

**REPORT TO:** CABINET MEMBER - COMMUNITIES

**DATE:** 4 November 2009

**SUBJECT:** COMBINED IMPLICATIONS FOR SEFTON OF THE DRAFT FLOOD & WATER BILL/PITT REVIEW

**WARDS AFFECTED:** ALL

**REPORT OF:** AR Moore - Strategic Director Regeneration and Environmental Services

**CONTACT OFFICER:** J H Baker (0151 934 4202)  
GA Gee (0151 934 2291)

**EXEMPT/  
CONFIDENTIAL:** No

**PURPOSE/SUMMARY:**

The purpose of this report is to advise the Cabinet Member of the implications of the Draft Flood & Water Bill and the continuing implications of the Pitt Review recommendations, for Local Authorities either directly or indirectly.

**REASON WHY DECISION REQUIRED:**

The Cabinet Member is lead Member for emergency planning issues.

**RECOMMENDATION(S):**

That Members note the report and the identified implications for Sefton arising from both the draft Floods and Water Bill and the Pitt Review recommendations.

That Members note that Overview and Scrutiny (Regeneration and Environmental Services) on 20<sup>th</sup> October are considering a report on Climate Change and Flooding, including future funding for this service.

That the report be passed to the Cabinet Member for Regeneration, Technical Services and Environmental for their information.

That Officers from Regeneration and Environmental Services and Emergency Planning Unit, supported by the relevant partner agencies, should form a project team to report back to Members various options for implementing the new roles and responsibilities and the likely cost implications.

**KEY DECISION:** NO

**FORWARD PLAN:** N/A

**IMPLEMENTATION DATE:** Immediately following the expiry of the "call-in" period for the minutes of this meeting.

**ALTERNATIVE OPTIONS:** N/A

**IMPLICATIONS:**

**Budget/Policy Framework:**

The Financial Implications are unknown at this stage but should become clearer following the review by the Project Team.

**Financial:**

<b><u>CAPITAL EXPENDITURE</u></b>	<b>2009/ 2010 £</b>	<b>2010/ 2011 £</b>	<b>2011/ 2012 £</b>	<b>2012/ 2013 £</b>
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<b><u>REVENUE IMPLICATIONS</u></b>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N				
How will the service be funded post expiry?				

**Legal:**

N/A

**Risk Assessment:**

Flooding identified as a Very High Risk within the Merseyside Local Resilience Forum 2009 Community Risk Register.

**Asset Management:**

Some of the Flood and Water Bill provisions are likely to lead to more detailed understanding of flood risk in Sefton so may inform future asset management decisions.

**CONSULTATION UNDERTAKEN/VIEWS**

**PLANNING**

FD 176 - The Finance and Information Services Director has been consulted and his comments have been incorporated into this report

Some

**CORPORATE OBJECTIVE MONITORING:**

<b><u>Corporate Objective</u></b>	<b><u>Positive</u></b>	<b><u>Neutral</u></b>	<b><u>Negative</u></b>
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		<b>Impact</b>	<b>Impact</b>	<b>Impact</b>
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being	√		
5	Environmental Sustainability	√		
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy		√	
8	Children and Young People		√	

**LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT**

Cabinet Member Communities Report 23 April 2008 'Implications for Sefton of the Pitt Review Report.'

Overview & Scrutiny (Regeneration and Environmental Services) Report 20 October 2009 'Climate Change and Inland Flooding in Sefton'-

## **BACKGROUND:**

### **1.0 Pitt Review**

- 1.1 In August 2007, Sir Michael Pitt was asked by ministers to carry out a review of the flood-related emergencies that occurred during the summer of 2007. His final report, 'The Pitt Review' report, can be viewed at <http://archive.cabinetoffice.gov.uk/pittreview/thepittreview.html>.
- 1.2 The report contains some 92 recommendations. They are strategic in nature, but with implications for every locality in the country. It considers climate change, flood risks and weather forecasting and the need to strengthen and enforce both Planning and Building Regulations to ensure flood resistance and resilience measures are built into any new developments.
- 1.3 The report also suggests there is room for improved inter-agency co-operation and recommends that local authorities should adopt a new leadership and scrutiny role overseeing flood risk management within their local area
- 1.4 The Government's response to the final report was released in December 2008 and is supportive of the conclusions and recommendations. The Government also indicated that any investment required for longer term implementation would be considered as part of the next comprehensive spending review but that all new burdens for local authorities will be funded.
- 1.5 Of the 92 recommendations, some 27 have either a direct Local Authority lead role or a leading role through its membership of the Local Resilience Forum. These lead roles will need to be driven through either the Office of the Chief Executive or Regeneration. Details of the 27 recommendations are shown in appendix A.

### **2.0 Draft Flood and Water Bill**

- 2.1 The Government also identified that it would be legislating to support its response to the Pitt Review, by presenting a Draft Floods and Water Bill which it released in April 2009 for consultation.
- 2.2 Sir Michael Pitt's report also recommended that flooding legislation should be updated and streamlined under a single unifying Act of Parliament that addresses all sources of flooding, clarifying responsibilities and facilitating flood risk management.
- 2.3 The Government have indicated that the new Bill will enable it to meet many of Sir Michael Pitt's recommendations by simplifying the existing complex and outdated flood and coastal erosion risk management legislation including the interrelationship of roles and responsibilities between the various responsible bodies that includes local authorities. It will unify the identified legislative needs in two previous strategy documents,

Future Water, Making Space for Water with the Pitt Review and transpose the EU Floods Directive by placing those duties on the relevant bodies.

