

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Environment and Transportation Select Committee
Date:	6 th November, 2012
Title:	The Flood and Water Management Act: Future Scrutiny Options
Reference:	4404
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1. Purpose of Report

- 1.1. The purpose of this report is to brief the Environment and Transportation Select Committee on the specific scrutiny implications of the Flood and Water Management Act, which have recently been revised.
- 1.2. The residual effect of the legislation and recent revisions is that a duty placed upon the County Council to scrutinise flood risk management activity has been repealed. However, the County Council does receive certain competencies to scrutinise flood risk management activity and, given the authority's new co-ordinating role in this field, the committee might still consider it appropriate to pursue a programme of flood risk management scrutiny.
- 1.3. On that basis, this report also proposes a potential way forward for the committee's consideration.

2. Contextual Information

- 2.1. The Flood and Water Management 2010 is an extensive piece of legislation that reorganises the distribution of responsibility for flood risk management among public bodies. It has implications for all local government (unitaries, counties, and districts inclusive), the Environment Agency, inland drainage boards, and the water companies, bringing in new powers, duties, and responsibilities for each of these types of organisation.
- 2.2. Its "flagship" innovation is the "Lead Local Flood Authority" (LLFA), a new status bestowed upon unitaries and county councils. The Lead Local Flood Authority assumes a range of new powers and responsibilities to help manage flood risk, but it also takes on a co-ordinating role among other risk

management authorities (RMAs) in the local area – specifically the types of body listed in 2.1 above. All these bodies assume a legal “duty to co-operate” under the Act. The Pitt Review, which followed the flooding of 2007 and prompted the Flood and Water Management Act, found that responsibility for flooding at a local level was too complicated and difficult to define; the Flood and Water Management Act, and the co-ordinating role of the Lead Local Flood Authority, were intended as responses to this finding.

- 2.3. The various new powers and duties are summarised in Appendix 1.
- 2.4. The LLFA does not assume any authority over the other types of RMA, but it does take on a number of functions and powers to help it to co-ordinate activity in its area, namely: the duty to develop a Local Flood Risk Management Strategy for the area; the ability to undertake statutory investigations into the causes of flooding incidents and publish the results; and a scrutiny role. All of these remain available to the LLFA, but the latter has been revised since the Flood and Water Management Act by more recent legislation.

3. Changes to Scrutiny Function

- 3.1. The Flood and Water Management Act placed a specific duty upon LLFAs to, by way of specific committee, scrutinise the exercise by risk management authorities of flood risk management functions, or coastal erosion risk management functions, which may affect the authority’s area.
- 3.2. This duty was amplified by regulation 3 of the Flood Risk Management Overview and Scrutiny Committee Regulations, 2011. This states that in relation to a request for information or response to a report, an RMA was under a duty to comply with such a request within 28 days or longer period as agreed between the scrutiny committee and the risk management authority. The RMA was also under a duty to indicate the action that they proposed to take in relation to a response to a report, and under a duty to attend the committee to give information orally if requested to do so.
- 3.3. However, part of the legislation on which these provisions relied has now been repealed, and several statutory instruments have been brought into force which make other alterations with the effect that:
 - There is no longer a specific duty upon Hampshire County Council to scrutinise other RMAs. Scrutiny powers bestowed by the FWMA have been repealed, but new powers and competencies remain, ***though these relate only to districts and not to other RMAs (the Environment Agency, water companies, etc), as set out below;***
 - The County Council cannot require attendance at scrutiny committee meetings to give information orally;
 - However, information in writing can be requested from districts. There is a rather woolly legal requirement for the districts to provide information if it is reasonably required by the County Council’s scrutiny committee, but there are various reasons a district could cite as

justification not to provide the information; in addition there is no time limit by which the district should respond;

- Where the scrutiny committee makes a report or recommendation to a district relating to its risk management functions, the committee can, by notice in writing, require the authority to have regard to the report and recommendation.

3.4 To sum up, the Flood and Water Management Act enabled an LLFA's scrutiny committee to demand and receive information relating to a RMA's flood and water management responsibilities within a set time frame. This has now been repealed and replaced with much less binding abilities to request information and require authorities to have regard to recommendations – and these only relate to district councils and not to all RMAs in the Hampshire area.

