

Scrutiny Committee

Meeting to be held on 10 June 2011

Electoral Division affected: All

County Council Responsibilities for Flood Risk Management in Lancashire (Appendix 'A' refers)

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Executive Summary

This report provides an update on the implications for the County Council arising from the Flood Risk Regulations 2009 and the Flood & Water Management Act 2010, both of which impose new duties on the County Council as a "lead local flood authority". It also draws attention to the enhanced scrutiny role now provided to lead local flood authorities through the Flood Risk Management Overview & Scrutiny (England) Regulations 2011 (attached at Appendix 'A').

Recommendation

The Scrutiny Committee is asked to:

- i. Note the report; and
- ii. Comment as appropriate on the issues raised, and on the approaches being taken to deliver against the duties imposed.

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. Two pieces of legislation have been introduced that bring new flood risk management responsibilities for local authorities and other organisations; the Flood Risk Regulations 2009, and the Flood & Water Management Act 2010.

1. The Flood Risk Regulations 2009: Requirement for Preliminary Flood Risk Assessment.

The Flood Risk Regulations 2009 transpose the EU Floods Directive into UK law, and require the assessment of "significant" flood risk. These regulations confirm a lead local flood authority role for county and unitary authorities, and impose a duty to

prepare preliminary flood risk assessment (PFRA) reports by June 2011. "Significant" in this context is measured by criteria developed by Defra exclusively 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 nevertheless have to lead the partnership development of strategies for managing lesser levels of flood risk under the Flood and Water Management Act, as explained later in this report.

The lack of nationally "significant" flood risk areas in Lancashire means that whilst an assessment report still has had to be prepared and submitted to the Environment Agency by June 2011, as required by the Flood Risk Regulations, 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.

2. The Flood & Water Management Act 2010

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, through the creation of a national flood risk management strategy, and the provision of guidance for lead local flood authorities.

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, in addition to delivering the preliminary flood risk assessment report referred to earlier. There is now in place a duty on the County Council as a lead local flood authority to start preparing a local flood risk management strategy for its area, to complement the EA national strategy.

A number of "Risk Management Authorities" are identified under the Act. These include the EA, lead local flood authorities, district councils, highway authorities and water companies. District councils will be expected to continue delivering existing responsibilities relevant to flood risk management, including managing coastal erosion (where appropriate), land drainage matters, planning decisions and emergency planning. They will be required by the Act to exercise their flood risk management functions in a way that aligns with the flood risk management strategy to be developed for Lancashire. There is scope in the legislation for risk management authorities, including the county council, to delegate certain flood risk management functions to other risk management authorities, by agreement.

Lead Local Flood Authorities

Lancashire County Council (LCC), Blackpool Council and Blackburn with Darwen Borough 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:

- From October 2010 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, following the advice from Defra that the information gathered for the PFRA report should then be used to underpin subsequent development of the local strategy.
- From April 2011 the lead local flood authority and the EA 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.
- From April 2011 the lead local flood authority has a duty to ensure that where it considers it necessary or appropriate, 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.
- From April 2011 the lead local flood authority has a duty to develop and 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.
- From April 2011 the lead local flood authority Scrutiny Committee is empowered to request reports or attendance at a meeting from any risk management organisation, to allow scrutiny of the delivery of flood risk management functions (Appendix 'A' refers).

Other key duties and powers are listed below

- The lead local flood authority will have a duty to ensure that the local strategy is consistent with a national strategy developed by the EA.
- 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 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. LCC Emergency Planning Team has this work in hand.
- 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 Designation, Consenting, and Sustainable Urban Drainage roles outlined in the final three bullet points above are quite complex to deliver, and there remain unresolved issues in terms of how best they should be carried out. For this reason their introduction is being deferred until October 2011 or April 2012.

Issues arising from the Flood & Water Management Act 2010

The main issues for the lead local flood authorities (LCC and the two unitaries) 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, and LCC officers are fully engaging with these opportunities. The Environment Directorate has appointed officers into area-based flood risk management roles, and has taken advantage of an opportunity to part fund a secondee from the Environment Agency, who is engaged for twelve months helping the county council to develop appropriate responses to the new duties. The directorate is also part funding a trainee who is undergoing a foundation engineering degree programme in flood risk management, and who is therefore bringing the new skills to bear in the council. 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. As identified earlier, the Act provides 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, other organisations including the district councils will be required 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 recently been consulting on a proposed 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

The approach to developing internal capability to take on the duties has been outlined above. In order to ensure a strong and unified partnership approach to engaging with these emerging new duties, a Lancashire Flood Risk Management Officer 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, UU and the EA. 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 historical flood information. 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 County Council runs the risk of reputational damage, or a failure to properly deliver new duties, if the approaches being taken to engage with this legislation are not adequately developed and scrutinised. The report sets out how the County Council is both developing internal capacity, and leading on the creation of appropriate multi-agency structures, in line with the expectations of the legislation, with progress subject to constant review and feedback from the Environment Agency in their strategic overview role.

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

Paper	Date	Contact/Directorate/Tel
The Flood Risk Regulations	2009	Rick Hayton, Environment Directorate, 01772 536033
The Flood & Water Management Act	2010	
The Flood Risk Management Overview & Scrutiny (England) Regulations	2011	

Reason for inclusion in Part II, if appropriate

N/A