- 2.4 The Government have said that the main aims of the Bill can be grouped under three themes of Security, Service and Sustainability:
- 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 its response to the Pitt Review. Improving leadership on flood risk, and enable better planning for and prediction and warning of floods;
  - Better **service** for people through new ways of delivering major infrastructure projects, improving complaints and enforcement procedures; and
  - Greater **sustainability** by helping people and their communities to 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.
- 2.5 The Bill is structured in eight Parts, with Parts 1,2 and 5 being of particular relevance to Sefton. Part 3 relates to reservoirs while Parts 4, 6, 7 are aimed at the Water Industry. Part 8 sets out various supplementary provisions that apply generally to the draft Bill. Details of the Bill clauses and local authority actions are shown in appendix B.
- 2.6 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 therefore 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. This includes, for example, the preparation of Surface Water Management Plans, and various other flood risk plans. The government has identified that the average Surface Water Management Plan costs £100,000 to prepare.
- 2.7 In addition, the Government has suggested that they anticipate that Local Authority's '**...will invest £100,000 annually in flood mitigation measures for surface water run-off and groundwater which will produce a real benefit for local flood risk.**'
- 2.8 The Government suggest that this enhanced role for local authorities, leading new local partnerships and responsibility for sustainable drainage systems, (SUDS); will be pivotal to the success of this much stronger and more comprehensive approach to flood risk management.

- 2.9 Appendix C shows the future roles for Local Authorities and the Environment Agency, who will have a strategic overview role of flood and coastal erosion risk management in England.
- 2.10 A detailed explanation of the changes and the Governments expectations in relation to the draft legislation is shown in Appendix D.

**3.0 Conclusions and Recommendations.**

- 3.1 The final review by Sir Michael Pitt contains a number of far reaching conclusions and recommendations, which will have direct implications for the Council in the future.
- 3.2 Officers are currently engaging with our partner organisations in understanding and responding to the actions identified by the Governments response to the Pitt Review.
- 3.3 The Floods and Water Bill contains legislation that will place a statutory responsibility to undertake the roles and actions identified in the Governments response to the Pitt Review.
- 3.4 While the Government has indicated that all new burdens for local authorities will be funded, the detail of this has not been presented. For example, the extent to which the proposed duty for the Council to act as the sustainable drainage systems approving body and maintain such systems can be offset against savings due to the transfer of private sewers to United Utilities has still to be determined.
- 3.5 It is therefore recommended that Members note the report and the identified implications for Sefton arising from both the draft Floods and Water Bill and the Pitt Review recommendations.
- 3.6 That the report be passed to the Cabinet Member for Regeneration, Technical Services and Environmental for their information.
- 3.7 That officers from Regeneration and Environmental Services and the Emergency Planning Unit, supported by the relevant partner agencies, should form a project team to report back to Members various options for implementing the new roles and responsibilities and the likely cost implications.
- 3.8 Although the detailed resource implications in implementing the Pitt Review and this new legislation are not yet clear, flood risk identification and management are clearly now a priority for Government. A separate report to Overview and Scrutiny (Regeneration and Environmental Services) on 20<sup>th</sup> October is considering the current levels of funding for this service. The table below summarises the current Drainage budget and compares this to the 2004/05 level.

Drainage Function	2004/05 Budgets	2009/10 Budgets
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	£k	£k
Highway Drainage	275	250 (45K offered as a saving last year)
Land Drainage	105	123
Gully Cleansing	272	222
Total	652	595

A.R. Moore  
Strategic Director Regeneration and Environmental Services

## APPENDIX A - Implications for Sefton of the Pitt Review Report Recommendations

Rec. No	Final Recommendation	Delivery Timetable	Lead Organisation	Sefton Lead	Sefton Position/Action
7	There should be a presumption against building in high flood risk areas, in accordance with PPS25, including giving consideration to all sources of flood risk and ensuring that developers make a full contribution to the costs both of building and maintaining any necessary defences.	Beginning immediately. Revision of PPS25 in Spring 2009	Local Authorities	Planning	Borough wide Strategic Flood Risk Assessment being undertaken in connection with future development sites.
12	All local authorities should extend eligibility for home improvement grants and loans to include flood resistance and resilience products for properties in high flood-risk areas.	Bids to be sought from Local Authorities early in 2009, with further in late 2009 and 2010.	Local Authorities	Home Improvement Section	Unknown Talk to HIS
13	Local authorities, in discharging their responsibilities under the Civil Contingencies Act 2004 to promote business continuity, should encourage the take-up of property flood resistance and resilience by businesses.	Government has already taken action to support Local Authorities in implementing this.	Local Authorities	Emergency Planning	Being actively promoted through for example leaflet drops & Website, Business Continuity Forum across Merseyside.
14	Local authorities should lead on the management of local flood risk, with the support of the relevant organisations.	Actioned by end 2010, supported by new Floods and Water Bill	Local Authorities	Drainage Capita	To be progressed
15	Local authorities should positively tackle local problems of flooding by working with all relevant parties, establishing ownership and legal responsibility.	Beginning immediately, supported by new Floods and Water Bill	Local Authorities	Drainage Capita	Progressing very slowly due to budget problems
16	Local authorities should collate and map the main flood risk management and drainage assets (over and underground), including a record of their ownership and condition.	Actioned by end 2010, supported by new Floods and Water Bill	Local Authorities	Drainage Capita	Commenced, funded to date by Environment Agency
18	Local Surface Water Management Plans, as set out under PPS25 and coordinated by local authorities, should provide the basis for managing all local flood risk.	Priority Surface Water Management Plans completed by end 2010	Environment Agency & Local Authorities	Planning/ Drainage Capita	No progress to date Talk to Planning
19	Local authorities should assess and, if appropriate, enhance their technical capabilities to deliver a wide range of responsibilities in relation to local flood risk management.	Beginning immediately, completed to support new statutory duties by end 2010	Local Authorities	Chief Executive/ Cabinet	Sefton has a Drainage Team retention will be a Capita issue. but may need further funding for additional resources as this is additional work.
38	Local authorities should establish mutual aid agreements in accordance with the guidance currently being prepared by the Local Government Association and the Cabinet Office.	Guidance issued.	Local Authorities and Cabinet Office	Chief Executive/ Cabinet	Merseyside wide mutual aid agreement in place.
41	Upper tier local authorities should be the lead responders in relation to multi-agency planning for severe weather emergencies at the local level and for triggering multi-agency arrangements in response to severe weather warnings and local impact assessments.	In consultation guidance to be issued in Spring 2009	Local Authorities	Emergency Planning	Local Resilience Forum, Flooding & Severe Weather Group established and processing recommendations.
42	Where a Gold Command is	In consultation	Local Resilience	Emergency	This is the agreed



