

Flood and Water Management Act 2010

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

This factsheet summarises flood management provisions in the Act that affect local authorities in England. This factsheet does not contain information about commencement or implementation of the Act which is available elsewhere on the Defra website.

Lead local flood authority

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

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

Local Partnerships

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

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

Statutory guidance on Co-operation and Information sharing has been published by the Environment Agency with the National Strategy. Guidance and examples of best practice arrangements for local partnerships will be made available to local authorities and, as recommended by the EFRA Select Committee, different bodies' roles can be varied if necessary.

Flood risk management strategies

The Environment Agency has developed and published a national strategy for the management of coastal erosion and all sources of flood risk for England. The National Strategy was consulted on publicly, approved by the Secretary of State and laid before Parliament prior to its publication (July 2011).

The Act also requires a lead local flood authority to develop, maintain, apply and monitor a strategy for local flood risk management in its area. The lead local flood authority will be responsible for ensuring the strategy is put in place but the local partners can agree how to develop it in the way that suits them best. The Act sets out the minimum that a local strategy must contain, and the lead local flood authority is required to consult on the strategy with risk management authorities and the public. The Local Government Group (LGG) in association with local authority representatives, the Environment Agency and Defra have published a Preliminary Framework for local strategies to help local authorities develop their local flood risk management strategy.

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

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

Duty to act consistently with local and national strategies

The Act requires local flood risk management strategies to be consistent with the national strategy – in particular the guiding principles for managing flood and coastal erosion risk set out in the National Strategy. The local strategies will build on information such as national risk assessments and will use consistent risk based approaches across different local authority areas and catchments. The local strategy will not be secondary to the national strategy; rather it will have distinct objectives to manage local flood risks important to local communities.

Duty to investigate and to maintain a register

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

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

Ensuring progress

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

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

Works powers

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

Designation of third party assets

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

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

Sustainable drainage systems

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

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

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

The SAB must arrange for SuDS on private property, whether they are adopted or not, to be designated under Schedule 1 to the Act as features that affect flood risk. The SAB will also be required to arrange for all approved SuDS to be included on the register of structures and features (as a separate category).

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

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

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

Other powers

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

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

Sustainable development duty and environmental works

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

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

Levies

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

Funding

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

The EU Floods Directive

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

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

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