



Post Implementation Review of the Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011

Presented to Parliament
by the Secretary of State for Environment, Food & Rural Affairs
by Command of Her Majesty

April 2018



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Introduction

1. This document provides an overview of the Post Implementation Review (PIR) of the Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011 (the Regulations).
2. The Regulations were introduced under The Local Government Act 2000 to prescribe the processes that Risk Management Authorities must follow to comply with requests for information from local authority Overview and Scrutiny Committees on flood management. The Regulations are subject to a sunset clause scheduled to take effect on 6th April 2018. After this date the Regulations will cease to have legal effect.
3. This Command Paper and associated PIR (Annex 1) evaluates the effectiveness and impact of the Regulations. Based on that evaluation, this paper makes a recommendation as to whether the Regulations should be replaced or renewed beyond the coming into effect of the sunset clause.

Background to the Regulations

4. Lead Local Flood Authorities (LLFAs) are county and unitary local authorities that have responsibility under the Flood and Water Management Act 2010 (FWMA) to manage local flood risk i.e. risk from surface run off, groundwater and ordinary watercourses. There are 152 LLFAs in England.
5. Risk Management Authorities (RMAs)¹ are Water and Sewage Companies, Environment Agency, Internal Drainage Boards, District Councils and Highways Authorities. They also have a role in local flood risk management.
6. The Local Government Act 2000 permits Overview and Scrutiny Committees (OSCs) to review and scrutinise RMAs in relation to their flood management work. They could, for example, use these powers if there were a flooding event in the area and the OSC wanted to undertake a review of the event or to review current arrangements for local flood risk management in the area. This legislation also places a duty on RMAs to comply with a request for information by an OSC. The Act reserved powers to make regulations that set procedural requirements for making information requests and for complying with them.

¹ Risk Management Authorities and their responsibilities are defined in the Flood and Water Management Act 2010

The Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011.

7. The Regulations were made under section 21F of the Local Government Act 2000, which was subsequently repealed by the Localism Act 2011, which in turn inserted s9FH and s9JB in the Local Government Act 2000. Section 17 of the Interpretation Act 1978 operates so that the Regulations continue to remain in force as though they were made under new s9FH. Section 17 of the Interpretation Act 1978 also means that references in the Regulations to section 21F(3) and (4) will be read as references to section 9FH(3) and (4).
8. The Regulations prescribe the form of the request, deadlines and processes attached to the duty in s9FH(3) on RMAs to comply with an OSC request. The provisions of the Regulations specifically: require that a request by the OSC must be made in writing, place a duty on RMAs to respond to a request within 28 days, impose a duty to indicate what action it proposes to take (if any), and to attend the committee if requested. They also cover confidentiality procedures and a requirement to review the Regulations before the end of the review period.

Legislation objectives

9. The Regulations were intended to contribute to the following policy objectives :
 - Greater accountability and transparency of RMAs
 - Strengthening collaborative working to improve flood risk management
 - Providing an added mechanism for bringing the work of these authorities together and holding different RMAs to account

Scope of the review

10. The purpose of this review is to evaluate the operation, use and perceived effectiveness of the Regulations. The aim of this work is not to evaluate OSCs themselves, but the Regulations relating to the duties imposed on RMAs in complying with OSC requests.
11. The Localism Act 2011 amended the Local Government Act 2000 by allowing local authorities to operate either an 'executive' governance model or 'committee' model. Those operating the 'executive' system are still required to have OSCs but those operating the 'committee' system do not have to. The 2011 Regulations only apply to those local authorities that operate an executive system of governance and not those that operate a committee system of governance. It is estimated that 90-95% of authorities operate the executive system.