Rec. No	Final Recommendation	Delivery Timetable	Lead Organisation	Sefton Lead	Sefton Position/Action
	established for severe weather events, the police, unless agreed otherwise locally, should convene and lead the multi-agency response.	guidance to be issued in Spring 2009	Forums	Planning	operating format at present.
43	Gold Commands should be established at an early stage on a precautionary basis where there is a risk of serious flooding.	In consultation guidance to be issued in Spring 2009	Local Resilience Forums	Emergency Planning	This is the agreed operating format at present.
44	Category 1 and 2 responders should assess the effectiveness of their emergency response facilities, including flexible accommodation, IT and communications systems, and undertake any necessary improvement works.	Facilities reviewed by end 2008, Government expectation details to be launched early 2009.	Local Authorities	Emergency Planning	Established within Sefton, continually reviewed, each Dept. has its own business continuity plan in connection with flooding.
64	Local Resilience Forums should continue to develop plans for door-knocking, coordinated by local authorities, to enhance flood warnings before flooding and to provide information and assess welfare needs once flooding has receded.	Developed as part of local flood emergency plans.	Local Resilience Forums	Emergency Planning	Implications still being considered
66	Local authority contact centres should take the lead in dealing with general enquiries from the public during and after major flooding, redirecting calls to other organisations when appropriate.	Government to consider if specific guidance required by Spring 2009	Local Authorities	Chief Executive/ Emergency Planning/ Avarto	Negotiations being undertaken by Sefton with Avarto to provide this support role.
68	Council leaders and chief executives should play a prominent role in public reassurance and advice through the local media during a flooding emergency, as part of a coordinated effort overseen by Gold Commanders.	In consultation guidance to be issued in Spring 2009	Local Authorities	Chief Executive/ Cabinet	Existing Council responsibility, systems in place.
72	Local response and recovery coordinating groups should ensure that health and well-being support is readily available to those affected by flooding based on the advice developed by the Department of Health.	All parties should have been made aware of the available advice & guidance.	Local Authorities & Local Resilience Forums	Chief Executive/ Emergency Planning	Systems in place, continually monitored, reviewed
74	The monitoring of the impact of flooding on the health and well being of people, and actions to mitigate and manage the effects, should form a systematic part of the work of Recovery Coordinating Groups.	Monitoring arrangements embedded in systems and processes by end of 2009	Local Authorities	Chief Executive/ Emergency Planning	Part of role of group when actioned following an incident.
76	Local authorities should coordinate a systematic programme of community engagement in their area during the recovery phase.	Further guidance to be provided by Government.	Local Authorities	Chief Executive/ Cabinet	Engagement of local community being progressed.
77	National and local Recovery Coordinating Groups should be established from the outset of major emergencies and in due course there should be formal handover from the crisis machinery.	Already implemented but further guidance in Spring 2009	CLG & Local Authorities	Chief Executive/ Emergency Planning	Mechanism already in place.
78	Aims and objectives for the recovery phase should be agreed at the outset by Recovery Coordinating Groups to provide focus and enable orderly transition into mainstream programmes when multi-agency coordination of recovery is no longer required.	Already implemented but further guidance in Spring 2009	Local Authorities	Chief Executive/ Emergency Planning	Mechanism already in place.
80	All central government guidance should be updated to reflect the new arrangements for recovery and Local Resilience Forums should plan, train and exercise on this basis.	Updated guidance by Spring 2009	Cabinet Office, CLG and Local Resilience Forums	Emergency Planning	Ongoing, as new plans developed, new guidance is added.

