

Cabinet Committee on Climate Change and the Environment

Meeting to be held on 15th March 2011

Part I - Item No. 8

Electoral Division affected:
All

The County Council's Duties as a Lead Local Flood Authority – Update (Appendices 'A' and 'B' refer)

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Executive Summary

This report provides an update on the implications for the County Council of the Flood and Water Management Act 2010 and the Flood Risk Regulations 2009, both of which impose new duties for the County Council as a "lead local flood authority".

Recommendation

The Cabinet Committee on Climate Change and the Environment are asked to note the report and comment as appropriate on the issues raised, and on the approaches being taken to prepare for the new duties arising from the legislation.

Background and Advice

In the summer of 2007 severe flooding occurred across many areas of England. As a consequence the Government commissioned an independent review by Sir Michael Pitt, who duly reported with 92 recommendations for improvements in the assessment and management of flood risk. In December 2008 the Government made a response to the review, resulting in the Flood & Water Management Act 2010. This legislation has major implications for upper tier local authorities which are becoming clearer, and hence this report seeks to provide an update.

New Roles and Responsibilities

The Environment Agency (EA) have a "Strategic Overview" role under the Flood and Water Management Act 2010. One of their key responsibilities is to support upper tier and unitary authorities in taking on new duties.

The upper tier and unitary authorities are designated as "Lead Local Flood Authorities" under the Act, and take on a number of new duties which will be expanded on later in this report. There is now in place a duty on the County Council as a lead local flood authority to start preparing a flood risk management strategy for its area.

District councils are one of a number of "Risk Management Authorities" under the Act. They will be expected to continue delivering responsibilities relevant to flood risk management, including managing coastal erosion (where appropriate), land drainage matters, planning decisions and emergency planning. There will be a need for district councils to continue to exercise these responsibilities in a way that aligns with the flood risk management strategy to be developed for Lancashire.

Lead Local Flood Authorities

Lancashire County Council, Blackpool Council and Blackburn with Darwen Council are all designated as lead local flood authorities. The delivery of the new duties will be based on effective partnership between lead local flood authorities and other risk management authorities. At present officers from the district, county and unitary councils across Lancashire are working together in a single partnership with the EA and United Utilities (UU) to develop responses to the new duties, an approach agreed by the Lancashire Chief Executives in March 2009.

The key duties which the Flood and Water Management Act will require of lead local flood authorities are set out below:

- The lead local flood authority has a duty to develop, maintain, apply, monitor and consult on a Local Flood Risk Management Strategy for its area. Local flood risk includes surface runoff, groundwater, and ordinary watercourses (including lakes and ponds). This strategy is being developed by the partnership outlined above.
- The lead local flood authority will have a duty to ensure that the strategy is consistent with a national strategy developed by the EA.
- The lead local flood authority and the EA will have a power to request information from third parties in connection with flood risk management duties. Risk management authorities such as the district councils will have a duty to co-operate with the EA and the lead local flood authorities in the provision of such information.
- The lead local flood authority will have a duty to ensure that flooding incidents in its area are investigated by the appropriate organisations, which is likely to include district councils, UU and the EA, and that intended actions are identified and published.
- The lead local flood authority will have a duty to maintain a register of structures or features which might impact on flood risk, including ownership details and condition. The register must be available for inspection.
- The lead local flood authority Overview & Scrutiny Committees will be empowered to scrutinise all risk management organisations in their exercising of flood risk management functions.
- The lead local flood authority will have powers to undertake works for managing flood risk from surface runoff or groundwater.
- The lead local flood authority will have powers to designate structures or features as affecting flooding, including those on private land. Designation would mean the owner would need consent before making any changes, and the lead local flood authority would have powers of enforcement action.
- The lead local flood authority will take on the current EA role for consenting works that are likely to affect the flow capacity of ordinary watercourses.

- The lead local flood authority will act as a Sustainable Urban Drainage System (SuDS) Approval Body, to work in tandem with the planning system. In this capacity, the lead local flood authority will have to approve or otherwise sustainable drainage proposals associated with any construction work for buildings, or any structure that covers land and will affect water absorption (including patios). The lead local flood authority will also have a duty to adopt and maintain those SuDS serving more than one property. This process will clearly need close working with districts in the planning context.
- The lead local flood authority will have a duty to contribute to sustainable development principles generally in carrying out its flood risk management functions.
- The lead local flood authority will be responsible for developing a generic off-site emergency plan for large reservoirs, of which there are several across Lancashire, and location specific plans for those reservoirs deemed the highest risk.

Commencement Timescale

The duty on the County Council to prepare a flood risk management strategy for Lancashire was commenced in October 2010. The Department for Environment, Food and Rural Affairs (Defra) have yet to confirm the further commencement timetable, but it is expected that the majority of further duties will be commenced from 1st April this year, with the more complex Designation, Consenting, and Sustainable Urban Drainage roles, being deferred until October 2011 or April 2012.

Requirement for Preliminary Flood Risk Assessment, under the Flood Risk Regulations 2009.

The Flood Risk Regulations 2009 are a separate piece of legislation arising from a European Floods Directive, requiring the assessment of "significant" flood risk across Europe. These regulations impose a duty on lead local flood authorities to prepare preliminary flood risk assessment reports by June 2011. "Significant" in this context is measured by specific criteria developed by Defra for this purpose, and deliberately set so as to identify only the greatest national flood risk threats. To assist in this process, the Environment Agency have produced national mapping of areas meeting the criteria, and there are none within the Lancashire area, the only areas in the north-west being parts of Manchester and Liverpool. Lead local flood authorities will develop strategies for managing lesser levels of flood risk in partnership with the district councils under the Flood and Water Management Act, as explained above.

