieved. The Water Framework Directive places a duty on EU Member States to ensure that a comprehensive plan is produced, and updated every six years, for each river basin district.

Runoff – water that is not absorbed into the ground and drains or flows off the land, often appearing in surface water bodies.

Secondary legislation (also called ‘subordinate legislation’) – is delegated legislation made by a person or body under authority contained in primary legislation for example statutory instruments. Typically, powers to make secondary legislation may be conferred on ministers, on the Crown, or on public bodies.

Spatial – relating to relative locations on the ground surface.

Standards of Protection – the flood event return period above which significant damage and possible failure of the flood defences could occur.

Statutory duty – an action required by law.

Storm surge – abnormal rise in sea level along the shore, usually caused by strong winds and/or reduced atmospheric pressure, often resulting from storms.

Strategic Coordination Group (SCG) – a multi-agency group that sets the policy and strategic framework for emergency response at local level (see also Gold command).

Surface run-off – occurs when the level of rainfall overwhelms the capacity of the drainage system to cope.

Sustainable Drainage Systems (SUDS) – help to deal with excesses of water by mimicking natural drainage patterns.

Swales – shallow, trough-like depressions that carry water.

Voluntary sector – self-governing organisations, some being registered charities, some incorporated non-profit organisations. They deliver work for the Public benefit using volunteers.

Trunk main – large-diameter water pipe.

Undertaker – a company licensed to provide water supplies under Chapter 1 or 1A of the Water Industry Act 1991 (as amended).

Utilities – companies providing essential services, for example water, energy and telecommunications.

Vulnerability – the susceptibility of an individual, community, service or infrastructure to damage or harm.

Water table – the upper surface of groundwater; the boundary between Saturated and unsaturated soil conditions.

Watercourse – is any river, stream, ditch, drain, cut culvert, dyke, sluice, sewer and passage through which water flows, except a public sewer.

ACRONYMS

ALT	Agricultural Land Tribunal
CCWater	Consumer Council for Water
CFMP	Catchment Flood Management Plan
CIL	Community Infrastructure Levy
CLG	Communities and Local Government
CPA	Coast Protection Act 1949
DWI	Drinking Water Inspectorate
EA	Environment Agency
EC	European Commission
EPP	Environmental Permitting Programme
EUFD	EU Floods Directive
FCERM	Flood and Coastal Erosion Risk Management
FHM	Flood Hazard Map
FDGIA	Flood Defence Grant in Aid
FHM	Flood Hazard Map
FRM	Flood Risk Map
FRMP	Flood Risk Management Plan
ICE	Institution of Civil Engineers
IDB	Internal Drainage Board
ISP	Infrastructure Service Provider
LA	Local Authority
LDA	Land Drainage Act 1991
LFRM	Local Flood Risk Management
LPA	Local Planning Authority
LRR	Large Raised Reservoir
LTIS	Long Term Investment Strategy
OA	Operating Authority
OPC	Office of the Parliamentary Counsel
PFRA	Preliminary Flood Risk Assessment
PPS25	Planning Policy Statement 25: Development and Flood Risk
RFERAC	Regional Fisheries, Ecology and Recreation Advisory Committee

REPAC	Regional Environment Protection Advisory Committee
RFCC	Regional Flood and Coastal Committee
RFDC	Regional Flood Defence Committee
RFRA	Regional Flood Risk Assessment
SAB	SUDS Approving Body
SFRA	Strategic Flood Risk Assessment
SMP	Shoreline Management Plan
SRR	Small Raised Reservoir
SUDS	Sustainable Drainage Systems
SWMP	Surface Water Management Plan
WFD	Water Framework Directive
WRMP	Water Resource Management Plan
WSL	Water Supply License



Draft Flood and Water Management Bill

Flood and Water Management Bill

April 2009

Flood and Water Management Bill

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A

B I L L

TO

Make provision about flooding and coastal erosion risk management and the use of water.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART 1

FLOOD AND COASTAL EROSION RISK MANAGEMENT

1: Introduction

1 Overview

- (1) This Part makes provision about the management of flood risk and coastal erosion risk in England.
- (2) In particular, this Part –
 - (a) gives the Environment Agency responsibility for supervising the management of flood risk and coastal erosion risk,
 - (b) gives unitary authorities and certain county councils responsibility for supervising the management of flood risk relating to surface runoff, groundwater and ordinary watercourses in their area,
 - (c) imposes duties on the Agency, unitary authorities and certain county councils to assess flood risk and plan for its management in their capacity as competent authorities for the purposes of Directive 2007/60/EC, and
 - (d) imposes other duties and confers powers on the Agency, local authorities and other authorities for the purpose of managing flood risk and coastal erosion risk.

(3) The Table describes the contents of this Part.

<i>Group of sections</i>	<i>Topic</i>
2	Key concepts and definitions
3	National flood and coastal erosion risk management strategy
4	Local flood risk management strategy
5	Effect of local and national strategies
6	Co-operation
7	Funding
8	Environment Agency: supplemental powers and duties
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12	Main rivers and boundaries
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14	General

2: Key concepts and definitions

2 List of definitions

The following sections define concepts for this Part.

<i>Section</i>	<i>Definition</i>
3	Flood
4	Coastal erosion
5	Risk
6	Particular risks
7	Risk management
8	Main river
9	Ordinary watercourse
10	Groundwater
11	Surface runoff
12	Authorities
12	Internal drainage board
12	Water company
12	Highway authority
12	Relevant authority
13	Flood risk management function
14	Coastal erosion risk management function
15	Constituent council

3 “Flood”

- (1) “Flood” includes any case where land not normally covered by water becomes covered by water.
- (2) It does not matter for the purpose of subsection (1) whether a flood is caused by –
 - (a) heavy rainfall,
 - (b) a river overflowing or its banks being breached,
 - (c) a dam overflowing or being breached,
 - (d) tidal waters, or
 - (e) any other event (or a combination of events).
- (3) But “flood” does not include –
 - (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system, or
 - (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991).

4 “Coastal erosion”

“Coastal erosion” means the erosion of the coast of any part of England.

5 “Risk”

“Risk” means a risk in respect of an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.

6 Particular risks

- (1) “Flood risk” means a risk in respect of flood.
- (2) “Coastal erosion risk” means a risk in respect of coastal erosion.
- (3) In each case the potential harmful consequences to be considered in assessing risk include, in particular, consequences for –
 - (a) human health,
 - (b) the social and economic welfare of individuals and communities,
 - (c) infrastructure, and
 - (d) the environment (including cultural heritage).

7 “Risk management”

- (1) “Risk management” means anything done for the purpose of –
 - (a) analysing a risk,
 - (b) assessing a risk,
 - (c) reducing a risk,
 - (d) reducing a component in the assessment of a risk,
 - (e) altering the balance of factors combined in assessing a risk, or
 - (f) otherwise taking action in respect of a risk or a factor relevant to the assessment of a risk.

- (2) In particular, risk management includes things done –
 - (a) that increase the probability of an event but may reduce or alter its potential consequences, or
 - (b) that increase the probability of an event occurring at one time or in one place but may reduce the probability of its occurring at another time or in another place.
- (3) The following are examples of things that might be done in the course of flood or coastal erosion risk management –
 - (a) planning, erecting, maintaining, altering or removing buildings or other structures,
 - (b) maintaining or restoring natural processes,
 - (c) reducing or increasing the level of water in a place (whether or not it results in a change to the water level in another place),
 - (d) carrying out work in respect of a river or other watercourse (such as taking things out of it or supporting or diverting the banks),
 - (e) moving things onto, off or around a beach, or carrying out other works in respect of the shoreline,
 - (f) using statutory or other powers to permit, require, restrict or prevent activities,
 - (g) making arrangements for financial or other support for action taken by persons in respect of a risk of, or in preparing to manage the consequences of, flooding or coastal erosion,
 - (h) making arrangements for forecasting and warning,
 - (i) preparing, gathering and disseminating maps, plans, surveys and other information, and
 - (j) providing education and giving guidance (including, for example, guidance on changes to land management).

8 “Main river”

“Main river” has the meaning given by section 113 of the Water Resources Act 1991.

9 “Ordinary watercourse”

“Ordinary watercourse” means a watercourse that does not form part of a main river.

10 “Groundwater”

“Groundwater” means all water which is below the surface of the ground and in direct contact with the ground or subsoil.

11 “Surface runoff”

- (1) “Surface runoff” means rainwater which—
 - (a) is on the surface of the ground (whether or not it is moving), and
 - (b) has not entered a watercourse, lake, drainage system or public sewer.
- (2) In subsection (1) –

“drainage system” has the meaning given by section 220, and
“rainwater” includes snow and other precipitation.

12 Authorities

- (1) “Lead local flood authority” in relation to an area means –
 - (a) the unitary authority for the area, or
 - (b) if there is no unitary authority, the county council for the area.
- (2) “Unitary authority” means –
 - (a) the council of a county for which there are no district councils;
 - (b) the council of a district in an area for which there is no county council;
 - (c) the council of a London borough;
 - (d) the Common Council of the City of London;
 - (e) the Council of the Isles of Scilly.
- (3) “Internal drainage board” has the same meaning as in section 1 of the Land Drainage Act 1991.
- (4) “Water company” means a company which holds –
 - (a) an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991, or
 - (b) a licence under Chapter 1A of Part 2 of that Act.
- (5) “Highway authority” has the meaning given by section 1 of the Highways Act 1980.
- (6) “Relevant authority” means –
 - (a) the Environment Agency,
 - (b) a lead local flood authority,
 - (c) a district council for an area for which there is no unitary authority,
 - (d) an internal drainage board,
 - (e) a water company, and
 - (f) a highway authority.

13 “Flood risk management function”

- (1) “Flood risk management function” means –
 - (a) a function listed in subsection (2) which may be exercised by a relevant authority in relation to an area in England, and
 - (b) anything else that is or may be done by a relevant authority for a purpose connected with flood risk management in England.
- (2) The functions are –
 - (a) a function under this Part;
 - (b) a flood defence function under the Water Resources Act 1991;
 - (c) a function under the Land Drainage Act 1991;
 - (d) a function under section 100, 101 or 339 of the Highways Act 1980;
 - (e) any other function specified for the purposes of this section by order made by the Secretary of State.
- (3) In subsection (2) “flood defence function” has the meaning given by section 221 of the Water Resources Act 1991.

14 “Coastal erosion risk management function”

- (1) “Coastal erosion risk management function” means –
 - (a) a function listed in subsection (2) which may be exercised by a relevant authority in relation to an area in England, and
 - (b) anything else that is or may be done by a relevant authority for a purpose connected with coastal erosion risk management in England.

- (2) The functions are –
 - (a) a function under this Part;
 - (b) a function under the Coast Protection Act 1949;
 - (c) any other function specified for the purposes of this section by order made by the Secretary of State.

3: National flood and coastal erosion risk management strategy

15 General duty

- (1) The Environment Agency must develop, maintain and apply a strategy for flood and coastal erosion risk management in England.
- (2) For that purpose the Agency must have regard to the desirability of minimising detrimental effects on the chemical, biological and other characteristics of water (whether or not by reference to the requirements of Directive 2000/60/EC on water policy).

16 Summary

- (1) The Agency must publish a summary of the national flood and coastal erosion risk management strategy under section 15.
- (2) The summary may, in particular, include –
 - (a) a statement of the objectives of the Agency in relation to flood and coastal erosion risk management,
 - (b) information about the way in which it intends to achieve those objectives, and
 - (c) a list of any plans, guidance or documents that are relevant to the strategy.

17 Guidance

- (1) The Environment Agency may issue guidance about the application of the national flood and coastal erosion risk management strategy under section 15.
- (2) The Agency may, in particular, issue guidance about how authorities exercising flood or coastal erosion risk management functions are to make a contribution towards the achievement of sustainable development.
- (3) Guidance may be issued to –
 - (a) a lead local flood authority,
 - (b) a district council for an area for which there is no unitary authority,
 - (c) an internal drainage board,
 - (d) a water company,
 - (e) a highway authority, and
 - (f) any other relevant public body under section 23(2).

18 Report to the Secretary of State

- (1) The Environment Agency must report to the Secretary of State about flood and coastal erosion risk management in England.
- (2) The Secretary of State may make regulations about –
 - (a) the times or intervals at which a report must be made, and
 - (b) the content of a report.

4: Local flood risk management strategy

19 General duty

- (1) A lead local flood authority in England must develop, maintain and apply a strategy for local flood risk management in its area.
- (2) In subsection (1), “local flood risk” means flood risk from or affected by—
 - (a) surface runoff,
 - (b) groundwater, and
 - (c) ordinary watercourses.
- (3) The local flood risk management strategy must be consistent with the national flood and coastal erosion risk management strategy under section 15.

20 Summary

- (1) A lead local flood authority in England must publish a summary of its local flood risk management strategy under section 19.
- (2) The summary may, in particular, include –
 - (a) a statement of the objectives of the authority in relation to flood risk management,
 - (b) information about the way in which it intends to achieve those objectives,
 - (c) information about the arrangements made by the lead local flood authority for co-ordinating the exercise of flood risk management functions by other relevant authorities in its area (whether by convening meetings of authorities or otherwise), and
 - (d) a list of any plans, guidance or documents that are relevant to the strategy.

21 Guidance

- (1) A lead local flood authority in England may issue guidance about the application of the local flood risk management strategy in its area.
- (2) Guidance may be issued to –
 - (a) a district council for an area for which there is no unitary authority,
 - (b) an internal drainage board,
 - (c) a water company,
 - (d) a highway authority, and
 - (e) any other relevant public body under section 23(2).

5: Effect of local and national strategies

22 Exercise of flood and coastal erosion risk management functions

In exercising its flood and coastal erosion risk management functions, a relevant authority in England must act in a manner which is consistent with –

- (a) the national flood and coastal erosion risk management strategy under section 15,
- (b) any guidance on the national strategy issued under section 17,
- (c) the local flood risk management strategy under section 19 for the area concerned, and
- (d) any guidance on the local strategy issued under section 21 for the area concerned.

23 Exercise of other functions

- (1) In exercising any function in a manner which may affect a flood risk or coastal erosion risk in England, a public body listed in subsection (2) must have regard to –
 - (a) the national flood and coastal erosion risk management strategy under section 15,
 - (b) any guidance on the national strategy issued under section 17,
 - (c) the local flood risk management strategy under section 19 for the area concerned, and
 - (d) any guidance on the local strategy issued under section 21 for the area concerned.
- (2) The relevant public bodies are –
 - (a) a relevant authority in England,
 - (b) the Broads Authority,
 - (c) the British Waterways Board,
 - (d) Natural England,
 - (e) the Office of Communications,
 - (f) the Office of Rail Regulation,
 - (g) the Gas and Electricity Markets Authority,
 - (h) the Water Services Regulation Authority,
 - (i) a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Part 11 of the Town and Country Planning Act 1990 (see section 262 of that Act), and
 - (j) any other body specified by order of the Secretary of State.

6: Co-operation

24 Duty to co-operate

A relevant authority must co-operate with any other relevant authority which is exercising functions under this Part.

25 Environment Agency: power to require information

- (1) An authority in England listed in subsection (2) must comply with any reasonable request of the Environment Agency to provide information which the Agency reasonably requires in connection with its flood and coastal erosion risk management functions.
- (2) The authorities are –
 - (a) a lead local flood authority,
 - (b) a district council for an area for which there is no unitary authority,
 - (c) an internal drainage board,
 - (d) a water company,
 - (e) a highway authority,
 - (f) a reservoir manager (within the meaning of Part 3),
 - (g) a navigation authority (within the meaning given by section 219 of the Water Industry Act 1991),
 - (h) a harbour authority (within the meaning given by section 313 of the Merchant Shipping Act 1995),
 - (i) a person responsible for anything designated under Part 2 and situated in England,
 - (j) the Historic Buildings and Monuments Commission for England, and
 - (k) any other relevant public body under section 23(2).
- (3) The information must be provided –
 - (a) in any form or manner specified in the request, and
 - (b) within the period specified in the request.
- (4) A requirement imposed under subsection (1) must be consistent with any guidance issued by the Agency under section 27.

26 Lead local flood authorities: power to require information

- (1) An authority in England listed in subsection (2) must comply with any reasonable request of a lead local flood authority to provide information reasonably required in connection with the lead local flood authority's flood risk management functions.
- (2) The authorities are –
 - (a) a relevant authority,
 - (b) a reservoir manager,
 - (c) a navigation authority,
 - (d) a harbour authority,
 - (e) a person responsible for anything which is designated under Part 2 and situated in England,
 - (f) the Historic Buildings and Monuments Commission for England, and
 - (g) any other relevant public body under section 23(2).
- (3) The information must be provided –
 - (a) in any form or manner specified in the request, and
 - (b) within the period specified in the request.
- (4) A requirement imposed under subsection (1) must be consistent with any guidance issued by the Agency under section 27.

27 Information: guidance

- (1) The Environment Agency may issue guidance about the provision of information under section 25 or 26.
- (2) The guidance may, in particular, include provision about –
 - (a) the form or manner in which information is to be provided, and
 - (b) the period within which information is to be provided.
- (3) In preparing guidance the Agency must have regard to the likely cost to an authority of providing information in a particular form or manner.
- (4) Before issuing guidance the Agency must consult the authorities listed in sections 25(2) and 26(2).

28 Information: supplementary

After section 206(3)(d) of the Water Industry Act 1991 (exceptions to prohibition on disclosure of information) insert –

- “(da) for the purpose of complying with a request under section 25 or 26 of the Flood and Water Management Act 2009;”

29 Arrangements: flood risk management

- (1) Two relevant authorities in England may arrange for a flood risk management function of one of them to be exercised on its behalf by the other.
- (2) But subsection (1) does not apply in relation to –
 - (a) the function of the Environment Agency under section 15(1),
 - (b) the function of a lead local flood authority under section 19(1), or
 - (c) a function of giving consent.

30 Arrangements: coastal erosion risk management

- (1) This section applies to –
 - (a) a unitary authority, and
 - (b) the district council for an area in England for which there is no unitary authority.
- (2) The authority may, with the consent of the Environment Agency, arrange for any of its coastal erosion risk management functions to be exercised on its behalf by –
 - (a) a lead local flood authority, or
 - (b) an internal drainage board.

7: Funding

31 Grants

- (1) The Environment Agency may make grants in respect of expenditure incurred or expected to be incurred by any person in connection with flood or coastal erosion risk management.
- (2) A grant may be subject to conditions (including conditions as to repayment and interest).

32 Levies

- (1) The Environment Agency may issue levies to the lead local flood authority for an area in respect of the Agency's flood and coastal erosion risk management functions in that area.
- (2) A levy issued under this section shall be issued in accordance with regulations under section 74 of the Local Government Finance Act 1988.
- (3) The Agency shall be treated as a levying body within the meaning of that section.
- (4) This section is subject to the requirement in section 72 to obtain the appropriate consent of the Regional Flood and Coastal Committee.

33 Consequential amendments

- (1) In section 21(1) of the Coast Protection Act 1949 (grants to coast protection authorities) –
 - (a) in paragraph (a) after “coast protection authority” insert “in Wales”, and
 - (b) in paragraph (b) after “county borough” insert “in Wales”.
- (2) In section 59(1) of the Land Drainage Act 1991 (grants to drainage bodies) after “drainage schemes” insert “in Wales”.

8: Environment Agency: supplemental powers and duties

34 Power to carry out work

- (1) The Environment Agency may carry out structural or environmental work if the following conditions are satisfied.
- (2) Condition 1 is that the Agency thinks the work desirable having regard to the national flood and coastal erosion risk management strategy under section 15.
- (3) Condition 2 is that the purpose of carrying out the work is to manage a flood risk from –
 - (a) the sea, or
 - (b) a main river.

- (4) “Structural work” means any of the following in relation to buildings or other structures –
 - (a) construction,
 - (b) alteration,
 - (c) improvement,
 - (d) repair,
 - (e) maintenance,
 - (f) demolition, and
 - (g) removal.
- (5) “Environmental work” means anything done for the purpose of –
 - (a) maintaining or restoring natural processes, or
 - (b) reducing or increasing the level of water in a place.

35 Directions

- (1) The Secretary of State may direct the Environment Agency to exercise a flood or coastal erosion risk management function on behalf of another relevant authority.
- (2) The Secretary of State may give a direction under subsection (1) only if satisfied that the relevant authority –
 - (a) has failed to exercise the function, or
 - (b) has failed to exercise the function in accordance with the national strategy under section 15 or the local strategy under section 19.
- (3) The Secretary of State must –
 - (a) send a copy of the direction to the relevant authority, and
 - (b) publish the direction.
- (4) But the Secretary of State may decide not to publish a direction if it appears that to do so would be contrary to the interests of national security.
- (5) Where the Environment Agency complies with a direction it may recover the costs of compliance from the relevant authority.

36 Flood risk: consent to works

- (1) Section 17 of the Land Drainage Act 1991 (requirement for Environment Agency consent before carrying out drainage works in connection with a watercourse) is amended as follows.
- (2) In subsection (1) after “local authority” insert “in Wales”.
- (3) After subsection (1) insert –
 - “(1A) A local authority in England shall not carry out or maintain any drainage works to which subsection (1C) applies except with the consent of, and in accordance with any conditions imposed by, the Agency.
 - (1B) An internal drainage board in England shall not carry out or maintain any drainage works to which subsection (1C) applies except with the consent of, and in accordance with any conditions imposed by, the Agency.
 - (1C) This subsection applies to drainage works –
 - (a) which the authority is authorised to carry out or maintain under section 14, and
 - (b) which are for the purpose of reducing a flood risk (within the meaning of Part 1 of the Flood and Water Management Act 2009) from the sea.”
- (4) In subsection (3) after “(1)” insert “, (1A) or (1B)”.
- (5) In subsection (5) after “(1)” insert “, (1A) or (1B)”.

37 Coastal erosion: general powers

- (1) Section 4 of the Coast Protection Act 1949 (general powers) is amended as follows.
- (2) In subsection (1) the words from “a coast protection authority” to the end become paragraph (a) and after that paragraph insert, “and
 - (b) the Environment Agency shall have power to carry out such coast protection work as may appear to it to be necessary or expedient for the protection of any land in England.”
- (3) In subsections (2) and (3) for “coast protection authority” substitute “relevant authority”.
- (4) At the end add –
 - “(5) The following are “relevant authorities” for the purposes of this section –
 - (a) coast protection authorities, and
 - (b) the Environment Agency.”

38 Coastal erosion: objections and approvals

- (1) Section 5 of the Coast Protection Act 1949 (objections to and approval of proposals to carry out coast protection work) is amended as follows.
- (2) In subsection (1) –
 - (a) for “coast protection authority” substitute “relevant authority”,
 - (b) for “area of the authority” substitute “area in which the proposed work is to take place”, and
 - (c) for the words from “on the Environment Agency” to the end substitute “on the persons listed in subsection (1A)”.
- (3) After subsection (1) insert –
 - “(1A) The notice shall be served –
 - (a) on any internal drainage board in whose district any of the work is to be carried out, and
 - (b) in the case of work proposed by a coast protection authority, on the Environment Agency.”
- (4) In subsection (5) for “Minister” substitute “Environment Agency”.
- (5) In subsection (6) –
 - (a) for “coast protection authority”, in the first place where it occurs, substitute “relevant authority”, and
 - (b) at the beginning of paragraph (a) insert “in the case of work carried out by a coast protection authority,”.
- (6) After subsection (6) insert –
 - “(6A) In its application to Wales, subsection (5) shall have effect as if the reference to the Environment Agency were a reference to the Minister.”
- (7) At the end add –
 - “(8) The following are “relevant authorities” for the purposes of this section –
 - (a) coast protection authorities, and
 - (b) the Environment Agency.”

39 Coastal erosion: compulsory acquisition of land

- (1) Section 14 of the Coast Protection Act 1949 (authorisation by the Minister to acquire land by compulsory purchase) is amended as follows.
- (2) In subsection (1) for “coast protection authority” insert “relevant authority”.
- (3) At the end add –
 - “(8) The following are “relevant authorities” for the purposes of this section –
 - (a) coast protection authorities, and
 - (b) the Environment Agency.”

40 Coastal erosion: provisions as to compensation

- (1) Section 19 of the Coast Protection Act 1949 (compensation for depreciation of value of an interest in land) is amended as follows.
- (2) In subsections (1) and (2) for “coast protection authority” substitute “relevant authority”.
- (3) At the end add –
 - “(7) The following are “relevant authorities” for the purposes of this section –
 - (a) coast protection authorities, and
 - (b) the Environment Agency.”

41 Environmental works

- (1) The Environment Agency may carry out work which will or may cause flooding or coastal erosion if the following conditions are satisfied.
- (2) Condition 1 is that the Agency thinks the work desirable for the benefit of the natural environment.
- (3) Condition 2 is that in carrying out the work the Agency –
 - (a) has regard to the national flood and coastal erosion risk management strategy under section 15, and
 - (b) does not create or increase potential harmful consequences of a kind listed in section 6(3).
- (4) In subsection (1) “work” includes anything listed in section 7(3)(a) to (e).
- (5) The Agency may make grants in respect of work that it could carry out under subsection (1).

9: Local authorities: supplemental powers and duties

42 Power to carry out work

- (1) A lead local flood authority in England may carry out structural or environmental work if Conditions 1 and 2 are satisfied.
- (2) A relevant district council, internal drainage board or unitary authority may carry out structural or environmental work if Conditions 1 and 3 are satisfied.
- (3) Condition 1 is that the authority thinks the work desirable having regard to the local flood risk management strategy for its area under section 19.

- (4) Condition 2 is that the purpose of the work is to manage a flood risk from –
 - (a) surface runoff in the authority’s area, or
 - (b) groundwater in the authority’s area.
- (5) Condition 3 is that the purpose of carrying out the work is to manage a flood risk from an ordinary watercourse in the authority’s area.
- (6) “Structural work” means any of the following in relation to buildings or other structures –
 - (a) construction,
 - (b) alteration,
 - (c) improvement,
 - (d) repair,
 - (e) maintenance,
 - (f) demolition, and
 - (g) removal.
- (7) “Environmental work” means anything done for the purpose of—
 - (a) maintaining or restoring natural processes, or
 - (b) reducing or increasing the level of water in a place.

43 Lead local authority: duty to investigate

In the event of a flood in its area, a lead local flood authority in England must make enquiries to ascertain –

- (a) which relevant authorities have flood risk management functions that may need to be exercised in response to the flood, and
- (b) whether each of those relevant authorities has exercised, or is proposing to exercise, those functions in response to the flood.

44 Lead local authority: duty to maintain register

- (1) A lead local flood authority in England must establish and maintain –
 - (a) a register of structures or features which may affect a flood risk in its area (including things designated under Part 2), and
 - (b) a record of information about each of those structures or features.
- (2) The Secretary of State may by regulations make provision about the content of the register and record.
- (3) The regulations may, in particular, provide that the register or record must contain information about –
 - (a) ownership, and
 - (b) state of repair.
- (4) The lead local flood authority must arrange for the register and record to be available for inspection by any person at all reasonable times.
- (5) The Secretary of State may by regulations provide for information of a specified description to be excluded from the register or record.

45 Concurrent powers

In section 8 of the Land Drainage Act 1991 (concurrent powers of the Environment Agency) for “to their district” substitute “a district in Wales”.

46 Enforcement of obligations to repair watercourses etc.

- (1) Section 21 of the Land Drainage Act 1991 (enforcement of obligations to repair watercourses, bridges etc.) is amended as follows.
- (2) In subsection (6) (meaning of drainage board) after paragraph (a) (before the word “and”) insert –
 - “(aa) in relation to any other watercourse, bridge or drainage works in an area in England, are references to the lead local flood authority for that area;”
- (3) In subsection (6)(b) after “drainage works” insert “in Wales”.
- (4) After subsection (6) add—
 - “(7) “Lead local flood authority” has the meaning given by section 12 of the Flood and Water Management Act 2009.”

47 Control of flow of watercourses

- (1) Section 23 of the Land Drainage Act 1991 (prohibitions on obstructions etc. in watercourses without consent) is amended as follows.
- (2) In subsection (1) for “that would be likely to affect the flow of” insert “in”.
- (3) After subsection (1) (general prohibition) insert –
 - “(1A) Consent under subsection (1) may be given subject to reasonable conditions.”
- (4) In subsection (8) (meaning of drainage board) for “and section 24” substitute “and sections 24 to 26”.
- (5) In subsection (8)(a) (before the “and”) insert –
 - “(aa) in relation to any other watercourse in an area in England, are references to the lead local flood authority for that area;”
- (6) In subsection (8)(b) after “watercourse” insert “in Wales”.
- (7) After subsection (8) add –
 - “(9) “Lead local flood authority” has the meaning given by section 12 of the Flood and Water Management Act 2009.”
- (8) In section 25 of the Act (powers to require works for maintaining the flow of watercourse) –
 - (a) in subsection (1) omit “or local authority”,
 - (b) omit subsection (2), and
 - (c) in subsections (6)(a), (7) and (8) omit “or local authority”.
- (9) In section 26 of the Act (competing jurisdictions under section 25) –
 - (a) omit subsection (1), and
 - (b) in subsection (2) omit “(otherwise than under section 25 above)”.

48 Commutation of obligations

- (1) Section 33 of the Land Drainage Act 1991 (commutation of obligations) is amended as follows.
- (2) In subsection (1) for “Agency or the drainage board for the internal drainage district” substitute “relevant authority for the area”.

- (3) In subsection (2) –
 - (a) for “Agency or an internal drainage board propose” substitute “relevant authority proposes”, and
 - (b) for “Agency or board” substitute “authority”.
- (4) In subsection (3) for “Agency or board” (in both places) substitute “relevant authority”.
- (5) After subsection (5) insert –
 - “(5A) In this section and section 34, references to the relevant authority for an area –
 - (a) in relation to work in an area which forms part of an internal drainage district, are references to the drainage board for the district,
 - (b) in relation to work in any other area in England, are references to the lead local flood authority for the area,
 - (c) in relation to work in any other area in Wales, are references to the Agency.
 - (5B) “Lead local flood authority” has the meaning given by section 12 of the Flood and Water Management Act 2009.”
- (6) In subsection (6)(b) after “internal drainage board” insert “or a lead local flood authority”.
- (7) Section 34 of the Act (financial consequences of commutation) is amended as follows.
- (8) In subsection (2) for “Agency or internal drainage board” substitute “relevant authority”.
- (9) In subsection (4) –
 - (a) for “Agency or internal drainage board” substitute “relevant authority”, and
 - (b) for “Agency or, as the case may be, that board” substitute “relevant authority”.
- (10) In subsection (5) for “Agency or, as the case may be, the internal drainage board” substitute “relevant authority”.
- (11) In subsection (6) –
 - (a) for “Agency or an internal drainage board” substitute “relevant authority”, and
 - (b) for “Agency or board” substitute “authority”.
- (12) In subsections (7) and (9) for “Agency or internal drainage board” substitute “relevant authority”.

49 Environmental works

- (1) An authority listed in subsection (4) may carry out work which will or may cause flooding or coastal erosion if the following conditions are satisfied.
- (2) Condition 1 is that the authority thinks the work desirable for the benefit of the natural environment.
- (3) Condition 2 is that in carrying out the work the authority—
 - (a) has regard to the national flood and coastal erosion risk management strategy under section 15,
 - (b) has regard to the local flood risk strategy under section 19, and
 - (c) does not create or increase potential harmful consequences of a kind listed in section 6(3).
- (4) The authorities are –
 - (a) a lead local flood authority,
 - (b) a district council in an area for which there is no unitary authority, and
 - (c) an internal drainage board.
- (5) In subsection (1) “work” includes anything listed in section 7(3)(a) to (e).

10: Preliminary flood risk assessments

50 Preliminary flood risk assessment

- (1) The Environment Agency must prepare in relation to each relevant area in England –
 - (a) a preliminary assessment map in accordance with section 51, and
 - (b) a preliminary assessment report in accordance with section 52.
- (2) The appropriate lead local flood authority for each relevant area in England must prepare a preliminary assessment report in accordance with section 52.
- (3) The Secretary of State must by order define “relevant area” for the purposes of this section.
- (4) The order may, in particular, provide that the following are relevant areas –
 - (a) a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (S.I. 2003/3242);
 - (b) an area of coastline outside a river basin district.
- (5) In this section the “appropriate lead local flood authority” in relation to a relevant area means –
 - (a) the lead local flood authority for the area, or
 - (b) if there is more than one lead local flood authority, the appropriate authority determined by reference to criteria specified by order made by the Secretary of State.

51 Preliminary assessment maps

- (1) For the purposes of section 50 a preliminary assessment map is a map which—
 - (a) shows the boundaries of each relevant area, and
 - (b) includes information about topography and land use.
- (2) The Secretary of State may by regulations make provision about the form and content of a preliminary assessment map (including the requirements under subsection (1)(b)).

52 Preliminary assessment reports

- (1) For the purposes of section 50 a preliminary assessment report is a report about previous floods in a particular area from a particular source.
- (2) The preliminary assessment report prepared by the Environment Agency must include information about flooding from –
 - (a) the sea,
 - (b) main rivers, and
 - (c) reservoirs.
- (3) The preliminary assessment report prepared by a lead local flood authority must include information about flooding in its area from –
 - (a) ordinary watercourses,
 - (b) surface runoff, and
 - (c) groundwater.
- (4) Each report must include, in particular –
 - (a) information about previous floods in the area,
 - (b) information about the consequences of previous floods for the matters within section 6(3)(a) to (d), and
 - (c) an assessment of the potential harmful consequences of floods in the area in future.
- (5) The Secretary of State may by regulations make provision about the form and content of a preliminary assessment report.

- (6) The lead local flood authority must have regard to any guidance issued by the Environment Agency about the form and content of a preliminary assessment report.

53 Publication

- (1) A lead local flood authority must submit its preliminary assessment report under section 50 to the Environment Agency before 22nd June 2011.
- (2) Before submitting the report the authority must consult –
 - (a) the Environment Agency,
 - (b) the district councils in its area,
 - (c) the internal drainage boards in its area, and
 - (d) such persons as it thinks appropriate.
- (3) The Secretary of State may by regulations make provision about the procedure for consultation.
- (4) The Environment Agency must publish the following documents before 22nd December 2011 –
 - (a) the preliminary assessment maps prepared under section 50,
 - (b) the preliminary assessment reports prepared by the Agency under that section, and
 - (c) the preliminary assessment reports prepared by lead local flood authorities under that section and submitted to the Agency.

54 Review

- (1) The Environment Agency must review the preliminary flood risk assessment documents prepared by it under section 50 –
 - (a) before 22nd December 2017, and
 - (b) at intervals of no more than 6 years after the publication date of the previous set of preliminary flood risk assessment documents.
- (2) A lead local flood authority must review the preliminary assessment report prepared by it under section 50 –
 - (a) before 22nd June 2017, and
 - (b) at intervals of no more than 6 years after the publication date of the previous set of preliminary assessment report.
- (3) Following a review of a document the Agency or authority may revise and reissue it.
- (4) This Part, apart from section 53(1) and (4), applies to re-issue as to first issue.

11: Significant flood risks: documents

55 Significant flood risk: Environment Agency

- (1) The Environment Agency must –
 - (a) determine in relation to each relevant area whether there is a significant risk of flooding from (i) the sea, (ii) a main river, and (iii) a reservoir, and
 - (b) identify the part of the relevant area affected by the risk (the “flood risk area”).
- (2) The Agency must have regard to the preliminary flood risk assessment documents in making a determination under subsection (1).
- (3) The Secretary of State must by regulations make provision about the criteria for assessing whether a risk of flooding is significant

- (4) The Agency must prepare in relation to each flood risk area –
 - (a) a flood hazard map in relation to the source of the flood risk in accordance with section 57, and
 - (b) a flood risk map in accordance with section 58.
- (5) The Agency must prepare a flood risk management plan in relation to each significant flood risk in accordance with section 61.
- (6) The Agency may prepare a flood hazard map, flood risk map and flood risk management plan for the whole of England in respect of the risks mentioned in subsection (1)(a); and if it does then –
 - (a) the Agency need not prepare the preliminary assessment maps and reports under section 50, and
 - (b) the duty under section 54 becomes a duty to review the decision whether (i) to prepare a new flood hazard map, flood risk map and flood risk management plan for the whole of England, or (ii) to prepare preliminary assessment maps and reports in accordance with section 50.

56 Significant flood risk: lead local flood authorities

- (1) The appropriate lead local flood authority in relation to a relevant area must –
 - (a) determine whether there is a significant risk of flooding in the relevant area from (i) an ordinary watercourse, (ii) surface runoff, and (iii) groundwater, and
 - (b) identify the part of the relevant area affected by the risk (the “flood risk area”).
- (2) The lead local flood authority must have regard to the preliminary flood risk assessment documents in making a determination under subsection (1).
- (3) The Secretary of State must by regulations make provision about the criteria for assessing whether a risk of flooding is significant.
- (4) The lead local flood authority must notify the Environment Agency of its determination under subsection (1) and any flood risk areas it has identified.
- (5) If the Environment Agency disagrees with a determination and identification made under subsection (1) –
 - (a) it must refer the matter to the Secretary of State, and
 - (b) the Secretary of State must determine it.
- (6) The appropriate lead local flood authority must prepare the documents listed in subsection (7) –
 - (a) if subsection (5) applies, in relation to a flood risk area identified by the Secretary of State, or
 - (b) in any other case, in relation to a flood risk area notified to the Environment Agency under subsection (4).
- (7) The documents are –
 - (a) a flood hazard map in relation to the source of the flood risk (see section 57), and
 - (b) a flood risk map (see section 58).
- (8) The lead local flood authority must prepare a flood risk management plan in relation to each identified significant flood risk in accordance with section 61.

57 Flood hazard maps

- (1) For the purposes of sections 55 and 56 a flood hazard map is a map which –
 - (a) identifies areas which, having regard to the preliminary flood risk assessment documents, are at significant risk of being flooded,
 - (b) includes information about the likely extent of any flood, and
 - (c) includes an assessment of whether the risk is low, medium or high.
- (2) The Secretary of State may by regulations make provision about the form and content of a flood hazard map.
- (3) The lead local flood authority must have regard to any guidance issued by the Environment Agency about the form and content of a flood hazard map.

58 Flood risk maps

- (1) For the purposes of sections 55 and 56 a flood risk map is a map showing in relation to flood risks assessed in accordance with section 57(1)(c) –
 - (a) the number of people likely to be affected,
 - (b) the type of economic activity likely to be affected,
 - (c) any industrial activities in the area that may increase the risk of pollution in the event of flooding,
 - (d) any areas of water subject to specified measures or protection for the purpose of maintaining the water quality, and
 - (e) an assessment of the potential harmful consequences of the identified flood risk for the matters within section 6(3)(a) to (d).
- (2) The Secretary of State may by regulations make provision about the form and content of flood risk maps (including the flood risks to be addressed).
- (3) The lead local flood authority must have regard to any guidance issued by the Environment Agency about the form and content of flood risk maps.

59 Publication

- (1) The lead local flood authority must submit the following documents to the Environment Agency before 22nd June 2013 –
 - (a) any flood hazard map prepared by it under section 56, and
 - (b) any flood risk map prepared by it under that section.
- (2) Before submitting the documents the authority must consult –
 - (a) the Environment Agency,
 - (b) the district councils in its area,
 - (c) the internal drainage boards in its area, and
 - (d) such persons as it thinks appropriate.
- (3) The Secretary of State may by regulations make provision about the procedure for consultation.
- (4) The Environment Agency must publish the following documents before 22nd December 2013 –
 - (a) the flood hazard maps and the flood risk maps prepared by the Agency under section 55, and
 - (b) the flood hazard maps and the flood risk maps prepared by the lead local flood authority under section 56 and submitted to the Agency.

60 Review

- (1) The Agency must review each flood hazard map and each flood risk map prepared by it under section 55 –
 - (a) before 22nd December 2019, and
 - (b) at intervals of no more than 6 years after the publication date of the previous flood hazard map or flood risk map (as the case may be) for that area.
- (2) The lead local flood authority must review each flood hazard map and each flood risk map prepared by it under section 56 –
 - (a) before 22nd June 2019, and
 - (b) at intervals of no more than 6 years after the publication date of the previous flood hazard map or flood risk map (as the case may be) for that area.
- (3) Following a review, the Agency or authority may revise and re-issue the document subject to review.
- (4) This Part (apart from section 59(1) and (4)) applies to re-issue as to first issue.

61 Flood risk management plans

- (1) For the purposes of sections 55 and 56 a flood risk management plan is a plan for the management of a significant flood risk.
- (2) The plan must include details of –
 - (a) objectives set by the Agency or the lead local flood authority (as the case may be) for the purpose of managing that flood risk, and
 - (b) the proposed measures for achieving those objectives.
- (3) The Secretary of State may by regulations make provision about the form and content of flood risk management plans.
- (4) The lead local flood authority must have regard to any guidance issued by the Environment Agency about the form and content of flood risk management plans.

62 Publication

- (1) The lead local flood authority must submit the flood risk management plan prepared by it under section 56 to the Environment Agency before 22nd June 2015.
- (2) Before submitting the plan the authority must consult –
 - (a) the Environment Agency,
 - (b) the district councils in its area,
 - (c) the internal drainage boards in its area, and
 - (d) such persons as it thinks appropriate.
- (3) The Secretary of State may by regulations make provision about the procedure for consultation.
- (4) The Environment Agency must publish the following documents before 22nd December 2015 –
 - (a) the flood risk management plan prepared by the Agency under section 55, and
 - (b) the flood risk management plan prepared by the lead local flood authority under section 56 and submitted to the Agency.

63 Review

- (1) The Agency must review a flood risk management plan prepared by it under section 55 –
 - (a) before 22nd December 2021, and
 - (b) at intervals of no more than 6 years after the publication date of the previous plan.
- (2) A lead local flood authority must review the flood risk management plan prepared by it under section 56 –
 - (a) before 22nd June 2021, and
 - (b) at intervals of no more than 6 years after the publication date of the previous plan.
- (3) Following a review, the Agency or authority may revise and re-issue the document subject to review.
- (4) This Part (apart from section 62(1) and (4)) applies to re-issue as to first issue.

12: Main rivers and boundaries

64 Main river maps: England

Before section 193 of the Water Resources Act 1991 (main river maps) insert –

“192A Main river maps (England): definition

- (1) A main river map for England is a map which –
 - (a) shows the boundaries of the region of a Regional Flood and Coastal Committee established under section 67 of the Flood and Water Management Act 2009, and
 - (b) shows by a distinctive colour the extent to which any watercourse in that area is to be treated as a main river, or part of a main river, for the purposes of this Act.
- (2) A main river map may be in electronic form.
- (3) In this section “watercourse” has the same meaning as in Part 4 of this Act.

192B Main river maps (England): inspection and copies

- (1) The Agency must provide reasonable facilities for a person –
 - (a) to inspect a main river map for England, and
 - (b) to take copies of it.
- (2) The Agency must, on request, provide any local authority whose area is wholly or partly within the area of a Regional Flood and Coastal Committee with a copy of the main river map for that area.
- (3) The Agency may, on request, provide a person with a copy of a main river map.
- (4) The Agency may charge a fee for the provision of a copy under this section.

192C Main river maps (England): amendment

- (1) The Agency may alter or replace a main river map for England.
- (2) If the Agency thinks that a proposed alteration or replacement might have a significant effect on the interests of any person, the Agency must –
 - (a) give notice of the proposal under subsection (3), and
 - (b) consider any objections made to it in accordance with the notice.

- (3) The Agency may give notice of the proposal by –
 - (a) sending notice to each person who, in the opinion of the Agency, is likely to be affected, or
 - (b) publishing the notice in a manner that the Agency thinks will be likely to bring it to the attention of those persons.
- (4) Any dispute between the Agency and a person who has made an objection in accordance with the notice under subsection (2) may be referred to the Minister.
- (5) A dispute may not be referred –
 - (a) before the end of the period of 6 weeks beginning with the date on which the objection was made, or
 - (b) after the end of the period of 12 weeks beginning with the date on which the objection was made.
- (6) The Agency must comply with any directions of the Minister given on a referral as to the alteration or replacement of the main river map which is the subject of the dispute.

192D Main river maps (England): evidence

- (1) A main river map for England shall be conclusive evidence for all purposes –
 - (a) as to the boundaries of the region of a Regional Flood and Coastal Committee, and
 - (b) as to what is a main river in England.
- (2) The Documentary Evidence Act 1868 shall have effect as if –
 - (a) the first column of the Schedule to the Act included a reference to the Agency, and
 - (b) the second column of the Schedule included in connection with that reference a reference to the Agency and persons authorised to act on its behalf.”