<b>Rec. No</b>	<b>Final Recommendation</b>	<b>Delivery Timetable</b>	<b>Lead Organisation</b>	<b>Sefton Lead</b>	<b>Sefton Position/Action</b>
83	Local authorities should continue to make arrangements to bear the cost of recovery for all but the most exceptional emergencies, and should revisit their reserves and insurance arrangements in light of last summer's floods.	Updated guidance issued, now fully implemented.	Local Authorities	Chief Executive/ Finance	No change to existing funding arrangement, Director of Finance to be requested to report on this recommendation.
85	Local Recovery Coordination Groups should make early recommendations to elected local authority members about longer-term regeneration and economic development opportunities.	Updated guidance issued, now fully implemented	Local Authorities	Chief Executive/ Cabinet	Mechanism already in place.
90	All upper tier local authorities should establish Oversight and Scrutiny Committees to review work by public sector bodies and essential service providers in order to manage flood risk, underpinned by a legal requirement to cooperate and share information.	Updated guidance by Spring 2009 Implementation timetable to be agreed.	Local Authorities and Cabinet Office	Chief Executive/ Cabinet	Committee in place but need to include this as a 'term of reference'.
91	Each Oversight and Scrutiny Committee should prepare an annual summary of actions taken locally to manage flood risk and implement this Review, and these reports should be public and reviewed by Government Offices and the Environment Agency.	Updated guidance by Spring 2009 Implementation timetable to be agreed.	Local Authorities, Government Offices and Environment Agency	Chief Executive/ Cabinet	Committee in place but need to include this as a 'term of reference'
92	Local Resilience Forums should evaluate and share lessons from both the response and recovery phases to inform their planning for future emergencies.	Updated guidance by Spring 2009. Ongoing local implementation.	Local Authorities	Emergency Planning	Debriefing and lessons learned process already in place.



## APPENDIX B - Draft Flood and Water Bill Assessment of Actions for Sefton

Clause No	Description	Action
Part 1 Flood & Coastal Erosion Risk Management		
1	<p>Overview</p> <p>a) gives the Environment Agency responsibility for supervising the management of flood risk and coastal erosion risk,</p> <p>(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,</p> <p>(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</p> <p>(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.</p>	<p>LA's shall set Local Strategy for local flood risk management by:-</p> <ul style="list-style-type: none"> <li>• Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater.</li> <li>• Production of local flood risk assessments, maps and plans including an asset register.</li> <li>• Improved drainage and flood risk management expertise.</li> <li>• Co-ordinate Surface Water Management Plan production.</li> <li>• Drainage from non-Highways Agency roads</li> <li>• Prioritising local investment.</li> <li>• Consenting and enforcement powers for certain works affecting ordinary watercourses.</li> <li>• Promoting partnerships with local planning authorities to produce Strategic Flood Risk Assessments.</li> </ul>
2-14	Definitions	
15-17	The Environment Agency must develop, maintain and apply a strategy for flood and coastal erosion risk management in England, publish a summary of it and may issue guidance on it.	
19-21	A lead local flood authority in England must develop, maintain and apply a strategy for local flood risk management in its area, publish a summary of it, and may issue guidance.	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. In the same way it does for the EA National Strategy, the draft Bill requires a 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
22/23	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. Also, relevant public bodies, 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	To fulfill this duty the unitary local authority will 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: <ul style="list-style-type: none"> <li>• 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;</li> </ul>

Clause No	Description	Action
	strategy, local flood risk management strategies and related guidance.	<ul style="list-style-type: none"> <li>• produce flood risk assessments and flood risk action plans (e.g. Surface Water Management Plans) for their areas. These must be consistent with the EA's FCERM strategy and any supplementary guidance and use any existing relevant work, such as Strategic Flood Risk Assessments. In addition the Government are encouraging unitary local authorities to produce assessments and plans throughout their areas even if they are not considered to have potential significant flood risk, so that such assessments and plans can form part of the local authority's local flood risk management strategy. This will deliver part of the EU floods Directive;</li> <li>• 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);</li> <li>• 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 area; and <ul style="list-style-type: none"> <li>• investigate local flooding incidents with all relevant parties to identify the source of the problem and where responsibility lies for addressing it</li> </ul> </li> </ul> <p>The Governments impact assessment for local flood risk management 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:</p> <ul style="list-style-type: none"> <li>• the average cost to develop a SWMP is £100,000;</li> <li>• 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;</li> <li>• 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.</li> </ul>
25-27	An authority in England must comply with any reasonable request of the Environment Agency or lead local flood authority to provide information, which the Agency/lead local authority reasonably requires in connection with its flood and coastal erosion risk management functions.	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 but include a district council, an IDB, a

Clause No	Description	Action
		<p>water company and the British Waterways Board. 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.</p> <p>To ensure that such information is provided they 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 further support the EA and county and unitary local authorities in meeting the requirements of the EU Floods Directive.</p>
28	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.	The Draft Bill adds the provision of information under s25 & 26 of the Draft Bill to the Water Industry Act 1991 exceptions to the prohibition on disclosure, to ensure that there is no restriction on the disclosure of information requested of the Water Companies .
29/30	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.	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. The Government see that works powers and elements within the EA or local authority strategy e.g. producing SWMPs could be delegated using these arrangements. However, they consider that overall accountability for the strategy should not be able to be delegated to another body.
31/32	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 or 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.	Existing arrangement at present through EA to DEFRA, now directly under control of the EA.
35	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 if satisfied that the relevant authority has failed to exercise the function, or has failed to exercise the function in accordance with the national strategy under section 15 or the local strategy under section 19.	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. There may be circumstances where a local authority is unwilling or unable to undertake local flood risk management works. The government is