Appendices 'A' and 'B' to this report contain recent mapping of flood risk information across Lancashire that has been used to confirm the absence of nationally significant flood risk in Lancashire for the purpose the Flood Risk Regulations, but which will nevertheless serve as a platform for recognising and addressing lesser levels of flood risk under the Lancashire flood risk management strategy to be developed. The map in Appendix A shows the population likely to be at some risk in parts of the county vulnerable to a 1 in 100 year flood event resulting from heavy rainfall. The criteria for "significant" in terms of the Preliminary Flood Risk Assessment would be at least 30,000 people in a single area. The map in Appendix 'B' is based on historical flood information gathered from partner organisations including the district councils, and at this stage may be incomplete. It should be

noted also that a number of the locations shown where flooding has occurred in the past have since benefited from remedial action. This historical information data will help to shape the Lancashire flood risk management strategy.

The lack of nationally "significant" flood risk areas in Lancashire means that whilst an assessment report still has to be prepared and agreed through the county council executive process, the further duty to prepare flood hazard and risk maps, and flood management plans for these areas, will not apply. This cycle of activity will be repeated every six years.

Issues arising from the Flood & Water Management Act 2010

The main issues for the lead local flood authorities (Lancashire County Council and the two Unitary Authorities – Blackpool Council and Blackburn with Darwen Council) are those of resources, skills, and knowledge. The EA are currently running workshops for lead local flood authorities across the country on a range of themes, to develop the necessary skills. However, it will be critical going forward that all councils across Lancashire are sufficiently skilled and resourced to exercise their current and new flood risk management duties properly. The Act provides some scope for certain functions to be delegated between authorities by agreement, which offers an opportunity to make best use of expertise. Hence whilst LCC, Blackpool and Blackburn will take on the lead local flood authority role, the districts will need to play a full role in flood risk management partnership working, and in delivering their own flood risk related functions.

Funding remains a major issue. Whilst the lead local flood authorities are receiving monies from Defra to "fully fund" the additional burdens imposed by this legislation, the Local Government Association remains sceptical that it will be sufficient to actually achieve this. Defra have also been consulting on a new system for funding capital flood risk management schemes, based on "payment for outcomes". Under current arrangements schemes generally receive full government funding or are deferred. The payment for outcomes approach would see any potential scheme receive a notional proportion of government funding depending on how many properties would have reduced flood risk as a consequence, but with the onus on lead local flood authorities and their partners to raise the balance from other sources, such as local beneficiaries of the scheme within the community. This approach brings further challenges of engaging communities and other stakeholders to contribute to such schemes, in difficult economic times.

The Regional Programme of flood risk management schemes will be prioritised by the Regional Flood & Coastal Committee (RFCC) which will continue to raise local levy to help achieve schemes within it. The RFCC is looking to align its council member representation in line with the new lead local flood authority areas, and any county council members selected to represent the Lancashire area will have a significant influence in helping to promote the county's interests in getting schemes selected and delivered.

The Way Forward

In order to ensure a strong and unified partnership approach to engaging with these emerging new duties, a Lancashire Flood Risk Management Officers Group has been meeting in recent months, under the chairmanship of the county council. The group is attended by officers from the county council, all the district and unitary councils in Lancashire, United Utilities and the Environment Agency. This group is developing the strategic approaches to the issues raised in this report. In support of this, fledgling "Making Space for Water" Groups are being established in each district, whereby the same core agencies will ensure operational delivery of flood risk management work going forward. The Lancashire Flood Risk Management Officer Group has been making good early progress on gathering local flood data, with all Lancashire's councils contributing, as can be seen from the attached Appendix 'B'. It will be necessary going forward to achieve a closer working relationship between County Council Members with flood risk management responsibilities, and the officer structures outlined above. The EA and the Chair of the Regional Flood and Coastal Committee are particularly pleased with the approach Lancashire's officers are developing and see it as an emerging model of good practice for delivering the new duties.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

The report sets out a number of new duties and powers coming to the county council as a result of recent legislation on flood risk management. The council will potentially be exposed to reputational, legal and financial risk if it is deemed as failing to fulfil those duties once they are in place.

Financial Implications

The government is providing, through Area Based grant funding, £200,100 to the county council in 2011/12, and £516,200 in each of the subsequent two years of the Government Spending Review, in recognition of the new burdens imposed by this legislation. Other funding may be provided by way of specific grants.

Legal Implications

The county council will have statutory duties to deliver as set out in the report.

Property Asset Management

The flood risk management duties place an onus on the county council to register, and where appropriate designate, assets that contribute to managing flood risk, and these may include county council assets. Investment in flood risk management

measures is prioritised on its benefits for different types of property and infrastructure, and this may include county council property assets.

Procurement

The new duties may have implications for procuring systems or services, for instance IT systems or licences, and delegation of functions through negotiation.

Any representations made to the Cabinet Committee prior to the issue being considered in accordance with the Public Notice of Forward Plans

Name: Organisation: Comments:

N/A

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
Flood and Water Management Act	2010	Rick Hayton / Environment / 01772 536033
Flood Risk Regulations	2009	Rick Hayton / Environment / 01772 536033
Selecting and Reviewing Flood Risk Areas for Local Sources of Flooding (DEFRA)	2010	Rick Hayton / Environment / 01772 536033

Reason for inclusion in Part II, if appropriate

N/A