65 Main river maps: Wales

- (1) The Water Resources Act 1991 is amended as follows.
- (2) In section 193 (main river maps) –
 - (a) in subsection (2) for “For the purposes of this Act a main river map” substitute “A main river map for Wales”,
 - (b) in subsection (3) after “main river map” insert “for Wales”, and
 - (c) in paragraph (a) of that subsection after “main river” insert “in Wales”.
- (3) The heading of section 193 becomes “Main river maps (Wales)”.
- (4) In section 194 (amendment of main river maps) –
 - (a) in subsection (1) after “main river map” insert “for Wales”, and
 - (b) in subsection (3)(c) after “main river map” insert “for Wales”.
- (5) The heading of section 194 becomes “Amendment of main river maps (Wales)”.
- (6) In section 221 (general interpretation) for the definition of “main river map” substitute –
““main river map” means –
 - (a) in relation to England, a main river map for England within the meaning of section 192A(1), and
 - (b) in relation to Wales, a main river map for Wales within the meaning of section 193(2).

13: Regional Flood and Coastal Committees

66 Overview

This group of sections makes provision –

- (a) for the establishment of Regional Flood and Coastal Committees in England (in place of flood defence committees under the Environment Act 1995), and
- (b) for the Committees to advise the Environment Agency about the exercise of its flood and coastal erosion risk management functions.

67 Establishment

- (1) The Environment Agency must establish Regional Flood and Coastal Committees.
- (2) The Agency must –
 - (a) divide England into regions for the purposes of this section, and
 - (b) establish a Committee for each region.

68 Membership

- (1) Each Committee shall consist of –
 - (a) a member appointed by the Secretary of State to chair the Committee,
 - (b) members appointed by the Environment Agency in accordance with section 69, and
 - (c) members appointed by the constituent councils in accordance with section 69.
- (2) A member of the Environment Agency may not be appointed as a member of a Committee.
- (3) A body appointing a member of a Committee must aim to appoint someone with relevant experience.
- (4) A lead local flood authority for an area wholly or partly within the boundaries of the region of a Committee is a constituent council in relation to that Committee.

69 Membership schemes

- (1) The Environment Agency must prepare a scheme for each region determining –
 - (a) how many members its Committee must have,
 - (b) how many members are to be appointed by the Environment Agency,
 - (c) how many members each constituent council may appoint.
- (2) Each scheme –
 - (a) must ensure that a majority of the members of the Committee are appointed by constituent councils, and
 - (b) may provide for an appointment to be made jointly by more than one council.
- (3) In preparing a scheme the Agency –
 - (a) must aim to include enough members to ensure reasonable representation for the different bodies and interests concerned in matters on which the Committee is likely to be consulted,
 - (b) must aim to ensure that members are of good character and of sound financial reputation, and
 - (c) must have regard to any guidance of the Secretary of State (which may deal with the matters mentioned in paragraphs (a) and (b) and any other matter).
- (4) The Agency has not fulfilled its duty under subsection (1) until the Secretary of State has approved a scheme for each region.

- (5) A scheme must include provision for commencement.
- (6) A scheme may include provision for the proceedings of the Committee.
- (7) The Agency must publish –
 - (a) a draft scheme submitted to the Secretary of State for approval, and
 - (b) an approved scheme.
- (8) When publishing a draft scheme the Agency must invite readers to make representations to the Secretary of State.
- (9) The Agency –
 - (a) may revise a scheme, and
 - (b) must comply with a direction of the Secretary of State to revise a scheme.
- (10) Subsections (2) to (8) apply to the revision of a scheme.

70 Money

- (1) The Secretary of State may direct the Environment Agency to pay to or in respect of persons who chair or have chaired Committees –
 - (a) remuneration,
 - (b) allowances,
 - (c) sums by way of or in respect of pension, and
 - (d) compensation, if the Secretary of State thinks that a person who ceases to chair a Committee should, because of special circumstances, receive compensation.
- (2) The Agency may pay allowances to members of Committees.
- (3) The Secretary of State shall determine amounts or maximum amounts to be paid under this section.

71 Consultation

The Environment Agency must –

- (a) consult each Regional Flood and Coastal Committee about the way in which the Agency proposes to carry out its flood and coastal erosion risk management functions in relation to the Committee's area, and
- (b) take into account any representations (whether made in response to a consultation or otherwise) made by the Committee about the exercise of the Agency's flood and coastal erosion risk management functions in that area.

72 Consent to levy

- (1) The Environment Agency may not issue a levy under section 32 without the consent of the majority of the relevant representative members of the Regional Flood and Coastal Committee for the region concerned.
- (2) "Relevant representative member" means a member appointed by a constituent council in accordance with section 69.

73 Consequential amendments

- (1) The Environment Act 1995 is amended as follows.
- (2) In section 14(2)(a) (regional flood defence committees) after “areas” insert “in Wales”.
- (3) In section 15 (composition of regional flood defence committees) –
 - (a) in subsection (6) for “county borough, metropolitan district or London borough” substitute “or county borough”,
 - (b) in subsection (6) omit the words from “and the Common Council of the City of London” to the end, and
 - (c) in subsection (7) omit paragraph (b).
- (4) In section 18(8) –
 - (a) for “county borough, metropolitan district or London borough” substitute “or county borough”, and
 - (b) omit the words from “and the Common Council of the City of London” to the end.
- (5) The Water Resources Act 1991 is amended as follows.
- (6) In section 106(1) (obligation to carry out flood defence functions through committees) after “flood defence”, in the second place where it occurs, insert “in Wales”.
- (7) Section 137 (special drainage charges in interests of agriculture) shall cease to have effect.

14: General

74 Orders and regulations

An order or regulations under this Part –

- (a) shall be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART 2

RISK MANAGEMENT: DESIGNATION OF FEATURES

1: Introduction

75 Overview

- (1) This Part –
 - (a) allows certain authorities to designate structures or other features which may affect a flood risk or a coastal erosion risk, and
 - (b) prohibits the alteration or removal of designated structures or other features without the consent of the responsible authority.

(2) The Table describes the contents of this Part.

<i>Group of sections</i>	<i>Topic</i>
2	Key concepts and interpretation
3	Designation
4	Procedure
5	Enforcement
6	General

2. Key concepts and definitions

76 Defined terms

In this Part the following terms have the same meaning as in Part 1—

- (a) coastal erosion risk,
- (b) coastal erosion risk management function,
- (c) flood risk,
- (d) flood risk management function,
- (e) lead local flood authority, and
- (f) internal drainage board.

77 “Designating authority”

The following are designating authorities –

- (a) the Environment Agency,
- (b) a lead local flood authority,
- (c) any other unitary authority or the district council for an area for which there is no unitary authority, and
- (d) an internal drainage board.

78 “Responsible authority”

- (1) The responsible authority in relation to a designated thing is the authority which made the designation, unless subsection (2) applies.
- (2) If an authority has adopted a designation in accordance with subsection (3), the responsible authority in relation to the designated thing is the adopting authority.
- (3) A designating authority may adopt a designation if –
 - (a) the authority which made the designation no longer has relevant functions,
 - (b) the authority proposing to adopt the designation has relevant functions, and
 - (c) the designation has not already been adopted by another authority.
- (4) In subsection (3) “relevant functions” means flood or coastal erosion risk management functions which may be affected by the existence or location of the designated thing.

79 “Owner”

In this Part “owner” in relation to anything which is or may be designated means—

- (a) the owner of the land on or in which the thing is situated, or
- (b) if different, the person responsible for managing or controlling the thing.

3. Designation

80 Designation

- (1) A designating authority may designate a thing for the purposes of this Part if the following conditions are satisfied.
- (2) Condition 1 is that the thing is –
 - (a) a structure, or
 - (b) a natural or man-made feature of the environment.
- (3) Condition 2 is that the designating authority thinks the existence or location of the thing affects –
 - (a) a flood risk, or
 - (b) a coastal erosion risk.
- (4) Condition 3 is that the designating authority has flood or coastal erosion risk management functions in respect of the risk which may be affected.
- (5) Condition 4 is that the thing is not designated by another authority for the purposes of this Part.
- (6) Condition 5 is that the owner of the thing is not a designating authority.

81 Alteration, removal or replacement

A person may not alter, remove or replace a designated thing without the consent of the responsible authority.

82 Local land charges

A designation is a local land charge.

83 Cancellation

The responsible authority may cancel a designation.

4. Procedure

84 Provisional designation notice

- (1) A designating authority may make a provisional designation by giving notice to the owner.
- (2) The notice must specify –
 - (a) the thing to be provisionally designated,
 - (b) the date on which the provisional designation takes effect,
 - (c) the reasons for the provisional designation,
 - (d) how representations to the responsible authority may be made, and
 - (e) the period within which representations may be made.

- (3) The period specified in the notice under subsection (2)(e) must be a period of at least 28 days beginning with the date of the notice.
- (4) A provisional designation ceases to have effect at the end of the period of 60 days beginning with the date of the notice, unless it is confirmed under section 85.
- (5) The following sections apply in relation to a provisionally designated thing as they apply in relation to a designated thing—
 - (a) section 81,
 - (b) section 86,
 - (c) section 87,
 - (d) section 88,
 - (e) section 91,
 - (f) section 92, and
 - (g) section 93.

85 Designation notice

- (1) The responsible authority may make a designation by giving notice confirming a provisional designation to the owner.
- (2) In deciding whether to confirm a provisional designation the authority must have regard to any representations made in accordance with section 84.
- (3) A notice under subsection (1) may not be given –
 - (a) before the end of the period specified in the provisional notice under section 84(2)(e) within which representations may be made;
 - (b) after the end of the period of 60 days beginning with the date of the provisional notice.
- (4) The notice must –
 - (a) specify the provisional notice to which it relates,
 - (b) specify the thing to be designated,
 - (c) specify the reasons for the designation,
 - (d) give information about the procedure for bringing an appeal under regulations under section 95, and
 - (e) specify the period within which an appeal may be brought.

86 Consent to alteration, removal or replacement

- (1) The responsible authority may by notice given to the owner –
 - (a) consent to specified alterations, or alterations of a specified kind, to a designated thing;
 - (b) vary or withdraw consent under paragraph (a) (but not retrospectively).
- (2) The responsible authority may by notice given to the owner consent to the removal or replacement of a designated thing.
- (3) The authority may give notice under subsection (1) or (2) –
 - (a) on the application of the owner, or
 - (b) if it otherwise thinks it appropriate.
- (4) Consent may be –
 - (a) general or specific;
 - (b) absolute or conditional.

87 Cancellation notice

- (1) The responsible authority may cancel a designation by giving notice to that effect to the owner.
- (2) The authority may give notice under subsection (1) –
 - (a) on the application of the owner, or
 - (b) if it otherwise thinks cancellation appropriate.
- (3) The notice must specify –
 - (a) the designated thing,
 - (b) the date on which the cancellation takes effect, and
 - (c) the reasons for the cancellation.

88 Notice to other authorities

- (1) This section applies where an authority –
 - (a) makes a designation, or
 - (b) cancels a designation.
- (2) The responsible authority must notify any other designating authority which it thinks may have an interest in the designation or cancellation.

89 Applications: general

The Minister may by regulations make provision about –

- (a) the form and content of an application under section 86 or 87, and
- (b) the procedure for determining an application.

90 Service

A notice under this Part may be delivered –

- (a) by hand,
- (b) by post, or
- (c) electronically.

5. Enforcement

91 Enforcement notice

- (1) If a person contravenes section 81 the responsible authority may give an enforcement notice.
- (2) The notice may be given to –
 - (a) the person who contravened section 81, or
 - (b) the person who owns the land on or in which the designated thing is situated.
- (3) The notice must direct the person to whom it is given to take specified steps, within a specified period, to remedy the contravention.
- (4) A person who fails to comply with an enforcement notice –
 - (a) commits an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

92 Default enforcement powers

- (1) This section applies if a person fails to comply with an enforcement notice in relation to a designated thing.
- (2) A person authorised by the responsible authority may –
 - (a) enter the land on or in which the thing is situated, and
 - (b) take the steps specified in the enforcement notice.
- (3) The authority may require the person to whom the enforcement notice was given to pay any expenses reasonably incurred by the authority under subsection (2).
- (4) Expenses under subsection (3) are recoverable as a civil debt.

93 Emergency powers

- (1) This section applies if –
 - (a) a person has contravened section 81, and
 - (b) the responsible authority thinks the contravention may immediately and materially increase or alter a flood risk or coastal erosion risk.
- (2) The authority may act to remedy the contravention without giving an enforcement notice.
- (3) In particular, the authority may authorise a person to enter the land on or in which the designated, or provisionally designated, thing is situated.
- (4) The authority may require the owner to pay any expenses reasonably incurred by the authority under this section.
- (5) Expenses under subsection (4) are recoverable as a civil debt.

94 Obstructing entry to land: offence

- (1) It is an offence to intentionally obstruct a person entitled to enter land under section 92 or 93.
- (2) A person guilty of an offence under subsection (1) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

95 Appeals

- (1) The Minister must by regulations provide a right of appeal against –
 - (a) designations,
 - (b) a refusal of consent on an application under section 86,
 - (c) a refusal to cancel a designation on an application under section 87, and
 - (d) enforcement notices.
- (2) The regulations must –
 - (a) confer jurisdiction on the Minister, a court or a tribunal, and
 - (b) make provision about procedure.
- (3) Where an appeal against a designation is brought—
 - (a) the designation continues to have effect while the appeal is pending;
 - (b) the person or body hearing the appeal may cancel the designation.

- (4) Where an appeal against an enforcement notice is brought—
 - (a) the effect of the notice is suspended while the appeal is pending;
 - (b) the person or body hearing the appeal may determine that the notice is to cease to have effect.

6. General

96 “The Minister”

- (1) This section defines “the Minister” in this Part.
- (2) In relation to designations in England, “the Minister” means the Secretary of State.
- (3) In relation to designations in Wales, “the Minister” means the Welsh Ministers.

97 Regulations

- (1) Regulations under this Part shall be made by statutory instrument.
- (2) Regulations made by the Secretary of State under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations made by the Welsh Ministers under this Part shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

PART 3

RESERVOIRS

1: Introduction

98 Overview

- (1) This Part –
 - (a) establishes a new regime for reservoir safety, and
 - (b) makes provision about the management of the risk of flooding from reservoirs.
- (2) In particular, this Part—
 - (a) requires the appointment of civil engineers (i) to supervise the building of new reservoirs and certain other work on reservoirs and (ii) to monitor the state of certain high-risk reservoirs,
 - (b) provides for reservoir managers to make contingency plans for floods, and
 - (c) requires reservoirs to be registered with the Environment Agency.

(3) The Table describes the provisions of this Part –

<i>Group of sections</i>	<i>Topic</i>
2	Key concepts
3	Construction and alteration
4	Restoration
5	Cessation of use
6	High-risk reservoirs
7	Flood plans
8	Enforcement
9	Powers of entry
10	Disputes
11	Panel of engineers
12	Reports, certificates and statements: general
13	Registration, records and information
14	Role of the Minister
15	Supplementary
16	General

99 Repeal

The Reservoirs Act 1975 shall cease to have effect in England and Wales.

2: Key concepts

100 “Reservoir”

- (1) In this Part “reservoir” means –
 - (a) a large, raised structure designed or used for collecting and storing water, and
 - (b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.
- (2) A structure or area is “raised” if it is capable of holding water above the natural level of any part of the surrounding land.
- (3) A raised structure or area is “large” if it is capable of storing 10,000 cubic metres of water above the natural level of any part of the surrounding land.
- (4) The Minister may by regulations provide for a structure or area to be treated as “large” by reason of proximity to, or actual or potential communication with, another structure or area.
- (5) In making regulations under subsection (4) the Minister shall aim to ensure that a structure or area is treated as large under the regulations only if 10,000 cubic metres of water might be released as a result of the proximity or communication mentioned in that subsection.
- (6) The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (5).
- (7) Section 103 provides for exclusions from the definition of “reservoir”.

101 Ancillary systems

- (1) A reference to a reservoir includes a reference to anything designed to contain the water or control its flow.
- (2) In particular, the following are included –
 - (a) a reservoir's basin,
 - (b) spillways,
 - (c) valves, and
 - (d) pipes.

102 Calculation of capacity

- (1) The Minister must make regulations about how to calculate capacity for the purpose of section 100(3).
- (2) The regulations may, in particular –
 - (a) provide for the calculation of the natural level of land;
 - (b) specify which surrounding land is to be considered;
 - (c) require “soft silt” or other mixtures of land and water to be disregarded to a specified extent.

103 Exclusions

- (1) The Minister may by regulations provide for specified things not to be treated as reservoirs for the purposes of this Part.
- (2) Here are some examples of things that might be excluded –
 - (a) a mine or quarry filled with water,
 - (b) a silt or ash lagoon,
 - (c) a sewage sludge lagoon,
 - (d) sewage treatment works, and
 - (e) a canal or other inland waterway.

104 Definitions of “reservoir manager”

- (1) Section 105 determines who is the “reservoir manager” of a reservoir for the purposes of the provisions about –
 - (a) alterations (sections 106 and 108 to 115),
 - (b) cessation of use (sections 126 to 129),
 - (c) high-risk reservoirs (sections 130 to 140), and
 - (d) flood plans (sections 141 to 145).
- (2) Section 107 determines who is the “reservoir manager” of a reservoir under construction (for the purposes of sections 106 and 108 to 115).
- (3) Section 117 determines who is the “reservoir manager” of a disused reservoir which is to be restored to use (for the purposes sections 116 and 118 to 125).

105 “Reservoir manager”: general

- (1) If the Environment Agency is responsible for the operation of the reservoir, the Agency is the reservoir manager.

- (2) If a water undertaker is responsible for the operation of the reservoir, the water undertaker is the reservoir manager.
- (3) If subsections (1) and (2) do not apply subsections (4) to (9) determine who is the “reservoir manager”.
- (4) If the whole of the reservoir is used for the purpose of a commercial or other undertaking, the person carrying on the undertaking is the reservoir manager.
- (5) If part of the reservoir is used for the purpose of a commercial or other undertaking, the following are the reservoir managers –
 - (a) the person carrying on the undertaking, and
 - (b) the reservoir manager under subsections (6) to (8).
- (6) If the reservoir is let, the lessee is the reservoir manager.
- (7) If part of the reservoir is let, the following are the reservoir managers—
 - (a) the lessee, and
 - (b) if part of the reservoir is not let, the owner.
- (8) In any other case, the owner of the reservoir is the reservoir manager.
- (9) Where there is more than one reservoir manager under subsection (4), (6) or (8) the requirements of this Part shall apply to each of them.
- (10) The Minister may by regulations make provision about when a person is to be or not to be treated as using a reservoir for the purpose of a commercial or other undertaking.
- (11) The following provisions do not apply where the Environment Agency is the reservoir manager –
 - (a) the notification requirements of sections 118, 128, 134(3)(a), 137(5)(b)(ii) and 139,
 - (b) the requirements to provide documents to the Environment Agency in sections 169 and 170,
 - (c) the offences in sections 115, 125, 129, 140, 145, 151 and 179,
 - (d) section 131(3) (notification of classification by the Environment Agency),
 - (e) the enforcement powers in sections 146 to 150 (and the related provisions in sections 114 and 124),
 - (f) section 157 (referrals: decisions of the Environment Agency),
 - (g) section 173 (the requirement to register),
 - (h) section 175 (power to require information), and
 - (i) section 177(3) (directions about emergency response information).

3: Construction and alteration

106 Application

- (1) Sections 108 to 114 apply where a reservoir manager proposes –
 - (a) to construct a new reservoir,
 - (b) to increase the capacity of a reservoir, or
 - (c) to decrease the capacity of a reservoir.
- (2) A proposal to increase the capacity of an existing structure, lake or area so that it becomes a reservoir within the meaning of section 100 is to be treated as a proposal to increase the capacity of a reservoir.
- (3) In sections 108 to 114 “construction or alteration works” means any works carried out for a purpose within subsection (1)(a) to (c).

107 “Reservoir manager”

- (1) This section determines who is the “reservoir manager” of a reservoir under construction.
- (2) If the Environment Agency is to be responsible for the operation of the new reservoir, the Agency is the reservoir manager.
- (3) If a water undertaker is to be responsible for the operation of the new reservoir, the water undertaker is the reservoir manager.
- (4) If subsections (1) and (2) do not apply subsections (5) to (10) determine who is the “reservoir manager”.
- (5) If it is proposed to use the whole of the reservoir for the purpose of a commercial or other undertaking, the person proposing to carry on the undertaking is the reservoir manager.
- (6) If it is proposed to use part of the reservoir for the purpose of a commercial or other undertaking, the following are the reservoir managers –
 - (a) the person proposing to carry on the undertaking, and
 - (b) the reservoir manager under subsections (7) to (9).
- (7) If the land on which the reservoir will be situated is let, the lessee of that land is the reservoir manager.
- (8) If part of the land on which the reservoir will be situated is let, the following are the reservoir managers –
 - (a) the lessee of that land, and
 - (b) if part of that land is not let, the owner of the land.
- (9) In any other case, the owner of land on which the reservoir will be situated is the reservoir manager.
- (10) Where there is more than one reservoir manager under subsection (5), (7) or (9) the requirements of this Part shall apply to each of them.
- (11) This section ceases to apply when a construction certificate is issued under section 112 in relation to the new reservoir.

108 Notice

- (1) The reservoir manager must notify the Environment Agency of the proposed construction or alteration.
- (2) The notice –
 - (a) must comply with any requirements as to form and content prescribed by regulations made by the Minister, and
 - (b) must be given not less than 28 days before the date on which the construction or alteration works begin.

109 Appointment

- (1) The reservoir manager must appoint an engineer (the “construction engineer”) –
 - (a) to design any construction or alteration works, and
 - (b) to supervise the reservoir until the final certificate is issued under section 113.

- (2) A person may not be appointed as the construction engineer in relation to a reservoir if the person –
 - (a) is employed by any person who is a reservoir manager of the reservoir,
 - (b) has previously acted as a construction engineer or a restoration engineer in relation to the reservoir, or
 - (c) is connected with a person who has previously acted as a construction engineer or a restoration engineer in relation to the reservoir.
- (3) In subsection (2)(c) “connected” means connected as a partner, employer, employee or fellow employee in a civil engineering business.
- (4) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

110 Interim certificate

- (1) This section applies –
 - (a) where the construction or alteration works are to increase or decrease the capacity of a reservoir, and
 - (b) a preliminary certificate has not yet been issued in relation to those works.
- (2) The construction engineer may issue a certificate (the “interim certificate”) if the engineer thinks that the level of water in the reservoir should be reduced.
- (3) The interim certificate must specify –
 - (a) the reduced water level,
 - (b) the time by which it must be reduced, and
 - (c) the conditions (if any) on which the reservoir may be filled to the reduced level.
- (4) The reservoir manager must ensure that the reservoir does not contain water except in accordance with the interim certificate.
- (5) The construction engineer may vary an interim certificate.
- (6) An interim certificate ceases to have effect on the issue of a preliminary certificate.

111 Preliminary certificate

- (1) The construction engineer may issue a certificate (the “preliminary certificate”) if the engineer thinks that the reservoir may safely be filled with water.
- (2) The preliminary certificate must specify –
 - (a) the level to which the reservoir may be filled, and
 - (b) the conditions (if any) on which it may be filled.
- (3) The construction engineer may vary a preliminary certificate.
- (4) The reservoir manager must ensure that the reservoir does not contain water except in accordance with the preliminary certificate.

112 Construction certificate

- (1) The construction engineer must issue a certificate following the completion of any construction or alteration works (the “construction certificate”).

- (2) The construction certificate must be issued –
 - (a) as soon as practicable after completion of the construction or alteration works, and
 - (b) no later than the final certificate (see section 113).
- (3) The certificate must state –
 - (a) that the works have been completed to a satisfactory standard, and
 - (b) that the works are in accordance with the drawings and descriptions annexed to the certificate.
- (4) The annex to the certificate must contain full information about the works, including details of –
 - (a) the dimensions,
 - (b) the water levels,
 - (c) the geological strata,
 - (d) deposits encountered in trial holes, and
 - (e) excavations made in connection with the works.
- (5) The provisions of this Part (apart from this section) apply in relation to the annex to a construction certificate as they apply in relation to the certificate.

113 Final certificate

- (1) The construction engineer must issue a certificate under this section (a “final certificate”) if –
 - (a) a period of at least 3 years has passed since the date of the first preliminary certificate, and
 - (b) the engineer is satisfied that the reservoir may safely be used for the storage of water.
- (2) Subsection (1) is subject to section 114.
- (3) The final certificate must specify –
 - (a) the level up to which the reservoir may be filled with water,
 - (b) the conditions (if any) on which the reservoir may be filled, and
 - (c) if the reservoir is a high-risk reservoir, the matters to be monitored by the supervising engineer.
- (4) In subsection (3)(c) –
 - (a) “high-risk reservoir” has the meaning given by section 130, and
 - (b) “supervising engineer” has the meaning given by section 136.
- (5) If the construction engineer thinks that the reservoir is likely to be classified as a high-risk reservoir, the requirements of subsection (3)(c) apply.
- (6) The reservoir manager must ensure that the reservoir is not filled with water except in accordance with the final certificate.
- (7) If a final certificate is not issued within 5 years of the date of the first preliminary certificate, the construction engineer must –
 - (a) provide the reservoir manager with a written statement of the reasons within 28 days, and
 - (b) provide subsequent written statements of the reasons at intervals of no more than 12 months until the final certificate is issued.

114 Appointments under sections 146 and 147

- (1) This section applies where an engineer is appointed for the purposes of section 109 –
 - (a) by the reservoir manager in accordance with an enforcement notice under section 146, or
 - (b) by the Environment Agency under section 147.

- (2) The engineer must inspect the reservoir and prepare a report on the construction or alteration as soon as practicable after the appointment takes effect.
- (3) The report may include directions about any measures that should be taken in the interests of safety.
- (4) If the report includes directions under subsection (3), the reservoir manager must take the measures as soon as practicable after receiving the report.
- (5) The engineer may issue a final certificate under section 113(1) –
 - (a) less than 3 years after the date of issue of the preliminary certificate in relation to the reservoir, if Condition 1 is satisfied, or
 - (b) without the previous issue of a preliminary certificate, if Condition 2 is satisfied.
- (6) Condition 1 is that the engineer is satisfied that the reservoir has been filled with water to the level specified in the preliminary certificate for a period of at least 3 years.
- (7) Condition 2 is that the engineer is satisfied that the reservoir has been filled with water to the level specified in the final certificate for a period of at least 3 years.

115 Offences

- (1) A reservoir manager who fails to comply with section 108 is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A reservoir manager who fails to comply with any of the following provisions is guilty of an offence –
 - (a) section 109(1);
 - (b) section 110(4);
 - (c) section 111(4);
 - (d) section 113(6);
 - (e) section 114(4).
- (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.

4: Restoration

116 Application

- (1) Sections 117 to 124 apply where –
 - (a) a reservoir manager proposes to restore a disused reservoir to use, and
 - (b) the restoration works do not include works to increase or decrease the capacity of the reservoir (in which case sections 108 to 114 apply).
- (2) In this section and sections 117 to 124 “restoration works” means repairs, alterations or other works carried out for the purpose of restoring a disused reservoir to use.

117 “Reservoir manager”

- (1) This section determines who is the “reservoir manager” of a disused reservoir which is to be restored to use.

- (2) If the Environment Agency is to be responsible for the operation of the restored reservoir, the Agency is the reservoir manager.
- (3) If a water undertaker is to be responsible for the operation of the restored reservoir, the water undertaker is the reservoir manager.
- (4) If subsections (1) and (2) do not apply subsections (5) to (10) determine who is the “reservoir manager”.
- (5) If it is proposed to use the whole of the restored reservoir for the purpose of a commercial or other undertaking, the person proposing to carry on the undertaking is the reservoir manager.
- (6) If it is proposed to use part of the restored reservoir for the purpose of a commercial or other undertaking, the following are the reservoir managers –
 - (a) the person proposing to carry on the undertaking, and
 - (b) the reservoir manager under subsections (7) to (9).
- (7) If the reservoir is let, the lessee is the reservoir manager.
- (8) If part of the reservoir is let, the following are the reservoir managers—
 - (a) the lessee, and
 - (b) if part of the reservoir is not let, the owner.
- (9) In any other case, the owner of the reservoir is the reservoir manager.
- (10) Where there is more than one reservoir manager under subsection (5), (7) or (9) the requirements of this Part shall apply to each of them.
- (11) This section ceases to apply when a final certificate is issued under section 123.

118 Notice

- (1) The reservoir manager must notify the Environment Agency of the proposed restoration to use.
- (2) The notice –
 - (a) must comply with any requirements as to form and content prescribed by regulations made by the Minister, and
 - (b) must be given not less than 28 days before the relevant date.
- (3) If restoration works are required, the relevant date is the date on which the restoration works begin.
- (4) If the reservoir is to be restored to use without any restoration works, the relevant date is the date of the preliminary certificate (see section 122).

119 Appointment

- (1) The reservoir manager must appoint an engineer (the “restoration engineer”) –
 - (a) to inspect the disused reservoir,
 - (b) to assess whether anything needs to be done in respect of the reservoir before it may safely be used for the storage of water, and
 - (c) to supervise the restoration and the reservoir until the final certificate is issued under section 123.

- (2) A person may not be appointed as the restoration engineer in relation to a reservoir if the person –
 - (a) is employed by any person who is a reservoir manager of the reservoir,
 - (b) has previously acted as a construction engineer or a restoration engineer in relation to the reservoir, or
 - (c) is connected with a person who has previously acted as a construction engineer or a restoration engineer in relation to the reservoir.
- (3) In subsection (2)(b) “connected” means connected as a partner, employer, employee or fellow employee in a civil engineering business.
- (4) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

120 Safety inspection

- (1) The engineer must prepare a report of the inspection under section 119(1)(a).
- (2) The report must give directions as to the steps (if any) that must be taken by the reservoir manager in accordance with section 119(1)(b).

121 Interim certificate

- (1) This section applies where a preliminary certificate has not yet been issued in relation to the restoration works.
- (2) The restoration engineer may issue a certificate (the “interim certificate”) if the engineer thinks that the level of water in the reservoir should be reduced.
- (3) The interim certificate must specify –
 - (a) the reduced water level,
 - (b) the time by which it must be reduced, and
 - (c) the conditions (if any) on which the reservoir may be filled to the reduced level.
- (4) The reservoir manager must ensure that the reservoir does not contain water except in accordance with the interim certificate.
- (5) The restoration engineer may vary an interim certificate.
- (6) An interim certificate ceases to have effect on the issue of a preliminary certificate.

122 Preliminary certificate

- (1) The restoration engineer may issue a certificate (the “preliminary certificate”) if the engineer thinks that the reservoir may safely be filled with water.
- (2) The preliminary certificate must specify –
 - (a) the level to which the reservoir may be filled, and
 - (b) the conditions (if any) on which it may be filled.
- (3) The restoration engineer may vary a preliminary certificate.
- (4) The reservoir manager must ensure that the reservoir does not contain water except in accordance with the preliminary certificate.

123 Final certificate

- (1) The restoration engineer must issue a certificate under this section (a “final certificate”) if –
 - (a) a period of at least 3 years has passed since the date of the first preliminary certificate, and
 - (b) the engineer is satisfied that the reservoir may safely be used for the storage of water.
- (2) Subsection (1) is subject to section 124.
- (3) The final certificate must specify –
 - (a) the level up to which the reservoir may be filled with water,
 - (b) the conditions (if any) on which the reservoir may be filled, and
 - (c) if the reservoir is a high-risk reservoir, the matters to be monitored by the supervising engineer.
- (4) In subsection (3)(c) –
 - (a) “high-risk reservoir” has the meaning given by section 130, and
 - (b) “supervising engineer” has the meaning given by section 136.
- (5) The reservoir manager must ensure that the reservoir is not filled with water except in accordance with the final certificate.
- (6) If a final certificate is not issued within 5 years of the date of the preliminary certificate, the restoration engineer must –
 - (a) provide the reservoir manager with a written statement of the reasons within 28 days, and
 - (b) provide subsequent written statements of the reasons at intervals of no more than 12 months until the final certificate is issued.

124 Appointments under sections 146 and 147

- (1) This section applies where an engineer is appointed for the purposes of section 119 –
 - (a) by the reservoir manager in accordance with an enforcement notice under section 146, or
 - (b) by the Environment Agency under section 147.
- (2) The engineer must inspect the reservoir and prepare a report on the restoration as soon as practicable after the appointment takes effect.
- (3) The report may include directions about any measures that should be taken in the interests of safety.
- (4) If the report includes directions under subsection (3), the reservoir manager must take the measures as soon as practicable after receiving the report.
- (5) The engineer may issue a final certificate under section 123(1) –
 - (a) less than 3 years after the date of issue of the preliminary certificate in relation to the reservoir, if Condition 1 is satisfied, or
 - (b) without the previous issue of a preliminary certificate, if Condition 2 is satisfied.
- (6) Condition 1 is that the engineer is satisfied that the reservoir has been filled with water to the level specified in the preliminary certificate for a period of at least 3 years.
- (7) Condition 2 is that the engineer is satisfied that the reservoir has been filled with water to the level specified in the final certificate for a period of at least 3 years.

125 Offences

- (1) A reservoir manager who fails to comply with section 118 is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A reservoir manager who fails to comply with any of the following provisions is guilty of an offence –
 - (a) section 119(1);
 - (b) section 121(4);
 - (c) section 122(4);
 - (d) section 123(5).
- (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.

5: Cessation of use

126 Application

- (1) Sections 127 and 128 apply where a reservoir manager proposes that the use of a reservoir is to cease.
- (2) The Minister may by regulations make provision about what is and is not to be treated as a proposal that the use of a reservoir is to cease.

127 Appointment

- (1) The reservoir manager must appoint an engineer to prepare a report under this section.
- (2) The report must include directions about the measures (if any) that the engineer thinks should be taken in the interests of safety to secure that the reservoir is incapable of filling with water above the natural level of any part of the adjoining land.
- (3) The reservoir manager must take any measures recommended by the engineer in the report –
 - (a) before the use of the reservoir ceases, or
 - (b) as soon as reasonably practicable after the use has ceased.
- (4) If the measures recommended in the report include a change to the capacity of the reservoir, the requirements of sections 108 to 114 apply.
- (5) Sections 161 to 166 make provision about panels of engineers approved for the purposes of this section.

128 Notice

- (1) The reservoir manager must notify the Environment Agency when use of the reservoir has ceased.
- (2) The notice –
 - (a) must comply with any requirements as to form and content as the Minister may provide by regulations, and
 - (b) must be given not more than 28 days after the day on which use of the reservoir ceased.

129 Offences

- (1) A reservoir manager who fails to comply with section 127(1) or (3) is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.
- (3) A reservoir manager who fails to comply with section 128 is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

6: High-risk reservoirs

130 Meaning of “high-risk reservoir”

- (1) The Environment Agency may determine that a reservoir is a high-risk reservoir if –
 - (a) the Agency thinks that an uncontrolled release of water from the reservoir could endanger human life, and
 - (b) the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.
- (2) The conditions specified in regulations under subsection (1)(b) may, in particular, include conditions as to –
 - (a) the purpose for which the reservoir is used,
 - (b) the materials used to construct the reservoir,
 - (c) the way in which the reservoir is constructed, and
 - (d) the maintenance of the reservoir.
- (3) The Minister may by regulations make provision about the time at which a determination under subsection (1) must be made.
- (4) Sections 132 to 139 make provision about requirements for inspection and supervision of high-risk reservoirs.

131 Notification of classification

- (1) This section applies where the Environment Agency determines that a reservoir is to be classified as a high-risk reservoir.
- (2) The Environment Agency –
 - (a) must review the classification of a reservoir as a high-risk reservoir in circumstances specified by regulations made by the Minister, and
 - (b) may change the classification of a reservoir following a review.
- (3) The Environment Agency must notify the reservoir manager of—
 - (a) the classification, and
 - (b) any change to the classification.
- (4) The Minister may by regulations make provision about the period within which notice must be given.

132 Inspections: appointment

- (1) This section applies in relation to a high-risk reservoir which is not under the supervision of a construction engineer or a restoration engineer.
- (2) The reservoir manager must appoint an engineer (the “inspecting engineer”) –
 - (a) to inspect the reservoir at each of the times specified in section 133,
 - (b) to report on the inspection, and
 - (c) to supervise the implementation of any safety measures required by the report.
- (3) A person may not be appointed as the inspecting engineer in relation to a reservoir if the person –
 - (a) is in the employment of any person who is a reservoir manager of the reservoir,
 - (b) holds an appointment under this Part made by or on behalf of any person who is a reservoir manager of the reservoir,
 - (c) has previously acted as a construction engineer or a restoration engineer in relation to the reservoir, or
 - (d) is connected with a person who has previously acted as the construction engineer or the restoration engineer.
- (4) In subsection (3)(d) “connected” means connected as a partner, employer, employee or fellow employee in a civil engineering business.
- (5) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

133 Inspections: timing

- The inspecting engineer must carry out an inspection at each of the following times –
- (a) before the end of the period of 2 years beginning with the date of any final certificate under section 113 or 123,
 - (b) as soon as practicable after carrying out any alterations to the reservoir that might affect the safety of the reservoir, unless sections 108 to 114 apply,
 - (c) at any time recommended by the supervising engineer,
 - (d) at any time recommended in the previous report of an inspecting engineer under section 134, and
 - (e) before the end of the period of 10 years beginning with the date of the previous inspection.

134 Inspections: reports

- (1) The inspecting engineer must provide a report of an inspection under section 132 to the reservoir manager.
- (2) The report must be provided as soon as reasonably practicable after completion of the inspection.
- (3) If the inspecting engineer has not provided a report before the end of the period of six months beginning with the date of completion of the inspection, the engineer must –
 - (a) notify the Environment Agency, and
 - (b) provide a written statement of the reasons.
- (4) The report may include directions about –
 - (a) the time of the next inspection,
 - (b) any maintenance required in the interests of safety,
 - (c) any other measures that should be taken in the interests of safety, and
 - (d) any matters that, in the opinion of the inspecting engineer, should be monitored by the supervising engineer.

135 Inspections: safety measures

- (1) If the report includes directions under section 134(4)(b) the reservoir manager must carry out any maintenance work in accordance with the directions.
- (2) If the report includes directions under section 134(4)(c) the reservoir manager must take the measures under the supervision of the inspecting engineer.
- (3) The reservoir manager must take the measures as soon as practicable after receiving the report.
- (4) The inspecting engineer must issue a certificate (“an interim safety certificate”) to the reservoir manager as soon as the engineer is satisfied that each measure required under section 134(4)(c) has been taken.
- (5) The inspecting engineer must issue a certificate (“a final safety certificate”) to the reservoir manager as soon as the engineer is satisfied that all of the measures required under section 134(4)(c) have been taken.
- (6) Subsection (7) applies if an inspection is carried out in relation to a reservoir before the issue of a final safety certificate in respect of the report of the previous inspection (the “previous report”).
- (7) Where this subsection applies, the inspecting engineer must include in the report of the inspection under section 134 –
 - (a) directions under section 134(4)(c) that are materially the same as those in the previous report for which an interim safety certificate has not been issued, or
 - (b) an explanation of why the engineer is not giving directions within paragraph (a).

136 Supervision: appointment

- (1) This section applies in relation to a high-risk reservoir which is not under the supervision of a construction engineer or a restoration engineer.
- (2) The reservoir manager must appoint an engineer (the “supervising engineer”) to supervise the reservoir.

137 Supervision: duties

- (1) The supervising engineer must notify the reservoir manager of anything that the engineer thinks might affect the safety of the reservoir.
- (2) The supervising engineer must –
 - (a) monitor any matters specified in the final certificate under section 113(3)(c) or 123(3)(c) in the period before the first inspection under section 132, and
 - (b) monitor any matters specified in the most recent report prepared by the inspecting engineer under section 134(4)(b) or (d).
- (3) The supervising engineer must provide the reservoir manager at least once every 12 months with a written statement of –
 - (a) the steps taken in relation to the matters mentioned in subsection (2),
 - (b) if a flood plan has been prepared under section 142, whether the engineer considers that the flood plan should be revised, and
 - (c) if a flood plan has been prepared under section 142, the steps taken by the engineer to comply with the requirements of, or to test, the flood plan.
- (4) If the supervising engineer considers at any time that the reservoir should be inspected under section 132, the engineer must make a written recommendation to that effect to the reservoir manager.

- (5) The supervising engineer must –
 - (a) monitor compliance with sections 109, 119, 127, 138 and 174, and
 - (b) notify (i) the reservoir manager and (ii) the Environment Agency of any breach of those provisions.

138 Monitoring

- (1) The reservoir manager must carry out a survey of the reservoir at intervals of not more than 1 month.
- (2) The purpose of the survey is to identify any matters that might affect the safety of the reservoir.
- (3) The reservoir manager must notify the supervising engineer of –
 - (a) any survey that is carried out, and
 - (b) any matters identified in the course of that survey.
- (4) The reservoir manager must keep a record of surveys carried out under this section.
- (5) The Minister may by regulations make provision about –
 - (a) the information to be recorded, and
 - (b) the form of the record.

139 Notification

- (1) A reservoir manager must notify the Environment Agency of –
 - (a) the appointment of an inspecting engineer, and
 - (b) the appointment, resignation or removal of a supervising engineer.
- (2) The notice must be given before the end of the period of 28 days beginning with the day on which the appointment, resignation or removal takes effect (but may be given before that date).
- (3) The notice must specify the date from which the appointment, resignation or removal takes effect.

140 Offences

- (1) A reservoir manager who fails to comply with any of the following provisions is guilty of an offence –
 - (a) section 132(2);
 - (b) section 135(3);
 - (c) section 136(2);
 - (d) section 138.
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.
- (3) A reservoir manager who fails to comply with section 139 is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

7: Flood plans

141 Directions

- (1) The Minister may by notice direct a reservoir manager to prepare a flood plan.
- (2) A flood plan is a document –
 - (a) giving information about the areas that may be flooded in the event of an uncontrolled escape of water from the reservoir,
 - (b) specifying the action that the reservoir manager would take in order to prevent an uncontrolled escape of water, and
 - (c) specifying the action that the reservoir manager would take in order to control or mitigate the effects of a flood.
- (3) A direction may, in particular –
 - (a) specify the matters to be included in the flood plan;
 - (b) require the flood plan to be prepared in accordance with methods of technical or other analysis specified by the Environment Agency;
 - (c) require the flood plan, the certificate under section 142(3) or any related information to be given to the Environment Agency at a time specified by the Agency or the Minister;
 - (d) require the reservoir manager to consult specified persons about the content of the flood plan;
 - (e) require a copy of the flood plan and the certificate under section 142(3) to be sent to specified persons;
 - (f) require the flood plan to be published in a specified manner.
- (4) The matters specified in a direction under subsection (3)(a) may, in particular, include –
 - (a) details of arrangements for contacting persons listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (Category 1 responders), and
 - (b) a map showing the likely areas of flooding in the event of an escape of water from the reservoir.
- (5) Before giving a direction, the Minister must consult –
 - (a) the reservoir managers concerned,
 - (b) the Environment Agency,
 - (c) if the reservoir concerned is in England, the county council, metropolitan district council or London borough council in whose area the reservoir is situated,
 - (d) if the reservoir concerned is in Wales, the county council or county borough council in whose area the reservoir is situated,
 - (e) such persons appearing to the Minister to represent the emergency services in the area where the reservoir is situated, and
 - (f) such other persons (if any) as the Minister thinks appropriate.
- (6) This section is subject to section 143.

142 Preparation

- (1) This section applies where a reservoir manager is directed to prepare a flood plan under section 141.
- (2) The reservoir manager must prepare a flood plan in consultation with the appointed engineer.
- (3) Before the reservoir manager provides a copy of, or publishes, a flood plan in accordance with a direction under section 141(3)(c), (e) or (f), the engineer must certify that the requirements of a direction under section 141(3)(a) or (b) are satisfied.
- (4) The reservoir manager must test a flood plan at such times and in such manner as may be directed by the appointed engineer.

- (5) In the event of flooding, or if flooding is reasonably expected to occur, the reservoir manager must implement the flood plan without delay.
- (6) The reservoir manager –
 - (a) must keep a flood plan under review, and
 - (b) may revise a flood plan.
- (7) The reservoir manager must revise the flood plan in accordance with the directions of the appointed engineer.
- (8) The following apply to a revision of a flood plan as they apply to a flood plan –
 - (a) subsections (2) to (7), and
 - (b) any requirements of a direction under section 141.
- (9) In this section “appointed engineer” means –
 - (a) in the case of a high-risk reservoir, the supervising engineer, and
 - (b) in any other case, the engineer appointed for the purposes of this section.
- (10) Sections 161 to 166 make provision about panels of engineers approved for the purposes of this section.

143 Restrictions on consultation and publication

- (1) The Minister is not required to consult any person or class of persons under section 141(5) if it appears that to do so would be contrary to the interests of national security.
- (2) The Minister may by notice require a reservoir manager not to publish, or not to publish except as specified in the notice –
 - (a) a flood plan prepared in response to a notice under section 141;
 - (b) any corresponding plan prepared by the reservoir manager other than in response to a notice under that section.
- (3) A notice under subsection (2) may require a reservoir manager to withhold access to the flood plan from any person except as specified in the notice.