Evidence collection

12. The Impact Assessment for the Regulations set out that they were expected to be low impact and low risk. Accordingly, it was judged that a proportionate approach to the review would be to collect any necessary evidence using existing resources within the Department.
13. The evidence required to assess the impact of the Regulations consisted of data on whether the powers and duties had been employed by OSCs. It was also decided to collect qualitative information on the value and effectiveness of the powers and duties imposed by the Regulations and make an assessment of whether other means could be utilised to achieve the same objectives.
14. It was decided that three stages of evidence gathering would be used to determine the impact of the 2011 Regulations.
15. The first stage involved reading available known OSC flooding review reports and scanning websites of local authorities for information on any previously unknown reviews (12 OSC flood related review reports were found in total). Those reports were reviewed for information on the use of the powers contained in the Regulations. For the second stage of evidence gathering a short online survey was developed to discover if OSCs had been active in scrutinising flooding and if an RMA had been requested to attend an OSC meeting or been asked to provide information to a deadline. A variety of networks were used to distribute and notify authorities about the survey. For the third stage, telephone interviews were conducted with LLFA/OSC contacts and electronic surveys distributed to RMA contacts. A fuller explanation of the evidence collection methods and their rationale is contained in the Annexed Post Implementation Review.

Evidence analysis

16. The evidence collected suggests that the Regulations have not been used by OSCs in their role scrutinising flooding.
17. Most of the LLFA interviewees (stage 3 evidence collection) expressed the view that this was because RMAs voluntarily worked alongside OSCs and their respective officers when requested to do so. On the occasions when input from a water company or the Environment Agency was deemed necessary, the OSC or its officers would make a simple request for their involvement and the RMA would attend without a formal written request being made under the Regulations. The primary legislation places a general duty on RMAs to comply with OSC requests for information in connection with floods management - most interviewees felt this had established an expectation of cooperation.

18. Some LLFA interviewees suggested that the existence of the Regulations may have contributed positively to the collaborative working relationships that exist between LLFAs and RMAs. LLFAs interviewed suggested they take security from knowing it is possible to demand an RMA attend an OSC meeting, or deliver information to it within a set time frame. However, no evidence could be found of an authority using the Regulations even when requesting information from RMAs, and knowledge about their content was low (amongst both LLFAs and RMAs).

Legal impact of removal

19. The Regulations will lapse on 6th April 2018, which means that the requirements and duties which the Regulations contain will no longer apply. However, the duty on RMAs to comply with requests for information from OSCs will remain in place (section 9FH of Local Government Act). However, no provisions about the required form of a request will remain, nor will there be any specific timeframes for compliance with the request. The Regulations currently provide safeguards for the confidentiality of the information disclosed by RMAs to OSCs in compliance with an information request. If the sunset clause takes effect, those safeguards will cease to exist.

Conclusions

20. The Regulations are not being relied upon and, as such, have contributed little to achieving the objectives of the enabling primary legislation from which they originate. OSCs are working with RMAs and making requests for information from them in relation to their flood management activities – both formally and informally according to the established working relationship. Evidence collected as part of this review indicates that RMAs are complying with those requests for information, as they have a duty to do under the primary legislation. The formal procedures for requesting information and compliance with timeframes in Regulations are not being used.

21. Defra considers that in light of their apparent lack of use, the sunset clause in the Regulations should be allowed to take effect and no replacement regulations should be laid. The loss of a timeframe for RMA compliance with information requests and a confidentiality safeguard will be unlikely to have an impact as to date they have not been used. The loss of a requirement to make requests in writing will have a very low impact as requests are currently made according to the norms of the working relationship in question.

Annex - Post Implementation Review

<p>Title: The Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011 IA/PIR No: 2011/697</p> <p>Lead department or agency: Defra</p> <p>Other departments or agencies:</p> <p>Contact for enquiries: Russell Bramley</p>	<p>Post Implementation Review</p> <p>Source of intervention: Domestic</p> <p>Type of regulation: Secondary legislation</p> <p>Type of review: Statutory - sunset clause</p> <p>Date of implementation: 06/04/2011</p> <p>Date review due (if applicable): 06/04/2016</p>
<p>Summary</p>	<p>The Regulations in question placed new duties on Risk Management Authorities to respond to information requests from local authority Overview and Scrutiny Committees. The Regulations have a sunset clause of 2018</p>

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

Lead Local Flood Authorities (LLFAs) are county and unitary local authorities that have responsibility under the Flood and Water Management Act 2010 to manage local flood risk i.e. from surface run off, groundwater and ordinary watercourses. There are 152 LLFAs in England.