Clause No	Description	Action
		therefore proposing that the EA should be empowered to act in such circumstances and with proposed safeguards. 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 fallback position under which the EA would be able to act in default of the local authority or IDB. However, to help ensure that these circumstances are appropriate the Government has made these powers exercisable only with the consent of Defra Ministers. Furthermore, in order to avoid an incentive for local authorities to default, the draft Bill gives the EA powers to recover reasonable costs from the relevant body.
43/44	<p>In the event of a flood in its area, a lead local flood authority in England must make enquiries to ascertain which relevant authorities have flood risk management functions that may need to be exercised in response to the flood, and whether each of those relevant authorities has exercised, or is proposing to exercise, those functions in response to the flood.</p> <p>A lead local flood authority in England must establish and maintain a register of structures or features, which may affect a flood risk in its area and a record of information about each of those structures or features including ownership and state of repair. The lead local flood authority must arrange for the register and record to be available for inspection by any person at all reasonable times.</p>	<p>This places a duty on Lead LA's to investigate flooding in their area to identify which relevant authority has the flood risk management function responsibilities and establish if that authority has responded or is proposing to respond to the flooding.</p> <p>In addition the Lead LA must produce and make available for inspection a register and record of information about structures and features (natural or man-made) that may affect flood risk in their area. These may be privately owned features, which will be designated by the Lead LA and will advise the owner that it has been designated under the legislation. The Lead LA will also be responsible for giving consent for alterations, removal or replacement of the designated thing. It will also have default enforcement and emergency powers in relation to the designated things.</p>
50-52	The appropriate lead local flood authority for each relevant area in England must prepare a preliminary assessment report in accordance with section 52. The preliminary assessment report prepared by a lead local flood authority must include information about flooding in its area from ordinary watercourses, surface runoff, and groundwater. Each report must include, in particular information about previous floods in the area, information about the consequences of previous floods for the matters, and an assessment of the potential harmful consequences of floods in the area in future.	<p>Start of clauses that reflect the transposition of the EU Floods Directive into English law.</p> <p>This clause requires Lead Local Flood Authority to prepare a preliminary flood risk assessment report, preliminary assessment maps for each relevant area (relevant area could be a river basin district or an area of coastline outside a river basin district. In addition it shall produce a preliminary assessment report about previous flooding in the area to include flooding from ordinary watercourses, surface runoff and groundwater.</p>
53/54	A lead local flood authority must submit its preliminary assessment report under section 50 to the Environment Agency before 22nd June 2011, after consulting	Deadline for Lead local flood authority to produce preliminary assessment reports and then review them at the agreed intervals.

Clause No	Description	Action
	with the EA and such other persons it thinks appropriate. It must review this every 6 years.	
55	Significant flood risk determination by the Environment Agency from the sea, a main river or a reservoir.	
56-63	The appropriate lead local flood authority in relation to a relevant area must 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 identify the part of the relevant area affected by the risk (the "flood risk area"). It must notify the EA of its determination under subsection (1) and any flood risk areas it has identified. The lead local flood authority must notify the Environment Agency of its determination under subsection (1) and any flood risk areas it has identified. It must then prepare a flood hazard map in relation to the source of the flood risk and a flood risk map. The maps are to be submitted to the EA before June 22nd 2013. It must review this every 6 years. It must also prepare a flood risk management plan in relation to each identified significant flood risk in accordance with section 61. The plans are to be submitted to the EA by 22nd June 2015 and reviewed every 6 years.	The lead local flood risk authority must determine if there is significant flood risk in the relevant area from ordinary watercourses, surface water runoff and groundwater. It must produce a flood hazard map; a flood risk map and a flood risk management plan in relation to each source of flood risk. It must submit them to the Environment Agency for publication by the deadlines identified and review them at the agreed intervals.
64-65	Amendments to the Water Resources Act 1991 re Main River Maps	
66-74	The Regional Flood Defence Committees are to be replaced by Regional Flood and Coastal Committees. These new committees will be consulted about the way the EA proposes to carry out its flood and coastal erosion risk management and consent any proposed levy.	Alterations to the Regional Flood Defence Committees title and responsibilities.
<b>Part 2 Risk Management: Designation of Features</b>		
75-97	Sets out that certain authorities have powers to designate (i.e. identify and restrict changes to) certain structures or features, which affect risk of flooding or coastal erosion. Definitions provided of the relevant terms relating to this part of the Draft Bill.	A lead local authority or unitary authority will have designating authority, enforcement, consent and emergency powers in connection with designated features.
<b>Part 3 Reservoirs</b>		
98-192	Establishes a new regime for reservoir safety and makes provision for the management of the risk of flooding from reservoirs.	
<b>Part 4 Water Administration Regime</b>		
193-216	This part provides a special administration regime for water and sewerage undertakers and water suppliers and replaces section 23 to 26 of the Water Industry Act 1991.	
<b>Part 5 Sustainable Drainage</b>		
217-220	Overview and definitions Requires the setting of national standards for sustainable drainage, prohibits the	Local authorities to adopt and maintain certain drainage systems once constructed.



<b>Clause No</b>	<b>Description</b>	<b>Action</b>
	construction of certain new drainage systems without approval of (generally) a local authority, requires approval of drainage systems to take account of the national standards on sustainable drainage, and requires a local authority to adopt and maintain certain drainage systems once constructed.	
221	Government shall consult on and then publish national standards for the implementation of sustainable drainage. The National standards must address the way in which drainage systems are constructed, and operated. The National standards are national policies for the purposes of section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 (preparation of local development documents - England).	National standards to be produced and published by Government for the implementation of sustainable drainage including construction and operation.
222-230	The Government proposes to require developers to apply for and seek approval for all new surface water drainage associated with a new development or redevelopment. 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 but must consult with and notify the relevant sewerage undertaker concerning the application. The SAB may publish a scale of fees for the applications ensuring that income from fees does not exceed the costs of determining and monitoring and operating the system following approval. Non-performance bonds may be required by the SAB.	The unitary authority for an area shall be the approving body for sustainable drainage systems and it must consult with the relevant sewerage undertaker and notify them of any decisions.
231/232	The Government proposes to require county and unitary authorities to take responsibility for adopting and maintaining new build SUDS in the public realm in England.	Unitary authorities must adopt approved sustainable drainage systems and then is responsible for its maintenance
233	The SAB may authorise a connection to the public sewer under s223 of the Flood and Water Management Act 2009 if a SUDS system is unsuitable or requires a connection as part of its operation.	Power of the authorising body to allow connections to the public sewer as part of a sustainable drainage system approval.
<b>Part 6 Water Industry Regulation</b>		
234-253	Modifications and consolidations to water industry regulations	
<b>Part 7 Miscellaneous</b>		
254-259	Additional modifications and amendments	
<b>Part 8 General</b>		
260-265	General clauses referring to the Act itself.	Act to be cited as The Flood and Water Management Act 2009

Clause No	Description	Action

## Appendix C

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

#### **Environment Agency Strategic overview role**

- 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.