144 Duty to co-operate

- (1) A reservoir manager must co-operate, to such extent and in such manner as may be specified by regulations, with Category 1 and Category 2 responders in connection with the performance of a relevant duty.
- (2) In this section “relevant duty” means a duty of a Category 1 responder under section 2 of the Civil Contingencies Act 2004 to assess, plan and advise in relation to a flood risk from a reservoir.
- (3) In this section –
“Category 1 responders” means persons listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004, and
“Category 2 responders” means persons listed in Part 3 of Schedule 1 to that Act.

145 Offences

- (1) A reservoir manager who fails to comply with a direction under section 141 is guilty of an offence.
- (2) A reservoir manager who fails to comply with section 142(2) or (6) is guilty of an offence.

- (3) A person guilty of an offence under subsection (1) or (2) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.
- (4) A reservoir manager who fails to comply with section 142(4) or (5) is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A reservoir manager who fails to comply with a notice under section 143 is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

8: Enforcement

146 Enforcement notice: appointments

- (1) This section applies in relation to a reservoir where it appears to the Environment Agency that –
 - (a) section 109 applies but the reservoir is not under the supervision of a construction engineer,
 - (b) section 119 applies but a restoration engineer is not appointed,
 - (c) section 127 applies but an engineer is not appointed for the purposes of that section,
 - (d) section 132 applies but an inspecting engineer is not appointed to carry out an inspection at a relevant time,
 - (e) section 136 applies but the reservoir is not under the supervision of a supervising engineer,
 - (f) section 142 applies but there is no appointed engineer.
- (2) The Environment Agency may by notice require the reservoir manager –
 - (a) to make a relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given, unless a relevant appointment has already been made, and
 - (b) to notify the Agency of the appointment (whether it was made before or after the notice was given).
- (3) For the purposes of this section and section 147, a relevant appointment is an appointment of a qualified civil engineer for the purposes of section 109, 119, 127, 132, 136 or 142 (as the case may be).
- (4) An engineer appointed under this section is to be treated for the purposes of this Part (except where otherwise provided) as if the engineer had been appointed by the reservoir manager under section 109, 119, 127, 132, 136 or 142 (as the case may be).

147 Power of appointment

- (1) This section applies where –
 - (a) the Environment Agency has by notice under section 146(2) required a reservoir manager to make a relevant appointment, and
 - (b) the reservoir manager has failed to make the appointment.
- (2) The Environment Agency may make the relevant appointment.

- (3) An engineer appointed under this section is to be treated for the purposes of this Part (except where otherwise provided) as if the engineer had been appointed by the reservoir manager under section 109, 119, 127, 132, 136 or 142 (as the case may be).
- (4) An appointment made under this section has no effect if the reservoir manager has already appointed an engineer for the purpose of the provision concerned.
- (5) An appointment made under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.
- (6) The reservoir manager must pay the Agency the amount of expenses reasonably incurred in making an appointment under this section.

148 Enforcement notice: safety measures

- (1) This section applies where it appears to the Environment Agency that the reservoir manager has failed to take a measure or carry out maintenance required in the interests of safety by –
 - (a) section 114(4),
 - (b) section 120(2),
 - (c) section 124(4),
 - (d) section 127(3), or
 - (e) section 135(3).
- (2) The Environment Agency may by notice require the reservoir manager to take the measure or carry out the maintenance specified under section 114(4), 127(3) or 135(3) (as the case may be) within the period specified in the notice.
- (3) The Environment Agency must consult an engineer appointed for the purpose of this section about the period to be specified in the notice.
- (4) The reservoir manager must pay the Agency the amount of expenses reasonably incurred by the Agency in connection with the consultation of an engineer under this section.
- (5) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

149 Power to take safety measures

- (1) This section applies where –
 - (a) the Environment Agency has by notice under section 148(2) required a reservoir manager to take action in the interests of safety, and
 - (b) the reservoir manager has failed to take that action.
- (2) The Environment Agency may arrange for the action to be taken under the supervision of an engineer appointed by the Environment Agency for the purpose of this section.
- (3) When the engineer appointed under subsection (2) is satisfied that the action has been taken, the engineer must give a certificate to that effect.
- (4) The reservoir manager must pay the Agency the amount of expenses reasonably incurred by the Agency in making arrangements under this section.
- (5) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

150 Emergency powers

- (1) This section applies where it appears to the Environment Agency that immediate action is needed to protect persons or property against an escape of water from a reservoir (whether or not the reservoir is in use).
- (2) The Environment Agency may take any measures that the Agency considers necessary –
 - (a) to remove or reduce the risk to persons or property, or
 - (b) to mitigate the effect of an escape of water.
- (3) The Environment Agency must –
 - (a) appoint an engineer to make recommendations about any measures to be taken under this section, and
 - (b) arrange for the measures to be taken under the supervision of the appointed engineer.
- (4) The Environment Agency must give notice to the reservoir manager of the measures to be taken under this section.
- (5) The notice must be given as soon as practicable (which may be after any works have begun).
- (6) But the Agency is not required to give notice –
 - (a) if the Agency is unable after reasonable enquiry to ascertain the name and address of the reservoir manager, and
 - (b) the works have commenced.
- (7) The reservoir manager must pay the Environment Agency an amount equal to the amount of expenses reasonably incurred by the Agency in the exercise of the powers under this section.
- (8) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

151 Offences

- (1) A reservoir manager who fails to comply with a notice issued by the Environment Agency under section 146 or 148 is guilty of an offence.
- (2) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.

9: Powers of entry

152 Authorisation by Environment Agency

- (1) Subject to the following provisions of this section, a person authorised in writing by the Environment Agency may at any reasonable time enter land on which a reservoir is situated for a purpose within subsection (2).
- (2) The purposes are to carry out an inspection, survey or other operation –
 - (a) to determine whether any provision of this Part applies,
 - (b) to determine whether a measure required to be taken by section 114(4), 127(3), 135(3) or 148(2) has been taken,
 - (c) following the person's appointment under section 147 or 149,
 - (d) to determine the period to be specified in a notice under section 148, or
 - (e) to determine what emergency measures (if any) should be taken under section 150, or for any purpose connected with taking those measures.

- (3) Where the entry is for a purpose within subsection (2)(e), the power to enter extends to any neighbouring land.
- (4) Except for a purpose within subsection (2)(e), a person may not demand admission to any land which is occupied unless –
 - (a) at least 7 days' notice has been given to the occupier, or
 - (b) the entry is authorised by a warrant granted under section 153.
- (5) A notice under subsection (4)(a) must –
 - (a) specify the purpose for which entry is required, and
 - (b) specify so far as practicable the nature of the proposed works on the land.
- (6) A person authorised under this section to enter on land –
 - (a) must produce evidence of the authorisation on request before entering, and
 - (b) may take any equipment or other persons onto the land if the authorised person reasonably thinks it is necessary.
- (7) Where the use of a reservoir has ceased the site of the reservoir is to be treated as land on which a reservoir is situated for the purposes of this section and section 155.

153 Authorisation by warrant

- (1) A justice of the peace may grant a warrant under this section if satisfied on sworn information in writing that Conditions 1 and 2 are satisfied.
- (2) A warrant under this section authorises the person to whom it is issued to enter land, if need be by force.
- (3) Condition 1 is that –
 - (a) admission to any land on which any person is entitled under section 152 has been refused,
 - (b) refusal of permission to enter is expected, or
 - (c) the occupier is temporarily absent.
- (4) Condition 2 is that there is reasonable ground for entry on to the land for the purpose for which entry is required.
- (5) A warrant may only be granted under this section if the justice of the peace is satisfied that notice in writing of the intention to apply for a warrant has been given to the occupier of the land.
- (6) A warrant granted under this section is to continue in force until the purpose for which the entry is required is satisfied.
- (7) A person authorised under this section to enter on land –
 - (a) must produce evidence of the authorisation on request before entering, and
 - (b) may take any equipment or other persons onto the land if the authorised person reasonably thinks it is necessary.

154 Offences

- (1) A person who obstructs a person entitled to enter onto land by virtue of section 152 or section 153 commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

155 Compensation

- (1) This section applies where in the exercise of the powers conferred by section 152 or 153 –
 - (a) any land, other than land which is occupied by the reservoir manager, is damaged, or
 - (b) the enjoyment of any land, other than land which is occupied by the reservoir manager, is disturbed.
- (2) Compensation is payable by the Environment Agency in respect of the damage or disturbance to a person –
 - (a) with an interest in the damaged land, or
 - (b) whose enjoyment of the land is disturbed.
- (3) Any dispute about compensation under this section is to be determined by the Lands Tribunal.
- (4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred in the exercise of the powers under section 150.

10: Disputes

156 Referrals: decisions of an engineer

- (1) This section applies where an engineer gives directions under –
 - (a) section 114(3),
 - (b) section 120(2),
 - (c) section 124(3), or
 - (d) section 127(2).
- (2) This section also applies where an engineer fails to give a certificate under section 142(3) in respect of a flood plan on the grounds that the requirements of a direction under section 141(3)(a) or (b) are not satisfied.
- (3) The reservoir manager may challenge the directions or determination by referring the matter to a referee in accordance with rules made under section 160.
- (4) On a referral under subsection (1), the effect of the directions is suspended until the reference has been determined or withdrawn.

157 Referrals: decisions of the Environment Agency

- (1) This section applies where the Environment Agency makes a determination in respect of the classification of a reservoir under –
 - (a) section 130(1), or
 - (b) section 131(2)(b).
- (2) The reservoir manager may challenge the determination by referring the matter to a referee in accordance with rules made under section 160.

158 Appointment of referee

- (1) The referee must be an engineer appointed –
 - (a) by agreement between the reservoir manager and the engineer giving the directions, or
 - (b) if no agreement is reached, by the Minister.
- (2) Sections 161 to 166 make provision about panels of engineers approved for the purpose of this section.

159 Powers of referee

- (1) The referee may make such modifications (if any) as the referee thinks fit to the report or the flood plan which is the subject of the referral.
- (2) The report or flood plan is to have effect with those modifications.
- (3) The referee must –
 - (a) issue a certificate stating that the decision does or does not modify the report or flood plan, and
 - (b) make any necessary revisions to any certificate given by the engineer in relation to the report.

160 Procedure

- (1) The Minister may make rules about –
 - (a) the time within which a referee may be appointed under section 158(1)(a);
 - (b) the time within which a request to the Minister for an appointment under subsection 158(1)(b) may be made;
 - (c) the manner of the request;
 - (d) the procedure before the referee;
 - (e) the costs of the investigation and proceedings (subject to subsection (2)).
- (2) The costs of any investigation and proceedings (including the costs of remunerating the referee) are to be paid by the reservoir manager.

11: Panel of engineers

161 Establishment

- (1) The Minister must establish at least one panel of civil engineers who are approved for the purposes of this Part.
- (2) A panel may consist of civil engineers who are approved –
 - (a) for general purposes, or
 - (b) for specified purposes (which may include specified classes of reservoir).
- (3) An engineer appointed for a purpose of this Part must be a member of a panel of engineers approved for that purpose.

162 Appointment

- (1) The Minister may appoint a person to be a member of a panel established under section 161 if –
 - (a) the person has applied to become a member of the panel, and
 - (b) the person is, in the opinion of the Minister, fit and qualified to be a member of the panel.
- (2) The Minister may make regulations about the application procedure under subsection (1)(a).
- (3) The regulations may include provision about an application fee; and any fee is to be paid into the Consolidated Fund.

163 Period of appointment

- (1) The period of appointment as a member of the panel is five years.
- (2) But at the end of that period a person may be re-appointed.

- (3) The Minister may by order substitute a different period for the period mentioned in subsection (1).

164 Removal

- (1) The Minister may remove a person from a panel of engineers if satisfied that the person is not fit and qualified to remain on it.
- (2) A person who is removed from a panel of engineers approved for a purpose of this Part must cease to act under any appointment made for that purpose.

165 Dissolution

- (1) The Minister may dissolve a panel established under section 161.
- (2) Before dissolving a panel, the Minister must give reasonable notice to the members of the panel.
- (3) An engineer who is appointed to act for a purpose of this Part may, on the dissolution of the panel of engineers approved for that purpose, continue to act under the appointment for a period not exceeding 4 years beginning with the date of dissolution.
- (4) But subsection (3) does not apply in relation to a person appointed to act as a supervising engineer under section 136.
- (5) The Minister may direct that a person may no longer act under subsection (3) if satisfied that the person is not fit and qualified to do so.

166 Consultation

- (1) The Minister must consult with the President of the Institution of Civil Engineers, or a committee appointed by the Institution for the purposes of this section, before –
 - (a) establishing a panel under section 161,
 - (b) making an appointment under section 162(1),
 - (c) making an order under section 163(3),
 - (d) removing a person from a panel under section 164(1), and
 - (e) directing that a person is no longer qualified to act under section 165(5).
- (2) The Minister may reimburse the Institution of Civil Engineers for any expenses incurred by the Institution for the purposes of this section.
- (3) If the Institution of Civil Engineers ceases to exist, the Minister may by order amend references in this Part to the Institution.

12: Reports, certificates and statements: general

167 Form

The Minister may by regulations make provision about the form of the following documents issued or prepared by an engineer for the purposes of this Part –

- (a) a report,
- (b) a certificate,
- (c) a written statement, and
- (d) a written recommendation.

168 Delivery to the reservoir manager

- (1) An engineer acting for the purposes of this Part must deliver any report or certificate issued by the engineer to the reservoir manager before the end of the relevant period (subject to subsection (3)).
- (2) The relevant period is 7 days beginning with the date of the report or certificate.
- (3) This section does not apply where the engineer is appointed by the Environment Agency under section 147.

169 Delivery to the Environment Agency

- (1) An engineer appointed by the Environment Agency under section 147 must before the end of the relevant period –
 - (a) deliver any report or certificate issued by the engineer to the Agency, and
 - (b) deliver a copy of any report or certificate issued by the engineer to the reservoir manager.
- (2) The relevant period is 28 days beginning with the date of the report or certificate.

170 Delivery of copy documents to the Environment Agency

- (1) An engineer must deliver to the Environment Agency a copy of each document to which this section applies.
- (2) The copy must be delivered no later than 28 days after the day on which the document is delivered to the reservoir manager.
- (3) This subsection applies to the following documents –
 - (a) a certificate issued by an engineer for the purposes of this Part,
 - (b) a report made by an engineer under section 114, 120, 124, 127 or 134 containing directions about safety measures,
 - (c) a decision of a referee modifying a report mentioned in paragraph (b),
 - (d) a statement made by a construction engineer under section 113(7),
 - (e) a statement made by a restoration engineer under section 123(6), and
 - (f) a statement or recommendation made by the supervising engineer under section 137(3) or (4).

171 Assessment of reports and statements

- (1) The Minister may by regulations make provision for the assessment of the quality of reports and written statements prepared by –
 - (a) inspecting engineers, and
 - (b) supervising engineers.
- (2) The regulations may make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers; and the regulations may specify the conditions for membership of the committee.
- (3) The regulations may, in particular, make provision about –
 - (a) the criteria for assessment,
 - (b) the documents, or categories of documents, that are to be assessed,
 - (c) the assessment procedure, which may include provision about oral or written representations,
 - (d) timing, and
 - (e) the steps that may be taken by the Environment Agency or the Minister following an assessment.

13: Registration, records and information

172 Registration and records

- (1) The Environment Agency must establish and maintain –
 - (a) a register of reservoirs, and
 - (b) a record of information about each registered reservoir.
- (2) The Minister may by regulations make provision about the information to be contained in the register and record.
- (3) The Environment Agency must make arrangements for the register and record to be available for inspection by any person at all reasonable times.
- (4) The Minister may direct the Environment Agency to exclude information from the register or record if, in the opinion of the Minister, the inclusion of the information would be contrary to the interests of national security.

173 Reservoir managers: duty to register

- (1) The reservoir manager must register a reservoir with the Environment Agency.
- (2) The Minister may make regulations about registration under this section.
- (3) Regulations under subsection (2) may, in particular, include provision about –
 - (a) the information to be registered, and
 - (b) the time by which information, or changes to information, must be registered.

174 Records

- (1) A reservoir manager must keep a record of –
 - (a) water levels and depth of water in the reservoir, including the flow of water over the waste weir or overflow,
 - (b) leakages,
 - (c) settlements of walls or other works,
 - (d) repairs, and
 - (e) any other prescribed matter.
- (2) The reservoir manager must install and maintain any instruments or equipment needed to provide the information within subsection (1).
- (3) The Minister may by regulations make provision about –
 - (a) the information about each of the matters within subsection (1) to be recorded, and
 - (b) the form of the record.
- (4) The reservoir manager must comply with any direction of the construction engineer or the inspecting engineer about –
 - (a) the intervals at which the record must be updated, and
 - (b) the manner in which the information is given.

175 Power to require information

- (1) For the purposes of carrying out its functions under the Act, the Environment Agency may by notice require a reservoir manager to provide information specified in the notice.

- (2) The notice may require the information to be provided –
 - (a) within a specified time period;
 - (b) in a specified manner or form.

176 Reports

- (1) The Minister may by regulations require a specified person to make a report to the Environment Agency about any incident of a specified kind which affects the safety of a reservoir.
- (2) The regulations may, in particular, provide that the duty to report applies to –
 - (a) a reservoir manager, and
 - (b) an engineer appointed for any purpose of this Part.
- (3) The regulations may make provision about –
 - (a) the form and manner of a report,
 - (b) the timing of a report.

177 Emergency response information

- (1) A reservoir manager must ensure that emergency response information is displayed at or near the reservoir.
- (2) The Minister may by regulations specify the information about the reservoir and the reservoir manager that must be displayed.
- (3) The reservoir manager must comply with any direction of the Environment Agency about the display of emergency response information, including directions about the location of a display.

178 Facilities and information

- (1) A reservoir manager must provide all reasonable facilities to an engineer that are required for the effective performance of the engineer's functions for the purposes of this Part.
- (2) A reservoir manager must provide the engineer with the following in relation to the reservoir –
 - (a) the record kept under section 174,
 - (b) copies of any certificates issued under this Part,
 - (c) copies of any reports made by an inspecting engineer under section 132, and
 - (d) any further information or particulars required by the engineer.

179 Offences

- (1) A reservoir manager who fails to comply with a requirement imposed by or under any of the following provisions is guilty of an offence –
 - (a) section 173,
 - (b) section 175, and
 - (c) section 177.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A reservoir manager who fails to comply with section 174 is guilty of an offence.

- (4) A person guilty of an offence under subsection (3) is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the amount specified by the Minister by order.
- (5) A reservoir manager who fails to provide a person with the facilities, information or particulars required under section 178 is guilty of an offence.
- (6) It is an offence for a person to make use of any document, or furnish any material or information for the purposes of section 178 which the person knows to be false in a material respect.
- (7) It is an offence for a person to recklessly make use of any document or furnish information for the purposes of section 178 which is false in a material respect.
- (8) A person guilty of an offence under subsection (5), (6) or (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) A person who fails to comply with a requirement of section 170 to deliver a copy of a document to the Environment Agency is guilty of an offence.
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

14: Role of the Minister

180 Report to the Minister

- (1) The Environment Agency must report to the Minister about –
 - (a) the steps taken by the Agency for the purpose of securing that reservoir managers comply with the requirements of this Part, and
 - (b) the steps taken by the Agency to comply with the requirements of this Part in relation to any reservoir for which it is the reservoir manager.
- (2) The Minister may make regulations about –
 - (a) the times or intervals at which a report under this section must be made, and
 - (b) the information to be included in the report.

181 Environment Agency compliance

- (1) If the Minister is satisfied that the Environment Agency has failed to comply with a requirement imposed on it by or under this Part, the Minister may make an order under this section.
- (2) An order under this section must specify the requirement that the Environment Agency has failed to comply with.
- (3) An order under this section may specify –
 - (a) the steps that the Environment Agency must take in order to remedy, or prevent recurrence of, the failure, and
 - (b) the time within which the steps must be taken.
- (4) The Minister may arrange for an inquiry to be held for the purpose of determining whether or not the Environment Agency has failed to comply with a requirement.
- (5) The Minister may by order revoke or vary an order made under this section.

15: Supplementary

182 Notices: deemed service

- (1) This section applies where the Environment Agency is unable after reasonable enquiry to ascertain the name or address of a reservoir manager.
- (2) A notice under this Part is deemed to have been given to the reservoir managers if –
 - (a) it is left in the hands of a person who is or appears to be resident or employed at the site of the reservoir, or
 - (b) it is conspicuously affixed to a building or object at the site of the reservoir.
- (3) This section is without prejudice to section 123 of the Environment Act 1995 as applied by section 183.

183 Notices: Environment Agency

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by the Environment Agency as if it were authorised or required to be served or given under that Act.

184 Notices: delivery

A notice under this Part may be delivered –

- (a) by hand,
- (b) by post, or
- (c) electronically.

185 Charges

In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (e) insert –

“(f) as a means of recovering costs incurred by it in performing functions conferred by Part 3 of the Flood and Water Management Act 2009 the Agency may require the payment to it of such charges as may from time to time be prescribed;”

186 Offences: bodies corporate

- (1) Subsection (2) applies where an offence under this Part committed by a body corporate is proved to have been committed with the consent of an officer of the body corporate.
- (2) The officer, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (3) In this section, “officer” means –
 - (a) a director, manager, secretary or other similar officer, or
 - (b) a person purporting to act in such a capacity.
- (4) Where the affairs of a body corporate are managed by its members, this section applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.

187 Offences: proceedings

Proceedings for an offence under this Part may only be instituted by –

- (a) the Environment Agency,
- (b) the Minister,
- (c) the Director of Public Prosecutions, or
- (d) any other person with the consent of the Director of Public Prosecutions.

188 Civil liability

This Part does not confer a right to claim damages in respect of a breach of an obligation imposed by this Part.

16: General

189 Crown application

- (1) This Act binds the Crown, subject to the following provisions.
- (2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.
- (3) The High Court may, on the application of the Environment Agency, declare unlawful any act or omission of the Crown that constitutes such a contravention.
- (4) This Act applies to persons in the public service of the Crown as it applies to other persons.
- (5) A power of entry conferred by this Act is not exercisable in relation to Crown premises if the Minister certifies that it appears that in the interests of national security the power should not be exercisable in relation to those premises.
- (6) Any power of entry conferred by this Act is exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (7) The “appropriate authority” for the purposes of subsection (6) is to be determined in accordance with section 293(2) and (3) of the Town and Country Planning Act 1990.
- (8) In this section –
 - “Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
 - “Crown premises” means premises held by or on behalf of the Crown.

190 “The Minister”

- (1) This section defines “the Minister” in this Part.
- (2) In respect of anything done in relation to reservoirs in England, “the Minister” means the Secretary of State.
- (3) In respect of anything done in relation to reservoirs in Wales, “the Minister” means the Welsh Ministers.

191 Index of defined terms

The Table sets out expressions defined in this Part for general purposes.

<i>Expression</i>	<i>Section</i>
Construction engineer	Section 109
High-risk reservoir	Section 130
Inspecting engineer	Section 132
Minister	Section 190
Reservoir	Section 100
Reservoir manager	Section 104
Restoration engineer	Section 119
Supervising engineer	Section 136

192 Regulations, rules and orders

- (1) Regulations and rules under this Part shall be made by statutory instrument.
- (2) An order under this Part, other than an order made under section 181, shall be made by statutory instrument.
- (3) A statutory instrument containing regulations, rules or an order made by the Secretary of State under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing regulations, rules or an order made by the Welsh Ministers under this Part shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) A statutory instrument to which subsection (6) applies may not be made unless a draft has been laid before and approved by a resolution of –
 - (a) each House of Parliament, in the case of regulations or an order made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of regulations or an order made by the Welsh Ministers.
- (6) This subsection applies to a statutory instrument containing –
 - (a) regulations under section 103 or 130(1)(b), and
 - (b) an order under section 100(6).

PART 4

WATER ADMINISTRATION REGIME

1: Introduction

193 Overview

- (1) This Part provides a special administration regime for water and sewerage undertakers and water suppliers (instead of the administration regime provided for companies in general by Schedule B1 to the Insolvency Act 1986).
- (2) This Part replaces sections 23 to 26 of the Water Industry Act 1991, which also provided a special administration regime.
- (3) The Table describes the contents of this Part.

<i>Group of sections</i>	<i>Topic</i>
2	Key concepts
3	Water administration order
4	Grounds for order
5	Effect of order
6	Relationship with other processes
7	General

2: Interpretation

194 “Water companies”

- (1) In this Part “water company” means a company which satisfies Condition 1 or 2.
- (2) Condition 1 is that the company holds appointment under section 6 of the Water Industry Act 1991 as –
 - (a) a water undertaker,
 - (b) a sewerage undertaker, or
 - (c) both.
- (3) Condition 2 is that –
 - (a) the company holds a water supply licence under section 17A of that Act,
 - (b) the licence is a combined licence (within the meaning of section 17A(6)) permitting the company to introduce water into a water undertaker’s supply system, and
 - (c) introduction of water by the company has been designated as a strategic supply, or a collective strategic supply, under section 66G or 66H of that Act.
- (4) Once a company enters water administration it does not cease to be a water company for the purposes of this Part by reason only of ceasing to satisfy Condition 1 or 2.

195 “Water functions”

- (1) This section defines a water company’s “water functions” for the purposes of this Part.
- (2) The water functions of a company appointed as a water undertaker or sewerage undertaker are the functions arising from the appointment.
- (3) The water functions of a licensed water supplier are activities relating to any introduction of water by the supplier which has been designated as a strategic supply, or a collective strategic supply, under section 66G or 66H of the Water Industry Act 1991.

196 “The Minister”

- (1) This section defines “the Minister” in this Part.
- (2) For a water undertaker whose area is wholly or mainly in Wales “the Minister” means the Welsh Ministers.
- (3) For other water undertakers “the Minister” means the Secretary of State.
- (4) For a sewerage undertaker whose area is wholly or mainly in Wales “the Minister” means the Welsh Ministers.
- (5) For other sewerage undertakers “the Minister” means the Secretary of State.
- (6) For a company holding a water supply licence “the Minister” means the Secretary of State.

197 Insolvency Act expressions

An expression used in this Part and in the Insolvency Act 1986 has the same meaning in this Part as in that Act.

3: Water administration order

198 Nature of order

- (1) A water administration order is an order of the High Court appointing a person to manage the affairs, business and property of a water company.
- (2) A person appointed by a water administration order in respect of a water company may be referred to as the company’s water administrator.

199 Procedure

- (1) A water administration order may be made by the High Court on the application of –
 - (a) the Minister, or
 - (b) the Water Services Regulation Authority.
- (2) The Water Services Regulation Authority may apply for a water administration order only with the consent of the Minister.
- (3) Rules under section 411 of the Insolvency Act 1986 (general company insolvency rules) shall include provision about giving notice of applications under this section.

- (4) On hearing an application the court may –
 - (a) grant it;
 - (b) dismiss it;
 - (c) adjourn (conditionally or unconditionally);
 - (d) make an interim order;
 - (e) make any other order.
- (5) An interim order may, in particular, restrict powers of the company or its directors –
 - (a) by requiring the court's consent,
 - (b) by requiring consent of a person qualified to act as an insolvency practitioner, or
 - (c) in any other way.
- (6) An application under this section may be withdrawn only with the court's permission.
- (7) The Secretary of State must consult the Welsh Ministers before making or consenting to an application in respect of a company holding a water supply licence.

200 Interim moratorium

- (1) This section applies to the period –
 - (a) beginning with the making of an application for a water administration order, and
 - (b) ending when the application is granted or dismissed.
- (2) No resolution may be passed for the winding up of the company.
- (3) No order may be made for the winding up of the company (but this subsection does not prevent the presentation of a petition for winding up).
- (4) A right of forfeiture by re-entry may be exercised in respect of premises let to the company only –
 - (a) with the court's permission, and
 - (b) subject to any terms imposed by the court.
- (5) No step may be taken to enforce security over the company's property except –
 - (a) with the court's permission, and
 - (b) subject to any terms imposed by the court.
- (6) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement, conditional sale agreement, chattel-leasing agreement or retention of title agreement except –
 - (a) with the court's permission, and
 - (b) subject to any terms imposed by the court.
- (7) No execution or other legal process (including the appointment of an administrative receiver and the exercise of an administrative receiver's functions) may be commenced or continued in respect of the company except –
 - (a) with the court's permission, and
 - (b) subject to any terms imposed by the court.
- (8) Legal proceedings (including enforcement proceedings under section 18 of the Water Industry Act 1991) may be commenced or continued in respect of the company only –
 - (a) with the court's permission, and
 - (b) subject to any terms imposed by the court.

4: Grounds for order

201 Breach of main duty

- (1) The court may make a water administration order in respect of a water company if satisfied that any of the following grounds applies.
- (2) Ground 1 is that –
 - (a) the company has breached a main duty,
 - (b) no notice has been served under section 19 of the Water Industry Act 1991 (breach trivial, dealt with or unenforceable) in respect of the breach, and
 - (c) the breach is sufficiently serious to make it inappropriate for the company to continue as a water company.
- (3) Ground 2 is that –
 - (a) the company is likely to breach a main duty,
 - (b) a notice is not likely to be served under section 19 of the Water Industry Act 1991 (breach trivial, dealt with or unenforceable) in respect of the breach, and
 - (c) the breach would be sufficiently serious to make it inappropriate for the company to continue as a water company.
- (4) Ground 3, which applies only to licensed water suppliers, is that –
 - (a) the company has caused a breach of a main duty by a water undertaker, and
 - (b) the company's behaviour is sufficiently serious to make it inappropriate for the company to continue as a licensed water supplier.
- (5) "Main duty" means –
 - (a) the duty imposed on a water undertaker by section 37 of the Water Industry Act 1991 (general duty to maintain water supply system),
 - (b) the duty imposed on a sewerage undertaker by section 94 of that Act (general duty to provide sewerage system), and
 - (c) a condition or requirement imposed under or by virtue of a water supply licence under section 17A of that Act.

202 Failure to co-operate

- (1) The court may make a water administration order in respect of a water company if satisfied that any of the following grounds applies.
- (2) Ground 1 is that –
 - (a) the company has breached an enforcement order within the meaning of section 18(7) of the Water Industry Act 1991,
 - (b) no application under section 21 of that Act questioning the validity of the enforcement order can be brought or is pending, and
 - (c) the breach is sufficiently serious to make it inappropriate for the company to continue as a water company.
- (3) Ground 2 is that –
 - (a) the company is likely to breach an enforcement order within the meaning of section 18(7) of the Water Industry Act 1991,
 - (b) no application under section 21 of that Act questioning the validity of the enforcement order can be brought or is pending, and
 - (c) the breach would be sufficiently serious to make it inappropriate for the company to continue as a water company.
- (4) Grounds 1 and 2 apply to a provisional enforcement order only if it has been confirmed under section 18(4) of that Act.

- (5) Ground 3, which applies only to water undertakers and sewerage undertakers, is that –
 - (a) arrangements have been certified by the Minister or the Water Services Regulation Authority as necessary in connection with a proposal to make an appointment or variation replacing a company as a water undertaker or sewerage undertaker in accordance with section 7(4)(c) of that Act (appointment or variation in accordance with conditions of original appointment), and
 - (b) the company is unable or unwilling to participate adequately in the arrangements.

203 Financial instability

- (1) The court may make a water administration order in respect of a water company if satisfied that any of the following grounds applies.
- (2) Ground 1 is that the company is unable to pay its debts.
- (3) Ground 2 is that the company is likely to become unable to pay its debts.
- (4) A company is unable to pay its debts if (and only if) it is –
 - (a) a limited company treated as unable to pay its debts in accordance with section 123 of the Insolvency Act 1986, or
 - (b) an unregistered company treated as unable to pay its debts in accordance with sections 222 to 224 of that Act.
- (5) Ground 3 is that –
 - (a) the Secretary of State has certified that it would be appropriate to petition for the winding up of the company under section 124A of the Insolvency Act 1986 (public interest), and
 - (b) it would be fair for the company to be wound up if it were not a water company.

204 Order instead of other process

The court may make a water administration order in the circumstances described in sections 210 or 211.

5: Effect of order

205 Administration objectives

- (1) There are three administration objectives in respect of a water company (W) in water administration –
 - (a) the “transfer objective”: to transfer to one or more other companies as much of W’s business as is necessary to ensure the proper performance of the water functions,
 - (b) the “rescue objective”: to rescue W as a going concern, and
 - (c) the “interim objective”: to ensure the proper performance by W of the water functions.
- (2) “The water functions” means the water functions vested in W immediately before it went into water administration (or which it acquires while in water administration).
- (3) A water company’s water administrator must pursue the transfer objective.
- (4) But in the case of a water administration order made under Ground 1 or 2 of section 203, the water administrator must pursue the rescue objective unless the water administrator thinks that –
 - (a) the rescue objective is not reasonably practicable, or
 - (b) the transfer objective would result in more effective performance of the water functions.
- (5) Pursuit of the rescue objective may include transferring part of a water company’s business.
- (6) Until the transfer or rescue objective has been achieved, the water administrator must pursue the interim objective.

206 Transfers

- (1) In preparation for pursuit of the transfer objective under section 205 a water administrator may transfer all or part of W’s business to a subsidiary of W.
- (2) Sections [replication of Schedule 2 to the Water Industry Act 1991 – transfer schemes] apply to transfers under subsection (1).

207 Application of general administration law

- (1) The provisions of Schedule B1 to the Insolvency Act 1986 (administration) specified in the Table apply to water administration with –
 - (a) the general modifications specified in subsection (2),
 - (b) the particular modifications specified in the Table, and
 - (c) any other necessary modifications.
- (2) The general modifications are that –
 - (a) a reference to administration is to be treated as a reference to water administration,
 - (b) a reference to the company is to be treated as a reference to the water company,
 - (c) a reference to an administration order is to be treated as a reference to a water administration order, and
 - (d) a reference to an administrator is to be treated as a reference to a water administrator.
- (3) A power of the Secretary of State under a provision applied by this section may be exercised in relation to a company holding a water supply licence only after consulting the Welsh Ministers.

TABLE OF APPLIED PROVISIONS

SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 5	Status of administrator	
Para. 6	Qualification to act	
Para. 40(1)(a)	Dismissal of pending winding-up petition	Para. 40(1)(a) does not prevent the operation of section 204 below.
Para. 41	Dismissal of administrative or other receiver	
Para. 42	Moratorium on insolvency proceedings	Ignore sub-paras. (4) and (5).
Para. 43	Moratorium on other legal process	
Para. 44	Interim moratorium	Para. 44 is not applied – but see section 200 above.
Para. 45	Publicity	
Para. 46	Announcement of appointment	The requirement in sub-para. (4) is to send a notice to the Water Services Regulation Authority (as well as the registrar of companies, where the water company is a registered company).
Paras. 47 & 48	Statement of affairs	

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 49	Administrator's proposals	(a) The statement must be sent to the Minister and the Water Services Regulation Authority (as well as the people listed in sub-para. (4)). (b) If the water administrator thinks that the rescue objective is not reasonably practicable, the statement must explain why.
Para. 50	Creditors' meeting	The water administrator may arrange for anything which may be done at a creditors' meeting to be done instead by correspondence.
Para. 54	Revision of administrator's proposals	(a) The water administrator must send a draft of proposed revisions to (i) the Minister, (ii) the Water Services Regulation Authority, (iii) the creditors, and (iv) the registrar of companies, if the water company is a registered company; but this modification does not apply if the water administrator is satisfied that the proposed revision is not substantial. (b) Ignore sub-paras. (5) and (6).
Para. 59	General powers	
Para. 60 and Schedule 1	General powers	(a) The water administrator may act on behalf of the water company in exercising a function under an enactment. (b) The water administrator may appoint a person with experience of the water industry to assist the administrator in managing the water company's affairs (including exercising functions under enactments).
Para. 61	Directors	
Para. 62	Power to call meetings of creditors	
Para. 63	Application to court for directions	
Para. 64	Management powers	
Para. 65	Distribution to creditors	
Para. 66	Payments	The reference to the purpose of administration is a reference to the relevant administration objectives.
Para. 67	Taking custody of property	
Para. 68	Management	(a) A reference to proposals is to be treated as a reference to the water administrator's proposals set out in the statement under para. 49 (with any revisions). (b) Ignore sub-para. (3).
Para. 69	Agency	
Para. 70	Floating charges	
Para. 71	Fixed charges	The hypothetical sale mentioned in para. 71(3)(b) must be consistent with the relevant administration objectives.

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 72	Hire-purchase property	The hypothetical sale mentioned in para. 71(3)(b) must be consistent with the relevant administration objectives.
Para. 73	Protection for secured and preferential creditors	
<i>Para. 74</i>	<i>Challenge to administrator's conduct</i>	<i>Para. 74 is not applied – but see section 208 below.</i>
Para. 75	Misfeasance	
Para. 79	<i>Court ending administration on application of administrator</i>	<i>Para. 79 is not applied – but see section 209 below.</i>
Para. 83	Moving from administration to creditors' voluntary liquidation	The water administrator may not give a notice under sub-para. (3) without the consent of – (a) the Minister, or (b) the Water Services Regulation Authority.
Para. 84	Termination: no more assets for distribution	The water administrator may not give a notice under sub-para. (1) without the consent of – (a) the Minister, or (b) the Water Services Regulation Authority.
<i>Para. 85</i>	<i>Discharge of administration order</i>	<i>Para. 85 is not applied – but see section 208 below.</i>
Para. 86	Notice to Companies Registrar of end of administration	The water administrator must send a copy of the court order to the Water Services Regulation Authority as well as to the companies registrar (or instead of the companies registrar if the water company is not a registered company).
Para. 87	Resignation	
Para. 88	Removal	
Para. 89	Disqualification	
Paras. 90 & 91	Replacement	An application under para. 91(1) may be made only by – (a) the Minister, (b) the Water Services Regulation Authority, or (c) any continuing water administrator.
Para. 98	Discharge	
Para. 99	Vacation of office: charges and liabilities	
Paras. 100-103	Joint administrators	An application under para. 103 may be made only by – (a) the Minister, (b) the Water Services Regulation Authority, or (c) a water administrator.
Para. 104	Validity	
Para. 106 (and section 430 and Schedule 10)	Fines	

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Paras. 107 – 109	Extension of time limits	The consent required for the variation of a period in accordance with para. 108 is the consent of the Minister or the Water Services Regulation Authority (whichever applied for the water administration order).
<i>Para. 110</i>	<i>Amendment of provisions about time</i>	<i>An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this section (whether or not in the same way as it amends the provision as it applies otherwise).</i>
Para. 111	Interpretation	

208 Challenge to water administrator’s conduct of water company

- (1) A creditor or member of a water company in water administration may apply to the court claiming that the administrator is acting, has acted or proposes to act so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) The Minister may apply to the court claiming that a water administrator –
 - (a) is not pursuing the relevant administration objectives as quickly or as efficiently as is reasonably practicable,
 - (b) is not pursuing the correct administration objective,
 - (c) is acting in a way that involves a contravention of a requirement imposed on the water company by or by virtue of an enactment.
- (3) The Water Services Regulation Authority may apply to the court, with the Minister’s consent, claiming any of the matters specified in subsection (2).
- (4) The court may –
 - (a) grant relief;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) make any other order it thinks appropriate.
- (5) In particular, an order of the court may –
 - (a) regulate the water administrator’s exercise of a function;
 - (b) require the water administrator to do or not do a specified thing;
 - (c) require a creditors’ meeting to be held for a specified purpose;
 - (d) provide for the water administrator’s appointment to cease to have effect;
 - (e) make consequential provision.
- (6) An order may be made whether or not the action complained of –
 - (a) is within the water administrator’s powers;
 - (b) was taken in reliance on an order under paragraph 71 or 72 of Schedule B1 to the Insolvency Act 1986 (as applied by section 207 above).
- (7) An order may not be made if it would impede or prevent pursuit of the relevant administration objectives.
- (8) The Secretary of State must consult the Welsh Ministers before making or consenting to an application in respect of a company holding a water supply licence.

209 Discharge of water administration order

- (1) A water administrator may apply to the court for the water administration order to be discharged on the grounds that the relevant administration objectives have been achieved.
- (2) The Minister may apply to the court for the water administration order to be discharged on the grounds that the relevant administration objectives need no longer be pursued.
- (3) The Water Services Regulation Authority may apply to the court for the water administration order to be discharged on the grounds that the relevant administration objectives need no longer be pursued.
- (4) On an application under this paragraph the court may –
 - (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order;
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).
- (5) The Secretary of State must consult the Welsh Ministers before making an application in respect of a company holding a water supply licence.

6: Relationship with other processes

210 Restrictions on winding-up orders

- (1) This section applies where a petition for the winding-up of a water company is presented by a person other than the Minister.
- (2) The court is not to exercise its powers on a winding-up petition unless –
 - (a) notice of the petition has been served both on the Minister and on the Water Services Regulation Authority, and
 - (b) a period of at least fourteen days has elapsed since the service of those notices.
- (3) If an application for a water administration order in relation to the company is made to the court before a winding-up order is made on the petition, the court may make a water administration order instead of exercising its powers on a winding-up petition.
- (4) References in this section to the court's powers on a winding-up petition are references to –
 - (a) its powers under section 125 of the Insolvency Act 1986 (other than its power of adjournment), and
 - (b) its powers under section 135 of that Act.

211 Restrictions on voluntary winding up

- (1) A water company has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Such permission may be granted only on an application made by the company.
- (3) The court is not to grant permission on such an application unless –
 - (a) notice of the application has been served both on the Minister and on the Water Services Regulation Authority, and
 - (b) a period of at least fourteen days has elapsed since the service of those notices.
- (4) If an application for a water administration order in relation to the company is made to the court after an application for permission under this section has been made and before it is granted, the court may make a water administration order instead of granting permission.

212 Restrictions on making of ordinary administration orders

- (1) This section applies where an ordinary administration application is made in relation to a water company by a person other than the Minister.
- (2) The court must dismiss the application if –
 - (a) a water administration order is in force in relation to the company, or
 - (b) a water administration order has been made in relation to the company but is not yet in force.
- (3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless –
 - (a) notice of the application has been served both on the Minister and on the Water Services Regulation Authority,
 - (b) a period of at least fourteen days has elapsed since the service of those notices, and
 - (c) no application for a water administration order is outstanding.
- (4) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a water administration order.
- (5) Upon the making of a water administration order in relation to a water company, the court must dismiss any ordinary administration application made in relation to that company which is outstanding.
- (6) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the Insolvency Act 1986.

213 Restrictions on administrator appointments by creditors etc.

- (1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if –
 - (a) a water administration order is in force in relation to the company,
 - (b) a water administration order has been made in relation to the company but is not yet in force, or
 - (c) an application for a water administration order in respect of the company is outstanding.
- (2) In the case of a water company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 14 or 22 of Schedule B1 to the 1986 Act takes effect only if each of the conditions mentioned in subsection (3) is met.
- (3) Those conditions are –
 - (a) that a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the 1986 Act (documents to be filed or lodged for appointment of administrator) has been served both on the Minister and on the Water Services Regulation Authority,
 - (b) that a period of fourteen days has elapsed since the service of those copies,
 - (c) that there is no outstanding application to the court for a water administration order in relation to the company, and
 - (d) no water administration order has been made (whether or not it has come into force).
- (4) Paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for a water administration order at any time before the appointment takes effect.

214 Enforcement of security

A person may not enforce a security over a water company’s property unless the person has given 14 days’ notice to –

- (a) the Minister, and
- (b) the Water Services Regulation Authority.

7: General

215 Repeal

The following provisions of the Water Industry Act 1991 cease to have effect.

<i>Provision</i>	<i>Subject</i>
Sections 23 to 26	Special administration regime for water undertakers and suppliers
Paragraph 1(3) and (3A) of Schedule 2	Application of Schedule (which deals with transfer schemes) to cases of special administration
Schedule 3	Application and modification of provisions of Insolvency Act to special administration scheme

216 Power to adapt insolvency law

- (1) The Secretary of State may by order make provision –
 - (a) applying (with or without modification) a provision of insolvency law in relation to water administration;
 - (b) modifying a provision of insolvency law in its application in relation to water administration;
 - (c) disapplying a provision of insolvency law in relation to water administration;
 - (d) amending this Part to reflect a change in insolvency law.
- (2) “Insolvency law” means an enactment about (i) insolvency, (ii) liquidation, (iii) administration, (iv) receivership, (v) composition with creditors, (vi) schemes of arrangements, or (vii) any related or similar process.
- (3) An order –
 - (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

PART 5

SUSTAINABLE DRAINAGE

1: Introduction

217 Overview

- (1) This Part –
 - (a) requires the setting of national standards for sustainable drainage,
 - (b) prohibits the construction of certain new drainage systems without approval of (generally) a local authority,
 - (c) requires approval of drainage systems to take account of the national standards on sustainable drainage, and
 - (d) requires a local authority to adopt and maintain certain drainage systems once constructed.
- (2) The Table describes the contents of this Part.

<i>Group of sections</i>	<i>Topic</i>
2	Key concepts
3	National standards
4	Approval of construction
5	Construction
6	Adoption
7	Connection to public sewers

218 Ministerial responsibility

- (1) This section defines “the Minister” for this Part.
- (2) In relation to a drainage system which is or is to be wholly or mainly in Wales, “the Minister” means the Welsh Ministers.
- (3) In any other case “the Minister” means the Secretary of State.