Risk Management Authorities are Water and Sewage Companies, Environment Agency, Internal Drainage Boards, District Councils and Highways Authorities which also have a role in local flood risk management.

The Flood and Water Management Act 2010 already extended Local Authority Overview and Scrutiny Committees (OSC) powers over authorities that are Lead Local Flood Authorities (LLFAs), which has been put in place by the Local Government Act 2000. The amendments allow LLFAs to review and scrutinise Risk Management Authorities (RMAs) in relation to exercising their flood management work. They could for example use this if there was a flooding event in the area and the OSC wanted to undertake a review of the event or to review current arrangements for local flood risk management in the area. In addition the Act places a duty on RMAs to comply with a request by an OSC and allows regulations to be made by Ministers about this duty. This is what Government did through The Flood Risk Management Overview and Scrutiny Committee (England) Regulations 2011.

The provisions of the 2011 Regulations specifically cover that a request by the OSC must be made in writing, places a duty on RMAs to respond to a request within 28 days, to indicate what action it proposes to take (if any), and to attend the committee if requested. It also covers confidentiality procedures and a requirement to review the regulations before the end of the review period i.e. 6 April 2016. It should be noted the 2011 Regulations only apply to those authorities that operate an executive system of governance and not those that operate a committee system of governance. It is estimated that 90-95% of authorities operate the executive system.

The 2011 Regulations objectives are linked to the wider objectives of the Act and should therefore be regarded as contributing to the following without being solely responsible for their delivery.

The legislative policy objectives were:

- Greater accountability and transparency of Risk Management Authorities (RMAs)
- Strengthening collaborative working to improve flood risk management
- Provide an added mechanism for bringing the work of these authorities together and to hold different RMAs to account

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

The Regulations were intended to complement the general powers and duties set out in the Act, the impact of which are not expected to be fully realised by the review date. If local authorities had cause to compel an RMA to attend a meeting or provide information, we would expect evidence of that action to be available at the time of review.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

(The PIR guidance states that the strength of evidence sought for PIRs should be proportionate to the scale of the regulation and its expected impact).

The 2011 Regulations were expected in the IA to be low impact and low risk. Accordingly, it was felt that a proportionate approach to review would be to collect any necessary evidence in-house, using published reports to form a view on whether the objectives had broadly been achieved with new evidence gathered from stakeholders identified as having experience of working with OSCs and willing to share their experiences. The evidence required to assess the impact of the 2011 Regulations consisted of factual information on whether the powers and duties within had been employed by OSCs. We also decided to collect qualitative information on the value and effectiveness of the powers and duties imposed by the Regulations and to assess the possibility of using other means to achieve the same objectives.

It was decided that three stages of evidence gathering would be used to determine the impact of the 2011 Regulations, using the resources available already within Defra policy and evidence teams to collect a volume of information proportionate to the scale of impact expected.

3. Describe the principal data collection approaches that have been used to gathering evidence for this PIR.

Aim of data collection - gather information on:

- Level of awareness
- Extent of use
- Level of compliance
- Cost of compliance
- Perceived benefits

Stage 1: Desk-based research. Reading available known OSC flooding review reports and scanning websites of local authorities for information on any previously unknown reviews (we found 12 OSC flood related review reports in total). Stage 1 identified where reports were already available; what sort of flooding issues they covered; indicate whether OSCs were devoting substantial time to flooding; and, most importantly for this PIR, whether there was evidence of RMA compliance with OSC information requests or specific deadlines being set to comply with such requests.

Stage 2: Initial survey. A short online survey was developed to discover if OSCs had been active in scrutinising flooding and if an RMA had been requested to attend an OSC meeting or been asked to provide information to a deadline. The survey was conducted on 'Survey Monkey' and notification was placed on 'flownet' (an information exchange portal for local authorities) and emails sent to water companies, Environment Agency Area Managers and the Association of Drainage Authorities. The survey was also referred to at several relevant stakeholder meetings with a request for attendees to complete it. This initial survey contained a question used to find out whether the respondent would be willing to provide more information at a later date. Targeting more detailed surveys at respondents known to have participated in OSC floods scrutiny work was reasoned to provide for more useful data collection at the next stage. In addition the Centre for Public Scrutiny highlighted the work in their newsletter asking any OSC officials with experience in this area to contact us if they were happy to discuss

Stage 3: Further surveys. Telephone based surveys were conducted with Lead Local Flood Authority/OSC contacts and electronic surveys distributed to RMA contacts. Two different survey means were chosen in this instance to ensure information collected was proportionate to the level of detail expected from interviewees.