#### **Delivery/executive role**

- 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.

#### **Local Authorities (LAs) Local leadership role (county councils in two tier areas)**

- 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.

#### **Delivery/executive role**

- 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.

#### **EA's Regional Flood and Coastal Committees (currently Regional Flood Defence Committees)**

- 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.

## APPENDIX D

### Draft Flood and Water Bill

#### Contents

- 1 Introduction.
- 2 Proposed Future Roles and Responsibilities of LA's and the EA for Flood and Coastal Erosion Risk Management.
- 3 Sustainable Drainage Systems.
- 4 Regional Flood Defence Committees.
- 5 EU Floods Directive.
- 6 Water Framework Directive
- 7 Third Party Assets.
- 8 Local Flood Risk
- 9 Single Unifying Act

#### 1. INTRODUCTION

Government policy is to manage flood and coastal erosion risks by a 'portfolio' of measures that 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.

Currently, the Environment Agency (EA), local authorities and Internal Drainage Boards (IDB's) 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. However, on their own, these powers would not enable those bodies to do all the things for flood and coastal risk management required. The Bill will therefore introduced new powers which begin to achieve the aim of allowing those bodies to undertake a wider suite of flood and coastal risk management measures in the future. 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.

The draft Bill does not explicitly make any provision to adapt to climate change. Instead it sets 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 extending the life of a scheme, to the provision of information and support to adapt to and live with risk and its potential impacts. 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.

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. The government wants to work with natural processes of flooding and erosion at a local level. They 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 that reduce run-off where this will reduce flood risk.

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.

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 (FCERM) 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. 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

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

- i) To provide the greatest possible clarity and accountability about who is responsible for what, including for leadership at a national and local level;

- ii) To retain the roles and responsibilities of existing delivery organisations wherever possible to ensure the continued engagement of local knowledge and expertise;
- iii) To provide flexibility for different delivery organisations to deliver flood and coastal erosion risk management on the ground; and
- iv) To promote the growth of effective local partnerships and to provide a strong duty on all bodies to cooperate and share information

## **2. PROPOSED FUTURE ROLES AND RESPONSIBILITIES OF LA.s AND THE EA FOR FLOOD AND COASTAL EROSION RISK MANAGEMENT**

### **2.1 Environment Agency**

#### ***Strategic overview role***

- 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.

#### ***Delivery/executive role***

- 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

### **2.2 Local Authorities (LAs)**

#### ***Local leadership role (county councils in two tier areas)***

- 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.
- Delivery/executive role

- 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.

### 2.3 EA strategic overview role

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.

In line with their strategic overview role, the draft Bill will give the EA powers to allocate grants 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.

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 the Government 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. They 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.

#### **2.4 EA delivery and operational role**

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.

There may be circumstances where a local authority or an IDB is unwilling or unable to undertake local flood risk management works. The government is therefore proposing that the EA should be empowered to act in such circumstances and with proposed safeguards. 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 fallback position under which the EA would be able to act in default of the local authority or IDB. However, to help ensure that these circumstances are appropriate they 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.

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. 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 is 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.



## **2.5 Local flood risk management**

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.

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 the government want to achieve following Sir Michael Pitt's Review. The proposed roles of the different organisations involved are set out below

## **2.6 Role of county and unitary local authorities**

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. It also believes that local flood risk management will be best if based on new partnership arrangements.

The government 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 organizations 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.

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.

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.

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, the Government are encouraging 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 area; and
- investigate local flooding incidents with all relevant parties to identify the source of the problem and where responsibility lies for addressing it.

In the same way as 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 that 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.

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. 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.

Surface Water Management Plans (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;
- be 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.

The Government is currently informally consulting on the draft Surface Water Management Plan (SWMP), guidance for which is available on the Defra website. This guidance provides 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

## **2.7 Overview and scrutiny**

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 scrutinize 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 that might affect the authority's area or inhabitants. 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 IDB's and water companies.

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.

## **2.8 Local delivery - counties, districts and IDBs**

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.

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.

Local authorities 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.

The Government 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. The Government does 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.

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. However, the overall accountability for the strategy should not be able to be delegated to another body.

The Government's impact assessment for local flood risk management 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 also assumes that:

- the average cost to develop a SWMP will be in the region of £100,000;
- local authorities 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) the Government believe that this will reduce all local flood risk by 40% (over a 43 year period) based on the limited best information available at present.

## **2.9 Duty to cooperate and share information**

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 the draft Bill and include a lead local authority, a district council, an IDB, a water company, a highway authority, reservoir manager, navigation authority and any other relevant public body.

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.

It is important to ensure that such information is provided and therefore the Government 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.

It is also 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.

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.

### **3. SUSTAINABLE DRAINAGE SYSTEMS**

In February 2008, the UK Government consulted stakeholders on 'Improving Surface Water Drainage'. 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 SUD adoption.