4. Conclusions

- 4.1. Earlier discussions between officers of the Economy, Transport and Environment Department, scrutiny officers, and the chairman of the Environment and Transport Select Committee established the need to use the Local Flood Risk Management Strategy when it is complete as a key tool for carrying out the scrutiny function. The desirability of a dedicated day event for Flood Risk Management issues was also considered, whereby district and county councillors, and other interested parties, would be invited to attend a conference style event for half the day, while the other half would be a scrutiny session that attendees would be encouraged to stay for.
- 4.2. It is suggested that the recent changes in the flood and water management scrutiny function do not require a change in the proposed approach in 4.1, though the event might need to be handled differently from first conceived. Should this remain the favoured way forward, September 2013 or thereabouts is proposed as a good time to hold such an event, at which point the implementation of the Local Flood Risk Management Strategy should have commenced and an update should be possible.
- 4.3. The Select Committee are asked to consider this as a possible way forward to be developed by scrutiny and Economy, Transport, and Environment officers. Detailed proposals can then be approved by the Committee chair.

Appendix 1 – Flood and Water Management Act: New Duties

Local Flood Risk Management Strategy

As the Lead Local Flood Authority (LLFA) for the County, Hampshire County Council has a duty to prepare a strategy for managing flood risk posed by surface water and ground water. This will need to be developed in partnership with the districts as well as the Environment Agency and water companies. This strategy will need to link to the Local Development Frameworks and will be fundamental as a basis for a joint approach to win funding for flood management schemes in Hampshire.

Register and Record of Features Affecting Flood Risk

The County Council is also required to develop a register and record of all features that have a “significant” effect on flood risk in the county. This should include public assets held by a variety of agencies (including the districts) as well as private or third party features. A group of officers from agencies across the county has been convened and a list of contacts developed for future engagement in order to build channels for information exchange. An electronic, web-based system is being developed by the County Council to make the register public facing and to explore how it might link with district authorities’ systems to ensure efficient support for the Sustainable Drainage Approval (SuDS) function.

Designation of Flood Risk Features

The County Council, district councils, and the Environment Agency are all empowered to “designate” privately owned features as being significant to flood risk in their area. These will all become land charges.

Flood Investigations

As Lead Local Flood Authority, the County Council is required to carry out investigations into flooding events that it considers significant in order to establish which flood risk management authority holds relevant functions and what it plans to do in response to the event. This is likely to involve the County Council working closely with districts, water companies, and the Environment Agency. A set of guidelines determining when such investigations should take place has been produced by senior officers from the County Council and its partners.

Sustainable Drainage

The provisions in the Act for the approval and adoption of SuDS (sustainable drainage) have been continually delayed, and as yet it remains uncertain when this part of the Act will be enabled. Nonetheless, when it is, the County Council will become a SuDS Approval Body or SAB, responsible for approving and adopting the sustainable drainage systems associated with new development. The complications of aligning this process with the standard planning approval process are well rehearsed and have been detailed in previous papers, including

one presented to the Chief Executives' group. Hampshire and Isle of Wight Planning Officers Group (HIPOG) have provided comments and suggestions, but the draft guidance on SuDS was published more recently, and the Government's reaction to the responses has yet to be made known: there is, therefore, uncertainty about the precise requirements of this legislation, as well as the timing of its enablement.

Ordinary Watercourses

Following the Act, both the County Council and the districts have powers to do works on ordinary water courses. The County Council has also taken on the Environment Agency's role in consenting to proposed works on property adjoining such water courses. The delivery of this function needs to be aligned with both the sustainable drainage approval process, and the planning approval process.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	Yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
The Flood and Water Management Act 2012	2280	29 th November 2010
Direct links to specific legislation or Government Directives		
<u>Title</u>	<u>Date</u>	
The Flood and Water Management Act	April, 2010	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1. Direct impact upon equalities issues will be minimal, but by proactively scrutinising flood risk management activity in Hampshire, the Environment and Transport Select Committee can help to ensure that flood risk is managed in the interests of all Hampshire's residents.

2. Impact on Crime and Disorder:

- 2.1. Direct impact upon crime and disorder will be minimal, but extreme flood events can lead to disorder of various kinds, and proactive scrutiny of flood risk management can help to minimise this.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Minimal direct impact.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Flood risk management is an important part of adapting to climate change. Proactive scrutiny of flood risk management activity in Hampshire will help to ensure that the County is "future-proofed" against flooding events influenced by climate change.