2: National standards

219 Sustainable drainage

- “Sustainable drainage” means managing rainwater with the aim of –
- (a) reducing damage from flooding of all kinds,
 - (b) improving water quality,
 - (c) protecting and improving the environment,
 - (d) protecting health and safety, and
 - (e) ensuring the stability and durability of drainage systems.

220 Drainage system

- (1) In this Part “drainage system” means any structure designed to receive rainwater except –
 - (a) a public sewer, or
 - (b) a natural watercourse.
- (2) The reference to a structure includes a reference to –
 - (a) any part of an existing or proposed structure, and
 - (b) any feature or aspect of a design that is designed to receive or facilitating the receipt of rainwater.
- (3) “Public sewer” has the meaning given by section 219(1) of the Water Industry Act 1991.
- (4) “Natural watercourse” means a river or stream.

3: National standards

221 Duty to publish

- (1) The Minister shall publish national standards for the implementation of sustainable drainage.
- (2) National standards must address the way in which drainage systems –
 - (a) are constructed, and
 - (b) operate.
- (3) The Minister must consult before publishing national standards.
- (4) National standards are national policies for the purposes of –
 - (a) section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 (preparation of local development documents - England), and
 - (b) section 62(5)(a) of that Act (local development plan – Wales).

4: Approval of construction

222 Approving body

- (1) For the purposes of the operation of this Part in relation to England the approving body for a drainage system is –
 - (a) the unitary authority for the area in which it is to be constructed, or
 - (b) if there is no unitary authority, the county council for the area.
- (2) “Unitary authority” means –
 - (a) the council of a county for which there are no district councils;
 - (b) the council of a district in an area for which there is no county council;
 - (c) a county borough council;
 - (d) the council of a London borough;
 - (e) the Common Council of the City of London;
 - (f) the Council of the Isles of Scilly.
- (3) For the purposes of the operation of this Part in relation to Wales the approving body for a drainage system is the county council or county borough council for the area in which it is to be constructed.
- (4) The Minister may by order appoint a body as approving body for drainage systems in a specified area (instead of the body that would be the approving body under subsection (1) or (3)).

- (5) An order under subsection (4) –
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of –
 - (i) either House of Parliament, in the case of an order of the Secretary of State, or
 - (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.

223 Requirement of approval before construction

- (1) The construction of a drainage system may not be commenced without the approval of the approving body.
- (2) The Minister may by order provide exceptions to subsection (1).
- (3) The Minister shall have regard to the desirability of using the power in subsection (2) to exempt from the requirement for approval any drainage system which is constructed wholly on one property and is unlikely to affect drainage systems on other properties.
- (4) An order under subsection (2) –
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of –
 - (i) either House of Parliament, in the case of an order of the Secretary of State, or
 - (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.
- (5) [Stop-notice or similar procedure for enforcement of subsection (1).]

224 Application for approval

- (1) An application for approval for the purposes of section 223 must contain or be accompanied by –
 - (a) such information as the approving body may require, and
 - (b) any fee charged in accordance with section 225.
- (2) On considering an application for approval the approving body must –
 - (a) grant it, if satisfied that the drainage system if constructed as proposed will comply with the national standards for sustainable drainage, or
 - (b) refuse it, if not satisfied.
- (3) The grant of an application for approval under subsection (2)(a) may rely on –
 - (a) conditions about the construction of the drainage system agreed between the approving body and the applicant;
 - (b) modifications of the proposal for the construction of the drainage system agreed between the approving body and the applicant.
- (4) Approval may be granted on condition that it takes effect only if and when the applicant provides a non-performance bond in accordance with section 229.
- (5) As soon as is reasonably practicable after determining an application for approval the approving body must notify the applicant.

225 Application fees

- (1) An approving body may publish a scale of fees for applications under section 223 or 226.
- (2) A scale must be set with the aim of ensuring that income from fees does not exceed the costs of –
 - (a) determining applications, and
 - (b) monitoring the construction and operation of drainage systems following approval.

226 Alteration of proposals

- (1) Where proposals were approved for the purposes of section 223, the applicant for approval may apply for approval of alterations of the proposals.
- (2) Section 224 applies as to the original application.
- (3) A reference to approved proposals includes a reference to approved altered proposals.

227 Sewerage undertaker

- (1) Before determining an application for approval under section 223 the approving body must consult any relevant sewerage undertaker.
- (2) As soon as is reasonably practicable after determining an application for approval the approving body must notify any relevant sewerage undertaker.
- (3) “Relevant sewerage undertaker” means any sewerage undertaker with whose public sewer the drainage system is proposed to communicate.

5: Construction

228 Inspection

- (1) This section applies where a drainage system is being constructed in accordance with approval under section 223.
- (2) The approving body may inspect the construction work from time to time in order to determine whether it complies with the proposals.

229 Non-performance bond

- (1) A non-performance bond is a bond of a kind and to a value specified in a condition subject to which an approving body grants an application for approval under section 223.
- (2) The effect of the bond must be that the value of the bond is payable to the approving body if it certifies that the drainage system –
 - (a) has been or is being constructed in a manner that is not in accordance with the approved proposals, or
 - (b) is unlikely to be completed.
- (3) Before giving a certificate under subsection (2) the approving body must consult the developer.
- (4) Where an approving body gives a certificate under subsection (2) –
 - (a) it must notify the developer,
 - (b) the developer must transfer to the approving body any rights specified for that purpose in the application for approval,
 - (c) the approving body may undertake any work necessary to ensure that the drainage system is completed in such a manner as to make it likely to operate in compliance with national standards for sustainable drainage,
 - (d) the sums received under the bond may be applied to the expenses of that work, and any excess is to be paid to the applicant for approval, and
 - (e) the developer and any other person must co-operate with the approving body for the purposes of paragraphs (b) and (c).
- (5) “Developer” means the person who applied for approval under section 224.

- (6) [Enforcement of subsection (4)(e)].
- (7) In requiring a non-performance bond an approving body must specify a value which does not exceed the best estimate of the maximum likely cost of work required to ensure that the drainage system accords with the approved proposals.

230 Certificate of satisfactory construction

- (1) This section applies where the approving body is satisfied that a drainage system for which approval was given under section 223 has been constructed in accordance with the approved proposals.
- (2) The approving body must give the developer a certificate to that effect.
- (3) The approving body must monitor the operation of the drainage system to see whether its operation is in accordance with the approved proposals.
- (4) In this section “developer” means the applicant for approval under section 224.

6: Adoption

231 Duty to adopt

- (1) This section applies where an approving body is satisfied that –
 - (a) a drainage system constructed in accordance with approval under section 223 is operating in accordance with the approved proposals, and
 - (b) the operation of the drainage system is likely to affect the operation of drainage systems for other properties.
- (2) The approving body must notify the developer that it is adopting the drainage system in accordance with section 232.
- (3) “Developer” means the applicant for approval under section 224.
- (4) The Minister may –
 - (a) give guidance to approving bodies (to which they must have regard) about the application of subsection (1)(b);
 - (b) make provision by order about the meaning and application of subsection (1)(b).
- (5) An order under subsection (4)(b) –
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of –
 - (i) either House of Parliament, in the case of an order of the Secretary of State, or
 - (ii) the National Assembly for Wales, in the case of an order of the Welsh Ministers.

232 Process of adoption

- (1) This section applies where an approving body gives a notice of adoption under section 231.
- (2) The approving body becomes responsible for maintaining the drainage system, in compliance with national standards on sustainable drainage.
- (3) The approving body must –
 - (a) notify any relevant sewerage undertaker,
 - (b) notify any landowners who the approving body thinks may be affected, and
 - (c) publicise the adoption in any other way it thinks appropriate.
- (4) The approving body must release the non-performance bond (if unused).

- (5) Any person must co-operate with the approving body in any work that it carries out or seeks to carry out for the purpose of its responsibility under subsection (2).
- (6) [Enforcement of subsection (5).]
- (7) “Relevant sewerage undertaker” means any sewerage undertaker with whose public sewer the drainage system communicates or is proposed to communicate.

7: Connection to public sewers

233 Right to connect

- (1) After section 106(1A) of the Water Industry Act 1991 (right to connect to public sewers) insert –
“(1B) The right under subsection (1) is subject to section 106A.”

- (2) After section 106 insert–

“106A Sustainable drainage

- (1) A person may exercise the right under section 106(1) in respect of surface water only if –
 - (a) the construction of the drainage system that is to communicate with the public sewer was approved under section 223 of the Water and Flood Management Act 2009 (sustainable drainage standards), and
 - (b) the proposals for approval included a proposal for the communication with the public sewer.
- (2) This section does not apply to the continuation of a communication with a public sewer where the communication was made before the commencement of section 233 of the Flood and Water Management Act 2009.”

PART 6

WATER INDUSTRY REGULATION

1: Undertakers

234 Modifying conditions of appointment

After section 13 of the Water Industry Act 1991 (modification by agreement) insert –

“13A Standard conditions

- (1) A “standard condition” is a condition of –
 - (a) every appointment of a water undertaker whose area is wholly or mainly in England,
 - (b) every appointment of a water undertaker whose area is wholly or mainly in Wales,
 - (c) every appointment of a sewerage undertaker whose area is wholly or mainly in England, or
 - (d) every appointment of a sewerage undertaker whose area is wholly or mainly in Wales.
- (2) During the initial period the Minister may determine that new standard conditions are to be included in existing appointments.
- (3) Sections 13B to 13F apply in relation to the inclusion of a new standard condition as they apply in relation to the modification of an existing standard condition.

- (4) In subsection (2) “the initial period” means the period of 1 year beginning with the day on which this section comes into force.

13B Power to modify standard conditions

- (1) The Authority may modify a standard condition of appointment under this Chapter if –
- (a) the Authority has given notice in accordance with section 13C, and
 - (b) Condition 1 or 2 of section 13E is satisfied.
- (2) The Authority may make consequential amendments to the appointments of the relevant undertakers affected by the modification of a standard condition.

13C Notice of intended modification of standard conditions

- (1) A notice of the Authority’s intention to modify a standard condition must –
- (a) specify the modification,
 - (b) give the Authority’s reasons, and
 - (c) specify a period during which representations by relevant undertakers affected by the modification may be made.
- (2) The period for representations must –
- (a) begin with the day after publication of the notice, and
 - (b) last for at least 28 days.
- (3) The Authority must –
- (a) publish a notice in a manner that it thinks will bring it to the attention of persons likely to be affected, and
 - (b) give a copy of the notice to –
 - (i) each relevant undertaker affected by the modification, and
 - (ii) the Minister.
- (4) In this section and sections 13D and 13E “the Minister” means –
- (a) in relation to relevant undertakers whose areas are wholly or mainly in England, the Secretary of State, and
 - (b) in relation to relevant undertakers whose areas are wholly or mainly in Wales, the Welsh Ministers.

13D Directions not to modify standard conditions

- (1) The Minister may direct the Authority not to make a modification.
- (2) A direction must be given during the period for representations under section 13C(1)(c).

13E Result of consultation on modification of standard conditions

- (1) The Authority must consider any representations made in accordance with section 13C by relevant undertakers affected by the modification.
- (2) Having considered the representations, the Authority may make the modification if one of the following conditions is satisfied.
- (3) Condition 1 is that –
- (a) the absolute proportion of objecting representations was less than the amount specified by the Minister by order, and
 - (b) the weighted proportion of objecting representations was less than the amount specified by the Minister by order.

- (4) For the purposes of Condition 1 –
 - (a) “representation” means a representation made by a relevant undertaker in accordance with section 13C,
 - (b) “objecting representation” means a representation which includes an unqualified statement that the relevant undertaker objects to the proposed modification,
 - (c) the “absolute proportion of objections” means the proportion of representations which are objecting representations, and
 - (d) the “weighted proportion of objections” means the proportion of representations which are objecting representations calculated in accordance with a process specified by the Minister by order, designed to adjust the proportion to reflect relevant undertakers’ market share.
- (5) Condition 2 is that the Authority is satisfied that –
 - (a) the standard condition imposes a burden on relevant undertakers,
 - (b) the modification would remove or reduce the burden without being contrary to the interests of consumers, and
 - (c) the modification would not place any relevant undertaker at a competitive disadvantage (compared to others).

13F Orders under section 13E

- (1) An order under section 13E –
 - (a) may make different provision for different cases or circumstances,
 - (b) may include supplemental, consequential and transitional provision, and
 - (c) shall be made by statutory instrument.
- (2) An order may not be made unless a draft has been laid before and approved by resolution of –
 - (a) each House of Parliament, in the case of an order made by the Secretary of State, and
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.”

235 Penalties

- (1) In section 22C(1) of the Water Industry Act 1991 (time limits on the imposition of financial penalties) for “twelve months” substitute “five years”.
- (2) But subsection (1) does not apply in relation to a contravention occurring before 1st April 2009.

236 Information

- (1) For section 203(1) of the Water Industry Act 1991 (power to acquire information for enforcement purposes) substitute –
 - “(1) The Secretary of State or the Director may serve a notice under subsection (2) in respect of a company if of the opinion that Condition 1 or 2 is satisfied.
- (1A) Condition 1 is that the company holds an appointment as a relevant undertaker and –
 - (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,
 - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding a licence under Chapter 1A of Part 2 of this Act of a condition of the licence or a statutory or other requirement enforceable under section 18,

- (c) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
 - (d) a company has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.
- (1B) Condition 2 is that the company holds a licence under Chapter 1A and –
- (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18, or
 - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18.
- (1C) The notice may be served –
- (a) on any person;
 - (b) for any purpose connected with powers under Chapter II of Part II of this Act.”
- (2) The reference to the Water Industry Act 1991 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) is to be treated as a reference to the Act as amended by this section.

237 Charges for inspections

- (1) After section 86 of the Water Industry Act 1991 (water quality assessors) insert –

“86A Charges

- (1) The Secretary of State may require water undertakers and licensed water suppliers to pay charges in connection with –
 - (a) the performance of functions by persons appointed under section 86, and
 - (b) other functions performed by the Secretary of State in connection with this Part.
- (2) The Secretary of State must by order specify the activities in respect of which charges may be imposed under subsection (1).
- (3) In imposing charges on a water undertaker or licensed water supplier under subsection (1) the Secretary of State must aim to ensure that so far as is reasonably practicable the charges reflect the cost of performing functions in respect of that undertaker or supplier.
- (4) For that purpose the Secretary of State must –
 - (a) aim to reflect costs taking one year with another, and
 - (b) include a reasonable proportion of costs incurred for general purposes rather than in connection with a specific undertaker or supplier.
- (5) A reference to the Secretary of State in subsections (1) to (4) is to be treated as a reference to the Welsh Ministers in respect of –
 - (a) water undertakers whose areas are wholly or mainly in Wales, and
 - (b) licensed water suppliers if and in so far as their licensed activities use water supply systems of water undertakers whose areas are wholly or mainly in Wales.

- (6) An order under subsection (2) –
 - (a) may make provision that applies generally or only in specified cases or circumstances,
 - (b) may make different provision for different cases or circumstances,
 - (c) may include incidental, consequential and transitional provision,
 - (d) shall be made by statutory instrument, and
 - (e) shall be subject to annulment in pursuance of a resolution of –
 - (i) in the case of an order of the Secretary of State, either House of Parliament, or
 - (ii) in the case of an order of the Welsh Ministers, the National Assembly for Wales.”
- (2) The present section 86A (quality of supply: complaints) is renumbered 86B; (and paragraph 27(3) of Schedule 7 to the Water Act 2003 – consequential amendments – therefore refers to the new section 86B).

238 Consolidation of regulatory regimes

- (1) The Minister may make regulations (“water regulations”) for the general purpose of regulating the use of water resources.
- (2) In making water regulations the Minister shall have regard to the desirability of reducing burdens by ensuring that so far as is reasonably practicable the system for regulating the use of water resources is combined with, or is consistent with, systems for regulating pollution or other matters.
- (3) Water regulations –
 - (a) may be combined with regulations under section 2 of the Pollution Prevention and Control Act 1999 (“pollution regulations”),
 - (b) may, in particular, make provision of any kind or about any matter that is or may be provided for in or in relation to pollution regulations (for which purpose a reference to emissions in Schedule 1 to that Act is to be treated as including a reference to use of water),
 - (c) may, in particular, make provision that replicates, or has similar effect to, any provision made by, by virtue of or in relation to the Water Resources Act 1991 or the Water Act 2003 (as they have effect before the coming into force of this section),
 - (d) apply any provision about fees, powers of entry or any other procedural matter provided for under or by virtue of the Environment Act 1995, and
 - (e) make consequential amendment of any enactment.
- (4) In subsection (1) the reference to the use of water resources –
 - (a) includes a reference to taking, diverting or impounding water from any natural source and applying it to any purpose, but
 - (b) does not include a reference to the use, by a person other than a water undertaker, of water drawn from a water mains or pipe forming part of a system maintained by a water undertaker under section 37 of the Water Industry Act 1991 (general duty to maintain water supply system).
- (5) Water regulations must specify to what uses of water resources they apply.
- (6) In so far as the Minister thinks it necessary or desirable in consequence of water regulations, the regulations may repeal or amend provisions of the Water Resources Act 1991 or the Water Act 2003.
- (7) “The Minister” means –
 - (a) in respect of anything done in or in relation to England, the Secretary of State, and
 - (b) in respect of anything done in or in relation to Wales, the Welsh Ministers.
- (8) Section 2(6) to (9) of the Pollution Prevention and Control Act 1999 (procedure) apply to water regulations.

2: Provision of infrastructure

239 Overview

- (1) This group of sections inserts provisions into the Water Industry Act 1991 so as to allow the regulation of the provision of infrastructure for the use of water undertakers and sewerage undertakers.
- (2) Each of the following sections in this group inserts a new section into that Act (numbered from section 36A); together they are to form a new Part 2A, with the title Regulation of the Provision of Infrastructure”.

240 Section 36A: Regulations

- (1) The Minister may by regulations make provision for the Authority to regulate the provision of infrastructure for the use of water undertakers or sewerage undertakers.
- (2) The regulations may, in particular –
 - (a) apply provisions of Part 2 with or without modifications;
 - (b) make provision similar to provision of Part 2;
 - (c) apply Part 4 of the Flood and Water Management Act 2009 (water administration regime) with or without modifications.
- (3) The regulations must specify the activities to which they apply; in particular, the regulations may –
 - (a) apply to designing, constructing, owning and operating infrastructure, and
 - (b) define “infrastructure”.
- (4) Sections 36B to 36D specify other kinds of provision that the regulations may make.
- (5) In those sections “infrastructure project” means a project to do any of the things specified in subsection (3).
- (6) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers as to regulations made by the Secretary of State.

241 Section 36B: Tendering

- (1) Regulations under section 36A may –
 - (a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;
 - (b) allow the Authority to specify one or more infrastructure projects which must be put out to tender;
 - (c) allow the Minister to delegate the power under paragraph (a) to the Authority.
- (2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.
- (3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose.
- (4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.

- (5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations –
 - (a) may specify factors to be taken into account in considering bids;
 - (b) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept.

242 Section 36C: Criteria for tendering

- (1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1).
- (2) Before exercising a power by virtue of section 36B(1) the Minister must consult –
 - (a) the Authority, and
 - (b) persons who in the Minister’s opinion represent the interests of persons likely to be affected.
- (3) The Authority must publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1) (which may supplement, but not contradict, criteria specified under subsection (1) above).
- (4) The Authority must consult before –
 - (a) publishing guidance under subsection (3), or
 - (b) exercising a power by virtue of section 36B(1).
- (5) In complying with subsection (4) the Authority must consult, in particular –
 - (a) the Minister, and
 - (b) persons who in the Authority’s opinion represent the interests of persons likely to be affected.

243 Section 36D: designation as infrastructure provider

- (1) Regulations under section 36A may enable the Authority to designate as an “infrastructure provider” a person who is successful in tendering for an infrastructure project (whether or not in accordance with section 36B).
- (2) The regulations may –
 - (a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers),
 - (b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers),
 - (c) relieve water or sewerage undertakers of specified duties to a specified extent,
 - (d) provide for designation to be conditional,
 - (e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a)),
 - (f) include provision about enforcement of powers, duties, conditions and limitations, and
 - (g) include provision for variation or revocation of designation.

244 Section 36E: Regulations: procedure

- (1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of –
 - (a) each House of Parliament, in the case of regulations made by the Secretary of State, or
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers.
- (2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister’s opinion represent interests likely to be affected by the regulations.

245 Section 36F: Ministerial responsibility

- (1) This section defines “the Minister” for the purposes of this group of sections.
- (2) In relation to infrastructure which is provided or to be provided for the use of a water undertaker or sewerage undertaker whose area wholly or mainly in Wales, “the Minister” means the Welsh Ministers.
- (3) For other purposes “the Minister” means the Secretary of State.

246 Consequential amendment

In section 213(1) of the Water Industry Act 1991 (regulations) for “or 17D(8)” substitute, “17D(8), 36A”.

3: Complaints and dispute resolution

247 Consumer complaints

In section 29(6) of the Water Industry Act 1991 (Consumer Council for Water: consumer complaints: duty to refer to Water Services Regulation Authority) for “shall” substitute “may”.

248 Cost of moving pipes

After section 185(7) of the Water Industry Act 1991 (water undertaker’s duty to move pipes: costs) insert –

“(7A) A dispute about the reasonableness of the amount of security, costs or interest under subsections (4) to (6) may be referred to the Director for determination under section 30A.”

249 Works on private land

- (1) Section 181 of the Water Industry Act 1991 (complaints about works on private land) is amended as follows.
- (2) For subsection (1) substitute –

“(1) A dispute about the exercise by a relevant undertaker of powers conferred by or under section 159 or 161(2) may be referred for arbitration by a single arbitrator to be appointed –

 - (a) by agreement between the parties to the dispute, or
 - (b) in default of agreement, by the Royal Institution of Chartered Surveyors.”
- (3) In subsection (2) –
 - (a) for the reference to the Authority in each place substitute “the arbitrator”, and
 - (b) omit “or the Council”.
- (4) In subsection (3) –
 - (a) for the words from “Where” to “duty under this section” substitute “Where an arbitrator”, and
 - (b) for each other reference to the Authority substitute “the arbitrator”.
- (5) In subsections (4) and (5) for the reference to the Authority in each place substitute “the arbitrator”.

250 Foul water and pollution

For section 161(6) of the Water Industry Act 1991 (power to deal with foul water and pollution: dispute resolution) substitute –

- “(6) Any dispute as to whether consent for the purposes of subsection (5) is being unreasonably withheld may be referred for arbitration by a single arbitrator to be appointed –
- (a) by agreement between the parties to the dispute, or
 - (b) in default of agreement, by the Institution of Civil Engineers.”

251 Compensation in respect of street works powers

- (1) Schedule 12 to the Water Industry Act 1991 (compensation in respect of street works powers) is amended as follows.
- (2) In paragraph 1(3) (dispute resolution) for the reference to the Authority substitute “by the Institution of Civil Engineers”.
- (3) In paragraph 4(2) (dispute resolution) for the reference to the Authority substitute “by the Institution of Civil Engineers”.
- (4) In paragraph 4(3) (dispute resolution) for the words from “to the” to “by either party.” substitute “by either party to an arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Institution of Civil Engineers”.
- (5) In paragraph 5(2) (dispute resolution) for the reference to the Authority substitute “by the Institution of Civil Engineers”.
- (6) In paragraph 6(3) (dispute resolution) omit “the President of”.

4: Drainage

252 Construction standards for sewers

- (1) For section 106(4) of the Water Industry Act 1991 (right to communicate with public sewers: standards) substitute –
 - “(4) A sewerage undertaker must not permit a communication to be made under subsection (1) of any drain or sewer that is not constructed in accordance with standards (which may relate to design, methods of construction and systems for maintenance) published by –
 - (a) the Welsh Ministers, for sewerage undertakers whose areas are wholly or mainly in Wales, or
 - (b) the Secretary of State, for other cases.”
- (2) In section 106(5A) for “reasonably required by it” substitute “published under subsection (4)”.
- (3) At the end of section 112 (requirements imposed by sewerage undertaker on construction) add –
 - “(8) This section does not allow a sewerage undertaker to impose a requirement that is inconsistent with standards published under section 106(4).”

253 Unlawful communications

- (1) Section 109 of the Water Industry Act 1991 (sewerage: unlawful communication with public sewer) is amended as follows.
- (2) Omit subsection (1)(b) (and the word “or” before it).
- (3) In subsection (2)(a) after “close” insert “or redirect”.
- (4) In subsection (2)(b) omit “from the offender”.
- (5) At the end add –
 - “(4) The expenses are recoverable from –
 - (a) the offender, or
 - (b) the owner of the drain or sewer.
 - (5) A person who obstructs a sewerage undertaker in exercising a power under subsection (2)(a) –
 - (a) commits an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

PART 7

MISCELLANEOUS

1: Water resources

254 Temporary bans

For section 76 of the Water Industry Act 1991 (temporary hosepipe bans) substitute the following –

“76 Temporary bans on use

- (1) A water undertaker may prohibit one or more specified uses of water if it thinks it is experiencing, or may experience, a serious shortage of water for distribution.
- (2) A use of water may be specified in a prohibition only if it is, or falls within, a class of use listed in section 76A(1).
- (3) A prohibition must specify –
 - (a) the date from which it applies, and
 - (b) the area to which it applies (which may be all or part of the undertaker’s area).
- (4) A prohibition may –
 - (a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way);
 - (b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).
- (5) A person who contravenes a prohibition –
 - (a) is guilty of an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges (including arrangements for repayment or credit where charges are paid in advance).
- (7) A water undertaker may vary or revoke a prohibition.

76A Use that may be prohibited

- (1) The following uses of water may be specified in a prohibition –
 - (a) watering a private garden using a hosepipe;
 - (b) cleaning a private motor-vehicle using a hosepipe.
- (2) The Minister may by order add to the list in subsection (1).
- (3) The Minister may by regulations –
 - (a) provide for exceptions to a category of use in subsection (1) (whether or not added under subsection (2));
 - (b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in subsection (1) (whether or not added under subsection (2));
 - (c) define a word or phrase used in subsection (1) (whether or not as amended under subsection (2)).
- (4) In particular, regulations may –
 - (a) restrict a category of use by reference to how water is drawn;
 - (b) frame an exception by reference to ownership of land by a specified person or class of person;
 - (c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;
 - (d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer).
- (5) In subsections (2) and (3) “the Minister” means –
 - (a) the Secretary of State in relation to prohibitions which may be issued by water undertakers operating wholly or mainly in England, and
 - (b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers operating wholly or mainly in Wales.
- (6) An order under subsection (2) –
 - (a) may include incidental, consequential or transitional provision, and
 - (b) shall be made by statutory instrument.
- (7) An order under subsection (2) may not be made unless a draft has been laid before and approved by resolution of –
 - (a) each House of Parliament, in the case of an order made by the Secretary of State;
 - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.
- (8) Regulations made by the Welsh Ministers under subsection (3) –
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (9) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers as it applies to regulations made by the Secretary of State.

76B Prohibitions: procedure

- (1) A prohibition takes effect only if this section is complied with.
- (2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms –
 - (a) in at least two newspapers circulating in the area to which it is to apply, and
 - (b) on the water undertaker’s internet website.
- (3) The notice must give details of how to make representations about the proposed prohibition.

- (4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.
- (5) A water undertaker must give notice, in accordance with subsection (2), of the proposed revocation of a prohibition.”

255 Waste from water sources

- (1) Section 71 of the Water Industry Act 1991 (waste from water sources: offences) is amended as follows.
- (2) In subsection (1) –
 - (a) in paragraph (a) omit “any underground”,
 - (b) in paragraph (a) for “well, borehole or other work” substitute “source of supply”, and
 - (c) in paragraph (b) for “well, borehole or other work” substitute “source of supply”.
- (3) After subsection (1) insert –

“(1A) In this section “source of supply” has the meaning given by section 221 of the Water Resources Act 1991.”
- (4) In subsection (2)(b) for “the well, borehole or other work” substitute “a well, borehole or other work from which water runs to waste or is abstracted”.
- (5) In subsection (3) for “underground water” substitute “water from any source of supply”.
- (6) After subsection (3) insert –

“(3A) It shall not be an offence under this section for a person to cause or allow water to run to waste if the person reasonably thinks it necessary to avoid or reduce an immediate risk to –
 - (a) human life,
 - (b) property, or
 - (c) the environment.”
- (7) In subsection (5) for “the well, borehole or other work” substitute “a well, borehole or other work from which water runs to waste or is abstracted”.

256 Special charges in respect of irrigation

- (1) Section 127 of the Water Resources Act 1991 (charges in respect of spray irrigation) is amended as follows.
- (2) For subsection (1)(a) and (b) substitute “water abstracted is to be used for the purposes which consist of or include irrigation,”.
- (3) In subsection (2) –
 - (a) omit “and used on the relevant land”,
 - (b) in paragraph (a) omit “and used”, and
 - (c) in paragraph (b) omit “for use on the relevant land”.
- (4) In subsection (4) –
 - (a) for “used on the relevant land for purposes which include spray irrigation” substitute “used for purposes which include irrigation”, and
 - (b) in paragraph (b) for “spray irrigation” substitute “irrigation”.
- (5) After subsection (5) insert –

“(5A) In this section references to irrigation include references to spray irrigation.”

- (6) In subsection (6) omit the definition of “the relevant land”.
- (7) The heading becomes “Special charges in respect of irrigation”.
- (8) In section 128(2) of the Water Resources Act 1991 (duration of agreement under section 127) –
 - (a) in paragraph (b) after “expires” insert “, is transferred to another person”, and
 - (b) omit paragraph (c).

257 Powers of entry: water resources functions

- (1) Section 172 of the Water Resources Act 1991 (powers of entry) is amended as follows.
- (2) For subsection (3) substitute –
 - “(3) In so far as a power conferred under subsection (1)(a) or (2) concerns powers and duties under Part 2 or the related water resources provisions in relation to Chapter 2 of Part 2, the power under subsection (1) or (2) includes power –
 - (a) to carry out experimental borings or other works on those premises; and
 - (b) to install and keep monitoring and other apparatus there.”
- (3) Subsection (3A) ceases to have effect.

2: Maps of waterworks

258 Repeal of duty

- (1) Section 195 of the Water Resources Act 1991 (duty to keep records of location of waterworks) shall cease to have effect.
- (2) For paragraph 7(2)(b) of Schedule 23 to that Act substitute –
 - “(b) any resource mains, discharge pipes or other underground works which are for the time being vested in the Agency.”

3: Fisheries Committee: Scotland

259 Abolition of Fisheries Committee

- (1) The Fisheries Committee appointed under section 5(2) of the Electricity (Scotland) Act 1979 (and continued in existence by paragraph 5 of Schedule 9 to the Electricity Act 1989) is abolished.
- (2) In Schedule 9 to the Electricity Act 1989 (preservation of amenity and fisheries) omit paragraph 5.
- (3) In Schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities) omit the entry relating to the Fisheries (Electricity) Committee.
- (4) In Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (other Scottish public authorities) omit paragraph 65.

PART 8

GENERAL

260 Interpretation: “action”

In this Act, a reference to action includes a reference to inaction.

261 Statutory instruments

- (1) A statutory instrument under this Act –
 - (a) may make provision that applies generally or only for specified purposes, cases or circumstances,
 - (b) may make different provision for different purposes, cases or circumstances, and
 - (c) may include incidental, consequential or transitional provision.

262 Money

There shall be paid out of money provided by Parliament –

- (a) any expenditure incurred under or by virtue of the Act by the Secretary of State, and
- (b) any increase attributable to the Act in the sums payable under any other Act out of money so provided.

263 Commencement

- (1) This Act comes into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (2) A duty imposed on a relevant authority by Part 1 to prepare, submit or publish a document may be satisfied by reference to the preparation, submission or publication of a document before this Act is passed.

264 Extent

- (1) This Act extends only to England and Wales, with two exceptions.
- (2) Exception 1 is that section 259 extends to Scotland only.
- (3) Exception 2 is that an amendment or repeal by this Act has the same extent as the enactment amended or repealed.

265 Short Title

This Act may be cited as the Flood and Water Management Act 2009.



Draft Flood and Water Management Bill

Explanatory Notes

April 2009

DRAFT FLOOD AND WATER MANAGEMENT BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the draft Flood and Water Management Bill which was published in draft on 21 April 2009. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The aim of the draft Bill is to take forward the identified legislative needs in three previous strategy documents – Future Water, Making Space for Water and the UK Government's response to the Pitt Review of the Summer 2007 floods. The Bill also aims to give effect to the flood and water aspects of the Welsh Assembly Government's Environment Strategy for Wales, the New Approaches Programme, including addressing issues raised by the Pitt Review, and the Strategic Policy Position Paper on Water.
4. The draft Bill will also make a number of minor changes to existing legislation which would otherwise be difficult to take forward. The overall policy ambition of the draft Bill is to manage the risks of flood and coastal erosion and to create an efficient basis for water management in the face of increasing pressures on industry and water resources.

OVERVIEW OF THE STRUCTURE OF THE BILL

5. The draft Flood and Water Management Bill has eight Parts:

Part 1: Flood and Coastal Erosion Risk Management

This part gives the Environment Agency overall responsibility for supervising the management of flood and coastal erosion risks in England, and gives local authorities in England responsibility for managing local flood risk in their areas. This part provides duties and powers on the Environment Agency, local authorities and other bodies so that they can manage those risks. It also transposes the EU Floods Directive by placing duties on relevant bodies. Provisions which refer to Wales have the effect of preserving the existing law in Wales.

Part 2: Risk Management: Designation of Features

This part provides additional legal powers for all Operating Authorities in England and Wales to formally designate assets which affect flood or coastal erosion risk. It will increase regulatory control of the significant number of assets which form flood and coastal erosion risk management systems, but which are not maintained or operated by those formally responsible for managing the risk.

Part 3: Reservoirs

This part will introduce a risk-based approach to reservoir safety in England and Wales to reflect the danger that reservoir failures might pose to human life. It provides the Environment Agency with necessary enforcement powers to support this.

Part 4: Water Administration Regime

This part replaces the special administration regime in the Water Industry Act 1991 with a new regime that is closely aligned with the general insolvency regime. The Water Administration Regime comes into place when water undertakers, sewerage undertakers or certain qualifying licensed water suppliers become insolvent or fail to carry out their statutory functions to such an extent that a transfer to a new owner is seen as the only reasonable way to protect the interests of water and sewerage customers. This part provides the appointed water administrator with objectives to either instigate a rescue plan or to transfer the failing company to one or more new owners. The water administrator also has an interim objective to run the company until it comes out of administration.

Part 5: Sustainable Drainage

This part introduces standards for the construction and operation of new rainwater drainage systems, and an ‘approving body’. The body, which will generally be the unitary, county and county borough local authorities, will be required to approve most types of rain-water drainage systems before work can start. Moreover, where the system affects the drainage of more than one property, the approving body will adopt and maintain the system upon satisfactory completion. The part also amends section 106 of the Water Industry Act 1991 to make the right to connect surface water run-off to public sewers conditional on the approval given.

Part 6: Water Industry Regulation

This part introduces changes to the regimes of the main water industry regulators. It provides for the Water Services Regulation Authority (“the Authority”) to make changes to all standard conditions of appointment of water and sewerage undertakers where a certain proportion of the undertakers agree the change. This Part also extends the Authority’s powers to pursue possible contraventions that may be subject to financial penalties, and to collect information related to possible customer service contraventions. This part also introduces a charging mechanism for the Drinking Water Inspectorate and a risk-based enforcement regime for the Environment Agency.

Part 7: Miscellaneous

This part provides an enabling power to allow the UK Government and Welsh Assembly Government to update the scope of water companies to ban, temporarily, non-essential uses of water during periods of water shortage. It also amends certain miscellaneous powers and duties of the Environment Agency under the Water Resources Act 1991. It also abolishes the Fisheries (Electricity) Committee in Scotland.

Part 8: General

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

TERRITORIAL EXTENT AND APPLICATION

6. The draft Bill extends to England and Wales. However, whilst the eventual legislation is expected to be the same or similar in most respects between England and Wales, the Welsh Assembly Government is consulting on certain policy in areas where we already have draft provisions, and which therefore currently only apply to England.
7. Ministerial powers in flood and water policy areas do not always follow the geographical boundary of England and Wales. The extent of the Secretary of State’s and the Welsh Ministers’ jurisdictions may instead follow, for example, water and sewerage undertakers’ areas of appointment rather than the national boundary.

8. The draft Bill does not generally extend to Scotland. However, it includes clauses for the abolition of the Fisheries (Electricity) Committee, a Scottish body concerned with the effects of hydro-electric power activities on water quality and fish stocks in freshwater fisheries in Scotland. The functions of that Committee are now carried out by the Scottish Environment Protection Agency. These provisions are being included in the draft Bill as a result of the Deputy Leader of the House's commitment to the Scottish Executive in a letter of 26 February 2009.
9. The Scottish Executive is already taking primary legislation through the Scottish Parliament on several of the floods issues addressed by our draft Bill. The Flood Risk Management (Scotland) Bill passed stage 2 on 18 March 2009. A copy of the Bill and accompanying documents are available on the Scottish Parliament website at:
<http://www.scottish.parliament.uk/business/bills/billsInProgress/index.htm>
10. We do not anticipate any Legislative Consent Motions being sought with regard to the draft Bill. This Draft Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are matters introduced which trigger the Convention, the consent of the Scottish Parliament will be sought for them.
11. The draft Bill does not extend to Northern Ireland. The Northern Ireland Assembly is preparing unrelated draft secondary legislation for flood risk management.

COMMENTARY

Part 1: flood and coastal erosion risk management

Introduction

Clause 1: Overview

12. This clause summarises the overall purpose and contents of this Part of the draft Bill which gives the Environment Agency, local authorities and other bodies powers and responsibilities for managing flood risk and coastal erosion risk in England, including for the purpose of Directive 2007/60/EC (the "Floods Directive").

Key concepts and definitions

Clause 2: Definitions

13. This clause lists the terms which are defined, for the purposes of Part 1, in clauses 3-14 and 68(4).

Clause 3: Flood

14. Subsection (1) defines a "flood". Subsection (2) indicates some of the sources from which a flood could occur but is not exhaustive or limiting.
15. Subsection (3) excludes certain forms of flooding from the definition of "flood". The first exclusion is flooding from any part of a sewerage system, unless caused by increases in volume from rainfall (including snow or other precipitation). Flooding from a sewerage system would be dealt with under s94 (1) (a) of the Water Industry Act 1991. The second exclusion is flooding from a burst water main (as defined in section 219 of the Water Industry Act 1991). Flooding from a water main is covered by s37 (1)(b) of that Act.

Clause 4: Coastal erosion

16. This clause defines “coastal erosion”. It is limited to the coast of England as the duties and responsibilities given to the Environment Agency and local authorities in the Part relate solely to England.

Clause 5: Risk

17. This clause defines “risk” as a combination of two things: the probability of an event occurring and the consequences if it does.

Clause 6: Particular risks

18. This clause links the foregoing definitions of “flood”, “coastal erosion”, and “risk” to clarify what is meant by “flood risk” in subsection (1) and “coastal erosion risk” in subsection (2).
19. Subsection (3) sets out examples (not an exhaustive list) of potential harmful consequences that should be considered when assessing risk, including impacts on human health, the social and economic welfare of individuals and communities, infrastructure and the environment, including cultural heritage.

Clause 7: Risk management

20. This clause sets out what “risk management” means in relation to flooding and coastal erosion. Subsection (1) sets out the range of purposes for which risk management actions may be undertaken.
21. Subsection (2) clarifies that risk management can include practices that increase the likelihood of flooding or coastal erosion in a specific area, either to achieve particular outcomes in that location or to manage the effect of flooding or coastal erosion elsewhere.
22. Subsection (3) lists some of the risk management actions that may be undertaken for flood and coastal erosion risk management. This list is not exhaustive or limiting.

Clause 8: Main river

23. This clause gives “main river” the same meaning as in s113 of the Water Resources Act 1991. These are watercourses that are indicated as main rivers on Main River Maps.

Clause 9: Ordinary watercourse

24. This clause defines “ordinary watercourse” as any watercourse that does not form part of a main river.

Clause 10: Groundwater

25. This clause defines “groundwater” as water under the surface of the ground.

Clause 11: Surface runoff

26. This clause defines “surface runoff” as any water that lies or moves on the surface of the ground following precipitation (rain, snow, etc) and which has not entered a watercourse, lake, public sewer or drainage system. (Once water has entered a watercourse, lake, public sewer or drainage system any subsequent flooding will be regarded as coming from that source, rather than surface runoff).

Clause 12: Authorities

27. Subsections (1) to (6) define the meaning of different authorities which are to be given flood and coastal erosion risk management functions (duties or powers) under the draft Bill. The clause introduces the concept of “Lead Local Flood Authority”, as county and unitary authorities, for whom specific functions are given in the draft Bill. The different authorities are collectively defined as “relevant authorities”.

Clause 13: Flood risk management function

28. This clause defines “flood risk management function” as a function exercised by relevant authorities under legislation specified in subsection (2) or anything else that they may do for a purpose connected with flood risk management.

Clause 14: Coastal erosion risk management function

29. This clause defines “coastal erosion risk management function” as a function exercised by a relevant authority under legislation specified in subsection (2) or anything else that they may do for a purpose connected with coastal erosion risk management.

National flood and coastal erosion risk management strategy

Clause 15: General Duty

30. This clause requires the Environment Agency to produce a national strategy for flood and coastal erosion risk management in England which, in particular, takes account of the need to minimise the adverse effects of flood and coastal risk management on the water environment. In this context the Environment Agency may have regard to the requirements of the Water Framework Directive.

Clause 16: Summary

31. Subsection (1) requires the Environment Agency to publish a summary of the national strategy produced under clause 15. Subsection (2) sets out the information and other material that may be included in, or form part of, the summary. This includes (but is not limited to): (a) the Environment Agency’s objectives; (b) how it intends to achieve them; and (c) a list of relevant plans, guidance or other documents. The summary may refer to a range of material that constitutes the strategy required by clause 15, rather than requiring all of this material to be contained within a single document.

Clause 17: Guidance

32. This clause allows the Environment Agency to issue guidance, to the bodies specified in subsection (3), about the application of the national strategy produced under clause 15. Subsection (2) allows the Environment Agency, in particular, to issue guidance about how these authorities are to make a contribution to achieving sustainable development.

Clause 18: Report to the Secretary of State

33. This clause requires the Environment Agency to report about flood and coastal erosion risk management in England to the Secretary of State (who may by regulation specify the times or intervals of the report being made and the information it should contain).

Local flood risk management strategy

Clause 19: General duty

34. This clause requires all Lead Local Flood Authorities to produce a local flood risk management strategy for their area. Subsection (2) defines “local flood risk” as meaning flood risk from or affected by surface runoff, groundwater and an ordinary watercourse. Subsection (3) requires local flood risk management strategies to be consistent with the national strategy produced by the Environment Agency under clause 15.

Clause 20: Summary

35. Subsection (1) requires all Lead Local Flood Authorities to publish a summary of the local flood risk management strategy produced under clause 19. Subsection (2) sets out the information and other material that may be included in, or form part of, the summary. This includes (but is not limited to): (a) the authority’s objectives; (b) how it intends to achieve them; (c) the arrangements made by the authority for co-ordinating the exercise of flood risk management functions by other relevant authorities in the area (whether by convening meetings of authorities or otherwise) and (d) a list of relevant plans, guidance or other documents. The summary may refer to a range of material that constitutes the strategy required by clause 19, rather than requiring all of this material to be contained within a single document.

Clause 21: Guidance

36. This clause allows Lead Local Flood Authorities to issue guidance, to the bodies specified in subsection (2), about the application of the local strategy produced under clause 19.

Effect of local and national strategies

Clause 22: Exercise of flood and coastal erosion risk management functions

37. This clause requires relevant authorities in England, in exercising their flood and coastal erosion risk management functions, to act in a manner consistent with the national flood and coastal erosion risk management strategy, local flood risk management strategies and related guidance issued under clauses 15, 16, 19 and 20. Relevant authorities are defined in clause 12 as the Environment Agency, Lead Local Flood Authorities, district councils, internal drainage boards, water companies and highways authorities. Flood and coastal erosion risk management functions are defined in clauses 13 and 14.

Clause 23: Exercise of other functions

38. This clause requires the relevant public bodies (as specified in subsection (2)), when exercising any function in a manner which may affect flood risk or coastal erosion risk in England, to have regard to the national flood and coastal erosion risk management strategy, local flood risk management strategies and related guidance issued under clauses 15, 16, 19 and 20. The list of bodies in subsection (2) includes “relevant authorities” which are defined in clause 12. Flood and coastal erosion risk management functions are defined in clauses 13 and 14. The Secretary of State has a power to specify additional bodies under subsection (3).