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. There is a need to ensure that such information is provided and therefore the Government 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.

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.

The following provisions relate to new surface water drainage systems from buildings and roads in England and Wales. They do not require any retrofit of SUDs, or deal with groundwater or foul water.

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.

### **3.1 National Standards**

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. 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.

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.

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.

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.

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.

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.

### **3.2 The Approval Process**

It is important to ensure that surface water drainage systems mitigate the environmental impact of run-off, and are sufficiently robust. Therefore, the Government proposes to require developers to seek approval for all new surface water drainage associated with a new development or redevelopment.

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.

The approving body may inspect the construction of the SUDS and will issue a certificate of satisfactory construction when completed. 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 Government intends to make the county council a statutory consultee in England for relevant planning applications.

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.

### **3.3 Adoption and Maintenance**

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 Government proposes to



require county and unitary authorities to take responsibility for adopting and maintaining new build SUDS in the public realm in England. They also propose that the Secretary of State and Welsh Ministers will be able to vary this approach where appropriate.

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.

### **3.4 Role of SUDS approving body**

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.

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.

Exceptions are likely to be needed to cover unusual circumstances. There is no intention to specify maintenance standards for SUDS in this 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.

### **3.5 Financial bond**

It is proposed 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.

### **3.6 Connection to a public sewer**

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. 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 Government has therefore accepted Sir Michael Pitt's recommendation to end the automatic right to connect.

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.

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.

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 Government proposes that the sewerage companies should be consulted about new drainage systems. However, they 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.

### **3.7 Drainage of roads to sewers**

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.

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.

### **3.8 Funding of SUDS maintenance**

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.

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. The Government believes that from April 2011, local authorities will benefit substantially from savings arising from the transfer of private sewers to the sewerage companies.

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 suggested 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.

### **3.9 Local authority performance on SUDS**

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. The Audit Commission presently carries out assessment of performance against all the indicators.

## **4. REGIONAL FLOOD DEFENCE COMMITTEES (RFDCs)**

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 the Government believe, the RFDCs role, responsibilities and membership should evolve to reflect the recent and proposed changes to the EA's role and 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*
- extend the levy power to cover coastal erosion risk.

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, the Government believes 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.

The key strengths of RFDCs are their local knowledge, representation of local interests, and an ability to question and challenge the EA Board. The 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.

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

#### **4.1 RFCC membership**

The Government 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. They propose to allow for the EA to produce a scheme of membership for each RFCC that will be approved by the Secretary of State.

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 Secretary of State to provide guidance to the EA on the sort of interests to be represented on each of the individual committees.

#### **4.2 Levy raising powers**

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.

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.

### **5. EU FLOODS DIRECTIVE**

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

#### **5.1 Background to the Directive**

The Floods Directive 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 had 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.

#### **5.2 Directive requirements**

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 neighboring country. Although not an international boundary, the Government proposes to apply this principle to any river basin district shared between England and Scotland or Wales.

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.

They must then define areas of potentially Significant Flood Risk. For these areas of significant risk they 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 that include number of inhabitants, types of economic activity and possible pollution causes. These maps will need to be coordinated with, and possibly integrated into, the reviews of River Basin Districts under the Water Framework Directive

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. In summary the Directive requirements are as follows:

<b>Output</b>	<b>Purpose</b>	<b>By</b>
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.

### **5.3 Approach to transposition and implementation of the Directive**

The Floods 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.

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 would be carried out by those seeking planning permission in flood risk areas

The Government's main aim is to reduce burdens by delivering the Floods Directive using existing outputs or those already under development. They 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, they would instead transpose via regulations under Section 2(2) of the European Communities Act 1972.

#### **5.4 Sewer flooding**

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.

Therefore, following informal consultation with Ofwat and Water UK, the Government 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. This is the position set out in the Flood Management (Scotland) Bill and similar provisions are expected in Northern Ireland

#### **5.5 Primary roles and responsibilities**

The Government proposes 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.

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.

## **5.6 Preliminary Flood Risk Assessments**

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. 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.

The Government proposes that county and unitary local authorities should be responsible for preparing PFRAs for ordinary watercourses, surface run-off and groundwater flood risk.

Local authorities should 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.

## **5.7 Determining significant risk**

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).

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.

The Government proposes 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.

To ensure consistency, prioritise investment and minimise the impact of a dispute, the Government 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.

For any dispute that does arise, they will set out a proposed mechanism in secondary legislation under powers provided in the Bill. The process should be sufficiently rapid so as not to compromise the timescale allowed by the Directive for subsequent mapping.

### **5.8 Responsibility for preparing Flood Hazard Maps and Flood Risk Maps**

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  $\approx$ 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.

The Government proposes 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.

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. The Government proposes that the EA should produce guidance and a detailed mapping specification to help local authorities do this.

Local authorities in England would fulfill their local flood risk mapping requirements by extending their level two SFRAs to look at the impact of flooding on the environment and cultural heritage. 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 also avoids duplicating work on local flood risk. Level 2 SFRAs 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.

### **5.9 Content of Flood Maps**

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 will use this flexibility to allow the EA and local authorities to exercise such discretion.

### **5.10 Responsibility for preparing Flood Risk Management Plans**

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

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).

These will need to be co-ordinated to ensure that measures and objectives set are consistent. The Government proposes that the EA in its strategic overview role should perform this task. A FRMP would 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. 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.

### **5.11 Co-ordination with the Water Framework Directive**

The various maps and plans will need to be coordinated and the Government proposes 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 focusing 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. They propose to leave it to the EA to decide how best to achieve this necessary coordination.