The results from the initial survey indicated which LLFA/OSCs were willing to be contacted again to discuss in more detail the use they had made of the powers granted to them under the Regulations. Accordingly, 12 LLFA/OSCs were contacted to arrange interviews along with another two contacts that had provided reports to Defra following the initial survey. Telephone interviews with LLFA/OSC contacts were approximately 30 minutes in length and gathered information on awareness of the 2011 Regulations and the duties/powers therein; information on whether those powers had been utilised by the OSC in question; availability of information on costs to RMAs of complying with the duties imposed; opinion on the value of the powers within the Regulations and opinion on whether they should be renewed or continued.

The electronic survey was sent to the 20 RMAs that had responded to the initial survey indicating that they had worked with OSCs in accordance with the obligations under the Act. The survey to RMAs gathered information on whether an RMA had complied with requests made using the Regulations; whether cost information was available for compliance; opinion on value of Regulations and opinion on whether the OSC role in flood scrutiny has benefitted flood management. Two RMAs provided responses to this survey.

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

Please set out conclusions and supporting evidence.

Evidence collected suggests that the 2011 Regulations powers and duties have not been used by OSCs in their role scrutinising flooding. The majority of LLFA interviewees (stage 3) expressed the view that this was because RMAs voluntarily worked alongside OSCs and their respective officers when requested to do so. On occasions when input from a Water Company or the Environment Agency was deemed necessary, the OSC or its officers would make a simple request for their involvement and the RMA would generally attend without any need for a formal request to be made under the Regulations.

However, some interviewees suggested that the existence of the Regulations have contributed positively to the collaborative working relationships that exist between LLFAs and RMAs. LLFAs take security from knowing it is possible to demand an RMA attend an OSC meeting, or deliver information to it within a set time frame.

Annexed to this PIR is a selection of quotes from interviews conducted at stage 3 of this review.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).

Key assumptions:

- There would be cost implications for LLFAs and RMAs of extra scrutiny reviews
- Costs would be kept to a minimum by adding a new mechanism to pre-existing scrutiny arrangements that are already familiar to local authorities
- Costs estimates were taken from Department of Communities and Local Government impact assessment of the Local Authorities (Overview and Scrutiny) Bill published in January 2010. The projected annual average cost to business was estimated at £0.09m-0.36m (10 year at 2010 value cost £0.8m-3.1m), spread across 9 English water and sewage companies. This was expected to be offset by flood damage reduction to other businesses.
- Benefits could not be directly monetised, not least because take-up of provisions would be discretionary and would vary from place to place. In principle the benefit will be reduced flood damage to people, property and the environment.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

Please highlight how these differed from the original assumptions and any reasons which explain these differences.

The direct costs of the 2011 Regulations are believed to be zero

OSCs interviewed typically invited RMAs to attend meetings or contribute to reviews on an informal basis. Evidence suggests that where OSCs have taken advantage of the responsibilities placed on them by the Local Government Act 2000, they have adapted the scrutiny processes already familiar to them. The costs to RMAs of attending meetings and the work necessary to prepare for those meetings therefore appear to have been absorbed by the companies themselves without being accounted for in a way that specifies the time its officers have devoted to the issue being probed by the OSC at the time.

The benefits of the Regulations could not be directly monetised in the IA and that remains the case. Benefits ascribed to the role of OSCs in scrutinising flood issues by interviewees are:

- Raising the profile of flood management within the LLFAs
- Engaging elected LLFA members in flood management issues
- Encouraging collaborative working relationships between local authorities and RMAs

Interviewees found the role of the 2011 Regulations broadly useful in supporting the work of OSCs to scrutinise flooding. Although no OSCs had specifically used the process for requesting information outlined in the Regulations up to now, some LLFAs interviewed speculated that if resources for RMAs were to be different in future they may be less inclined to share their time with OSCs so willingly. In such a scenario, the power to require information or attendance for a meeting would be important. RMAs surveyed did not identify that as a risk.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

- What are the main limitations to the evidence base for the PIR?
- Are there any other issues which should be considered when this PIR is reviewed?