Co-operation

Clause 24: Duty to co-operate

39. This clause requires a relevant authority to co-operate with any other relevant authority which is exercising functions under this Part of the draft Bill. Relevant authorities are defined in clause 12 as the Environment Agency, Lead Local Flood Authorities, district councils, internal drainage boards, water companies and highways authorities. Functions are defined in clauses 13 and 14.

Clause 25: Environment Agency: power to require information

40. Subsection (1) requires authorities in England (as listed in subsection (2)) to comply with any reasonable request from the Environment Agency to provide information in connection with the Agency's flood and coastal erosion risk management functions. Subsection (3) requires the information requested of the authorities to be provided in a form or manner specified by the Environment Agency and within a specified period but under subsection (4) the Agency's requirements must be consistent with any guidance issued by the Agency under clause 27.

Clause 26: Lead Local Flood Authorities: power to require information

41. Subsection (1) requires authorities in England (as listed in subsection (2)) to comply with any reasonable request from a Lead Local Flood Authority to provide information in connection with the Lead Local Flood Authority's flood risk management functions. Subsection (3) requires the information requested of the authorities, to be provided in a form or manner specified by the higher tier authority and within a specified period but under subsection (4) such requirements must be consistent with any guidance issued by the Environment Agency under clause 27.

Clause 27: Information: guidance

42. Subsection (1) allows the Environment Agency to issue guidance about the provision of information under clauses 25 or 26. Subsection (2) sets out examples of the issues which may be covered by such guidance, including the form of the information, and the manner and time within which it should be provided. Subsection (3) requires the Environment Agency, when preparing guidance, to have regard to the likely cost to an authority of providing information in a particular form. Subsection (4) requires the Environment Agency to consult those authorities listed in clauses 25 and 26 before issuing guidance under this clause.

Clause 28: Information: supplementary

43. This clause amends section 206(3) of the Water Industry Act 1991 (which creates a number of exceptions to the general prohibition on disclosure of information gained by companies or individuals under that Act) by also exempting the provision of information in response to a request under clauses 25 or 26.

Clause 29: Arrangements: flood risk management

44. Subsection (1) allows relevant authorities in England to make arrangements for any of their flood risk management functions to be exercised by another relevant authority. However, subsection (2) specifically excludes the functions of producing national or local strategies (under clauses 15 or 19) or giving consent (to works etc) from being exercised by another body. Relevant authorities are defined in clause 12 as the Environment Agency, higher and lower tier local authorities, internal drainage boards, water companies and highways authorities. Flood risk management functions are defined in clause 13.

Clause 30: Arrangements: coastal erosion risk management

45. Subsection (1) allows a unitary authority or a relevant district council in England, with the consent of the Environment Agency, to make arrangements for any of its coastal erosion risk management functions to be exercised on its behalf by the Lead Local Flood Authority or an internal drainage board. Coastal erosion risk management functions are defined in clause 14.

Funding

Clause 31: Grants

46. This clause enables the Environment Agency to pay grants to any person in respect of expenditure incurred or expected to be incurred in connection with flood or coastal erosion risk management. Subsection (2) allows such grants to be made subject to conditions, including conditions for repayment and interest.

Clause 32: Levies

47. This clause enables the Environment Agency to issue a levy on lead local authorities in respect of the Environment Agency's flood and coastal erosion risk management functions in those local authorities' areas. Levies must be issued in accordance with regulations made under section 74 of the Local Government Finance Act 1988 and the Environment Agency must obtain the "appropriate consent" of the Regional Flood and Coastal Committee under clause 72 (and which is set out in the explanatory note on that clause).

Clause 33: Consequential amendments

48. Consequential on clause 31, this clause amends the Coast Protection Act 1949 and the Land Drainage Act 1991 so that the powers in those Acts for the Minister to make grants to coast protection authorities, county boroughs and drainage bodies will in future apply only to Wales.

Environment Agency: supplemental powers and duties

Clause 34: Power to carry out work

49. This clause allows the Environment Agency to carry out structural or environmental work provided that (a) the works are required in connection with the national flood and coastal erosion risk management strategy under clause 15, and (b) the works relate to flood risk from the sea or main river.
50. The meanings of "structural work" and "environmental work" are defined in subsections (4) and (5).

Clause 35: Directions

51. Subsection (1) allows the Secretary of State to direct the Environment Agency to exercise a flood or coastal erosion risk management function on behalf of another relevant authority (as defined in clause 12). Subsection (2) states that this may only be done where the relevant authority has failed to exercise the function either at all, or in a way that accords with national or local flood risk management strategies and related guidance issued under clauses 15 and 19. Subsection (3) states that any such directions must be sent to the authority concerned, and published (except where this might be contrary to the interests of national security).
52. Subsection (5) allows the Environment Agency to recover costs where complying with a direction.

Clause 36: Flood risk – consent to works

53. This clause amends section 17 of the Land Drainage Act 1991 (the 1991 Act) (which requires the consent of the Environment Agency to drainage works carried out by a local authority in connection with a watercourse).
54. Subsection (2) amends section 17(1) of the 1991 Act so that it will apply only to local authorities in Wales who will continue to require the consent of the Environment Agency before carrying out or maintaining any drainage works on any watercourses (under sections 14 to 16 of the 1991 Act).
55. In relation to England, subsection (3) inserts three new subsections into section 17 of the 1991 Act. These subsections require English local authorities and internal drainage boards to obtain the consent of the Environment Agency before carrying out drainage works where these works are for the purpose of reducing flood risk from the sea. The definition of “drainage” in section 72 of the 1991 Act includes defence against water, including sea water.
56. Subsection (4) amends section 17(3) of the 1991 Act so that the provisions relating to the granting and/or refusing of consents applies also to the inserted subsections 1A and 1B. Subsection (5) amends section 17(5) of the 1991 Act so that the provisions relating to emergency works apply also to the inserted subsections 1A and 1B.

Clause 37: Coastal erosion – general powers

57. This clause gives the Environment Agency the same powers, under section 4 of the Coast Protection Act 1949, to do coastal erosion works as coast protection authorities, where the Agency considers this necessary or expedient for the protection of any land in England. Both the Environment Agency and coast protection authorities become “relevant authorities” for the purposes of this section.

Clause 38: Coastal erosion – objections and approvals

58. This clause amends section 5 of the Coast Protection Act 1949 (which sets out the procedure for dealing with objections to certain coast protection works and for approving such works).
59. Subsection (2) amends section 5(1) that the current requirement for coast protection authorities to publicise intended works, will extend to “relevant authorities” which (under subsection (7)) takes the same meaning as in clause 37, ie the Environment Agency and coast protection authorities. Under subsection (3) notice of intended works has to be given to internal drainage boards and, where works are proposed by a coast protection authority, to the Environment Agency.
60. Subsection (4) amends section 5(5) of the 1949 Act so that the Environment Agency, rather than the Minister, will decide whether or not to approve works.
61. Subsection (5) amends section 5(6) so that the requirement to give the Environment Agency notice of emergency works applies only to works carried out by coast protection authorities.
62. Subsection (6) inserts a new subsection (6A) into section 5 of the 1949 Act, the effect of which is to retain the Ministerial role in relation to these procedures in Wales.

Clause 39: Coastal erosion – compulsory acquisition of land

63. This clause amends section 14 of the Coast Protection Act 1949 (under which coast protection authorities can compulsorily acquire land). This will be extended to “relevant authorities” which (under subsection (3)) takes the same meaning as in clause 37, i.e. the Environment Agency and coast protection authorities.

Clause 40: Coastal erosion – provisions as to compensation

64. This clause amends section 19 of the Coast Protection Act 1949 (under which coast protection authorities may pay compensation for depreciation of value of an interest in land). This will be extended to “relevant authorities” which (under subsection (3)) takes the same meaning as in clause 37, ie the Environment Agency and coast protection authorities.

Clause 41: Environmental Works

65. This clause allows the Environment Agency to carry out works that may or will cause flooding or coastal erosion provided (a) the Environment Agency considers that the works will achieve an environmental benefit; (b) that the works have regard to the national flood and coastal erosion risk management strategy produced under clause 15 and; (c) they do not result in or increase potential harmful consequences as set out in clause 6 subsection (3).
66. The works covered in this clause include any listed in clause 7 subsection 3 (a) to (e). The Environment Agency may provide grants in respect of this work.

Local Authorities: supplemental powers and duties

Clause 42: Power to carry out work

67. This clause allows Lead Local Flood Authorities in England to carry out structural or environmental works provided (a) the works are required in connection with the local flood risk management strategy produced under clause 19 and (b) they relate to flood risk from surface runoff or groundwater.
68. This clause also allows unitary authorities, district councils and internal drainage boards in England to carry out structural or environmental works provided (a) the works are required in connection with the local flood risk management strategy produced under clause 19 and (b) they relate to flood risk from an ordinary watercourse.
69. The meanings of “structural work” and “environmental work” are defined in subsections (6) and (7).

Clause 43: Duty to investigate

70. This clause requires Lead Local Flood Authorities in England to investigate flooding incidents their area in order to (a) identify which relevant authority has flood risk management functions in respect of the flooding and (b) establish whether that authority has responded or is proposing to respond to the flood.

Clause 44: Duty to maintain register

71. This clause requires Lead Local Flood Authorities in England to produce and make available for inspection a register and record of information about structures and features that may affect flood risk in their area (including any such features designated under Part 2). The Secretary of State may make regulations about the content of the register and record and describing information to be excluded.

Clause 45: Concurrent powers

72. This clause amends Section 8 of the Land Drainage Act 1991 (which allows the Environment Agency to exercise powers vested in internal drainage boards (IDBs) under sections 21 and 23 of that Act concurrently with the IDB). The effect of this amendment is that this power will apply in Wales only; the Environment Agency in England will no longer be able to take action under sections 21 or 23.

Clause 46: Enforcement of obligations to repair watercourses etc

73. This clause amends section 21 of the Land Drainage Act 1991 (which allows the IDB or Environment Agency to take action to enforce obligations to maintain or repair any watercourse, bridge or other drainage work (other than those on or relating to Main River) against any person who by reason of tenure, custom, prescription or otherwise is bound to do the work).
74. The effect of this amendment is that the Environment Agency will no longer be able to exercise this power in England. The power will be exercisable by the Environment Agency in Wales only, the IDB (within its District) and otherwise by the Lead Local Flood Authority for the area in question. (The Environment Agency will continue to exercise this power in both England and Wales so far as it relates to Main River under Section 107(2) of the Water Resources Act 1991.)

Clause 47: Control of flow of watercourses

75. This clause makes various amendments to sections 23, 25 and 26 of the Land Drainage Act 1991. Section 23 of the 1991 Act prohibits the construction of certain kinds of obstructions in ordinary watercourses without the prior consent of the drainage board (currently the Environment Agency or internal drainage board (for works within its District)). The structures which are caught by this section are (a) mill-dams, weirs and other similar structures and (b) culverts which are likely to affect the flow of water in the watercourse. Section 24 sets out the enforcement powers if works are carried out without, or other than in compliance with, a consent.
76. Subsection (2) amends section 23 so that the construction of any culvert in an ordinary watercourse will require consent.
77. Subsection (3) amends section 23 to allow the drainage board to impose reasonable conditions on any consent issued.
78. Subsections (4), (5) and (6) amend the definition of “drainage board” for the purposes of section 23 and sections 24-26 of the 1991 Act. The effect is that the following organisations will constitute the “drainage board”:
 - for works within an IDB’s District, the IDB;
 - for all other watercourses in England, the Lead Local Flood Authority for the area; and
 - for all other watercourses in Wales, the Environment Agency.
79. In England, the Environment Agency will no longer be responsible for consenting to works under section 23 (or for taking enforcement action under section 24).
80. Subsection (8) amends section 25 of the Land Drainage Act 1991 (Powers to require works for maintaining flow of watercourse). Currently, these powers which relate to ordinary watercourses can be exercised by **either** the drainage board (that is the IDB (for watercourses within its District), or the Environment Agency (for all other watercourses)) or the local authority (defined under section 72 of the Land Drainage Act 1991 as county or district councils) concurrently with the Environment Agency or the internal drainage board. The effect of subsection (8) is to remove the Environment Agency’s powers in this context and to amend the provision so as to give the internal drainage board powers within its district, and the Lead Local Flood Authority powers outside an internal drainage board district.
81. Subsection (9) makes consequential amendments to section 26 of the Land Drainage Act 1991 (Competing jurisdictions under Section 25) resulting from the amendments made to section 25.

Clause 48: Commutation of obligations

82. This clause amends sections 33 and 34 of the Land Drainage Act 1991 (which provide for the commutation (with Ministerial consent) of tenure-based land drainage obligations (not related to Main River) by the Environment Agency or an IDB.

83. The effect of the amendment is that such obligations can now be commuted by either (a) an IDB in relation to work in an area forming part of the Board's district, (b) the Lead Local Flood Authority in relation to work in any other area in England, or (c) the Environment Agency in relation to work in any other area in Wales. The Environment Agency in England can no longer commute obligations under this section (although it continues to have powers to commute obligations in both England and Wales where these relate to Main River under section 107 (4) of the Water Resources Act 1991).

Clause 49: Environmental Works

84. This clause allows a Lead Local Flood Authority, a district council in an area where there is no unitary authority or internal drainage boards to carry out works that may or will cause flooding or coastal erosion provided (a) the authority considers that the works will achieve an environmental benefit; (b) that the works have regard to the national flood and coastal erosion risk management strategy produced under clause 15 and the local flood risk strategy produced under clause 19; (c) they do not result in or increase potential harmful consequences as set out in clause 6 subsection (3).
85. The works covered in this clause include any listed in clause 7 subsection 3 (a) to (e).

Clauses 50 to 63: Overview

86. These clauses transpose the EU Floods Directive into law in England and Wales. The Directive requires a preliminary assessment of flood risk as a basis for determining areas of potential significant flood risk. For these areas, flood hazard maps and flood risk maps must be prepared leading to flood risk management plans that set out objectives to reduce flood risk and measures for achieving these. A detailed description of the Floods Directive articles and the relevant clauses that transpose them is set out in a separate transposition note.

Preliminary flood risk assessments

Clause 50: Preliminary flood risk assessment

87. This clause sets out the requirements for preliminary flood risk assessments. Subsection (1) requires the Environment Agency to prepare a preliminary assessment map (see clause 51) and a preliminary assessment report (see clause 52) for each relevant area in England.
88. Subsection (2) requires the appropriate Lead Local Flood Authority for each "relevant area" in England to prepare a preliminary assessment report for that area.
89. Subsection (3) requires the Secretary of State, by order, to define "relevant area".
90. Subsection (4) in particular allows that order to define as "relevant areas" (a) a river basin district as defined in relation to the Water Framework Directive or (b) an area of coastline outside a river basin district.
91. Subsection (5) defines "appropriate Lead Local Flood Authority" as (a) the Lead Local Flood Authority for the area, or (b) if there is more than one Lead Local Flood Authority, the appropriate authority will be determined through criteria specified by order made by the Secretary of State.

Clause 51: Preliminary assessment maps

92. Subsection (1) defines a preliminary assessment map as one that (a) shows the boundaries of each relevant area, and (b) shows topography and land use.

93. Subsection (2) allows the Secretary of State to make regulations about the form and content of the preliminary assessment map (including the information it should contain about topography and land use).

Clause 52: Preliminary assessment reports

94. This clause sets out the requirements for preliminary assessment reports. Subsection (1) states that this is a report about previous floods in an area. Subsection (2) requires the Environment Agency's report to include information about flooding from (a) the sea, (b) main rivers, and (c) reservoirs. Subsection (3) requires the Lead Local Flood Authority's report to include information about flooding from (a) ordinary watercourses, (b) surface runoff, and (c) groundwater.
95. Subsection (4) requires each report to include (a) information about previous floods in the area, and (b) information about their consequences for (i) human health, (ii) the social and economic welfare of individuals and communities, (iii) infrastructure, and (iv) the environment (including cultural heritage).
96. Subsection (5) allows the Secretary of State to make regulations about the form and content of the preliminary assessment report. Subsection (6) requires the Lead Local Flood Authority to have regard to any guidance issued by the Environment Agency about the form and content of the preliminary assessment report.

Clause 53: Publication

97. Subsection (1) requires the Lead Local Flood Authority to submit the preliminary assessment report to the Environment Agency before 22nd June 2011. Before doing so, subsection (2) requires the authority to consult the Environment Agency, the district councils in its area, internal drainage boards in its area, and such persons as it thinks appropriate. Subsection (3) allows the Secretary of State to make regulations about the procedure for consultation.
98. Subsection (4) requires the Environment Agency to publish, before 22nd December 2011, the following material produced under clause 50, ie: (a) the preliminary assessment maps, (b) the preliminary assessment reports prepared by the Agency, and (c) the preliminary assessment reports prepared by Lead Local Flood Authorities and submitted to the Agency.

Clause 54: Review

99. Subsection (1) requires the Environment Agency to review the preliminary flood risk assessment documents that it has prepared before 22nd December 2017 and at intervals of no more than 6 years thereafter. Subsection (2) requires the Lead Local Flood Authority to review the preliminary assessment report that it has prepared before 22nd June 2017, and at intervals of no more than 6 years thereafter.
100. Subsection (3) allows the Agency or authority to revise and re-issue the document following its review. Subsection (4) applies all relevant requirements for the preparation of the first preliminary flood risk assessment documents to any re-issue.

Significant Flood Risks : Documents

Clause 55: Significant flood risk: Environment Agency

101. Subsection (1) requires the Environment Agency to (a) determine for each relevant area whether there is a significant risk of flooding from (i) the sea, (ii) a main river and (iii) a reservoir, and (b) identify which area is affected by the risk (the "flood risk area"). In making this determination, subsection (2) requires the Agency to have regard to the preliminary flood risk assessment

documents. Subsection (3) requires the Secretary of State to make regulations about the criteria for assessing whether a flood risk is significant.

102. Subsection (4) requires the Environment Agency to prepare, for each flood risk area, (a) a flood hazard map relating to the source of the flood risk, and (b) a flood risk map (see clause 58).
103. Subsection (5) requires the Agency to prepare a flood risk management plan for each significant flood risk (see clause 61).
104. Subsection (6) allows the Agency to prepare a flood hazard map, flood risk map and flood risk management plan for flooding from the sea, main river or reservoirs covering all of England instead of preparing the preliminary assessments maps and reports. If this is the case, the duty under clause 54 to review the preliminary assessments maps and reports becomes a duty to review the decision whether to prepare a flood hazard map, flood risk map and flood risk management plan or to prepare preliminary assessments maps and reports.

Clause 56: Significant flood risk: Lead Local Flood Authorities

105. Subsection (1) requires the appropriate Lead Local Flood Authority for each relevant area to (a) determine whether there is a significant risk of flooding from (i) an ordinary watercourse, (ii) surface runoff and (iii) groundwater, and (b) identify the area that is affected by the risk (the “flood risk area”). Subsection (2) requires the Lead Local Flood Authority to have regard to the preliminary flood risk assessment documents in making the above determination. Subsection (3) requires the Secretary of State to make regulations about the criteria for assessing whether a flood risk is significant.
106. Subsection (4) requires the Lead Local Flood Authority to notify the Environment Agency of its determination of significant risk and any flood risk areas identified.
107. Subsection (5) requires the Environment Agency, if it disagrees with the determination and identification made under subsection (1), to refer the matter to the Secretary of State for him to determine.
108. Subsections (6) and (7) require the appropriate Lead Local Flood Authority to prepare a flood hazard map and a flood risk map (a) if, following a disagreement, the Secretary of State identifies the flood risk area, or (b) in any other case, in relation to the flood risk area notified to the Environment Agency.
109. Subsection (8) requires the Lead Local Flood Authority to prepare a flood risk management plan for each area of significant risk (see clause 61).

Clause 57: Flood hazard maps

110. Subsection (1) defines a flood hazard map as one which (a) identifies areas, having regard to the preliminary assessment documents, that are at significant risk of flooding, (b) shows the likely extent of any flood, and (c) assesses whether the risk of a flood from the same source is low, medium or high. Subsection (2) allows the Secretary of State to make regulations about the form and content of a flood hazard map.
111. Subsection (3) requires the Lead Local Flood Authority to have regard to any guidance issued by the Environment Agency about the form and content of a flood hazard map.

Clause 58: Flood risk maps

112. Subsection (1) defines a flood risk map as one that shows, for each area of significant flood risk, (a) the number of people likely to be affected, (b) the type of economic activity likely to be affected, (c) any industrial activities in the area that may increase the risk of pollution in the event of flooding, (d) any areas of water subject to specified measures or protection in order to maintain

water quality, and (e) an assessment of the potential harmful consequences of the flood risk for (i) human health, (ii) the social and economic welfare of individuals and communities, (iii) infrastructure, and (iv) the environment (including cultural heritage).

113. Subsection (2) allows the Secretary of State to make regulations about the form and content of a flood risk map. Subsection (3) requires the lead local authority to have regard to any guidance issued by the Environment Agency about the form and content of the flood risk map.

Clause 59: Publication

114. Subsection (1) requires the Lead Local Flood Authority to submit, to the Environment Agency before 22 June 2013, any flood hazard map, or any flood risk map, that the authority has prepared. Subsection (2) requires the authority, before submitting these maps, to consult (a) the Environment Agency, (b) the district councils in its area, (c) internal drainage boards in its area, and (d) such persons as it thinks appropriate. Subsection (3) allows the Secretary of State to make regulations about the consultation procedure.
115. Subsection (4) requires the Environment Agency to publish, before 22nd December 2013: (a) the flood hazard maps and the flood risk maps that it has prepared, and (b) the flood hazard maps and flood risk maps prepared by the Lead Local Flood Authorities and submitted to the Agency.

Clause 60: Review

116. Subsection (1) requires the Environment Agency to review each flood hazard map and flood risk map that it has prepared before 22nd December 2019 and at intervals of no more than 6 years thereafter. Subsection (2) requires the Lead Local Flood Authority to review each flood hazard map and flood risk map that it has prepared before 22nd June 2019 and at intervals of no more than 6 years thereafter.
117. Subsection (3) allows the Environment Agency or Lead Local Flood Authority to revise and re-issue any document that it has reviewed. Subsection (4) applies all relevant requirements for the preparation of the first flood hazard maps and flood risk maps to any re-issue.

Clause 61: Flood risk management plans

118. Subsection (1) defines a flood risk management plan as being one for the management of significant flood risk. Subsection (2) requires the plan to include details of (a) the objectives for managing the flood risk set by the Agency or Lead Local Flood Authority and (b) proposed measures for achieving those objectives.
119. Subsection (3) allows the Secretary of State to make regulations about the form and content of a flood risk management plan.
120. Subsection (4) requires the Lead Local Flood Authority to have regard to any guidance issued by the Environment Agency about the form and content of flood risk management plans.

Clause 62: Publication

121. Subsection (1) requires the Lead Local Flood Authority to submit the flood risk management plan it has prepared to the Environment Agency before 22nd June 2015. Before submitting the plan, subsection (2) requires the authority to consult the Environment Agency, the district councils in its area, internal drainage boards in its area, and such persons as it thinks appropriate. Subsection (3) allows the Secretary of State to make regulations about the consultation procedure.

122. Subsection (4) requires the Environment Agency to publish flood risk management plans (whether produced by the Agency, or by a Lead Local Flood Authority and submitted to the Agency) before 22nd December 2015.

Clause 63: Review

123. Subsection (1) requires the Agency to review a flood risk management plan that it has prepared before 22nd December 2021 and at intervals of no more than 6 years thereafter. Subsection (2) requires a Lead Local Flood Authority to review the flood risk management plan that it has prepared before 22nd June 2021 and at intervals of no more than 6 years thereafter.
124. Subsection (3) allows the Environment Agency or authority to revise and re-issue any document that it has reviewed. Subsection (4) applies all relevant requirements for the preparation of the first flood risk management plans to any re-issue.

Main rivers and boundaries

Clause 64: Main River Maps: England

125. This clause inserts four new sections before section 193 of the Water Resources Act 1991, which apply to England only.
126. Main River is defined in Clause 8 by reference to section 113 of the Water Resources Act 1991. This defines Main River as “a watercourse shown as such on a Main River map...”. New Section 192A of the 1991 Act defines what should be shown on a Main River map, that is the boundaries of Regional Flood and Coastal Committees and the extent of watercourses designated as Main River within their areas. It specifically allows for the map to be held in an electronic format.
127. New Section 192B requires the Environment Agency to provide facilities for inspecting the map and sets out arrangements for the provision of copies, for which charges may be made.
128. New Section 192C allows the Environment Agency to alter or replace maps. No notice is required where the change is of a minor nature, but where changes are likely to have a significant effect on any person, formal notice of the proposal must be given and any objections must be considered by the Environment Agency. Any disputes are to be referred to the Minister and the Environment Agency is required to comply with any Ministerial directions relating to the alteration or replacement of the Main River map.
129. New Section 192D provides for a Main River map to be conclusive evidence (including for the purposes of the Documentary Evidence Act 1868) of the matters shown on it as set out in New Section 192A.

Clause 65: Main River Maps: Wales

130. This clause amends sections 193, 194 and 221 of the Water Resources Act 1991 so that the current provisions relating to main river maps continue to apply in Wales only. Clause 64 sets out the changes being made regarding main river maps in England.

Clause 66: Overview

131. This clause provides an overview of clauses 67 to 73 which establish Regional Flood and Coastal Committees (RFCCs), These replace flood defence committees in England.

Clause 67: Establishment

132. This clause requires the Environment Agency to establish Regional Flood and Coastal Committees (RFCCs) for each region in England. By virtue of clause 73 RFCCs will replace Regional Flood Defence Committees (RFDCs) in England. In Wales, existing RFDCs will continue in being.

Clause 68: Membership

133. This clause sets out the requirements for membership of the RFCCs. Each committee must have a chair appointed by the Secretary of State with other members appointed by the Environment Agency and constituent councils (in accordance with clause 69). Under subsection (2), Environment Agency members may not be appointed to an RFCC while subsection (3) requires bodies appointing members to aim to appoint someone with relevant experience. Lead Local Flood Authorities within the boundaries of the RFCC are defined as “constituent councils” in subsection (4).

Clause 69: Membership schemes

134. This clause sets out arrangements for RFCC membership schemes. Subsection (1) requires the Environment Agency to prepare a membership scheme for each RFCC setting out the total number of members, and how many will be appointed by constituent councils. Subsection (2) requires membership schemes to ensure each RFCC has a majority of constituent council members and that schemes may allow appointments to be made jointly by more than one local council.
135. Subsection (3) sets out further requirements on the Environment Agency in preparing RFCC membership schemes. The Environment Agency must ensure a reasonable representation of bodies and interests covering the issues on which the RFCC is likely to be consulted. Members should be of good character and have a sound financial reputation. And the Environment Agency must also have regard to any guidance that the Secretary of State may issue about RFCC membership.
136. Schemes must be approved by the Secretary of State under subsection (4) and may include provisions for commencement under subsection (5) and provision for the proceedings under subsection (6). Subsection (7) requires the Environment Agency to publish membership schemes both in draft and when approved. Subsection (8) requires the Environment Agency to invite readers to make representations to the Secretary of State.
137. Subsection (9) allows the Environment Agency to revise a membership scheme and requires them to comply with any direction from the Secretary of State to revise a scheme. Subsection (10) states that subsections (2) to (6) apply to the revision of a membership scheme.

Clause 70: Money

138. Subsection (1) allows the Secretary of State to direct the Environment Agency to make specified payments to RFCC Chairs (and former Chairs). The Agency may also pay allowances to members of these committees under subsection (2). Subsection (3) requires the Secretary of State to determine the amounts or maximum amounts that may be paid under this clause.

Clause 71: Consultation

139. This clause requires the Environment Agency to consult the RFCC about the exercise of its flood and coastal erosion risk management functions in the Committee’s area and to take into account any representations made.

Clause 72: Consent to levy

140. Clause 32 allows the Environment Agency to issue levies to local authorities in respect of the Environment Agency's flood and coastal erosion risk management functions in those local authorities' areas. This clause, however, prohibits the Environment Agency from doing so without first obtaining the consent of the majority of members appointed by local authorities on the Regional Flood and Coastal Committee.

Clause 73: Consequential amendments

141. Subsections (1) to (6) amend the Environment Act 1995 and Water Resources Act 1991 to provide that those provisions apply only in Wales. This has the effect of preserving the existing law in Wales while the new provisions in the draft Bill apply in England only.
142. Subsection (7) amends section 137 of the Water Resources Act 1991 to repeal the power to raise special drainage charges in interests of agriculture.

General

Clause 74: Orders and regulations

143. This clause provides for orders or regulations under this Part to be made by statutory instrument and specifies the use of the negative resolution procedure in Parliament.

Part 2: risk management – designation of features

Clause 75: Overview

144. *Subsection (1)* describes what Part 2 does in setting out that certain authorities as listed in Clause 77 have the power to designate (i.e. identify and restrict changes to) certain structures or features which affect the risk of flooding or coastal erosion.
145. *Subsection (2)* sets out a table of contents for this Part.

Clause 76: Defined Terms

146. This lists terms that have the same meaning as in Part 1.

Clause 77: “Designating authority”

147. This lists the organisations which will be able to designate structures or features.

Clause 78: “Responsible authority”

148. This sets out that the authority which made the designation is the “responsible authority” and that where responsibilities or organisations change the designation may be adopted by another authority. *This is important for the rest of the Part as it is the “Responsible Authority” that has ongoing and exclusive role in exercising statutory functions for the designated thing.*

Clause 79: “Owner”

149. Defines the “owner” for a thing which is or may be designated as a) the owner of the land where the thing is situated or b) if different, the person responsible for managing or controlling the thing.

Clause 80: Designation

150. This specifies that something can only be designated if five conditions are satisfied, namely that the thing is a) a structure or b) a natural or man-made feature; that the designating authority thinks that the thing affects either a) the flood or b) a coastal erosion risk; that the designating authority has responsibility for the risk that is affected; that the thing is not already designated; and that the person responsible for the thing is not a designating authority.
151. Subsection (6) means that a designating authority cannot designate things that it or another designating authority owns or is responsible for.

Clause 81: Alteration, removal or replacement

152. This sets out that a person may not alter, remove or replace anything which is designated or provisionally designated without the permission of the responsible authority.

Clause 82: Local land charges

153. This says that the designating authority registers the designation as a local land charge by applying to the registering authority. The designating authority will do this and the owner of the thing designated will not need to pay. The designating authority will remove the local land charge if the designation is cancelled.

Clause 83: Cancellation

154. This allows the responsible authority to cancel a designation.

Clause 84: Provisional designation notice

155. This section sets out the initial procedure, termed provisional designation, that the designating authority should use to inform the person responsible that something is being considered for designation.

Clause 85: Designation notice

156. This sets out that the responsible authority can follow up a provisional designation to confirm the designation by sending a further communication to the owner.
157. In reaching the decision whether or not to proceed with the designation process the authority must take into account any comments received during the notice period specified in Clause 84 above.
158. A confirmation of the designation can only be sent a) after the notice period has expired and b) within 60 days of the provisional notice. If the authority does not act within this time and still wants to designate the thing then the whole process must start again.
159. The confirmation of designation communication must: a) refer to the previous 'provisional' designation; b) specify to the thing to be designated; c) state the reasons for designation; d) set out the procedure for lodging an appeal; and e) set out the timescale for lodging an appeal.

Clause 86: Consent to alteration, removal or replacement

160. This sets out that the responsible authority may give permission or consent to the owner a) to carry out alterations to the designated thing. The authority may also b) vary or withdraw any such permission (but not in respect of past events).

161. The responsible authority may give permission or consent to the owner to remove or replace the designated thing.
162. The consent in (1) and (2) above may be given (a) following application by the owner or (b) if the authority thinks it appropriate for another reason.
163. The consent may be (a) general or specific and (b) absolute or conditional.

Clause 87: Cancellation notice

164. The responsible authority can cancel a designation by notifying the owner and removing the local land charge.
165. The cancellation may be given (a) following application by the owner or (b) if the authority thinks it appropriate for another reason.
166. A communication cancelling the designation must specify: a) details of the thing to which it refers; b) the date from which the change will occur; and c) the reason for the cancellation.

Clause 88: Notice to other authorities

167. This explains that this section applies where an authority wishes to designate a thing or cancel a designation. In such circumstances the responsible authority must inform any other designating authorities which it thinks may be interested.

Clause 89: Applications: general

168. This states that the Minister may make regulations to set out (a) the form and content of applications under Clauses 86 or 87 and (b) the procedure for making a decision about an application.

Clause 90: Service

169. This allows the authority to communicate to the owner by means of communications delivered by hand, post or electronically.

Clause 91: Enforcement notice

170. *Subsections (1), (2) and (3)* sets out that if a person does not obtain the consent of the responsible authority before altering, removing or replacing a designated thing, the designating authority may serve an enforcement notice on that person. It specifies that the enforcement notice may be given to either the person who carried out the work or the landowner. It states that the enforcement notice must give instructions to the person on which it is served, setting out the corrective measures the person must undertake and by when they should be completed in order to restore the thing to its proper state.
171. *Subsection (4)* sets out that anyone failing to properly respond to an enforcement notice; (a) commits an offence and (b) if found guilty may be fined up to a maximum amount as set out in level 5 of the standard scale.

Clause 92: Default enforcement powers

172. *Subsection (1)* sets out that the section applies if an enforcement notice is not complied with. The rest of the section sets out the actions that may be taken. If the costs referred to in subsection (3) are not paid the responsible authority may refer the matter to the civil courts.

Clause 93: Emergency powers

173. This section only applies if (a) the owner undertakes works to alter, remove or replace a designated thing without obtaining consent and (b) the responsible authority considers that this increases an immediate and serious flood or coastal erosion risk that warrants emergency action. In such an emergency situation the authority may take remedial action without the need to first serve an enforcement notice. Such emergency action includes entry to the land where the thing is.
174. *Subsection (4)* enables the authority to recover from the owner any reasonable costs incurred in carrying the emergency works. If the owner does not pay the reasonable costs of the emergency works the authority may refer the matter to the civil courts.

Clause 94: Obstructing entry to land: offence

175. This establishes that it is an offence to deliberately obstruct a person officially representing the responsible authority from entering land for the purposes of carrying out default enforcement or emergency works.
176. Anyone found guilty is liable to up to: (a) 2 years imprisonment or a fine or both (on indictment in a Crown Court) or (b) up to the statutory maximum (on summary conviction in a Magistrates Court).

Clause 95: Appeals

177. This provides that the Minister must provide a mechanism by which a owner may appeal against: a) designations; b) refusal to consent alteration, removal or replacement; c) refusal to cancel a designation; and d) enforcement notices. The mechanism or process must: a) give the power to consider the appeal and reach decisions to the Minister, or a court or a tribunal and b) set out how the person might appeal and the procedure for doing so.
178. *Subsection (3)* confirms that when an appeal is made: a) the designation remains in place until the appeal has been determined; and b) the person or legal body who hears and determines the appeal may cancel the designation.
179. *Subsection (4)* specifies that if someone appeals against an enforcement a) the timescale for completion of the specified remedial actions is temporarily suspended until the appeal has been determined; and b) the person or legal who hears and determines the appeal may cancel the notice if appropriate.

Clause 96: “The Minister”

180. This states that references to “the Minister” means the Secretary of State in England and the Welsh Minister in Wales.

Clause 97: Regulations

181. This states that regulations shall be made by statutory instrument and for England can be removed by either House of Parliament whilst for Wales they can be removed by the National Assembly of Wales.

Part 3: Reservoirs

Introduction

Clause 98: Overview

182. Part 3 establishes a new regime for reservoir safety in England and Wales to replace the current regime in Reservoirs Act 1975 and makes provision about the management of the risk of flooding from reservoirs.

Clause 99: Repeal

183. The Reservoirs Act 1975 will cease to apply in England and Wales, but will continue to apply in Scotland.

Key concepts

Clause 100: “Reservoir”

184. This clause defines the term “reservoir” for the purposes of this Part. The term covers:

- large, raised structures designed or used for collecting and storing water; and
- large, raised lakes or other areas capable of storing water which have been created or enlarged by artificial means.

185. The term “raised” is defined in subsection (2). A raised structure or area will be “large” if it is capable of storing 10,000 cubic metres of water or more above the natural level of any part of the surrounding land. This volume may be amended by the Secretary of State, in relation to reservoirs in England and by Welsh Ministers, in relation to reservoirs in Wales, under subsection (6).

186. Subsections (4) and (5) allow the Minister (that is Secretary of State in relation to reservoirs in England and Welsh Ministers in relation to Wales) to make regulations to bring certain reservoirs “in a chain” within this Part if they would not otherwise be and are capable of collectively releasing more than 10,000 cubic metres of water when an upstream reservoir “breaches”.

187. Subsection 7 explains that specified things may be excluded from the definition of reservoir under section 6. Orders under this clause are subject to affirmative resolution procedure.

Clause 101: Ancillary systems

188. This clause clarifies that the term reservoir includes anything that is designed to control the water in it or the water’s flow. Subsection (2) sets out a non-exhaustive list of things that are included in this term.

Clause 102: Calculation of capacity

189. This clause allows the Minister to make Regulations specifying how the capacity of a reservoir is to be calculated for the purposes of Clause 100(3). The power will allow details to be included in secondary legislation on various matters to ensure that the same methodology and criteria are used for the purposes of determining whether a raised structure or other area is “large”.

190. These regulations are to be subject to the negative resolution procedure – see Clause 192.

Clause 103: Exclusions

191. This clause allows Ministers to exclude specified things from the definition of reservoir in Clause 100.
192. Subsection (2) contains a non-exhaustive indicative list of things that may be excluded by regulations under this Clause.
193. The regulations are to be subject to the affirmative resolution procedure – see Clause 192.

Clause 104: Definitions of “reservoir manager”

194. This clause introduces the term “reservoir manager” and explains where the different definitions of “reservoir manager” can be found.

Clause 105: “Reservoir manager”: general

195. This clause determines who a “reservoir manager” is, except where section 107 or 117 apply.
196. The Environment Agency or a water undertaker will be the reservoir manager if either is responsible for the operation of the reservoir.
197. In any other case, a person who uses the reservoir or part of a reservoir for the purpose of a commercial or other undertaking will be the reservoir manager of the reservoir or that part of the reservoir.
198. If the reservoir is not used, or if only part is used, for the purposes of an undertaking, then the lessee, or if none, the owner, of the reservoir or that part of the reservoir not used for the purposes of an undertaking will be the reservoir manager of the reservoir or that part of the reservoir not so used.
199. Subsection 9 clarifies that there may be more than one reservoir manager of a reservoir and that the requirements in this Part apply to each reservoir manager of a reservoir.

Construction and alteration

Clause 106: Application

200. This clause explains that sections 108 to 114 apply where a reservoir manager proposes to construct a new reservoir or carry out construction or alteration works to a reservoir to increase or decrease its capacity.
201. These sections also apply to a proposal to increase the capacity of an existing structure, lake or other area which on completion of the construction or alteration works will become a reservoir for the purposes of Clause 100.

Clause 107: “Reservoir manager”

202. This clause provides a different definition of reservoir manager to the one in Clause 104 in relation to a reservoir under construction.

Clause 108: Notice

203. This clause will require the reservoir manager to notify the Environment Agency of the proposed construction and alteration at least 28 days before the date on which the construction or alteration works begin.

Clause 109: Appointment

204. This clause requires the reservoir manager to appoint a “construction engineer” to design and supervise any construction or alteration works until a final certificate has been issued under Clause 113.
205. Subsection (2) places restrictions on who may be appointed as a construction engineer. The purpose of the restrictions is to ensure that a panel engineer is not appointed as a construction engineer if the engineer’s personal interests might conflict with the engineer’s responsibilities if he were appointed as construction engineer. The construction engineer must have been appointed to the relevant panel established by the Minister under Clause 161.

Clause 110: Interim Certificate

206. This allows a reservoir manager to vary the level to which an existing reservoir can be filled where its capacity is being increased or decreased and the construction or alteration works have not reached a stage at which a preliminary certificate can be issued. The reservoir manager must ensure that the reservoir does not contain water except in accordance with the interim certificate.

Clause 111: Preliminary Certificate

207. Once the construction or alteration works have reached a stage at which it is safe to start filling the new reservoir or the altered reservoir, the construction engineer must issue a preliminary certificate. The purpose of a preliminary certificate is to ensure that a reservoir is only filled under the supervision of the construction engineer. The reservoir manager must not fill the reservoir except in accordance with the preliminary certificate. The construction engineer can vary a preliminary certificate.

Clause 112: Construction certificate

208. This purpose of the construction certificate is to confirm that the construction, or alteration to, a reservoir has been carried out satisfactorily and according to the drawings and descriptions annexed to the certificate. The construction engineer must issue the construction certificate as soon as practicable after completion of the construction or alteration works and no later than when the final certificate is issued.

Clause 113: Final certificate

209. The purpose of the final certificate is to confirm that the construction engineer is satisfied that the new or altered reservoir can be safely used for the storage of water and to specify the level up to which, and any conditions on which, it may be safely filled. If the reservoir is a high-risk reservoir (see Clause 130), the final certificate must also specify any matters to be monitored by the supervising engineer under Clause 137.
210. A final certificate cannot be issued before the expiry of 3 years from the date of the first preliminary certificate. The minimum period of 3 years is needed to ensure that the construction engineer can properly observe the reservoir once it is filled with water before giving the final certificate.
211. In some cases, it may not be possible during this three year period for a construction engineer to observe how a reservoir behaves when filled with water because the reservoir remains empty during the period. If the construction engineer does not issue a final certificate within five years of the first preliminary certificate, under subsection (7), the construction engineer must explain to the reservoir manager and to the Environment Agency why this is the case.

Clause 114: Appointments under sections 146 and 147

212. If a reservoir manager fails to appoint a construction engineer under Clause 109, the Environment Agency may serve a notice on the reservoir manager requiring the reservoir manager to appoint one. If the reservoir manager still fails to appoint one, the Environment Agency can appoint an engineer to act as construction engineer in relation to the reservoir under Clause 146.
213. This clause provides that any engineer appointed by a reservoir manager following the receipt of a notice under section 146 or any engineer appointed by the Environment Agency under section 147 must prepare a report on the reservoir's construction or alteration as soon as practicable after the appointment.
214. Subsections (3) and (4) require the reservoir manager to carry out any measures which the engineer considers should be taken in the interests of safety as soon as practicable after the engineer has issued his report.

Clause 115: Offences

215. Clause 115 creates several offences in relation to the failure of a reservoir manager to comply with the reservoir manager's obligations under section 109-114.

Restoration

Clause 116: Application

216. This clause explains that sections 117 to 124 apply where a reservoir manager proposes to restore a disused reservoir to use. These clauses do not apply if the restoration includes the increase or the decrease of the reservoir's capacity. In these circumstances, sections 107-114 will apply instead.

Clause 117: "Reservoir manager"

217. The clause explains how the reservoir manager is to be determined for the purposes of restoring a disused reservoir to use.

Clause 118: Notice

218. The reservoir manager is required to notify the Environment Agency of the proposed restoration no less than 28 days before the restoration works begin or if there are no restoration works, the issue of the first preliminary certificate (see Clause 122).

Clause 119: Appointment

219. The reservoir manager must appoint a "restoration engineer" to inspect the discontinued reservoir, assess whether anything needs to be done to make it safe when filled and to supervise the restoration until a final certificate (see clause 26) is issued.

Clause 120: Safety inspection

220. This Clause requires the restoration engineer to prepare a report on the engineer's inspection of the disused reservoir setting out what the reservoir manager must do before the reservoir can be safely used for the storage of water.

Clauses 121 to 123: Interim certificate, preliminary certificate and final certificate.

221. These clauses contain the same requirements in relation to interim, preliminary and final certificates issued by restoration engineers as those contained in clauses 110-112.

Clause 124: Appointments under sections 146 and 147

222. If a reservoir manager fails to appoint a restoration engineer under Clause 119, the Environment Agency may serve a notice on the reservoir manager requiring the reservoir manager to appoint one. If the reservoir manager still fails to appoint one, the Environment Agency can appoint an engineer to act as restoration engineer in relation to the reservoir under Clause 146.

223. This clause provides that any engineer appointed by a reservoir manager following the receipt of a notice under section 146 or any engineer appointed by the Environment Agency under section 147 must prepare a report on the reservoir's restoration as soon as practicable after the appointment.

224. Subsections (3) and (4) require the reservoir manager to carry out any measures which the engineer considers should be taken in the interests of safety as soon as practicable after the engineer has issued his report.

Clause 125: Offences

225. This Clause makes it an offence for a reservoir manager to fail to comply the reservoir manager's obligations under Clauses 118-123.

Cessation of use

Clause 126: Application

226. This clause explains that sections 127 and 128 apply where it is proposed to discontinue the use of a reservoir. If a reservoir manager proposes to reduce the reservoir's capacity, sections 108-114 will apply instead.

Clause 127: Appointment

227. The reservoir manager is required to appoint an engineer to report on measures that should be taken in the interests of safety to prevent a reservoir which is to be discontinued from filling with water i.e. to make it incapable of holding water above the natural ground level.

228. Subsection (3) requires the reservoir manager to take any measures specified in the engineer's report before the use of the reservoir ceases or as soon as practicable after its use has ceased.