### 5.12 Ensuring public participation

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.

### 5.13 The reporting and review cycle

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 that is due seven years after the first appraisal, but then every six years after that.

Given that the area of 'significant risk' may change with each cycle, and additional mapping may be required, the Government 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		
PFRA	22 December 2017*	22 December 2023, 2029...
Flood maps	Flood maps 22 December 2019	22 December 2025, 2031...
PFRAs	PFRAs 22 December 2021	22 December 2027, 2033...
*Directive deadline is 22 December 2018		

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.

To allow sufficient time for quality assurance, the Government proposes 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.

## 6. WATER FRAMEWORK DIRECTIVE

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.

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.

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.

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.

## **6.1 Way forward**

In light of these limitations the Government considers it 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. 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.

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.

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

## **7. THIRD PARTY ASSETS**

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.

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.

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. 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.

### **7.1 Maintenance of third party assets**

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 included in the draft Bill 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 and this will be considered as part of the consultations.

### **7.2 Consenting and enforcement**

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. 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.

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.

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.

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

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.

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.

## **8. LOCAL FLOOD RISK**

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. 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.

The control of private assets is important to flood risk management as is considering flood and drainage problems and their resolution at the most local level.

At this local level, LA's will deal with those situations in which the probability of flooding is high, but in which the areas affected and the scale of the damage is 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 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. It is therefore important to consider 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.

The draft Bill 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.

### **8.1 Local flooding from watercourses and riparian responsibilities**

Under common law, the owner of a river's banks also owns the riverbed up to the center 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.

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.

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. The Government therefore considers that some mechanism is needed by which local people can prompt riparian owner's action to reduce the risk.

In the case of most designated main rivers this lack of a mechanism does not normally have implications for flood risk management as for most of these watercourses, the EA exercises its powers and conducts the necessary maintenance itself. For 'ordinary' watercourses the case is generally different.

In areas where there are IDB's, the Boards usually engage actively in the management of most ordinary watercourses. However, local authorities that also have the same permissive powers on ordinary watercourses normally only involve themselves on the more strategic watercourses than the smaller watercourses and ditches that are being considered here.

As a result, the management of ordinary watercourses relies more heavily on the 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.

### **8.2 Increasing riparian owners' awareness of their responsibilities**

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.

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. The Government is seeking suggestions as part of its consultation on how increasing riparian owners awareness can be achieved.

### **8.3 Existing law on the obstruction of watercourses**

There are several potential mechanisms for enforcing property owners' and occupiers' responsibilities for keeping watercourses free from obstructions. 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. 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.

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. Under section 25 of the Land Drainage Act 1991, drainage bodies (local authorities and IDB's) 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.

The Government is 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. They believe that this is unacceptable and are proposing amendments to the Agricultural Land Tribunal (ALT) to enable it to be used to resolve such problems.

#### **8.4 Agricultural Land Tribunals**

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.

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.

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'. 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.

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. 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.

The legislation also enables the Secretary of State to arrange for work to be carried out if the landowner 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.

However the Government believe that there to be a number of drawbacks to the ALT as a mechanism for resolving disputes over flood risk from ditches such as the formality and contested nature of ALT hearings and as most applicants and respondents will be neighbours, it is important to foster a positive ongoing relationship if possible. The Government is therefore proposing that all applicants and respondents should be offered an option for resolving their disagreements informally. To this end, they propose a form of mediation known as Early Neutral Intervention (ENI).

At present, all of this cost for the ALT process 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.

The Government is therefore suggesting the introduction of a hearing fee. They suggest that it should be paid by the losing party in any case but believe it is also possible to leave this issue to the tribunal to decide in the light of the particular case. The charging of a hearing fee would also provide an incentive for people to use the mediation service, ENI, above.

The fee would therefore only be charged in the event of the applicant requesting a formal 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.

To deter people from applying to the tribunal without due prior reflection and without first attempting to resolve disputes directly with their neighbours, the Government 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.

### **8.5 Expanding the remit of the ALT**

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

The Government also consider that 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, they suggest that it should be renamed the 'Drainage and Agricultural Land Tribunal'.

### **8.6 Creating a new statutory nuisance 'obstructing a watercourse'**

The proposed amendment to the process by which the ALT resolves disputes and perhaps to extend its remit is the Government's preferred option. However, an alternative option being considered, might be to set up a new dispute resolution mechanism by creating a statutory nuisance of 'obstructing a watercourse'.

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.

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.

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.

These new nuisances could be administered either by the ALT or by local authorities. If this process was enacted then the Government currently favours 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.

### **8.7 Create a new statutory nuisance 'surface run-off risk'**

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.

The Government believe that 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. To provide a mechanism of enforcement, the Government is suggesting the creation of a new statutory nuisance for run-off risk.

This new statutory nuisance could be administered either by the ALT or by local Authorities, however again, the Government believes that local authorities are best positioned for this task. 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 that will have the statutory role for managing the risk of surface water flooding more generally.

### **8.8 Prevent actions that increase surface run-off risk**

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. 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.

### **8.9 The creation of Run-Off Reduction Zones**

No equivalent powers exist to enable restrictions to be placed on farming practices that cause or aggravate run-off floods. The Government are therefore recommending 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.

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. Any decision to designate an area as a Run-Off Reduction Zone would be open to appeal to Defra Ministers. Once a designation had been approved, enforcement of the restrictions would be by means of the proposed new statutory nuisance

## **9. SINGLE UNIFYING ACT**

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.

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.

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.

With this in mind the Government therefore intends 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 they 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 they 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.

The government 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 has been completed at this time. They 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.