There is a lack of specific information in respect to the costs for RMAs attending OSC meetings or providing information for reviews. This is because the working relationship between LLFAs and RMAs have reportedly worked well in those areas that provided a response to our surveys, with no formal requests under the 2011 Regulations being issued. Where RMAs have devoted resources to working with OSCs there has been no separate account of those resources. In any event, all information in regard to costs was self-reported by the interviewees with no external checks available for verification of accuracy.

The information collected was done so from a limited sample: as not every authority was interviewed, there could be other LLFAs, OSCs and RMAs with different views. We also focused on those who were willing to take part so again we might have missed those with different experiences. This applies to both the surveys and phone interviews.

The data gathering for this exercise was light touch in order to ensure it was proportionate to the scale of impact.

7. Lessons for future Impact Assessments

- Are there any significant lessons for future IAs arising from this PIR, e.g. were any costs or benefits substantially mis-estimated and, if so, how can better estimates be obtained in future?

There is a post implementation review plan in the original IA. Considering that the benefits were judged impossible to quantify in the IA, there should perhaps have been a provision in the plan as to what data on costs would have been helpful, as well as how and when such data should have been collected to ensure the PIR was as effective as possible.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

Allow sunset clause to take effect

The evidence collected suggests that the 2011 Regulations have not been used. The role of OSCs in scrutinising flood management has provided impetus for some authorities to engage in flood issues and encourage collaborative working between LLFAs and RMAs. However, the collaborative nature of those relationships has not, up to now, resulted in any authorities using the formal requirements in the Regulations.

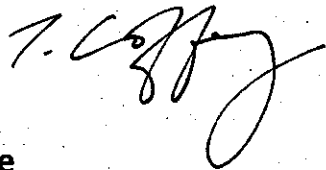
It should be noted that even if the regulations are not renewed RMAs will still have a duty to comply with requests by an OSC as provided for by the Flood and Water Management Act. It is the additional requirements around this duty provided for by the 2011 Regulations that will be removed, including time limits for RMAs to respond and the protection of RMA confidentiality.

Sign-off For Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed:

Date:



8. ~~11~~
March
2017

Evidence Base

Please provide additional evidence in subsequent sheets, as required.

Annex A

Selected OSC responses

1. "We experienced two incidents in 2012 which resulted in our authority asking a water company and the Environment Agency to the OSC. We hadn't been able to deal with its as officers so OSC got involved to call them in. I don't think we would have been able to resolve the issues we have without the involvement of the OSC. We didn't use the 2011 Regulations however, but in asking them to attend we quoted the Act as providing powers of scrutiny to the OSC."
2. "We did a report and review, invited the local water company and EA. We also invited the highways agency, but they only have a few roads in this area so they didn't actually come. Police and fire rescue came to give evidence, as did the local Community Flood Forum. Outcome of the review is that we will be doing an annual report for the OSC on flooding. We didn't actually need to use the Regulations but good to know they are there in case we need them."
3. "I wasn't aware of the Regulations as such, though I know the Act provided OSCs with certain powers. RMAs were very involved in writing up of our report. Some outsourcing in the report - we engaged with one of the best district councils in how they deal with drainage and flooding in issues. The fire service were also very helpful in the flood context. Folios were requested, but people wanted to be involved, we didn't need to force anyone. These were learning points for me and our authority as a whole."
4. "Never invited one to our review. Would expect RMAs to attend if asked. Up to committee who to ask. I know RMAs have attended other committees but that's not under remit of scrutiny."
5. "Removal of the Regulations would take away the formal guidance and things might not take place. LLFAs take the local lead and there is some backup from the members to ensure things are working well. Things like improvement plans and budgets benefit from having the formal guidance in place. I think we would be losing a trick if the Regulations are removed. However, we have a good working relationship with EA and the water companies and our OSC invited them informally and haven't had to use the regulations."

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