Clause 128: Notice

229. The reservoir manager is required to notify the Environment Agency when the use of a reservoir has ceased no later than 28 days after this has occurred.

Clause 129: Offences

230. This Clause makes it an offence for a reservoir manager to fail to comply with the reservoir manager's obligations under sections 127 and 128.

High-risk reservoirs

Clause 130: Meaning of “high-risk reservoir”

231. This clause allows the Environment Agency to determine whether a reservoir should be classified as a “high-risk reservoir” or not. The reservoir manager of a high-risk reservoir will be required to appoint an inspecting engineer in specified circumstances (see Clause 132) and to appoint a supervising engineer to supervise the reservoir under (Clause 136).
232. Subsection (1) provides for the determination of a reservoir as a high-risk reservoir if the Environment Agency thinks that an uncontrolled release of water from the reservoir could endanger human life and the reservoir does not meet any conditions specified in regulations made by the Minister.
233. When the reservoir manager of a reservoir applies to register the reservoir, it will be required under regulations made under Clause 173 to provide certain information to the Environment Agency. It is envisaged that these regulations will require reservoir managers to provide inundation maps for their reservoirs showing the areas that are likely to be flooded if water escaped from them. The Environment Agency will be able to use these maps for the purposes of assessing whether an uncontrolled release from a reservoir could endanger human life. Subsection (2) provides a non-exhaustive indicative list of the type of conditions that the Minister may specify in regulations made under subsection (1)(b). The power to make these regulations will enable the relevant Minister to exempt certain types of reservoir where, for example, an uncontrolled release of water from these types of reservoir would present only a negligible risk.

Clause 131: Notification of classification

234. Subsection (2) requires the Environment Agency to review any determination of a reservoir as a high-risk reservoir in accordance with regulations made by the Minister. A reservoir may need to be re-classified as high-risk reservoir, for example, as a result of new development downstream of the reservoir.

Clause 132: Inspections: appointment

235. The reservoir manager of a “high-risk reservoir” will be required to appoint an “inspecting engineer” to inspect the reservoir at specified intervals (see Clause 133 below) and to report on his inspection. Subsection (3) places restrictions on who may be appointed as an inspecting engineer. The purpose of the restrictions is to ensure that a panel engineer is not appointed as an inspecting engineer if the engineer’s personal interests might conflict with the engineer’s responsibilities if he were appointed as an inspecting engineer.

Clause 133: Inspections: timing

236. This clause sets out when an inspecting engineer must carry out an inspection. An inspection will be required at least once every 10 years, but may be required sooner.

Clause 134: Inspections: reports

237. This clause requires an inspecting engineer to provide a report as soon as reasonably practicable after the inspection. If no report has been provided within six months of the completion of the inspection, the inspecting engineer must explain to the Environment Agency why no report has yet been provided.
238. Subsection (4) provides that the report may contain directions about the timing of future inspections; any maintenance or other matters which are required in the interests of safety; and any matters which should be monitored by the supervising engineer.

Clause 135: Inspections: safety measures

239. Reservoir managers must implement directions as to safety measures contained in Inspection reports as soon as practicable. The inspecting engineer must issue interim safety certificates as and when each measure in the report has been completed and a final safety certificate when all have been done. Where a subsequent inspection takes place before all works in the previous report have been done, the inspecting engineer must explain any change he/she makes to the earlier, outstanding, ones.

Clause 136: Supervision: appointment

240. This clause requires a reservoir manager to appoint a supervising engineer to supervise the reservoir.

Clause 137: Supervision: duties

241. This Clause sets out a supervising engineer's duties. Under subsection (1), a supervising engineer has a general duty to notify the reservoir manager of anything that the engineer thinks might affect the safety of the reservoir. Subsection (4) requires the supervising engineer to inform the reservoir manager if the engineer considers that an inspection should take place.

Clause 138: Monitoring

242. This clause requires a reservoir manager to visit the reservoir at monthly intervals to carry a visual inspection of the reservoir for any signs of anything that may affect the reservoir's safety.
243. The reservoir manager must keep a record of these surveys.
244. Subsection (5) allows the Minister to make regulations to specify what information the reservoir manager must record in relation to these inspections.

Clause 139: Notification

245. The reservoir manager must inform the Environment Agency of appointments of inspecting engineers and appointments, resignations and removals of supervising engineers.

Clause 140: Offences

246. This Clause creates several offences in relation to the failure of a reservoir manager to comply with the reservoir manager's obligations under sections 132 to 139.

Flood plans

Clause 141: Directions

247. This clause provides for the Minister to make directions to reservoir managers to prepare flood plans. Subsection (2) explains what a flood plan is and its purpose. The power to direct a reservoir manager enables the Minister to ensure that reservoir managers are fully prepared to take appropriate action if their reservoirs are about to breach or do breach.
248. Under subsection (3), the Minister can specify what a flood plan should contain, how it should be prepared, who should be consulted in its preparation and provided with copies, and how it should be published.
249. Subsection (5) requires the Minister to consult interested persons before making the direction.

Clause 142: Preparation

250. A reservoir manager is required to prepare a flood plan in consultation with the supervising engineer or a panel engineer appointed for that purpose, who must certify the plan prior to any publication. This is to ensure that the flood plan contains all of the matters required to be included and has been prepared correctly. Flood plans must be tested and kept under review and revised as necessary.

Clause 143: Restrictions on consultation and publication

251. The clause will allow the Minister to restrict consultation on and publication of flood plans in the interests of national security.

Clause 144: Duty to co-operate.

252. This Clause requires reservoir managers to co-operate with the designated Category 1 and 2 responders under the Civil Contingencies Act 2004 in relation to their duty to assess, plan and advise in relation to flood risk from a reservoir. Ministers may make regulations to specify the extent and manner of the duty.

Clause 145: Offences

253. This Clause creates several offences for failing to comply with a reservoir manager's obligations under Clauses 141 to 143.

Enforcement

Clause 146: Enforcement notice: appointments

254. This Clause enables the Environment Agency to serve enforcement notices on reservoir managers who have failed to comply with their obligations to appoint a panel engineer.

Clause 147: Power of appointment

255. If a reservoir manager fails to comply with an enforcement notice under Clause 146, the Environment Agency has the power to appoint a panel engineer instead and to recover its costs reasonably incurred in relation to that appointment.

Clause 148: Enforcement notice: safety measures

256. A reservoir manager may be required to take measures or carry out maintenance work. This clause gives the Environment Agency the power to serve enforcement notices on reservoir managers who fail to comply with these obligations, requiring them to implement the measures or carry out the maintenance work within a specified period. The period can only be set after the Environment Agency has consulted a panel engineer appointed for this purpose about what period it should specify.

257. Subsection (4) allows the Environment Agency to recover its reasonable expenses from the reservoir manager in relation to this consultation.

Clause 149: Power to take safety measures

258. If a reservoir manager fails to comply with an enforcement notice under Clause 148, the Environment Agency can implement the measure or carry out the maintenance work under the supervision of a panel engineer appointed for the purpose, who will certify that the required measure has been taken. The Environment Agency can recover from the reservoir manager its reasonable costs in taking this enforcement action.

Clause 150: Emergency powers

259. This clause gives the Environment Agency the power to take immediate action in relation to a reservoir if the Agency considers that this is necessary to protect persons or property against an escape of water from a reservoir. The Environment Agency must consult a panel engineer about any measures that should be taken to deal with the situation at hand and must arrange for the measures to be carried out under the engineer's supervision. Subsections (4) to (6) require the Agency to give the reservoir manager notice of the measures to be taken, except in circumstances where this is not possible.

260. The Environment Agency can recover from the reservoir manager the costs it reasonably incurs in exercising its powers under this clause.

Clause 151: Offences

261. A reservoir manager will commit an offence if the reservoir manager fails to comply with an enforcement notice issued by the Environment Agency under section 146 or 148.

Powers of entry

Clause 152: Authorisation by Environment Agency

262. This clause will enable the Environment Agency to authorise a person to enter land on which a reservoir is situated for enforcement purposes and to take "emergency" action under Clause 150. This power of entry covers neighbouring land if this is necessary to determine what emergency action is needed or to take emergency action.

263. Subsection (4) restricts the power to enter occupied land unless 7 days' notice has been given to the occupier or entry is authorised by warrant. Subsections (5) and (6) provide safeguards in relation to the exercise of this power.

Clause 153: Authorisation by warrant

264. This Clause explains when a Justice of the Peace may grant a warrant to authorise the entry onto land under Clause 152.

Clause 154: Offences.

265. A person who obstructs a person entitled to enter land under Clause 152 or 153 is guilty of an offence.

Clause 155: Compensation

266. This Clause deals with compensation by the Environment Agency to any third party whose interest in or enjoyment of land onto which entry has been made under Clause 152 or 153 has been damaged or disturbed. Disputes must be referred to the Lands Tribunal.

Disputes

Clause 156: Referrals: decisions of an engineer

267. This clause allows a reservoir manager to appeal against the directions given by panel engineers under Clauses 114, 120, 124 or 127 or against the refusal of an engineer to certify a flood plan under Clause 142.

Clause 157: Referrals: decisions by the Environment Agency

268. This clause allows a reservoir manager to appeal against the determination as to a classification of reservoir made by the Environment Agency, including following a review by the Agency.

Clause 158: Appointment of referee

269. Referees in the case of appeal will be appointed by agreement of the reservoir manager and the panel engineer giving the directions; or if no agreement is made, by the Ministers. The referee will be appointed from the relevant panel (see Panel of Engineers below).

Clause 159: Powers of referee.

270. The referee may modify the report or the flood plan which has been the subject of the appeal; and provide a certificate to that effect or modify any certificate given in relation to the report.

Clause 160: Procedure

271. This Clause allows Ministers to make rules for considering an appeal. The costs of any appeal will be met by the reservoir manager.

Panel of engineers

Clause 161: Establishment

272. This Clause provides for Ministers to establish at least one panel of engineers for the purposes of the Bill, either for general purposes or for specified ones. The proposals mirror the system for establishing up panels contained in the Reservoirs Act 1975.

273. Current panels are:

- all Reservoirs Panel: members may act as supervising, construction, or inspecting engineers for all reservoirs;
- Service Reservoirs Panel: members may act as supervising engineers for all reservoirs and construction or inspecting engineers for service reservoirs (covered structures which supply potable water direct to consumers);
- Non-impounding Reservoirs Panel: members may act as supervising engineers for all reservoirs and construction or inspecting engineers for non-impounding reservoirs (bundled structures); and
- Supervising Engineers Panel: members may act as supervising engineers for all reservoirs.

274. A similar panel system is likely to be adopted under the new provisions.

Clause 162: Appointment

275. An engineer who wants to be appointed to a panel must apply to the relevant Minister. The Minister may appoint an engineer to a panel if in Ministers' opinion, he or she is a fit and qualified person. Detailed requirements as to the application procedure and fees will be set in regulations. The current application procedure (in relation to panel appointments made under the Reservoirs Act 1975) is contained in the Reservoirs (Panels of Engineers) (Applications and Fees) Regulations 1992 (S.I 1992/1527 as amended by S.I 2003/143).

Clause 163: Period of appointment

276. The period of appointment to panels will be five years, with a provision for reappointment. Subsection (3) allows Ministers to vary this period by Order. Variations would not be on individual appointments but in those circumstances where, after consultation (see Clause 166), Ministers decide to vary the period generally, either for all or for specific panels.

Clause 164: Removals

277. This Clause provides for appointments be terminated where Ministers are satisfied that the person is not fit or qualified to remain on it, in which circumstances all appointments held will cease.

Clause 165: Dissolution

278. As a concomitant of setting up panels, Ministers will be able to dissolve them, with reasonable notice to their members.

Clause 166: Consultation

279. For the purposes of setting up and dissolving panels, making and cancelling appointments, Ministers must consult with the President of the Institution of Civil Engineers or a Committee set up by the President. Ministers will be able to reimburse the Institution. If the Institution ceases to exist, Ministers may by order amend the references to it.

Reports, certificates and statements: general

Clause 167: Form

280. This clause provides for Ministers to make regulations about the form in which panel engineers' reports, statements and certificates should appear. The Reservoirs Act 1975 contains a similar provision (see section 20(1)). For the current regulations under the Reservoirs Act, see the Reservoirs Act (Certificates, Reports and Prescribed Information) Regulations 1986 (SI 1986/468).

Clause 168: Delivery to the reservoir manager

281. Any report or certificate issued or prepared by an engineer for the purposes of the Bill must be delivered to the reservoir manager within 7 days of the date of the report or the certificate (except where an engineer is appointed by the Environment Agency – see Clause 169).

Clause 169: Delivery to the Environment Agency

282. Where an engineer is appointed by the Environment Agency under section 147, the engineer is required to deliver any report or certificate issued or prepared by the engineer to the Environment Agency within 28 days; and a copy must be delivered to the reservoir manager as well in that time.

Clause 170: Delivery of copy documents to the Environment Agency

283. This clause specifies the timetable of 28 days for delivery to the Environment Agency by the engineer of copies of certificates, reports and statements issued by engineers and referees.

Clause 171: Assessment of reports and statements

284. This Clause will allow Ministers to make regulations for the assessment of the quality of reports and written statements prepared by engineers, including for the assessment to be made by a committee of members of the Institution of Civil Engineers. Regulations may set out the criteria and procedures for assessment and the steps that may be taken by the Environment Agency or Ministers following an assessment.

Registration, records and information

Clause 172: Registration and records

285. This Clause will require the Environment Agency to establish and maintain a register of reservoirs and a record of information about each, to be available for public inspection (although Ministers will be able to direct the Environment Agency to exclude information on national security grounds). It enables Ministers to make regulations about the information to be contained in the register and record.

Clause 173: Reservoir managers: duty to register

286. This Clause requires reservoir managers to register a reservoir with the Environment Agency. Under subsection (2), Ministers can make regulations setting out the information required to be registered and the registration process.

Clause 174: Records

287. Reservoir managers will be required to keep a record of the matters included in subsection (1) (water levels and depth of water in the reservoir, including the flow of water over the waste weir or overflow; leakages; settlements of walls or other works; repairs; any other prescribed matter); and install and maintain any necessary instruments or equipment. Ministers may make regulations setting out detailed requirements and forms of records. Construction or inspecting engineers may also specify the intervals at which the record must be updated and the manner in which the information is given.

Clause 175: Power to require information

288. The Environment Agency will be able by notice to require a reservoir manager to provide specified information in a specified time and manner or form.

Clause 176: Reports

289. This Clause will enable Ministers to make regulations to require persons including reservoir managers or engineers to report to the Environment Agency any incident of a specified kind which affects the safety of a reservoir. Regulations may specify the form or manner or the timing of reports.

Clause 177: Emergency response information

290. This Clause will require reservoir managers to display emergency response information at or near their reservoirs; and enable Ministers by regulations to specify the information that must be displayed. Also, the Environment Agency may direct managers about the display of emergency response information, including its location.

Clause 178: Facilities and information

291. This Clause requires reservoir managers to provide all reasonable facilities to an engineer, including copies of records, certificates and reports, to enable the engineer to properly carry out the engineer's functions for the purposes of this Part.

Clause 179: Offences

292. This Clause creates several offences for failing to comply with a reservoir manager's or panel engineer's obligations under:

- Clause 170 Delivery of copy documents to the Environment Agency
- Clause 173 Reservoir managers: duty to register
- Clause 174 Records
- Clause 175 Power to require information
- Clause 177 Emergency response information
- Clause 178 Facilities and information

Role of the Minister

Clause 180: Report to the Minister

293. The Clause will require the Environment Agency to report to Ministers about:

the steps it has taken to secure compliance of reservoir managers with the Bill; and the steps it has taken to comply in respect of reservoirs for which it is the reservoir manager. Ministers may make regulations about the times or intervals of reports and their content.

Clause 181: Environment Agency compliance

294. This Clause makes provision for Ministers, if satisfied that the Environment Agency has failed to comply with a requirement, to make orders specifying the requirement it has failed to comply with, the steps that the Agency must take to remedy the failure or prevent recurrence and the time for doing so. Ministers may arrange for an inquiry to be held to determine whether or not the Environment Agency has failed to comply with a requirement.

Supplementary

Clause 182: Notices: deemed service

295. This Clause provides that where the Environment Agency is unable to ascertain the name or address of a reservoir manager, it will be treated as having served notice on the reservoir manager by leaving it in the hands of a person who is or appears to be resident or employed at the site of the reservoir, or by affixing it conspicuously to a building or object at the site.

Clause 183: Notices: Environment Agency

296. The Clause applies the general provisions on service of documents in the Environment Act 1995.

Clause 184: Notices: delivery

297. This specifies the means by which a notice may be delivered.

Clause 185: Charges

298. The Clause provides for the introduction of a charging scheme for the Environment Agency's enforcement functions under the Bill.

Clause 186: Offences: bodies corporate

299. This Clause specifies that liability for offences committed with the consent of certain officers of a body corporate applies to the officer as well as the body corporate.

Clause 187: Offences: proceedings

300. This Clause specifies the bodies who are able to bring proceedings for offences as: the Environment Agency; Ministers; or the Director of Public Prosecutions or another person with the Director's consent.

Clause 188: Civil liability

301. This Clause clarifies that this Part does not confer a right to claim damages in respect of a breach of an obligation imposed by those sections.

General

Clause 189: Crown application

302. This Clause sets out how this Part applies to the Crown. While the Crown is not criminally liable for contravening any provision in this Part, the High Court may, on receipt of an application, declare any of its acts or failure to act unlawful. Ministers have the power to certify, in the interests of national security, that any powers of entry granted in this Part of the Bill should not be exercised on any Crown land specified in that certificate.

Clause 190: "The Minister"

303. This Clause sets out the respective functions of the Secretary of State and Welsh Ministers and defines the term "Minister" for this Part.

Clause 191: Index of defined terms – considered to be self-explanatory. Therefore no explanation given.

Clause 192: Regulations, rules and orders

304. This Clause specifies how regulations and rules shall be made:

- Regulations and rules shall be made by statutory instrument

- Orders shall be made by statutory instrument (except for orders made against the Environment Agency under Clause 181);
- Statutory instruments are to be subject to annulment in pursuance of a resolution of either House of Parliament; or the National Assembly of Wales, as appropriate, except for
- Statutory instruments containing regulations made under Clauses 103 or 130 (1)(b) or an order made under Clause 100(6) may not be made without the approval of both Houses of Parliament or the National Assembly for Wales as appropriate.

Part 4: Water administration regime

Clause 193: Overview

305. This clause provides an overview of Part 4. Part 4 provides a revised special administration regime for water and sewerage undertakers and licensed water suppliers, to be known as the water administration regime, in substitution for the ordinary administration regime in Schedule B1 to the Insolvency Act 1986 that applies to companies in general. The regime is designed to ensure that, where a water company “fails”, its assets and infrastructure will continue to be used to provide essential water and sewerage services to its customers.
306. The revised regime replaces the existing special administration regime which applies to water and sewerage undertakers and licensed water suppliers in sections 23 to 26 of the Water Industry Act 1991 (“the Act”). It is based on the ordinary administration regime in Schedule B1 to the Insolvency Act 1986, with modifications where required to reflect the different aims of the water administration regime.
307. Clause 215 revokes the previous special administration provisions as included in sections 23 to 26 of the Water Industry Act 1991 (“the Act”).

Clause 194: “Water companies”

308. The water administration regime applies to “water companies”. These are companies which are either:
- appointed as water or sewerage undertakers (or both) under the Act;
 - granted a combined water supply licence pursuant to section 17A of the Act and whose introductions of water into an undertaker’s system have been designated as a strategic supply or a collective strategic supply under section 66G or 66H of the Act; or
 - the above water companies that remain in water administration but no longer hold a relevant appointment or licence.

Clause 195: “Water functions”

309. This clause explains the term “water functions”. The water administration regime is limited to a water company’s water functions..

Clause 196: “The Minister”

310. This clause sets out the respective functions of the Secretary of State and Welsh Ministers for the purposes of the water administration regime. The functions of the Minister in relation to any water or sewerage undertaker whose area is not wholly or mainly in Wales or any licensed water supplier are exercisable by the Secretary of State, whilst the functions of the Minister in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales are exercisable by Welsh Ministers.

Clause 197: Insolvency Act expressions

311. This clause confirms that any expressions used in this part have the same meaning as those used in the Insolvency Act 1986 (as amended by the Enterprise Act 2002).

Clause 198: Nature of order

312. A High Court order is required to place a water company in water administration. Where the High Court makes a water administration order a qualified insolvency practitioner will be appointed as the “water administrator”. This post is restricted to insolvency practitioners because the Government considers that their resource capabilities and practical experience of dealing with assets in complex insolvencies will be vital to ensure that the objectives of the special administration regime can be achieved and returns to creditors maximised. The water administrator’s role is to manage the affairs, business and property of the water company in water administration.

Clause 199: Procedure

313. This clause allows the relevant Minister or the Water Services Regulation Authority (“the Authority”) (with the appropriate Minister’s consent) to make an application to the court for a water administration order in relation to a water company. No other person may apply to the court for a water administration order.
314. *Subsection (3)* requires that notice of an application for a water administration order must be given in accordance with rules made under section 411 of the Insolvency Act 1986.
315. *Subsection (4) to (5)* outlines the powers of the court on hearing an application for a water administration order. The court may make such an order, adjourn the application or dismiss it. The court may also make an interim order restricting the powers of the company or its directors while it is subject to a water administration order.
316. *Subsection (6)* provides that any application for a water administration order may only be withdrawn with the permission of the court.
317. *Subsection (7)* requires the Secretary of State to consult Welsh Ministers before making or consenting to an application related to a relevant licensed water supplier.

Clause 200: Interim moratorium

318. This clause applies from the time that a water administration order is made until the application is either granted or dismissed. It restricts the passing of any resolution for the voluntary winding up of a company in water administration or the making of a winding up order in relation to company in water administration (although the presentation of a winding up petition may still be made). It also restricts the exercise of certain rights over the company’s property, the enforcement of any security over the company’s property and the taking of specified legal proceedings except with the permission of the court.

Clause 201: Breach of main duty

319. This clause provides that the court may make a water administration order in relation to a water company if the water company has breached a main duty under the Act or if it is likely to make such a breach in the future and the breach or anticipated breach is, or would be, sufficiently serious to make it inappropriate for the company to continue as a water company. A court may not make an order if the relevant Minister or the Authority has served or is likely to serve a notice under section 19 of the Act with respect to the breach. Section 19 provides exceptions to the requirement to enforce (e.g. where contraventions are trivial or where the water company has provided an

undertaking to comply with the relevant provision). Subsection (5) defines what a main duty is for these purposes. In the case of a licensed water supplier, the court may also make a water administration order if the licensed water supplier has caused a water undertaker to breach its duty under section 37 of the Act and the licensed water supplier's behaviour is sufficiently serious to make it inappropriate for the company to continue as a licensed water supplier.

Clause 202: Failure to co-operate

320. This clause provides that the court may make a special administration order if a water company has breached an enforcement order (or if confirmed, a provisional enforcement order) made under section 18 of the Act or if it is likely to breach an enforcement order (or a provisional enforcement order) in the future. An order may not be made if the water company makes an application to the court under section 21 of the Act questioning the validity of the enforcement order. The court may also make a special administration order where a water or sewerage undertaker does not co-operate with the relevant Minister or the Authority when granting inset appointments in its area of appointment. An inset appointment is granted to a new entrant that takes over the functions of the local undertaker for certain large business premises, greenfield sites or where the local undertaker agrees to transfer part of its area.

Clause 203: Financial instability

321. The court may also make a special administration order if a water company is unable, or likely to become unable, to pay its debts or where it would be fair for the water company to be wound up on public interest grounds if it were not a water company under section 124A of the Insolvency Act 1986. It will be deemed to be insolvent in accordance with section 123 of the Insolvency Act 1986 or, if the water company is an unregistered company in accordance with sections 222 to 224 of that Act.

Clause 204: Order instead of other process

322. This clause allows a court to make a water administration order where a petition for the winding-up of a water company is presented by a person other than the relevant minister (e.g. a creditor of the water company) or where a water company makes an application to the court for voluntary winding up of the water company.

Clause 205: Administration objectives

323. This clause establishes the administration objectives in relation to a water company in water administration:

324. The transfer objective is to transfer as much of the water company's business to one or more companies as is necessary to ensure the proper performance of the water company's water functions (these being the functions it had immediately before going into water administration and any others that it acquires while in water administration);

- the rescue objective is the rescue of the water company as a going concern; and
- the interim objective is to ensure that the water company properly carries out its statutory functions until the transfer objective or the rescue objective is achieved.

325. *Subsections (3) and (4)* requires that the special administrator pursue the transfer objective unless it is required to pursue the rescue objective. Subsection (4) requires the water administrator to pursue the rescue objective if the water administration order was made on the grounds that it was or was likely to be unable to pay its debts; the rescue objective is reasonably practicable and the transfer objective would not result in the more effective performance of the company's water functions. *Subsection (5)* provides that the rescue objective could include the transfer of a part of a water company's business.

326. *Subsection (6)* requires the water administrator to pursue the interim objective until either the transfer or the rescue objective has been achieved.

Clause 206: Transfers

327. *Subsection (1)* provides that where the transfer objective is pursued, the water administrator may transfer the whole or part of the water company's business to a subsidiary of the water company. This allows the whole or a part of a water company's business to be "hived down" to a new wholly-owned subsidiary of the water company.
328. *Subsection (2)* will permit the use of transfer schemes under schedule 2 of the Act to facilitate transfers of a water company's business to one or more companies.

Clause 207: Application of general administration law

329. The Table after *subsection (2)* provides for certain provisions of Schedule B1 to the 1986 Insolvency Act (introduced by section 248 and Schedule 16 of the Enterprise Act 2002 (c.40)) to apply to water administration with specified modifications.

Clause 208: Challenge to special administrator's conduct of water company

330. This clause sets out the circumstances in which the creditors or members of the water company in water administration, the relevant Minister or the Authority may apply to the court to challenge the conduct of a water administrator. The court may not make an order if it would impede or prevent the pursuit of the relevant administration objectives.

Clause 209: Discharge of special administration order

331. *Subsection (1)* provides that the water administrator may apply to the court for the water administration order to be discharged once the transfer objective or, where applicable, the rescue objective has been achieved.
332. *Subsections (2) and (3)* allows the relevant Minister or the Authority to apply for a water administration order to be discharged where the objectives of the water administration need no longer be pursued. The Secretary of State must consult Welsh Ministers before making an application concerning a licensed water supplier.
333. On receiving an application the court may adjourn the hearing; dismiss the application; make an interim or any other order it thinks appropriate.

Clause 210: Restriction on winding-up orders

334. This clause prevents the court from exercising its powers on a winding-up petition from a person other than a minister (e.g. a creditor) unless notice has been given to the minister and the Authority at least 14 days prior to the petition being served to the court. If an application for a water administration order is made before a winding-up petition is served the court may make a water administration order instead of exercising its winding-up powers.

Clause 211: Restrictions on voluntary winding up

335. This clause prevents a water company from passing a resolution for voluntary winding up without the permission of the court. The court may not grant an application unless notice has been given to the minister and the Authority at least 14 days prior to the application being sent to the court. If an application for a water administration order is made before permission has been granted the court may make a water administration order instead of granting permission.

Clause 212: Restrictions on ordinary administration orders

336. This clause prevents the court from granting an ordinary administration order for a water company from a person other than a minister (e.g. a creditor) if a water administration order is in force or where an application is pending. If this is not the case the court may not exercise its powers in relation to ordinary administration orders unless notice has been given to the minister and the Authority at least 14 days prior to the application being submitted to the court.

Clause 213: Restrictions on administrator appointments by creditors etc

337. This clause prevents any person (creditors, directors, holders of floating charges, etc) from appointing an administrator where a water administration order is in force, about to come into force, or pending. If this is not the case, an administrator may only be appointed if all relevant documents have been served on the minister and the Authority at least 14 days prior to the service of those documents.

Clause 214: Enforcement of security

338. This clause provides that no step may be taken to enforce any security over the property of a water company unless the relevant Minister and the Authority have been given 14 days' prior notice.

Clause 215: Repeal

339. This clause repeals the relevant sections of the Act on special administration.

Clause 216: Power to adapt insolvency law

340. This allows the Secretary of State to apply or de-apply a provision of insolvency law in relation to water administration and to modify a provision of insolvency law, as applied to water administration. It also allows the Secretary of State to amend Part 4 to reflect a change in insolvency law. An order under this clause is subject to the affirmative resolution procedure.

Part 5: Sustainable drainage

Clause 217: Overview

341. This clause gives an overview of this Part of the Bill. The purpose of this part is to improve the environmental performance of new surface water drainage systems, in order to reduce damage caused by flooding and improve water quality.

Clause 218: Ministerial Responsibility

342. This clause explains that where a drainage system is wholly or mainly in Wales, the Welsh Ministers are the Ministers responsible. In other cases the Secretary of State is the Minister responsible.

Clause 219: National standards

343. This clause requires Ministers to consult on and publish national standards for sustainable drainage, addressing their construction and operation. Planning authorities must have regard to the standards in preparing local development documents.

Clause 220: Sustainable Drainage and Clause 221: Drainage system

344. These clauses define the terms “sustainable drainage” and “drainage system” which are used later in this Part of the Bill. This Clause defines a drainage system as a structure to receive rainwater, excluding natural watercourses and public sewers. A public sewer is defined in the Water Industry Act 1991 as being vested in a sewerage undertaker.

Clause 222: Approving body

345. This clause defines the approving body as, by default, the upper tier local authority. However, subsection (4) allows Ministers to appoint an alternative approving body. Subsections (4) and (5) explain that this must be done by an order which will be subject to the negative resolution procedure in Parliament or (in the case of an appointment by the Welsh Ministers) the National Assembly for Wales.

Clause 223: Requirement of approval before construction

346. Subsection (1) prevents any person from starting work on any new drainage system without approval from the approving body. Subsection (2) allows Ministers to make exceptions to this rule. Subsections (2) and (4) explain that this must be done by an order which will be subject to negative resolution procedure in Parliament or (in the case of an appointment by the Welsh Ministers) the National Assembly for Wales.

347. Subsection (3) requires Ministers to consider exempting drainage systems which are unlikely to affect the drainage from other properties.

348. Subsection (5) will contain details about enforcement powers, and further consideration will be given to what powers might be needed.

Clause 224: Application for approval

349. This clause sets out the process for applying for approval to construct a new rainwater drainage system. Subsection (1)(a) requires the applicant to provide any information which the approving body needs. Subsection (2) says that the approving body must approve the application if it satisfies the national standards, and must refuse the application if it does not.

350. The approving body can agree modifications to the plans (subsection (3)(b)), set conditions (subsection (3)(a)), charge a fee from the applicant (subsection (1)(b)), and require the applicant to provide a non-performance bond (subsection (4)).

Clause 225: Application fees

351. Subsection (1) enables an approving body to set and publish fees. These are fees which a person must pay on making an application for approval of a drainage system under clause 224 or to alter an application under clause 226. The fees must not exceed their costs in approving and monitoring the construction and operation of the systems before adoption (subsection (2)).

Clause 226: Alteration of proposals

352. This clause enables a person who has made an application to build a drainage system to apply to alter their proposals. The same procedure and considerations applies as to a new application.

Clause 227: Sewerage undertaker

353. This clause sets out the role of sewerage undertakers in the application process. Subsections (1) and (3) provide that if the new drainage system is going to communicate with a public sewer, the approving body must consult the sewerage undertaker which is responsible for the sewer in question before the application is decided. Once the approving body has made a decision about the application, it must notify the sewerage undertaker of the outcome (subsection (2)).

Clause 228: Inspection

354. This clause means that where a new drainage system has been approved, the approving body may inspect it during construction.

Clause 229: Non-performance bond

355. This clause ensures that the approving body may require the applicant to pay a financial bond, up to the cost of work involved, before approval is given (subsections (1) and (7)). If the approving body considers that work on the drainage system is not completed in compliance with the approved proposal or is unlikely to be completed, the approving body can give a certificate for unsatisfactory performance (subsection (2)). The approving body must consult the developer before doing this (subsection (3)).

356. When the approving body gives a certificate of unsatisfactory performance, it may claim the bond (subsection (2)), and use it to carry out work to bring the drainage system up to the national standards. If it does not need to use all of the money, it must return any part to the person who made the application (subsection (4)).

357. Subsection (6) will contain details about enforcement powers, and further consideration will be given to what powers might be needed.

Clause 230: Certificate of satisfactory construction

358. This clause ensures that, where a drainage system has been constructed in accordance with approved proposals, the approving body will issue a certificate to the applicant (subsections (1)-(2)). It will then begin monitoring the drainage system to check that it is operating in accordance with the approved proposals (subsection (3)).

Clause 231: Duty to adopt

359. This clause requires the approving body to adopt any new drainage system which has been approved, is operating in accordance with the approved proposals and is likely to affect the operation of drainage systems for other properties (subsection (1)).

360. The approving authority must notify the developer that it is adopting the drainage system (subsection (2)).

361. Under subsection (4), Ministers may give guidance about what is meant by ‘a drainage system may affect other drainage systems’, and make regulations setting out the meaning and application of ‘being likely to affect the operation of drainage systems for other properties.’

Clause 232: Process of adoption

362. This clause provides that where an approving body adopts a drainage system, it becomes responsible for maintaining it in line with the national standards on sustainable drainage.

363. If the drainage system connects with a public sewer, the approving body must notify the sewerage undertaker in whom it is vested. It must also notify any landowners who may be affected and publicise the adoption (subsection (3)). If the non-performance bond is unused it must be released (subsection (4)).
364. Subsection (6) will contain details about enforcement powers, and further consideration will be given to what powers might be needed.

Clause 233: Right to connect

365. This clause amends the automatic right to connect surface water drains and sewers to the public sewerage system. Section 106 of the Water Industry Act 1991 sets out an automatic right for owners of premises or owners of private sewers draining premises to connect a drain or sewer with a public sewer. This clause restricts that right so that connection of surface water drainage can only be made if the drainage system has been approved for sustainable drainage of surface water from new development and the proposals include a communication with a public sewer.
366. This clause does not apply to communications with the public sewer made before this Act comes into force.

Part 6: Water industry regulation

Undertakers

Clause 234: Modifying conditions of appointment

367. This clause inserts six new sections into the Water Industry Act 1991 to allow the Authority to create or modify “standard conditions” of appointment. A condition is regarded as a “standard condition” if it applies to all appointed sewerage or water undertakers, or a relevant geographical (England or Wales) or functional (sewerage or water) subgroup.
368. Currently, the Authority may modify the Conditions of Appointment of an individual undertaker if the undertaker agrees. Alternatively, the Authority may make a reference to the Competition Commission seeking modifications to the conditions of one or more undertakers’ appointments. The Competition Commission will then decide what (if any) remedies are appropriate.
369. This clause would allow the Authority to modify standard conditions if more than a specified percentage of the undertakers concerned agree to the modification. It also allows for an initial period of one year during which the Secretary of State and the Welsh Ministers may create new standard conditions in their respective areas, subject to the same process of undertaker agreement.

Clause 235: Penalties

370. This clause amends section 22C of the Water Industry Act 1991 to extend the period of time within which a financial penalty can be imposed to five years. At present, section 22C of that Act allows the enforcement authority to pursue financial penalties within twelve months of any relevant breach. In order to avoid retrospective effect, subsection (2) introduces a transitional provision which limits the use of the extended time limit to contraventions which occur on or after 1 April 2009. This is to ensure that the information submitted by the companies as part of the review of price controls in 2009 remains within the scope of the revised legislation.

Clause 236: Information

371. The Authority has powers to impose an enforcement order (under section 18 of the Water Industry Act 1991) and financial penalties (under section 22A of the same Act) for various contraventions.

At present, section 203 of the Water Industry Act 1991 allows the Authority to acquire information to determine whether contraventions have occurred. This power applies in relation to suspected breaches of conditions of appointment, conditions of licences and requirements under section 18 of that Act. But it doesn't apply for suspected breaches of standards of performance prescribed under sections 38(2) or 95(2) of that Act. The proposed amendment (and the revised subsections (1A)(c)-(d) in particular) introduces a uniform approach.

Clause 237: Drinking Water Inspectorate charges for inspections

372. This clause inserts a new section into the Water Industry Act 1991 to introduce a new power for the Secretary of State (or the Welsh Ministers as regards Wales) to recover the costs of the regulatory activities undertaken by the Drinking Water Inspectorate (DWI) from water companies.
373. DWI was established in 1990 as the drinking water quality regulator for the privatised water industry in England and Wales. DWI consists of the Chief Inspector of Drinking Water and other inspectors, all of whom are appointed under section 86 of the Water Industry Act 1991. It carries out a variety of work which can broadly be divided into work to deliver its regulatory functions and work to support policy functions.
374. The Chief Inspector of Drinking Water reports direct to Ministers on matters relating to the statutory function of enforcing drinking water regulations. However, in other respects DWI operates as a self contained unit within the Water Directorate of Defra and the Chief Inspector reports to the Water Director on management issues. DWI is fully funded by Defra.
375. The introduction of charging to water companies and licensed water suppliers will be a new cost that water companies will have to meet to fulfil their regulatory obligations and will therefore form part of the costs funded through the price review and met through consumer bills.
376. This clause inserts a new section 86A into the Water Industry Act. Subsection (1) of the new section enables the Secretary of State to require water undertakers and licensed water suppliers to pay charges for the delivery of the DWI's statutory and connected functions.
377. Subsection (2) requires the Secretary of State to make an order setting out more precisely the activities which can be charged for. Subsection (6) set out the requirements for this order, including that it will be subject to the negative resolution procedure in Parliament.
378. Subsection (3) establishes the principle that charges will reflect the cost of performing functions in respect of each individual undertaker or supplier. Subsection (4) makes it clear that the charges can be calculated taking one year with another and can take account of a reasonable proportion of costs for general purposes, such as overheads.
379. DWI acts on behalf of both the Secretary of State and Welsh Ministers. Subsection (5) confirms that Secretary of State functions are devolved to the Welsh Ministers in relation to any water undertaker whose area is wholly or mainly in Wales and any licensed supplier so far as relating to licensed activities using the supply system of any such water undertaker. Orders made by the Welsh Ministers pursuant to subsection (2) are subject to annulment pursuant to a resolution of the National Assembly for Wales (subsection (6) of the new section).

Clause 238: Consolidation of regulatory regimes

380. Subsection (1) provides a power for the Minister (Secretary of State in England and Welsh Ministers in Wales under Subsection (7)), to regulate the use of water resources ("water regulations").
381. Subsection (2) sets out what the Secretary of State and Welsh Ministers must consider in deciding whether to make water regulations with the overall aim of reducing unnecessary burdens, for example on business, individuals and regulators. This will be achieved by allowing regulations to be made to control the use of water resources, consistent with, and combined with regulations covering pollution.

382. Subsection (3)(a) allows water regulations to be combined with regulations made under section 2 of the Pollution Prevention and Control Act 1999 (“pollution regulations”). Subsection (3)(b) allows water regulations to be made covering any matter that pollution regulations can cover. Subsection (3)(c) allows provisions to be made that replicate or have similar effect to any provision in the Water Resources Act 1991 or the Water Act 2003. Subsection (3)(d) states that the water regulations may apply any provision about fees, powers of entry or other procedural matters made under the Environment Act 1995; and (3)(e) allows for consequential amendments to be made.
383. Subsection (4) states that the use of water includes taking, diverting or impounding water from a natural source and applying it to any purpose, but does not include water drawn from a system maintained by a water undertaker.
384. Subsection (5) requires water regulations to be specific about the uses of water resources to which they apply.
385. Subsection (6) enables the Secretary of State and Welsh Ministers to repeal provisions in the Water Resources Act 1991 or Water Act 2003 where no longer necessary in the light of regulations made under this clause.
386. Subsection (8) applies the legislative procedures set down in section 2 (2) to (9) of the Pollution Prevention and Control Act 1999 to the making of water regulations.

Provision of infrastructure

Clause 239: Overview

387. This clause inserts a new Part 2A into the Water Industry Act 1991 (“the Act”) under the title of “Regulation of the Provision of Infrastructure”.

Clause 240: Section 36A: Regulations

388. *Subsection (1)* of a new section 36A allows the Secretary of State or Welsh Ministers (“the Minister”) to introduce regulations to allow the Water Services Regulation Authority (“the Authority”) to regulate the provision of infrastructure by a third party for the eventual use by water undertakers or sewerage undertakers.
389. *Subsection (2)* permits the regulations to apply the same or similar provisions contained in Part 2 of the Act and Part 4 of this Bill. These provisions include such matters as appointment of water and sewerage undertakers, enforcement orders, special administration orders and restrictions on voluntary winding up and insolvency proceedings.
390. *Subsection (3)* requires that the regulations must specify the activities to which they apply which may include the designing, constructing, owning and operating infrastructure provide for undertakers (e.g. large reservoirs shared between a two or more water undertakers) and allows them to define the term “infrastructure”.
391. *Subsections (4) and (5)* states that sections 36B to 36D specifies other provisions that may be included in the regulations and defines the term “infrastructure project” as being a project that involves the designing, constructing, owning and operating of infrastructure (as per subsection (3)(a) above).
392. *Subsection (6)* provides that the regulations are to be made in accordance with subsection 213(2) to (2B) of the Act (powers to make regulations).

Clause 241: Section 36B Tendering

393. *Subsection (1)* of a new section 36B in the Act provides that the regulations under section 36A may allow the Minister or the Authority (if the role has been delegated to it by the minister) to specify one or more infrastructure project which must be put out to tender.
394. *Subsection (2)* requires the regulations to prohibit water and sewerage undertakers from carrying out infrastructure projects if they have been identified as the type of projects which have to be put out to competitive tender.
395. *Subsection (3)* provides that the regulations may permit or require undertakers to carry out certain preparatory work associated with an infrastructure project.
396. *Subsection (4)* requires that the regulations must include provisions outlining which of the undertakers' associate companies (e.g. parent or sister companies) may participate in tender processes.
397. *Subsection (5)* requires the regulations to specify the procedures to be followed in a tender exercise. These provisions may specify factors that need to be taken into account by undertakers when considering bids and must enable an undertaker to determine which bid to accept.

Clause 242: Section 36C: Criteria for tendering

398. This clause, which introduces a new section 36C in the Act, requires that the regulations must specify the criteria to be used in determining whether an infrastructure project must be put out to competitive tendering. Before exercising this power the Minister must consult the Authority and any other person likely to be affected by the proposal (subsections (1)-(2)).
399. If the Authority is the determining body, it must publish guidance on how it will determine which infrastructure projects will be subject to tendering. Before publishing the guidance or carrying out relevant functions under the regulations, it must consult ministers and anyone else likely to be affected by its proposals (subsections (3)-(5)).

Clause 243: Section 36D: Designation as infrastructure provider

400. *Subsection (1)* provides that the regulations may enable the Authority to designate a successful bidder as an "infrastructure provider".
401. *Subsection (2)* enables the regulations to:
- confer full or limited powers and duties consistent with, or similar to, those in the Act upon infrastructure providers, the Authority, ministers and other public bodies (e.g. the Drinking Water Inspectorate or Environment Agency);
 - relieve water and sewerage undertakers from certain duties in relation to the infrastructure project; and
 - vary, revoke or provide conditions of appointment on the designation and provide enforcement provisions.

Clause 244: Section 36E: Regulations: procedures

402. This clause, which introduces a new section 36E in the Act, provides that regulations cannot be made unless a draft has been laid before and approved by resolution of both Houses of Parliament or, if appropriate, the National Assembly for Wales. Ministers must also consult with persons likely to be affected by the regulations before the draft is laid before Parliament or the Assembly.

Clause 245: Section 36F: Ministerial responsibility

403. This clause, which introduces a new section 36F in the Act, confirms that Welsh Ministers are responsible for any infrastructure project that is provided for undertakers in whose area is wholly or mainly in Wales. The Secretary of State is responsible for all other projects.

Clause 246: Consequential amendment

404. This clause changes section 213(1) to confirm that the regulations need to be made under the affirmative procedure.

Complaints and dispute resolution

Clause 247: Consumer complaints

405. This amends section 29(6) of the Water Industry Act 1991 (“the Act”) to remove a duty on the Consumer Council for Water (“the Council”) to pass on certain consumer complaints to the Authority. This means that the Council will have an opportunity to reach agreement between the consumer and the water undertaker and only pass on the complaint to the Authority if the consumer is not satisfied with the outcome.

Clause 248: Cost of moving pipes

406. This clause places a duty on the Authority to make a determination in a dispute between an undertaker and landowner relating to the amount of security, costs or interest that an undertaker may charge the landowner when meeting a request to move or alter pipes or other apparatus on his land.

Clause 249: Works on private land

407. This clause removes a duty on the Authority to make a determination with respect to the exercise of an undertaker’s works powers on private land. The complaint would instead be heard by a single arbitrator appointed by both parties or, where such an appointment cannot be agreed by the parties, by one appointed by the Royal Institution of Chartered Surveyors.

Clause 250: Foul water and pollution

408. This clause changes the appointee of a single arbitrator to hear a dispute on an undertaker’s powers to deal with foul water pollution from the President of the Institution of Civil Engineers to the Institution itself.

Clause 251: Compensation in respect of street works powers

409. This clause removes a duty on the Authority to make a determination with respect to compensation payable in respect of an undertaker’s pipe-laying and other street works powers. The determinations would instead be heard by a single arbitrator appointed by both parties or, where such an appointment cannot be agreed by the parties, by one appointed by the Institution of Chartered Engineers. This clause changes the appointee of a single arbitrator to hear other disputes from the President of the Institution of Civil Engineers to the Institution itself.

Drainage

Clause 252: Construction standards for sewers

410. Currently, statutory sewerage undertakers may specify their own standards for construction of lateral drains and sewers proposed to connect to the public sewerage system. This clause amends sections 106 and 112 of the Water Industry Act 1991 to provide for all newly built lateral drains and sewers connecting to the public sewerage system be built to a mandatory standard.
411. *Subsection (1)* replaces section 106(4) with a new subsection prohibiting connection to the public sewer of drains or sewers unless they are built to a standard published by the Secretary of State or the Welsh Ministers, (in relation to sewerage undertakers wholly or mainly in Wales).
412. *Subsection (2)* makes a consequential change to section 105A so as to allow a sewerage undertaker to adopt lateral drains and sewers built to the standard prescribed in section 106(4) as part of the public sewerage system.
413. *Subsection (3)* adds a new subsection (8) to section 112 to ensure that where a statutory sewerage undertaker requires someone who proposes to build a drain or sewer to build it to a standard that would enable it to be adopted as part of the public sewerage system, that standard is consistent with the mandatory standard prescribed in section 106(4).

Clause 253: Unlawful communications

414. This clause amends section 109 of the Water Industry Act 1991 so as to provide sewerage undertakers with corrective powers similar to those currently available to local authorities for resolving unlawful communications with a public sewer.
415. Currently a person commits an offence if a communication is made to a public sewer in contravention of the requirements in section 106 or 108 of the Water Industry Act 1991 or if such a communication is made within the 21 day period for giving notice to the sewerage undertaker that a communication is desired. Subsection (2) amends subsection 109(1) so that it is no longer an offence to make a communication with the public sewer within 21 days of notifying the sewerage undertaker. This is because the right of the sewerage undertaker to object to the communication within 21 days is being amended in clause 252.
416. One type of unlawful communication occurs where a connections is made to drain foul water into a surface water sewer or surface water into a foul water sewer. The effect of the amendments in subsections (3) to (5) is to give sewerage undertakers the option of redirecting an unlawful communication into the correct public sewer rather than only having the power to close it (subsection (3)) and to recover the cost of either option from either the offender or the owner of the drain or sewer (subsections (4) and (5)) where previously expenses could only be recovered from the offender. This means that sewerage undertakers will have the discretion to reclaim costs of rectifying the misconnection from whichever they think is the most appropriate – the person who caused the unlawful communication or the owner. Subsection (5) also inserts a new subsection (5) into section 109 creating an offence where a person obstructs a sewerage undertaker exercising a power under section 109(2)(a). Anyone convicted of this offence will be liable to a fine up to level 5 on the standard scale (currently £5,000).

Part 7: Miscellaneous

Water resources

Clause 254: Temporary bans

417. This clause replaces section 76 of the Water Industry Act 1991 with a similar power to allow water companies to temporarily prohibit or restrict specified uses of water. The new section 76(1) and (2) allow water undertakers to ban specified uses of water if there is, or is expected to be, a serious water shortage.
418. They may only ban uses of water which appear in section 76(A)(1). The uses which appear in this list are the watering of private gardens and the cleaning of private motor vehicles using a hosepipe. This continues the water companies existing powers to prohibit these activities.
419. Section 76A(2) enables the Secretary of State/Welsh Ministers, to add other uses of water to the list in section 76(A)(1), thus extending the water companies' powers. This must be done by order which will be subject to the affirmative resolution procedure in Parliament or the National Assembly for Wales (subsection (7)).
420. Section 76A(3) and (4) allows the Secretary of State/Welsh Ministers by regulations to provide exclusions for any of the listed uses, so that the government could, for example, require the water companies to provide an exemption on the grounds of health and safety. It also allows, by regulations, the definition of some of the terms used and for further clarification to be provided on the uses of water that can be banned
421. Section 76B requires the water undertaker, in addition to the current requirement to publish a notice of prohibition or restriction in local newspapers, to do so on its website (subsection (2)). It requires the water undertaker to serve notices in this way each time the scope of any prohibition or restriction is altered in any way, including the variation of, or lifting (including the partial lifting) of any such prohibition or restriction (subsections (4) and (5)). Subsection (3) requires water undertakers to allow for the receipt of representations to the proposed prohibition.
422. A water undertaker is required to set out clearly in its published notices the terms of the prohibition, as outlined in section 76(3) and (4). This includes, the extent of the uses of water that it will be restricting or prohibiting, and to whom the prohibition or restriction will apply. Under section 76(4), a water undertaker may exclude groups of customers and/or apparatus in relation to the uses of water, for any purpose which is prohibited or restricted. Under section 76(3), the notice of the prohibition must specify the date on which the prohibition or restriction will commence and the part of the water undertaker's area to which the ban will apply.
423. Section 76(5) which outlines offences and section 76(6) which outlines arrangements for reductions of charges by water companies have not been changed from the Water Industry Act 1991, and will continue. It is an offence to contravene a prohibition, punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale. A water company which prohibits a use of water must make arrangements for a reasonable reduction in the amount that it charges.

Clause 255: Waste from water sources

424. Section 71 of the Water Industry Act 1991 currently gives the power to the Environment Agency to take action to prevent the waste of water abstracted but only from underground strata (wells and boreholes). This clause amends the existing power of the Environment Agency to take action under section 71 by extending it to prevent the waste of water abstracted from inland waters (rivers and streams).

Clause 256: Special charges in respect of irrigation

425. This clause amends section 127 of the Water Resources Act 1991 in two key areas. Firstly by extending this special charge arrangement to the holder of any licence which authorises the abstraction of water for the purposes of irrigation and secondly it removes the land restrictions associated with such agreements.

Clause 257: Powers of entry: water resources functions

426. This clause amends section 172(3) of the Water Resources Act 1991 and allows the Environment Agency to exercise its powers of entry to premises or vessels to install and keep monitoring works or apparatus or carry out experimental borings for the purposes of carrying out its water resources functions. This clause applies the same powers of entry that already exists for other functions of the Environment Agency.

Maps of waterworks

Clause 258: Repeal of duty

427. This clause repeals section 195 of the Water Resources Act 1991 and removes the current duty on the Environment Agency to keep and maintain a record of maps showing its resources mains, discharge pipes or other underground works that it owns.

Fisheries Committee: Scotland

Clause 259: Abolition

428. This clause abolishes the Fisheries Committee: Scotland, originally appointed under section 5(2) of the Electricity (Scotland) Act 1979 and now governed by the Electricity Act 1989 Schedule 9 paragraph 5 (“the Committee”). There is no equivalent for England or Wales. Abolition reflects the current capacity within the Scottish Environment Protection Agency to have full regard to the Committee’s responsibilities for the effect on fisheries and fish stocks of proposals for and ongoing operation of hydro-electric generation in Scotland.

Part 8: General

Clause 260: Interpretation: “action”

429. This clause refers to an action including not doing something.

Clause 261: Statutory instruments

430. This clause sets out the sort of provision which can be contained within a statutory instrument made under the Bill.

Clause 262: Money

431. This clause provides for money to be provided by Parliament to pay for expenditure under the Bill or increases in expenditure incurred by virtue of the Bill.

Clause 263: Commencement

432. *Subsection 1* provides for the provisions of the Bill to be brought into force by order of the Secretary of State.
433. *Subsection 2* allows for pre-existing documents to be used to satisfy a duty in Part 1 to prepare, submit or publish a document.

Clause 264: Extent

434. This clause explains that the Bill applies generally to England and Wales but that amendments or repeals made by the Bill have the same extent as the enactment amended or repealed.

Clause 265: Short Title

435. This clause gives the short title of the Act (as it will become on Royal Assent) as the Flood and Water Management Act 2009.

FINANCIAL EFFECTS AND EFFECTS ON PUBLIC SECTOR MANPOWER

436. Public sector costs for the draft Bill are estimated at £56.78 million annually and £14.25 million for one-off costs from the point of implementation which is expected to start in 2010-11. Costs and new burdens up to and including 2010-11 have already been agreed as part of the Pitt announcement in December. From 2011-12 the transfer of private sewers to water and sewer companies, and the savings that local authorities will realise from better local flood risk management, together with EA charging schemes will off-set the majority of the public expenditure required. Anything remaining will be fully accommodated within Government's current baselines.
437. We are therefore confident that no unfunded net new burden will be placed on council tax as a result of provisions within the draft Bill or consultation document.
438. Defra is in close consultation with Communities and Local Government (CLG) colleagues to agree the final details of the new burdens assessment. The draft Bill sets out the framework for managing floods and coastal erosion risk management. As such the Draft Bill will also have indirect impacts associated with policy interventions in those areas, which are set out at high level in the Impact Assessment that accompanies this draft Bill, and for which detailed impact assessments have also been published:
<http://www.defra.gov.uk/environ/fcd/floodsandwaterbill.htm>
439. All new burdens for the current CSR period have been met by Defra's budget and agreed with Department of Communities and Local Government (CLG) for the purposes of the Government's Response to Sir Michael Pitt's Review of the Summer 2007 Floods in December 2008. Defra is working with CLG to ensure that any other minor new burdens are appropriately accounted for. Analysis indicates that the likelihood of there being additional burdens is small.
440. The final Impact Assessment accompanying this draft Bill has identified small changes in public sector manpower. For example, in Reservoirs policy, inspecting engineers will be required to ensure that safety measures for previously unregulated high risk reservoirs are increased. It is possible that if Internal Drainage Board districts merge that there might be a small consequent loss of public officials.
441. Equally, when Environment Agency (EA) responsibilities pass to local authorities, such as in the case of the Consenting and Enforcing provisions, around 10 EA employees can be expected to have less work. However, the arrangements for ensuring that the EA has a strategic overview of flood and coastal erosion management will mean that there will be a re-balance within the organisation, and it is likely that there will be a slight net gain in the number of employees required.

SUMMARY OF THE IMPACT ASSESSMENT

442. The final Summary Impact Assessment accompanying this draft Bill can be found online at <http://www.defra.gov.uk/enviro/fcd/floodsandwaterbill.htm> or in hard copy in the Vote Office (House of Commons) or Printed Paper Office (House of Lords).
443. The analysis in the final Summary Impact Assessment supports the case for this legislation. This can be seen in monetised and non-monetised ways. A conservative cost-benefit ratio for the impact assessment for the provisions for the Environment Agency strategic overview, for Sustainable Drainage Systems (SUDs) and other Surface Water Management measures is 1:2.5, the benefits of which will be seen in water quality, sustainable drainage, and a decrease in damage from flooding in those areas which are at greatest risk from this. Many of the benefits from the draft Bill's Drinking Water Inspectorate policy are unable to be monetised since they relate to improved regulatory practice, transparency, and the provision of incentives to the water industry. This is in accordance with Treasury standards on 'Managing Public Money', bringing the policy closer in line with Hampton Principles of regulation.
444. The 2008 Enterprise Strategy committed the Government to examine whether small firms can be fully exempted from new regulatory requirements or be subject to a simplification of enforcement. Policy for the draft Bill has been developed with this in mind. For SUDs policy, the consultation paper suggests a sliding scale of costs so that smaller construction companies are not disproportionately disadvantaged by the policy. However, for small businesses who own high risk Small Raised Reservoirs of up to 25,000 cu metres, it is possible that they might be required to pay for registering their reservoir so that the correct risk-based approach can be taken for monitoring it. This is because, should it prove to be of very high risk of breaching and causing harm and damage to those who live within its inundation area, it would be necessary to protect those people.
445. Impact assessments for the draft Bill conclude that there would be no significant impact on race, disability and gender, through implementation of the legislation. Equally, there would be no tangible impact on carbon levels as a result of this legislation.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

446. This section of the Explanatory Notes sets out the provisions of the draft Bill which are most likely to raise questions about compatibility with the European Convention on Human Rights, and explains why these provisions do not infringe or authorise the infringement of the Convention rights.
447. *Part 1* of the draft Bill provides for the Environment Agency to have overall responsibility for supervising the management of flood and coastal erosion risk in England. It makes local councils responsible for supervising the management of flood risk relating to surface runoff, groundwater and ordinary watercourses. It imposes duties on the Environment Agency and certain councils to assess flood risk and plan for its management.
448. The majority of this Part is concerned with imposing duties on these public bodies, requiring them to do certain work, and requiring them to carry out its work in a particular way. In particular it imposes duties to assess risk, to prepare reports and guidance and to co-operate with one another. It also provides for the establishment of Regional Flood and Coastal Committees. These provisions do not affect the rights of individuals and therefore do not engage their Convention rights.
449. Clause 37 gives the Environment Agency a power to carry out coast protection work. Clauses 34 and 42 give the Environment Agency and other public bodies powers to carry out structural or environmental work for the purpose of managing flood or coastal erosion risk while clauses 41 and 49 give those bodies powers to carry out work which will create flooding or coastal erosion where it is desirable for the benefit of the natural environment. The creation of a power does not in itself engage the Convention rights, but as this could include work on individuals' land, there could be concerns about whether the exercise of these powers would be compatible with the right to property under Article 1 of Protocol 1.

450. The right to property is a limited right. An interference with a person's right to property will be allowed under the Convention if it pursues a legitimate aim of public policy and it strikes a fair balance between the rights of the individual and of the public. In this case, the powers under clauses 34, 37 and 42 only authorise the carrying out of works in order to manage a flood or coastal erosion risk (in which case it must also be desirable having regard to the national flood and coastal erosion risk management strategy). The assessment of a risk will take into account the potential harmful consequences of the flooding or coastal erosion for human health, social and economic welfare, infrastructure and the environment and the desirability of any risk management work will be assessed in this context. The powers may therefore only be exercised where there is a public interest in doing so.
451. The powers under clauses 41 and 49 may only be exercised where the work is desirable for the benefit of the natural environment, regard is had to the flood and coastal erosion risk strategies, and the work will not create or increase specified harmful consequences to human health, the welfare of individuals and communities, infrastructure and the environment. Again the draft legislation confines the powers to situations where there is a public interest in carrying out the work.
452. It would be unlawful for the Environment Agency or any of the other bodies authorised under clauses 41 or 49 to exercise these powers in such a way which does not strike a fair balance between the public interest and the interests of the property owner. This is because all are public authorities and will therefore, by virtue of section 6 of the Human Rights Act 1998, be prevented from exercising this power in such a way so as to infringe the Convention rights. It is therefore concluded that Part 1 of the draft Bill does not infringe, or authorise any infringement of, Article 1 of Protocol 1.
453. *Part 2* allows authorities (the Environment Agency, local councils and internal drainage boards) to designate certain structures or features which affect a flood or coastal erosion risk. Once designated, a person may not alter, remove or replace the feature without consent of the authority. There may be concerns that the designation of property in this would engage the right to property under Article 1 of Protocol 1 or the right to a fair trial under Article 6.
454. A feature or structure may only be designated if it affects flood or coastal erosion risk. Designations are therefore only allowed where there is a public interest in controlling its use, which is to allow public authorities to properly plan for and manage flood risk. For example, a factory wall running alongside a river may perform a crucial function in determining the direction in which flood water would flow. There is no outright prohibition on removing or altering property – it may be removed or altered with the authority's consent.
455. The authorities in question are all public authorities for the purpose of section 6 of the Human Rights Act. They will therefore be obliged to ensure that there is a fair balance between the public interest and the rights of the individual when deciding whether to designate a feature, and when deciding whether or not to consent to work. There is therefore no infringement of the right to property.
456. Regarding the right to a fair trial, Article 6 recognises that it is legitimate for decisions to be taken by administrative rather than judicial bodies where the exercise of specialist judgment is required. In this case, the decisions to designate a feature, or whether to give or withhold consent are decisions which will require expert judgment on the management of flood and coastal erosion risk. There are also a number of procedural safeguards in place to make sure that there is a right to a fair trial. These are:
- a designation cannot be confirmed without giving at least 28 days to make representations;
 - there will be a right of appeal against designations and against refusals of consent;
 - a person with standing will be able to judicially review a decision to designate a feature or to refuse consent.

457. The combination of these factors mean that there will be no infringement of the right to a fair trial under Article 6, or of the right to property under Article 1 of Protocol 1.
458. *Part 3* repeals and replaces the Reservoirs Act 1975. On the whole, this Part puts into place a regime for controlling the management of reservoirs in order to ensure their safety. In the most part, there is no question of any of them interfering with the rights of individuals.
459. There are a number of provisions which require the reservoir manager to engage a suitably qualified civil engineer to oversee the construction, alteration, restoration or cessation of the use of a reservoir. The reservoir manager is prevented from doing certain things with the reservoir without certification from the engineer. This is a control on the use of the reservoir, and therefore could engage the right to property under Article 1 of Protocol 1.
460. There is a clear public interest in regulating the use of reservoirs. If a reservoir were to be breached, there would be the possibility of large quantities of water flowing in directions where it is not intended to flow. This could lead to widespread damage to the surrounding environment, to the property of others and to human life. These are significant risks and so putting the management of the reservoir under the supervision of a suitably qualified engineer therefore strikes a fair balance between the property rights and the public interest. Part 3 therefore does not infringe Article 1 of Protocol 1.
461. *Part 4* re-enacts and modifies the existing special administration regime for suppliers of strategic supplies of water and sewerage companies. This system acts instead of the general rules under the Insolvency Act 1986.
462. Some might try to argue that this system engages the right to property as it has the effect of limiting the rights of creditors to recover and enforce debts owed to them by water companies. However, there have always been limitations on the ability to recover debts (including under the Insolvency Act), and creditors will be aware of the fact that there are limitations when it decides to lend. Therefore there is no interference with the right to property.
463. Even if that were not the case, this system strikes a fair balance between the rights of creditors and the public interest in ensuring that the essential public function of providing water and sewerage services can be preserved. There is therefore no infringement of the right to property under Article 1 of Protocol 1.
464. *Part 5* restricts the right of persons to build rainwater drainage systems or to connect to the public sewer. No person may do so without the approval of the local authority, who will make the decision based on national standards for the sustainable drainage of rainwater. It is arguable that this restriction might engage the right to a fair trial under Article 6.
465. The local authority's discretion will be limited in that it must allow the building work or the connection if the drainage system will be constructed in accordance with the national standards on sustainable drainage, and otherwise must not allow it. The purpose of the national standards is to ensure that in so far as possible rainwater is drained gradually into the ground, for example through soakaways, permeable paving, ditches or into a nearby pond. It should only allow rainwater to drain into a sewer where there are no practical alternatives.
466. Such a decision will require expert judgment, and allowing a body such as a local council to make a decision such as this is consistent with the right to a fair trial. It would also be possible for a person to judicially review the council's decision, for example, on the grounds that it did not properly judge the decision against the national standards. Part 5 therefore does not infringe Article 6.
467. It is considered that the remaining Parts of the draft Bill do not give rise to any human rights issues

TRANSPOSITION NOTES

468. This draft Bill includes provisions giving effect to the following European law:

- *Floods Directive (2007/60/EC)*

A Transposition Note setting out how the Government will transpose into UK law the main elements of this Directive is annexed to these Explanatory Notes.

469. The Directive is the first piece of EC legislation to specifically address flood risk by setting out a common framework for its measurement and management. It requires Member States to make a preliminary assessment of flood risk from all sources, excluding sewers¹, and then to identify areas at significant potential risk of flooding. For these 'significant risk' areas it requires the development of maps showing the flood extent and humans and assets at risk and the development of adequate and coordinated measures to reduce this flood risk.
470. The Directive shall be carried out in co-ordination with the Water Framework Directive, notably by aligning flood risk management plans and river basin management plans, and by co-ordinating public participation during preparation of these plans. All assessments, maps and plans shall be made available to the public.
471. Although less applicable within the UK, except in Northern Ireland, Member States must co-ordinate flood risk management practice in shared river basins to avoid measures that might increase flood risk in a neighbouring country. Within the UK the same principle will be applied for catchments crossing administrative boundaries.
472. The Floods Directive sets in train a six yearly appraisal, mapping and planning cycle that begins with the first preliminary flood risk assessments which are due by 22 December 2011. This assessment then forms the basis for determining significant risk and therefore the areas that will be mapped and for which flood risk management plans will be developed. The maps, both flood hazard maps and flood risk maps, are due to be completed by 22 December 2013. Finally, based on the information provided by the maps, by 22 December 2015 flood risk management plans must be prepared for these areas.
473. The appraisal, mapping and planning cycle then continues on a six-yearly basis with the first review of preliminary flood risk assessments due by 22 December 2017. Flood maps must be reviewed by 22 December 2019 and flood risk management plans by 22 December 2021. Each review must take into account the likely impact of climate change on the occurrence of floods.
474. Responsibility for flood risk management is a devolved matter. Draft primary legislation has been prepared in England (this draft Flood & Water Management Bill) and the Welsh Assembly Government is expected to join in with this legislation after an initial consultation on its proposed policy. In Scotland draft primary legislation is currently with the Scottish Parliament and in Northern Ireland draft secondary legislation is being prepared.
475. Each administration is responsible for legislating for river basin districts falling wholly within their land area. The Scottish Executive is responsible for transposition of the Directive in relation to river basin districts that are wholly in Scotland, as is the Department of the Environment Northern Ireland in relation to river basin districts in Northern Ireland. For river basin districts that cross these administrative boundaries separate secondary legislation will transpose the Floods Directive, drafted by whichever administration has the largest share.

¹ Member States may exclude flooding from sewerage systems from transposition and the UK has opted to exclude such flooding where it is caused entirely by a system failure or blockage.

476. The Northumbria River Basin District lies partly in England and partly in Scotland, because certain tributaries of the Tyne extend into Scotland. The Northumbria Regulations have been made by the Secretary of State alone, after consultation with the Scottish Government. Separate Regulations will be made by the Scottish Government in relation to the river basin district that straddles the border between England and Scotland on the west coast (the Solway Tweed River Basin District). The Northumbria Regulations generally apply the principal Regulations to Northumbria, with some modifications to ensure that the appropriate cross-border consultation and coordination takes place.
477. The Floods Directive provisions need to be embedded into an existing body of flood and spatial planning legislation which is already diverse and complex. Fortunately the decision, in England and Wales, to review all flood risk legislation and bring it into a single unifying act has meant that Directive provisions can be more easily aligned to the proposed changes in roles and responsibilities.
478. Given that flood risk management mapping and planning in England and Wales already mirrors much of the Directive approach, the draft legislation focuses on issues that are currently less advanced, for example mapping surface water flooding and other sources of local flood risk.
479. Further detail on the use of the draft Bill to transpose the Floods Directive can be found in the Transposition Note annexed to this Explanatory Note.

COMMENCEMENT DATES

480. We intend all provisions in the Bill to be commenced by Order. In that way any provisions will only be brought into effect if circumstances are appropriate.

ANNEX

TRANSPOSITION NOTE – EU FLOODS DIRECTIVE (2007/60/EC)

The draft Flood and Water Management Bill (England and Wales) and future cross-border and delegated powers legislation

This Note sets out how the Government will transpose into UK law the main elements of the EU Floods Directive. This is referred to in pages 76-77 of the Explanatory Note.

1. This Transposition Note has been prepared by the Department for Environment, Food and Rural Affairs to show how the main elements of Directive 2007/60/EC of the European Parliament and of the Council of 23rd October 2007 on the assessment and management of flood risks (“the Floods Directive”)² have been transposed in England.
2. The note has been published to accompany the Flood and Water Management Bill (“the Bill”).
3. The Bill provides delegated powers for regulations stipulating further detail on the scope and content of preliminary flood risk assessments, flood maps and flood risk management plans and on the determination of significant flood risk.
4. Separate regulations will also be drafted to apply the requirements of the Directive to catchments that are shared between England and Scotland and Wales

The Directive

5. The Floods Directive is the first piece of EC legislation to specifically address flood risk by prescribing a common framework for its measurement and management. It requires Member States to make a preliminary assessment of flood risk from all sources, except sewers³, and then to identify areas at significant potential risk of flooding. For these ‘significant risk’ areas maps must be plotted to show the potential flood extent and the adverse consequences arising from such a flood. Objectives and measures must then be developed to reduce this flood risk.
6. The Directive needs to be implemented in co-ordination with the Water Framework Directive, notably by aligning flood risk management plans with river basin management plans, and by co-ordinating public participation during preparation of these plans. All assessments, maps and plans must be made available to the public and we must encourage the active involvement of interested parties in the preparation of flood risk management plans.
7. Although less applicable within the UK except for Northern Ireland, Member States must co-ordinate flood risk management practice in shared river basins to avoid measures that might increase flood risk in a neighbouring country. Within the UK the same principle will be applied for catchments crossing administrative boundaries.
8. The Floods Directive sets in train a six yearly assessment, mapping and planning cycle that begins with the first preliminary flood risk assessment which is due by 22 December 2011. The assessment forms the basis for determining areas of potential significant flood risk which will subsequently be mapped and for which flood risk management plans will be then prepared. The maps, both flood hazard and flood risk maps, are due to be completed by 22 December 2013. Finally, based on the information provided in these maps flood risk management plans must be prepared by 22 December 2015.

² Official Journal of the European Communities, No. L288, 6.11.2007, p 27.

³ Member States may exclude flooding from sewerage systems from transposition and within the UK, England, Scotland and Wales have opted to exclude such flooding where it is caused entirely by a system failure or blockage.

9. The assessment, mapping and planning cycle continues thereafter on a six-yearly basis with the first review of the preliminary flood risk assessment due by 22 December 2017⁴. Flood maps must be reviewed by 22 December 2019 and flood risk management plans by 22 December 2021. Each review must take into account the likely impact of climate change on the occurrence of floods.

Responsibility for transposition

10. Responsibility for flood risk management is a devolved matter although this Department is ultimately accountable for UK compliance with the Floods Directive. Draft primary legislation has been prepared in England (the Floods and Water Bill) and the National Assembly Wales is expected to join in with this legislation after an initial consultation on its proposed policy. In Scotland draft primary legislation is currently with the Scottish Parliament and in Northern Ireland draft secondary legislation is being prepared.
11. Each administration is responsible for legislating for river basin districts falling wholly within its land area. For river basins that cross these administrative boundaries separate secondary legislation will transpose the Floods Directive, to be drafted by whichever administration has the greatest share of the river basin.

The legal context for transposition

12. The Floods Directive provisions need to be embedded into an existing body of flood and spatial planning legislation which is already diverse and complex. Fortunately the decision, in England and Wales, to review all flood risk legislation has meant that Directive provisions can be more easily aligned with the proposed changes in roles and responsibilities.
13. Given that flood risk mapping and planning in England and Wales already mirrors much of the Directive's approach, the draft legislation focuses on issues that are currently less advanced, for example mapping surface water flooding and other sources of local flood risk.

Means of transposition of the main elements of the Directive

14. The following Table sets out how the main elements of the Directive have been Transposed into law in England.
15. Note that in the draft Bill responsibility for flood risk management is divided between the Environment Agency, which leads on 'national level flood risk, i.e. main river, sea and reservoir flooding, and unitary and county authorities which are responsible for flood risk from surface water, groundwater and ordinary watercourses. This division of responsibilities is reflected in the clauses that implement the Directive.

⁴ Although the Floods Directive requires the second cycle PFRA by 22 December 2018 we propose to bring this forward to 22 December 2017, and every six years thereafter, to allow up to two years to prepare maps.

Article and objective	Implementation	Responsibility
Article 1 – the purpose of the Directive, establishing a framework for the assessment and management of flood risks.	Clause 1 summarises the duties placed on the Environment Agency, unitary authorities and county councils by Part 1 of the draft Bill. These include the duty to assess flood risk and plan for its management in their capacity as competent authorities for the purposes of Directive 2007/60/EC	It is the responsibility of Defra to transpose the Floods Directive and the responsibility of competent authorities (the Environment Agency and unitary and certain county councils) to implement the Directive.
Article 2 – defining ‘flood’ and ‘flood risk’	Clause 3 defines ‘flood’ and clause 5 defines ‘risk’. Flood risk is an aggregation of the two.	n/a
Article 3 – option to appoint different competent authorities and units of management for coastal areas and river basins from those for the Water Framework Directive	Clause 1 indicates that under Part 1 of the draft Bill the EA, unitary and county councils are competent authorities for the purposes of the Floods Directive. Clause 50 requires the Secretary of State, by order, to define “relevant area”.	The Environment Agency is the lead competent authority in as far as it will be responsible for providing guidance, contributing to quality assurance and making appraisals, maps and plans available to the commission. Unitary and county local authorities are also competent authorities for the purpose of the Directive. The Secretary of State may by order define the areas in which preliminary flood risk assessments should be carried out, including the appropriate unit of measurement.
Article 4 – preliminary flood risk assessment (PFRA) on all river basin districts and coastal areas; to include maps showing topography and land use, a description of significant past floods and their impact both past and potential, and may include a detailed assessment of the potential consequences of future floods (characteristics, impact, effect of flood defences and impact of climate change). Information exchange for cross border catchments. Completion by 22 December 2011.	Clause 50 (duty to prepare a PFRA), clause 51 (content of a PFRA map) and clause 52 (content of PFRA reports). Clause 53 requires preliminary maps and reports to be published by 22 December 2011. Delegated powers are provided for secondary legislation detailing the scope and content.	The Environment Agency is responsible for preparing PFRAs for main river, sea and reservoir flooding. Unitary and certain county authorities are responsible for preparing PFRAs for local flood risks (surface water, groundwater and ordinary watercourses).

Article and objective	Implementation	Responsibility
Article 5 – on the basis of the PFRA, identify areas of potential significant flood risk or the likely occurrence thereof. Co-ordinated determination for cross-border catchments.	Clauses 55 and clause 56 require the competent authorities, having regard to the PFRA documents, to determine where there is a significant flood risk. Separate secondary legislation will apply this determination to cross-border catchments.	Duty on the EA to determine significant risk for ‘national’ flood risk and unitary and certain county authorities for ‘local’ flood risk.
Article 6 – prepare flood hazard maps and flood risk maps for significant risk areas. Information exchange on cross-border catchments. Flood hazard maps to include areas likely to be flooded with: a low probability; medium probability and a high probability – and to show: flood extent; water depths or level and flow velocity. Flood risk maps to show potential consequences of above flood scenarios for – numbers affected; economic activity; installations that might cause pollution; other information the Member State consider useful. Member States may limit maps to low probability/extreme event scenarios only in defended coastal areas or where the risk is from groundwater. Maps to be completed by 22 December 2015.	Clause 55 requires the EA to prepare maps for national flood risk and clause 56 requires unitary and county authorities to prepare maps for local flood risk. Clauses 57 and 58 briefly define the content of flood hazard maps and flood risk maps respectively, and allow for regulations to specify further detail. Clause 59 requires the EA to publish all maps before 22 December 2013.	The Environment Agency is to prepare maps for ‘national’ flood risk and unitary and county authorities for ‘local’ flood risk.
Article 7 and Annex – on the basis of flood maps (Art. 6) MS shall establish flood risk management plans (FRMPs) with appropriate objectives and measures for reducing the consequences and/or likelihood of flooding. FRMPs to include components in part A of the Annex to the Floods Directive. FRMPs to take account of costs and benefits, flood extent, conveyance routes, flood retention and environmental objectives of the Water Framework Directive. Further aspects include spatial planning flood warning. FRMPs shall be completed and published by 22 December 2015	Clauses 55 and 56 require the EA and unitary and county authorities to prepare flood risk management plans for areas of significant flood risk. Clause 61 outlines the content of flood risk management plans and allows for regulations to specify further detail. Clause 62 requires the EA to publish all FRMPs before 22 December 2015.	The EA is responsible for preparing flood risk management plans for national flood risk and unitary and county authorities to prepare flood risk management plans for local flood risk. FRMPs will be comprised of existing flood risk management plans such as catchment plans, shoreline plans, surface water plans and, when available, reservoir flood plans.
Article 8 – one single flood FRMP or set of FRMPs co-ordinated at river basin district. Cross-border co-ordination.	Clause 61 sets out the requirement to produce FRMPs and provides for regulations about the form and content of an FRMP, which will include co-ordination at the river basin district level where appropriate.	The EA is responsible for co-ordination of FRMPs at the river basin district level.

Article and objective	Implementation	Responsibility
Article 9 – Member States to co-ordinate with Water Framework Directive. Flood hazard maps and flood risk maps to be consistent with information provided for WFD and may be integrated into reviews. Flood risk management plans may be integrated into reviews of WFD RBMPs.	In making regulations about the form and content of, and procedure for consultation on, maps and plans the Secretary of State may establish arrangements for ensuring consistency with the Water Framework Directive plans and reviews. (For regulation making powers see clauses 57 and 59 , re flood hazard maps, and clauses 58 59 re flood risk maps and clauses 61 and 62 re flood risk management plans.).	The EA is responsible for ensuring consistency and integration with Water Framework Directive river basin management plans.
Article 10 – assessments, maps and plans to be made available to the public. Active public involvement to be encouraged in development of FRMPs.	Clauses 53, 59 and 62 require the EA to publish: the preliminary flood risk assessments; flood hazard and risk maps; and the flood risk management plans respectively prepared by EA or by unitary and certain authorities. All three clauses require prior consultation with interested parties and provide for regulations setting out the procedure for consultation.	The EA is responsible for publishing all flood risk appraisals, maps and plans. Responsibility for consulting on each appraisal, map or plan rests with the competent authority that is responsible for preparing it.
Article 11 – provision for Commission to specify reporting formats two years before deadline	It is not necessary to transpose this article.	n/a
Article 12 – Commission committee arrangements	It is not necessary to transpose this article.	n/a
Article 13 – transitional measures – making use of existing assessments, maps and plans where equivalent to Directive requirements	Clause 55 allows the EA to prepare a flood hazard map, flood risk map and flood risk management plan for national flood risks instead of preparing a preliminary flood risk assessment. If it opts to do this, the decision must be reviewed within 6 years (in place of a PFRA. Clause 264 provides for pre-existing documents to satisfy the duties placed on the EA, unitary and county local authorities in clauses 50, 53, 55, 56, 59 and 62 to prepare, submit or publish a document,.	It is the responsibility of the Environment Agency to determine whether it wishes to present existing maps and plans to the Commission in place of a PFRA.

Article and objective	Implementation	Responsibility
<p>Article 14 – PFRA to be reviewed by 22 Dec 2018 and every six years thereafter. Flood maps to be reviewed by 22 Dec 2019 and every six years thereafter. FRMPs to be reviewed by 22 Dec 2021 and every six years thereafter. All to include likely impact of climate change.</p>	<p>Clauses 54, 60 and 63 set out the timetable for the review of Floods Directive appraisals, maps and plans respectively.</p> <p>Preliminary flood risk assessments must be reviewed by 22 December 2017, flood hazard and risk maps by 22 December 2019 and flood risk management plans by 22 December 2021.</p> <p>Subsequent reviews are then required at intervals of not more than six years.</p> <p>Floods Directive documents prepared by unitary and certain authorities are required 6 months before the EC deadline to allow time for quality review.</p>	<p>Responsibility for reviewing each Directive appraisal, map or plan rests with the competent authority that is responsible for preparing it.</p>
<p>Article 15 – make assessments, maps and plans available to the Commission three months after Article 14 deadlines.</p>	<p>It is not necessary to transpose this article.</p>	<p>n/a</p>
<p>Article 16 – Commission reports to European Parliament</p>	<p>It is not necessary to transpose this article.</p>	<p>n/a</p>
<p>Article 17 – Legal transposition by 26 November 2009, refer to Directive, communicate same to Commission.</p>	<p>Clause 1 notes that duties have been placed on the EA and unitary and county authorities, under Part 1 of the draft Bill for the purpose of giving effect to Directive 2007/60/EC</p>	<p>n/a</p>
<p>Article 18 – entry into force date.</p>	<p>It is not necessary to transpose this article.</p>	<p>n/a</p>
<p>Article 19 – application of Directive.</p>	<p>It is not necessary to transpose this article.</p>	<p>n/a</p>



Draft Flood and Water Management Bill

Summary Impact Assessment

April 2009

Summary Note on Impact Assessments for the draft Flood and Water Management Bill

The aims of the draft Flood and Water Management Bill

The draft Flood and Water Management Bill largely takes forward the identified legislative needs in three previous strategy documents (Future Water, Making Space for Water and the Government's Response to Sir Michael Pitt's Review of the Summer 2007 Floods). The draft Bill will also make a number of more minor changes to legislation which would otherwise be difficult to take forward. The overall logic of the draft Bill, is to manage the risk of flood more effectively and to create a more efficient basis for water management in the face of increasing pressures on industry and water resources.

The draft Bill has several aims but they can be grouped under the three themes of security, service and sustainability. The draft Bill will deliver:

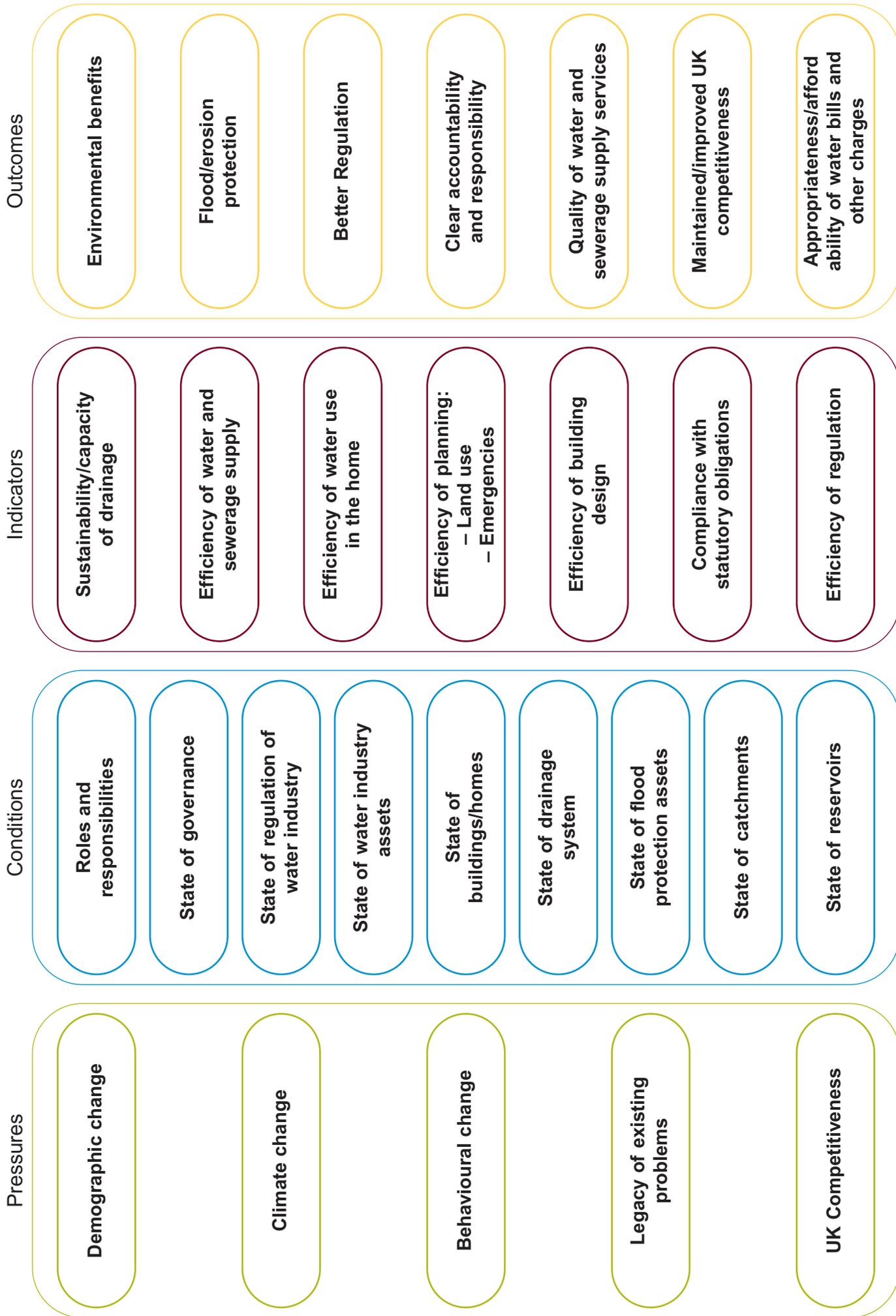
- greater **security** for people and their property from the risk of flooding and coastal erosion by creating clearer structures and responsibilities for managing that risk, building on the Government's response to Sir Michael Pitt's report. It will improve leadership on flood risk, and enable better planning for and prediction and warning of floods. It will also introduce modern risk-based approaches to reservoir safety. And it will deliver greater security of water supply in the event of water company failure, and improve the protection of essential supplies during drought;
- better **service** for people through new ways of delivering major infrastructure projects, better protection of essential water supplies during drought and improving complaints and enforcement procedures; and
- greater **sustainability** by helping people and their communities adapt to the increasing likelihood of severe weather events due to climate change, encouraging sustainable drainage systems in new developments, protecting communities and the environment better from the risk of flooding, and protecting water resources and improving water quality.

The following diagram summarises the overall aim of the draft Bill in terms of pressures, conditions, indicators and outcomes.

Demographic change, climate and behavioural changes are all important sources of pressures identified in the Impact Assessments (IAs). Even without these changes there is an important legacy of existing problems which need to be addressed. Some of these stem from existing market failures but others stem from the legacy of previous Government interventions and associated regulations which are no longer fit for purpose.

The second column of the diagram identifies the key conditions of flood and water management on which these pressures bear. Many of the IAs which aim to update roles and responsibilities to improve water management for the 21st century. The state of the various assets through which flood and water management are delivered are also important. Water industry assets, flood protection assets, reservoirs etc. are all affected by the policies covered by the IAs.

The draft Bill is expected to increase the efficiency of flood and water management. In the face of increasing pressures on the water environment, it is these efficiencies which will enable continued delivery of the very significant benefits of water management outlined below. In many cases new additional benefits can also be delivered. The main benefits stem from reduced flood damage and improvements in the ecological quality of water bodies. Other benefits stem from better accountability and improved regulation.



The impact of the draft Flood and Water Management Bill

Separate IAs have been produced for each of the principle areas of the consultation paper on the draft Bill. Each Impact Assessment deals with the costs and benefits of the individual policy area, where these are separable. However, many of the individual policies will work together to deliver the overall benefits – largely from flood risk reduction and from helping to ensure progress towards the ecological targets set by the Water Framework Directive. The other major sources of benefits, from more efficient water management, are more free-standing.

This section therefore seeks to explain the overall nature of the flood risk reduction and environmental benefits and then summarises the specific benefits contained in the individual IAs.

Flooding

Future Flooding (Foresight 2004) estimated flood risk to 2080 under four scenarios of the future varying in many factors including rate and characteristic of economic development, climate change and the principles and character of public policy. Scenarios were described as World Markets, Global Sustainability, Local Stewardship and National Enterprise.¹

The 2004 Foresight estimate was that approximately 2 million properties in the UK are at risk of flooding from rivers and the sea, and 80,000 in towns and cities from intense rainfall that overwhelms drains, so-called 'surface water' flooding. There are also around 500 Small Raised Reservoirs² which are as likely to breach as those which are slightly bigger and which have stricter safety measures.

The cost of flood risk from the sea and rivers was estimated at approximately £1.4bn per annum; from surface water, £0.25bn. Assuming no change in expenditure on flood and coastal erosion risk management (FCERM), Foresight estimated that flood risk from both sources will rise to 2080, to approximately £2.5bn under Local Stewardship, £7bn (Global Sustainability), £20bn (National Enterprise), and £27bn (World Markets).

Scenarios vary enormously and it is not clear what use can be made of any one of them alone. But it is clear that flood risk is high and may rise significantly.

The flood benefits of the proposed draft Bill come from reduced flood risk. Some measures deliver resource savings, and in most cases, it is assumed that these are invested in flood risk management and deliver reduced flood risk.

There are some other forms of benefits, including water quality (IA 'Local Flood Risk Management'), benefits to the natural environment such as habitat creation (IA 'Change in definition') and reduction in risk of coastal erosion. These are relatively modest and in most cases unquantified. There is also the need to deliver the EU Floods Directive and other IAs demonstrate benefits of justice to victims of flooding³.

1 The most varied future flooding scenarios presented by Foresight include: 'World Markets', with variables of the greatest economic growth (4.5% GDP), high levels of precipitation and carbon emission and a weak, dispersed and consultative structure of governance. In contrast, the 'Local Stewardship' scenario has growth rates of 1.5% GDP, with lower precipitation and carbon emissions and a strong local and participative structure of governance. For more information of the numerous variables, refer to :
<http://www.environment-agency.gov.uk/research/library/publications/33923.aspx>

2 A 'Small Raised Reservoir' is under currently said to be under 25,000 cu metres.

3 These IAs are: 'Property-owner and occupier responsibilities for managing the risk from run-off flooding' and 'Property-owner and occupier responsibilities for managing the risk from run-off flooding'

The costs of flooding are high and there is a range of effective interventions to reduce those costs. In spite of significant increases in exchequer funding in recent years there remain many more 'good' (strongly justified) projects than can currently be funded. The benefits of a traditional community flood defence are approximately 5 times greater than the costs. There is therefore a strong argument for more traditional flood defences.

However, the argument for the measures covered within the IAs are even stronger. Traditional measures do not measure, plan for or necessarily help defend against major surface water flooding events, for example. Yet they are also extremely costly when they happen.

The proposed legislation will ensure that parties bear a greater share of the costs and risks they impose on others, including on the taxpayer. This will extend to those responsible for small raised reservoirs, some private owners of flood risk assets, and local authorities.

In general, the result of the floods measures is to increase benefits from FCERM, spread them more widely, and in some cases, concentrate costs of flood protection more closely on those who benefit most. The measures therefore tend to make the position more equitable.

The impact assessments indicate that there is reason to be confident of the cost-benefit case, but there is significant uncertainty about the precise scale of that net benefit. However, unsurprisingly, the impact assessments show that the more is spent on FCERM, the greater the benefit.

Environment

Some elements of the draft Bill will help meet ambitious new goals set as part of the first comprehensive attempt to produce a full set of River Basin Plans covering England and Wales⁴. Draft plans are currently being consulted on. The overall aim of these plans is to move the majority of water bodies in E&W to good ecological potential or as close to it given physical changes, including flood defence structures, that may have taken place in the past.

Research suggests very significant benefits will flow from the achievement of good ecological status⁵. The Draft River Basin Plans indicate benefits across England and Wales of around £170 million per annum stemming largely from actions taken in the first plan period (2009 to 2015)⁶. The majority of these benefits are delivered as a result of implementing existing agreed statutory requirements, but over £50 million per annum of benefits arise as a result of meeting new objectives.

These benefits arise as a result of quite modest improvements in the percentage of water bodies which meet good ecological status. This is expected to rise from 21% at present to 26% in 2015. Further improvements are expected up to 2027 when the majority of water bodies would be expected to be at good ecological status or its counterpart. The provisions in the draft Flood and Water Management Bill are needed to deliver both the short and long term benefits from the Water Framework Directive.

In addition to the benefits stemming from these improvements there are also the benefits which arise from maintaining status in the face of increasing pressures on water resources. The plans embody a legal requirement for there to be no deterioration in the status of water bodies except under exceptional circumstances.

4 As part of the implementation of the European Water Framework Directive.

5 The National Water Environment Benefits study can be found at <http://www.wfdcrp.co.uk/>. See Project 4bc. See also related work on Direct Market Benefits (project 4e).

6 The Flood and Water Management Bill will have a continued impact helping to secure environmental improvements in subsequent planning rounds.

Securing these benefits requires action across the board although in the first plan period action will mainly be taken by the Water Industry. Elements of the draft Bill which will affect our ability to deliver these benefits are outlined below.

Definition of flood defence – to the extent that this allows more ecologically sensitive flood management activities, this will make it easier to achieve the no-deterioration objective of the plans.

Local Flood Risk Management/SUDS – diffuse urban pollution is a significant factor in the pressures leading to less than good ecological status. Again the most significant aspect is likely, in the short term at least, to help avoid further deterioration of water bodies which are subject to new development pressures.

Misconnections – Changing powers will make it easier for water companies to correct misconnections will help reduce the amount of untreated wastewater entering water bodies and thus contribute to improvements in the ecological status of water bodies.

Water Resources - greater enforcement powers for example in terms of allowing the Environment Agency to prosecute for wasting water will improve incentives for good water management and may thereby impact on the ability to achieve the good ecological status.

Specific Benefits

In addition to these general benefits, the majority of IAs demonstrate a positive net benefit, as can be seen from the following table. In most cases although there is a net benefit there are also significant non-monetised benefits which should also be taken into account.

Summary of costs and benefits of individual IAs (£millions)

Summary of costs and benefits in the Flood & Water Bill		millions						
IA	version	Preferred option benefits>costs	Quantified annual costs	Quantified annual benefits	Significant one off costs	Significant non-monetised benefits	Number of years	Net benefit
Funding	3	yes	3.00	19.00	no	no	30.00	297.00
Compliance with EU Floods Directive			0.95	0.00	1.2	no	30.00	-19.67
Water uses (temporary control) Measures (Hosepipes)	5	Ongoing evidence development	n/a	n/a	no	To be developed in ongoing work	–	–
Reservoir Safety		no	19.90	4.0	21.60	yes	45.00	14.00
Local Food Risk Management (EASO, SUDS and SWMP)	2	yes	72.00	172.00	5	yes	43.00	4300.00
Changes to Ofwat Enforcement Powers and Related Provisions	4		0.00	0.00	no	no		0.00
Changes to Ofwat's Complaint Handling ⁷		0.02	0.0		no	yes	10.00	–
Third Party Assets	draft final	yes	0.80	16.80	7.90	no	25.00	217.00
Internal Drainage Boards	0.1	yes	0.20	3.92	no	no	5.00	17.02
New legislative framework/licensing regime for large projects in the water sector: Large Projects		yes*	n/a	n/a	no	no	30.00	–
Changes to legislation regarding misconections	19	yes	0.04	0.22	no	yes	30.00	2.49
Minor changes to WRA 1991	2		0.00	0.00	no	no	–	–

⁷ There are significant non-monetised benefits which can be seen in the full IA published on the Defra website.

Summary of costs and benefits in the Flood & Water Bill		millions						
IA	version	Preferred option benefits>costs	Quantified annual costs	Quantified annual benefits	Significant one off costs	Significant non-monetised benefits	Number of years	Net benefit
Property-owner and occupier responsibilities for flood risk management (water courses)	4	yes	0.1	0.09	no	no	20.00	0.24
Property-owner and occupier responsibilities for managing the risk from run off flooding ⁸	1	-	-	-	-	-	-	-
Consenting and Enforcement ⁹	-	-	-	-	-	-	-	-
Enable Drinking Water Inspectorate to impose a charging scheme.	5	no	2.00	1.90	no	yes	12.00	-1.00
Change of definition	1	yes	1.10	4.60	no	no	20.00	58.00
EPP (Abstraction)		yes	0.00	0.40	no	no	10.00	4.00
Impact Assessment of powers to restore rivers, lakes, and coasts affected by physical modification.	1	yes	4.70	22.40	no	no	22.00	226.00
Totals			104.81	282.4	35.7			5115.08

* = based on case study evidence.

These prices are generally in current prices, although they are not all consistent, refer to the IA document for full details.

⁸ Defra is consulting openly on all of these options

⁹ There are no quantifiable impacts, only small transitional costs. A small impact assessment justifying this will be published in the draft Bill.

By simply summing the annual cost of each policy a total annual cost of £105 million is produced. This however is a difficult figure to interpret, as one-off or transitional costs are excluded, the figures are undiscounted, in some cases only some costs are monetised at present, and the costs occur over different time periods for each proposed policy. The highest annual costs occur in the Local Flood Risk Management IA which has annual costs of £72m over a 43 year time period and Reservoir Safety with costs of £20 million per annum.

This compares to total annual benefits, excluding one-off or transitional benefits, of £282 m with the largest benefits expected from Local Flood Risk Management measures (£172m per year). Again it should be noted that the annual benefits are projected to rise over different time periods for each proposed policy, and in some cases only some benefits are monetised at present. In these cases, where possible, examples, case studies or specific information are given in the Impact Assessments. It should also be noted that there may be a degree of double counting of the benefits as a result of more than one proposed policy contributing to the same high level objective. Therefore the aggregate figure presented here may be overstating than the actual expected benefits.

The total net present value of the policies is over £5 billion with the majority arising from the Local Flood Risk Management measures. Other significant contributions come from funding, third party assets and restoration measures.

Very few of the proposed policies have significant one off costs, the largest of which is £7.9m for third party assets. Other proposed policies with one off cost are Internal Drainage Boards and Drinking Water Inspectorate

Costs and benefits within individual impact assessments

- Funding measures give rise to costs of around £3 million per annum and benefits of around £20 million.
- In the IA which covers Local Flood Risk Management measures, the majority of the costs (total = £72 million) will be borne by local authorities in fulfilling the lead role for local flood risk management, leading development of the SWMPs and maintaining SUDs. The remainder will be borne the Environment Agency and to a lesser degree by water companies, in providing data and cooperating. The Environment Agency will have some new costs in undertaking national risk assessments and providing guidance and support tools to local authorities. Benefits of £172 million are the damages avoided from surface water flooding in UK, which are based on a range of Foresight estimates.
- The one off cost for third party assets largely fall to the operating authorities in designating the assets. The Operating Authorities comprise the Environment Agency (EA) in respect of Main River, estuaries and the coast, local authorities in respect of ordinary watercourses and coastal protection, and the Internal Drainage Boards in respect of ordinary watercourses within their boundaries. There are also some one off costs to owners of challenging registration of assets. The annual costs are based on administering consents by operating authorities and owners etc applying for consents.
- For IDBs, the key monetised costs are administrative costs which fall on Internal Drainage Boards. The key monetised benefits are administrative savings which will accrue in the main to Internal Drainage Boards.
- For the large projects proposed policy, costs arise as a result of Incremental regulatory costs associated with consulting on the delivery approach, developing the new regime and the overseeing the procurement exercise and Incremental administrative costs associated with registration of a new company. The key monetary benefit associated with delivery of a large project is in respect of the lower required cost of finance.

- For misconnections, most of the costs fall to water companies and householders. There is likely to be a cost saving to local authorities because local authority visits would no longer be necessary for those misconnections dealt with by the water companies. Benefits have been calculated for the effects on the environment that a reduction in misconnections will make.
- For restoration, costs to the environment agency are a result of undertaking the restoration activity. Benefits arise through improvements to water status.
- For DWI, main costs arise for the water companies, in funding WI regulatory activities. Many of the benefits from this policy are unable to be monetised since they relate to improved regulatory practice, transparency, and the provision of incentives to the water industry.

Public expenditure

There are significant public sector costs including both costs to the exchequer and to local authorities. These will all be met within Government baselines.

Apart from public expenditure costs, costs are borne by water companies, minor costs on businesses, and through small charges for water customers (DWI policy), reservoir owners (reservoirs policy) and RFCC (widening of levy proposals within funding policy). Full explanation of these breakdowns is explained in the individual impact assessments on Defra's website.

There are also very significant benefits created by these measures, some of which are not easily monetised. All sectors of the economy will benefit.

Costs as a percentage of benefits

As noted above, as well as having specific benefits, many of these policies are also expected to contribute to the delivery of the overall quantum of benefits associated with flood risk management and achieving the ecological objectives set for water bodies. These overall benefits are of the order of £3 billion per annum (£2.5 billion from the lowest Foresight scenario and extrapolating to overall benefits of around £500 million per annum from the first set of River Basin Management Plans).

Given this, the draft Bill policies would only have to deliver around 4% of these benefits in order to pay back the anticipated costs (as described above).¹⁰ The Government believes that the actual benefits will be far greater than this very low figures, and that the package of measures is therefore very well justified in economic terms.

¹⁰ (Annual monetised costs / annual benefit as specified by Foresight plus mapping) x 100 = (111.29 million / 3 billion) x 100 = 3.71%

Impact Assessment status

While the evidence is necessarily mixed it is felt to be sufficient to support the policies and consequently all of the IAs have passed rigorous peer review, have been cleared by the Department's Chief economist and signed by the Secretary of State. The state of the evidence needs to be seen in the context of the decisions that are being taken at this stage in the life of the draft Bill. The following points should be borne in mind when considering the state of the evidence:

- Most of the policy areas are set out in the Future Water Strategy, Making Space for Water and the Government's Response to Sir Michael Pitt's Review of the Summer 2007 Floods.
- Several of the policy areas are the subject of intensive evidence preparation as part of a series of Independent Reviews into Competition and Innovation (Cave), Charging (Walker) and the Summer 2007 floods (Pitt).
- Some of the provisions of the draft Bill are minor and do not require much in terms of justification.
- Other elements of the draft Bill require further analysis/evidence before they will take effect. This can arise because:
 - there is a need for secondary legislation for which there will be a separate IA,
 - the policies are "enabling only" and contain a restriction such that they will only be applied where the benefits exceed the costs.
- In other cases, where the policy is not yet well supported by the evidence we will ask for further information from consultees during the consultation to try to improve the IA further.
- Finally, where evidence is particularly problematic an action plan has been identified to improve the quality of the evidence during the consultation period by undertaking specific pieces of additional evidence gathering.

Consequently the IAs have been signed-off by the Department's Chief Economist, with caveats supporting the development of better evidence and analysis through the consultation stage so that the design and configuration of the measures can be improved, maximising the net benefits and minimising situations in which costs are imposed on parties which are not justified by the benefits (for example, identifying criteria for the use in practice of new powers created by the legislation). These and other specific comments on the analysis and evidence base are set out in the following summaries of the Impact Assessments of the individual measures.

Summary of the evidence base for the individual Impact Assessments

IA on Local Flood Risk Management: (EASO, SUDS and other SWMP measures)		
Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Assignment of responsibility for local flood risk to local authorities. New and better use of existing exchequer funding of Local Authorities to have a local strategy to manage local flood risk including risk assessment, mapping, planning, co-ordinate the actions of others to best effect and take some direct measures (e.g., re-routing of urban flooding).</p> <p>Changes to the right of developers to connect to the sewerage network and accompanying new duties on local authorities to be able to adopt and maintain Sustainable Drainage Systems that meet new construction and operation standards.</p> <p>Environment Agency broadening their role to consider national scale risks from all forms of flooding and advise government and local authorities on approaches for flood risk management.</p>	<p>Sir Michael Pitt's Review of the Summer 2007 Floods and the Government's Response reflect the central arguments of this policy.¹¹ The central argument is that current arrangements for local surface water flood risk management are incomplete disparate and uncoordinated.</p> <p>It is anticipated that the policy, notably the removal of the right to connect, will lead to the greater use of 'sustainable drainage systems' (SUDS) in new developments. These are usually above ground "green drains" and rely largely on infiltration rather than piped disposal. A strong cost-benefit case is based on evidence that SUDS are not significantly more costly and could be cheaper than 'traditional' or underground drainage whilst delivering flood prevention and water quality benefits.</p> <p>The major changes brought about by this policy are the duty to identify local flood risks from all sources, agreement of a strategy to address them and local coordination of works in line with that strategy. This is expected to reduce the impact of flooding significantly and provide water quality benefits.</p>	<p>There is uncertainty over the benefits of the measures that may result from the policy. Measures include such things as carrying out risk assessments, development of plans (to reduce flood risk), measures in these plans to safely 'route' flooding in urban areas, e.g. raised kerbstones or retain water in storage ponds. This also includes the contribution that SUDS will make to flood risk management in new developed areas in addition to their drainage role. There are currently limited examples of these measures actually in place and confidence in their beneficial effect is based on judgement and an understanding of how they should work. We know that other forms of flood risk interventions such as those used on rivers and the coast are typically highly effective.</p> <p>Estimation of benefits is top-down, and assumed equal to approximately 40% of current and expected increasing future damages of 'intra-urban flooding' as reported by Foresight (2004). There are two problems with this approach. Firstly, Foresight estimated damages are highly uncertain, sensitive to future economic growth, climate change, the rate of development, and LA capacity and willingness to assume responsibility for flood risk. Sensitivity analysis using alternative Foresight scenarios indicates a large range of benefits. Secondly, we need to be confident that the measures required to deliver this level of benefit will work and are fully identified and costed.</p>

11 Sir Michael Pitt's Review: <http://archive.cabinetoffice.gov.uk/pittreview/thepittreview.html>
The Government's Response: <http://www.defra.gov.uk/environ/fcd/floods07/Govtresptoppitt.pdf>

IA on Local Flood Risk Management: (EASO, SUDS and other SWMP measures) (cont'd...)

Central elements of the policy	Central arguments underlying the policy	Action Plan
		<p>Does this matter? To some extent, no. In general, the costs of the policy are variable (i.e., correlated with the extent of real measures taken on the ground), and costs and benefits are positively correlated. In addition, there will be a requirement that only measures that are cost-beneficial will be undertaken. The policy may either lead to many SUDS being implemented or not many, either way the costs and benefits will move in parallel. Therefore the costs and benefits will be either both higher or both lower. The policy does however also incur some significant fixed costs that might not realise real benefits such as the costs of employing staff in Local Authorities for assessing local flood risk, identifying solutions to manage these and implementing them (most of these would initially be in areas at higher flood risk). This could be managed to some extent, if the effectiveness of the fixed staffing costs in the early years was not appearing to deliver viable strategies it could be curtailed. Assuming the real measures on the ground are net beneficial, there needs to be sufficient confidence that the scale of impact is sufficient to off-set the fixed cost.</p> <p>More evidence is required on the costs and benefits in the impact assessment and further work is proposed as follows:</p> <ol style="list-style-type: none"> 1. Autumn 2009 – New surface water risk maps currently being prepared will provide evidence to substantiate Foresight estimated current surface water damages. Further work will be undertaken to review the viability of the Foresight future flood risk damages and look at alternative approaches to assessing these. 2. Autumn 2009 - Based on work underway to develop the first round of surface water management plans proper estimation of costs and benefits should be bottom-up and centred on real and tangible examples to improve the 40% estimate. 3. Spring and summer 2009 - Work will be taken forward with Ofwat, Water Companies and house building organisations to improve and quantify estimates of costs and benefits to businesses. 4. Summer 2009 - More work will be undertaken to quantify the scale of likely water quality benefits.

IA ‘Internal Drainage Boards (IDBs)’

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>There are a number of measures proposed and these include explicit provision for IDBs to pursue shared services, empowerment of the Secretary of State to determine the number and size of IDBs, and some changes to the representation of IDB boards, and IDB boundaries.</p> <p>IDBs maintain existing powers ‘to manage water levels’ and assume additional ‘powers in relation to other sources of flood risk such as surface water, subject to a flood plan agreed with LAs.</p> <p>An option(cited in the Funding IA) is to remove powers of IDBs to levy LAs.</p>	<p>Two problems with IDBs are identified. The objectives of IDBs are too narrow, focussing relatively on drainage of agricultural land and too little on the broader requirements of flood risk management and the natural environment. The second problem concerns inefficiencies, largely relating to the number and size of some IDBs.</p> <p>A broad aim of the measures is to change and develop the relationship between LAs and IDBs such that IDBs are more responsive to the requirements of local flood risk. For example, the aim of one proposed measure is to increase LA representation on some IDB boards. The purpose is to make IDBs more accountable to the local flood plan and the interests of all in the LA.</p> <p>The aim of empowering the SoS to restructure IDBs is to reduce inefficiencies.</p>	<p>It is important to understand why, under current arrangements, the focus of IDBs is too narrow, and whether this will change as a result of these measures.</p> <p>The efficient structure of IDBs depends on the characteristics of drainage and flood risk management, and whether there are benefits from scale. No evidence is provided. However, it is probably a reasonable assumption that IDBs are too many and too small. It is the case that any proposal to change the structure of IDBs must be evidenced.</p> <p>Further evidence will be gathered over the consultation period. As a result of the consultation to test the robustness of the likely administrative savings and the wider benefits that the changes are expected to make to Flood Risk Management.</p> <p>This will be in the form of direct consultation questions, and if necessary undertake a specific project to review the evidence base and consider the assumptions more thoroughly.</p>

IA 'Reservoirs'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Removal of some existing regulatory requirement from low-risk large raised reservoirs (LRRs).</p> <p>Requirement for high-risk small raised reservoirs (SRRs) to take measures to mitigate risk to people and property.</p>	<p>Removing regulatory burden on some larger reservoirs will generate savings.</p> <p>The net benefit of establishing a regulatory burden on high-risk small reservoirs is NEGATIVE.</p> <p>Benefits are aversion of most of the costs associated with a catastrophic incident with large numbers of fatalities, and damaged property. However, these are rare – the model assumes only 1 catastrophic breach in 45 years. The costs of the policy include costs of developing maps and plans, capital works, and inspection. It is estimated that there are a large number of small high-risk reservoirs (approx 500) and the regulatory burden per reservoir is high (of 10,000s).</p> <p>In these circumstances, justification of the policy must make reference to arguments other than CBA. There is an equity argument. It is unfair that reservoir owners generate risk that falls on communities living beneath the reservoir. And much of the risk cannot and will not be compensated for. The policy may also be justified with reference to the 'precautionary principle'. Breaches of reservoirs are potentially catastrophic and very uncertain.</p> <p>In principle, obliging owners to be accountable for the costs of a reservoir failure will lead them to voluntarily undertake risk reduction including decommissioning, where appropriate. It is understood that a liability does fall on owners but that, for various reasons, this does not have a meaningful impact on their behaviour. In these circumstances, regulation may be the best responses.</p>	<p>Little is understood of the number of reservoirs, the probability and consequences of reservoir failure, and costs and benefits of measures to mitigate this risk. Much of this will be difficult to resolve quickly.</p> <p>At this point, priority should be attached to developing the policy beyond the Bill, and, in particular, to better specification of the process of determining the risk status of reservoirs and the required measures. The net benefits of the policy are negative in part because large numbers of reservoirs must undertake costly regulations to avert one incident. This may suggest some scope to reduce the number of reservoirs taking measures and the scale of those measures.</p> <p>Before May 2009, sensitivity analysis will be improved within the IA, and the 3 scenarios made more robust.</p>

IA 'Funding'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Simplify funding streams and strengthen accountability and delivery of value for money.</p>	<p>The economic arguments are relatively uncontroversial. It is assumed that removal of some circularities in flows of funds generates modest administrative savings.</p> <p>It is broadly assumed that reallocation of funding to reflect changing roles of authorities in flood risk generates no net administrative burden and delivers some gains in outcomes.</p>	<p>The broad rationale for the policy is uncontroversial.</p> <p>A detailed analysis of the implications for administrative burden will be undertaken during consultation.</p>

IA 'Change in definition'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Removal of references in legislation to duties of flood 'protection' and 'defence', and replacement with duties of 'flood risk management'.</p>	<p>The purpose of the proposal is to enable operating authorities to pursue a wider suite of options in relation to Flood Risk Management, and some of these are listed in the legislation. They include options that involve moving assets (compulsory purchase), moving water (flood storage) and allowing water to flood assets but reducing the adverse consequences (e.g., through property-level resilience).</p> <p>The policy can reasonably be described as only an enabling power and the consequences depend on what assumptions are made of the baseline, and, in particular, the level of total resource for Flood Risk Management.</p> <p>There is some limited evidence on the costs and benefits of the broader suite of options being promoted by the proposed change in legislation. In general, they are cost-beneficial but less cost-beneficial than a 'traditional' community defence. For this reason, in the absence of significant additional funding, it is anticipated that 'uptake' of these options will be limited, and benefits (and costs) of the policy very modest. However, significant benefits may be realised should investment in Flood Risk Management to rise closer to its optimal.</p>	<p>Costs and benefits of Flood and Coastal Erosion Risk Management activities will be requested from the EA, so that increase frequency of flooding in order to achieve benefits from: bio-diversity, amenity improvement and economic activities.</p> <p>There is a strong case to enable operating authorities to pursue a wider range of options in FCERM. However, it is important to recognise that, in the absence of other policy initiatives, this measure is unlikely to have a major impact.</p> <p>If operating authorities are required by measures other than the Bill to undertake options of this sort through regulation or ear-marked funding, there is a risk that this activity will displace traditional community defences and all else equal, increase flood risk.</p>

IA 'Third party assets'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Requirement on private owners of flood risk assets to request consent of the Environment Agency for removal or change of use of those assets.</p>	<p>Some flood risk assets are privately owned and asset-holders may remove or damage assets (such as a garden or factory wall).</p> <p>The baseline assumption is that the Environment Agency identifies the problem as part of its routine inspection, and undertakes emergency works. The benefits of the proposed policy are lower flood risk and avoided costs of expensive emergency works.</p> <p>Asset-holders accrue costs; of delay in consent, and, where consent is granted, additional costs of meeting any reasonable conditions imposed. In conclusion net costs to owners are likely to be low or negative. In many cases, owners unknowingly remove or damage assets exposing themselves to risk. Importantly, owners already benefit from surrounding flood risk financed by others.</p>	<p>Defra peer review noted that there is little systematic evidence concerning flood damages associated with third party assets and the benefits calculations are therefore based on illustrative scenarios. Over the consultation period further work should be undertaken to resolve uncertainties in the evidence base, including more concrete evidence on the benefits and the assumptions used to generate benefits.</p> <p>The Environment Agency will carry out work to:</p> <ol style="list-style-type: none"> 1) Areas to keep a record from 1st April 2009 of third party asset that are below their target condition and of the action taken to remedy this. 2) Areas to keep a record from 1st April 2009 of any physical failure of third party assets under hydraulic loading (i.e. during a flood event) and the consequence of that failure in terms of property flooding. 3) Areas to report by 1st June 2009 any examples since 1985 (lifetime of EA) of the physical failure of third party assets and the consequence of that failure in terms of property flooding. Situations where the asset has been demolished or where gaps in the defences have existed should be included.

IA 'Flood risk from private lands': This summary includes the two Impact Assessments: 'Property-owner and occupier responsibilities for flood risk management (water courses)' and 'Property-owner and occupier responsibilities for managing the risk from run-off flooding'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>No policy recommendation has been made.</p> <p>Actions of private landowners contribute to flood risk borne by others (e.g., through development of hard surfaces and some agricultural land management practices). The focus of this IA is on mechanisms through which victims of flood may seek redress.</p> <p>The central question concerns who should be responsible for processing complaints and pursuing remedies. An option is to extend the power of Agricultural Land Tribunals to consider issues in 'ordinary watercourse' and overland flooding such as in urban areas. The alternative is to modify law on statutory nuisance to embrace flooding and empower LAs to pursue complaints.</p>	<p>No strong conclusions are made. The broad rationale for all options is centred on justice and the opportunity of victims of flood risk to make complaints to seek compensation and prevent future flooding.</p> <p>A benefit of assigning responsibility to LAs is their experience of addressing and resolving complaints in relation to other nuisance, such as noise.</p> <p>A benefit of extending responsibility of ALTs to cover additional sources of flooding is their experience of addressing issues around agricultural drainage.</p>	<p>This policy is in early development and does not have provisions in the draft Bill. It is understood that further work is required. Much of this will relate to legal definition. One option is to charge complaints an upfront cost and there may be further consideration as to how this affects willingness to bring cases to hearing. Other plan of action include;</p> <ol style="list-style-type: none"> 1. Add figures for Wales to ALT statistics (which currently are only for England) 2. Get clarification from EA lawyers and ALT re: under what conditions ALT has no jurisdiction because a drainage body is deemed to have 'control' over a watercourse. What is understood by 'control'? 3. Clarify roles of upper and lower tier local authorities with respect to statutory assessment for run-off risk. 4. Obtain figures from LGA re costs of administering statutory nuisances (already in March 2009).

IA 'Compliance with the EU Floods Directive'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>'Comprehensive' transposition of the EU Floods Directive in the proposed Floods and Water Bill.</p> <p>Specification of a responsibility of the Environment Agency and LAs to undertake risk appraisal, mapping and planning compliant with the requirements of the Directive.</p>	<p>The central argument is that the UK has a legal requirement to comply with the EU Directive.</p> <p>Significant mapping and planning in flood risk already takes place or is proposed in other elements of the Bill (see IA. 'Roles and responsibilities'). This IA only identifies processes required by the Directive in addition to these. A stated aim is to minimise the cost of compliance.'</p>	<p>In principle, the IA is uncontroversial. However, the total cost is high (approx £20mn, Present Value). The detail on costs is not huge and it is difficult to comment with confidence on how reasonable are the estimates. Further work to improve confidence in costs will be undertaken during the consultation period and before the final publication of the Bill.</p>

Misconnections

IA 'New legislative framework/licensing regime for large projects in the water sector'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>This policy concerns improvements in dealing with misconnections through changing legislation to give additional powers to water companies to correct misconnections.</p> <p>The main issue addressed by this policy proposal is diffuse pollution from waste water which comes mainly from households and is discharged to the environment without treatment. This can happen when waste water pipes are connected to the wrong sewer.</p> <p>The objective is to streamline legal powers to make operations on the ground more effective.</p>	<p>Currently, local authorities have the power to remedy misconnections by requiring dischargers to rectify misconnections or by repairing the misconnection themselves and reclaiming the money from the discharger. Local Authorities are not commonly best equipped or well resourced to deal with the misconnection problem.</p> <p>Water companies are required to deal with misconnections in response to complaints of pollution arising from discharge from their assets but they have no powers to force dischargers to remedy misconnections.</p> <p>This policy would allow water companies to take action to rectify misconnections by extending the powers currently held by local authorities to water companies.</p> <p>This will result in a more effective way for water companies to rectify misconnection problems.</p> <p>This measure alone will not bring large reductions in the number of misconnected properties, but it will make the process significantly more efficient. It will also give water companies the power to protect their assets from misuse.</p>	<p>1. Poor information regarding number of misconnections. We shall ask the Environment Agency to continue adding information on surveys of misconnections to make this information more robust. (15/3/09). However the actual number of misconnections will always be uncertain since they are by their nature a hidden problem in water pollution management.</p> <p>2. Proportions of misconnections which would be repaired by local authorities and water companies. This information is being improved through a forum on misconnections led by the Environment Agency. This forum includes local authority representation and water companies as well as representatives from the white goods and building industry. The forum will produce information on what is being done now as well as what will be done in the future on misconnections. (by Dec 2009).</p> <p>3. The percentage increase of misconnections dealt with after this legislation change. This number will be clarified once it water companies are more confident of how the system will work and how partnerships will work together to solve misconnections. (Dec 2009) The forum will help us improve the accuracy of this estimate. Understandably water companies are unwilling to commit to large numbers of misconnection repairs before funding of the work is clarified.</p>

Misconnections

IA 'New legislative framework/licensing regime for large projects in the water sector' (cont'd...)		
Central elements of the policy	Central arguments underlying the policy	Action Plan
		<p>4. Benefits Assessment. Benefits assessment relies on water framework directive benefits work. We will use developments in water framework directive work to improve benefits assessment for misconnections. (by Dec 2009). We could also as the Environment Agency to gather data for case study examples (request to Agency 15/3/09).</p>

Misconnections

IA 'New legislative framework / licensing regime for large projects in the water sector'		
Large Projects Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>New framework for Ofwat to licence and regulate new, separate project companies/consortia to deliver (and possibly operate) occasional, very large investment projects, such as those necessitated by the WFD, which may straddle AMP investment periods and/or water company areas.</p> <p>Separate project companies would raise funds directly from debt and equity investors, reflecting the specific project risks of construction (and potentially operation), outside the current regulatory framework for the water company cost of capital.</p>	<p>The IA outlines options including adapting the existing regime (as is being done for an element of Thames Tideway project, in case there is no legislative change), or creating a specific large projects regime with the project company contracted to the water company, not itself regulated by Ofwat.</p> <p>Under the preferred option, Ofwat directly regulates a new project company. The preferred option will deliver more discipline and transparency in project delivery, will reveal the market-tested project cost of finance, and may allow innovative new entrants into the industry.</p> <p>It is asserted that significant Capital Expenditure projects will be required in future, but that these cannot be financed or made viable (for example, if they are cross company boundary or take place over an extended period of time) within the current regulatory framework, or if undertaken in the current regime may produce sub-optimal outcomes. A large project may subject the entire water company business to the project's (higher than average) construction risk, leading to downgrading of the water company's credit rating, affecting its cost / availability of debt.</p>	<p>A threshold for the Capital Expenditure project is developed within the near future after draft Bill publication. This information will go to Defra's Chief Economist for clearance.</p>

IA 'New legislative framework / licensing regime for large projects in the water sector' (cont'd...)

<p>Large Projects Central elements of the policy</p>	<p>Central arguments underlying the policy</p>	<p>Action Plan</p>
<p>The intended policy will enable the development of a regime to allow project companies to enter into a competitive bidding process to finance, build and maintain an individual large investment project. The project company would be regulated. The intended effect is to achieve cost effective funding and delivery solutions for large projects to meet the requirements of Community obligations and other investment drivers in the water sector.</p>	<p>The economic argument is that a separate project company, created for the delivery of a specific major project, could receive a cost of capital 5-20% below a water company's average cost of capital. Thus, customers would ultimately face lower bills for project delivery under the proposed regime.</p> <p>When the regime is implemented, there would be specific Ofwat analysis, IAs, and consultations on any major project arising. The SoS will determine, for each project, the type of new entity that should be created.</p>	<p>Details on the threshold to be developed during the consultation period.</p>

IA 'Amendments to the Special Administration regime for the water industry'

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>New "rescue objective" for the water industry Special Administrator so she/he may consider disposal of an insolvent/failing company as a "going concern" rather than <i>having</i> to transfer the business to new owner(s).</p> <p>Removal of the veto that existing undertakers have over a transfer.</p> <p>Introduction of the standard insolvency practice of "hive down".</p> <p>Application of various other changes, as introduced by the Enterprise Act 2002.</p> <p>(Applicable to water undertakers, sewerage undertakers and licensed water suppliers owning a strategic supply.)</p>	<p>A regulatory improvement to bring water into line with other sectors, non-regulated companies, and insolvency legislation; and to implement the Government's wider objectives, favouring a "rescue culture" (rescuing failing companies as going concerns).</p> <p>The new power enables the Special Administrator to explore options to obtain the full market value of the business. Directors, investors, creditors, and customers (bills) may benefit. (Currently, a <i>transfer</i> may fail to realise a company's full market value.)</p> <p>It is assumed that this policy does not have any impact on services to customers, as the statutory functions of a water company are already protected.</p>	<p>Not necessary</p>

IA ‘Changes to Ofwat’s Complaint Handling Role’

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Revisions to statutes so that three types of complaints currently dealt with entirely or partly by Ofwat are dealt with entirely by other bodies in future. These disputes are increasing in number. All disputes concerning optional meters to be handled by Consumer Council for Water disputes concerning work on private land to go to arbitration; on failure to agree appointment of arbitrators, this will go to Institute of Civil Engineers.</p> <p>A new power for Ofwat to determine “reasonableness” of costs imposed by water companies on private landowners when they request the diversion of company infrastructure.</p>	<p>Regulatory streamlining or simplification, few economic arguments.</p> <p>May deliver some improvement in cost-reflective charging, aligning the funding of disputes in some cases more directly with those in dispute, giving incentive for avoiding disputes or resolving them swiftly.</p> <p>Simpler for consumers and landlords if each specific issue is handled by one body only.</p> <p>Better for landlords if a body – Ofwat – can determine “reasonable” costs. Small cost associated with this new power.</p>	<p>It is proposed that to resolve disputes about work on water company infrastructure on private land, that complaint resolution and compensation be decided by an Ombudsman in place of Ofwat. The IA currently includes some preliminary proposals and cost estimates for this suggestion. There will need to be further work and a clear plan on the form of the Ombudsman scheme and its cost.</p>

IA ‘Changes to Ofwat Enforcement Powers and Related Provisions’

<p>Five changes intended to strengthen Ofwat’s ability to regulate the industry in the interests of consumers, and to improve the manner in which existing enforcement tools work.</p>	<p>Regulatory improvements, no economic arguments.</p> <p>Better alignment of powers with principles of Better Regulation.</p> <p>Some increase in incentive for companies to comply with their obligations (removal of perverse incentive to delay reporting of possible contraventions).</p> <p>Better alignment of companies’ obligations with the needs of consumers.</p>	<p>Not Necessary</p>
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IA ‘Enable Drinking Water Inspectorate to impose a charging scheme’

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Removal of Defra (tax payer) funding for DWI Regulatory functions – such as technical audits of water companies, investigation of water quality events and incidents, and enforcement actions.</p> <p>Policy functions not affected.</p> <p>Replacement with charges levied directly on water companies (passed on to customers), somewhat proportional to the DWI costs each company incurs.</p>	<p>The proposal improves the regulatory framework, with a cost to set up and operate a system to identify and apportion relevant DWI costs to companies.</p> <p>Benefits:</p> <ul style="list-style-type: none"> – improve independence and accountability of DWI in relation to its Regulatory functions. – improve transparency of charging in line with Hampton recommendations. – increase cost reflective charging and impose degree of “polluter pays” on water companies, increasing incentives for compliance. 	<p>Cost estimates could be made more robust.</p> <p>1. It is not possible to monetise the identified benefits of the charging scheme but it is recognised that improved transparency in charging, increased independence and accountability of DWI in relation to its regulatory activities and charges and the new incentive for lighter regulation are all important outcomes in line with Hampton recommendations. It is unlikely that these benefits can be quantified in the longer term.</p> <p>2. The exact costs of technical audits and enforcement activities have not been precisely identified, and the system to apportion costs to individual company charges has yet to be constructed. DWI have estimated the proportion of their costs that relate to regulatory functions. DWI will develop a IT based system to record and collate the extent of regulatory activities undertaken for each water company which will enable the costs to be accurately identified.</p> <p>3. The effectiveness of a charging scheme will be subject to periodic review by Defra to ensure it continues to meet policy objectives and complies with Defra charging good practice. The power to charge will be in the name of Secretary of State who will be given the proposed charges for water companies for approval on an annual basis.</p>

IA ‘Minor changes to WRA 1991 (as amended) and Water Industry Act 1991’

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Amendment to give non-spray irrigators equal treatment in abstraction charging structures to spray irrigators.</p> <p>Amendment to remove reference to the “relevant land” on which water can be used in special charge agreements for irrigation abstractors.</p> <p>Amendment to allow Environment Agency to enter land to carry out experimental boring and to install and maintain water monitoring devices for its water resource functions.</p> <p>Removal of requirement on the Agency to maintain a public register of maps of its waterworks.</p> <p>Extension of the offence of waste of water from underground water to inland waters.</p>	<p>Series of tidying or harmonising regulatory changes. Few economic arguments made, other than the cost saving from ceasing to maintain a data register, and provision of equity in charging incentives between different types of irrigation (which the Agency/Cranfield University consider to be similar in terms of water efficiency).</p> <p>Benefits are:</p> <ul style="list-style-type: none"> – Removal of bias in fee structures in favour of spray irrigation. – Removal of an inconsistency in the law. Easier administration of charge agreements associated with the trading of irrigation licences, once the agreement applies to any land, like the licence itself. – Greater certainty that Agency can install and maintain water resource monitoring devices for its statutory monitoring functions. – Avoided maintenance cost for data register (other Agency records available on request). – Potential for Agency to enforce action against waste of water taken from rivers or streams at times of water stress, to protect the environment. 	<p>No quantification has been attempted of the consequences or implications of some changes. It is noted that the avoided maintenance cost of the register may be broadly equivalent to the additional costs arising as a result of the policy changes, which include some remedial costs expected to fall on inland water abstractors who are wasting water from leaking pipes etc. Total figures are expected to be in the order of £10k saved or incurred. Not very clear whether and why all are one-off, not annual or recurring, costs and benefits.</p> <p>The impact of extending special charge agreements to all irrigators will depend on the number of licence applications, take-up of agreements, and water volumes abstracted. Few applications and licences are expected, suggesting a negligible redistributive effect (loss of Agency income from irrigators will be made up from income received from those who are granted new licences).</p> <p>The Agency’s cost and likely use of new powers of entry have not been estimated as they will vary with need and circumstances. The cost of protracted negotiations on entry may be avoided in some cases.</p> <p>The Agency’s cost and likely use of new enforcement powers against waste of water have not been estimated: they will vary with need and circumstances including weather patterns, and according to whether the power itself acts as a deterrent.</p>

IA 'Water Uses (temporary control) Measures' (hosepipes)

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Take a power to allow the Secretary of State/Welsh Ministers to widen the range of non essential uses of water that water companies could restrict under a 'hosepipe ban' at times of water shortage, without using a Drought Order. The latter involves first seeking SoS approval supported by a detailed Statement of Reasons, through a lengthy process, usually involving holding hearings.</p> <p>New powers would allow some additional water savings to be achieved from the start of a drought response, rather than from a minimum of 12-20 weeks later (as per a Drought Order). Further work will be undertaken to determine the non-essential uses that it might be most beneficial to enable water companies to control in these circumstances.</p> <p>This approach will also make it easier to update the scope of these powers to reflect future patterns of water use.</p>	<p>It is proposed only to take an enabling power to allow the Secretary of State/Welsh Ministers in the future to widen the scope of non-essential uses that may be prohibited following further cost benefit analysis.</p>	<p>A commitment has been made to undertake further research and analysis to identify the most beneficial mix of options. The bill clauses allow new restrictions to be added to a hosepipe ban, once the Secretary of State approves them.</p>

IA 'Incorporating Water Abstraction and Impoundment into a common environmental permitting framework'

The EPP2 consultation Impact Assessment can be viewed at <http://defra/corporate/consult/env-permitting/index.htm>

Central elements of the policy	Central arguments underlying the policy	Action Plan
<p>Incorporating the Water Abstraction and Impoundment (WAI) regime into the Environmental Permitting framework (EPP2), will deliver a clearer, simpler system estimated to save £4 million of the programme's total savings of around £40 million net present value (NPV) across England and Wales.</p> <p>In general, EPP2 will not change the substantive requirements of permits, but it does reduce the administration necessary to deliver those requirements. The Government is consulting February – May 2009 on widening the Environmental Permitting Regime the Impact Assessment with the consultation includes Water Abstraction and Impoundment in the Environmental Permitting framework, which has already been successfully used to streamline and simplify the waste management and pollution prevention and control regimes. EPP2 aims to:</p>	<p>Environmental permitting and compliance systems have been developed largely in isolation from each other. To achieve similar outcomes they adopted a variety of approaches to the same aspects of environmental permitting and compliance. This led to an overall regulatory system that was too complex and sometimes contradictory for industry, regulators and others. Government intervention is necessary to rationalise permitting regimes to reduce the administrative costs of environmental regulation while continuing to protect the environment and human health, and to increase clarity and certainty for everyone on how the system protects the environment.</p> <p>Summary of total savings</p> <p>We have estimated that a total saving (after transitional costs) of £3.9 million NPV over ten years for England and Wales could be achieved by incorporating WAI into the EPP2. This comprises</p> <ul style="list-style-type: none"> • £2.8 million to industry • £0.8 million to the Environment Agency and • £0.3 million to consultees. <p>The greatest savings are anticipated to be from the integration of WAI with the other EPP regimes, with £2.8 million NPV of savings over ten years to Industry alone.</p>	<p>No further action required.</p>
<ol style="list-style-type: none"> 1) cut unnecessary red tape – bringing cost-savings to industry and allowing regulators to focus their resources on issues that matter 2) continue to protection of the environment and human health – maintaining current standards 3) increase clarity and certainty for everyone on how the regulations protect the environment – a clearer, simpler and quicker system allowing a better understanding of the law and its effects 		

IA: 'Transfer of private sewers and lateral drains to statutory water and sewerage companies'

An impact assessment can be viewed at: <http://www.defra.gov.uk/environment/water/industry/sewers/pdf/impact-assessment-private-sewers.pdf>

Central elements of the recommended policy	Central arguments underlying the recommendation	Action Plan
<p>All new sewers and laterals intended to connect to the public sewerage system must be built to a mandatory design and construction standard approved by the Secretary of State.</p> <p>All new such sewers and laterals will automatically be adopted by WaSCs, (Water and Sewerage Companies). I.e. they will assume responsibility for them, in support of the transfer of existing private sewers and laterals connected to the public sewerage system to WaSCs,</p>	<p>Transfer of existing private sewers and laterals connected to the public sewerage system to WaSCs will alleviate private ownership burdens, integrate and allow better management of the wider sewerage network.</p> <p>There is little point transferring existing stock, if a new stock grows over time to replicate the same problems.</p> <p>Without a mandatory design and construction standard, poor performing sewers may be laid in future without penalty, as their adoption by WaSCs will be automatic.</p> <p>Key assumptions include:</p> <ul style="list-style-type: none"> The cost for developers of constructing to a higher uniform standard will be slightly higher than the cost typically incurred today, but only marginally, in the context of all development costs. Operation of a single national standard for new sewers and drains, and simplified adoption procedures, may bring time and cost savings for those involved in new development, compared with working to the existing multiplicity of guidance. The higher build cost will be off-set by lower maintenance costs for WASCs over time, due to improved long-term asset serviceability and maintenance (this was the common expectation voiced in responses to the July 2007 consultation <i>Private Sewers Transfer – Implementation Options</i>). 	<p>A draft basis for the mandatory standard based on the current Water Industry document, <i>Sewers for Adoption</i>, is expected to be with Defra by May. Defra will work with stakeholders to assess the draft and its proposals, and update the Impact Assessment</p>



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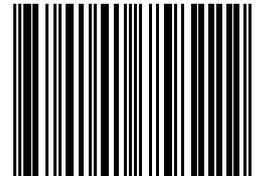
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