

REGENERATION, COMMUNITY AND CULTURE OVERVIEW AND SCRUTINY COMMITTEE

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FLOOD AND WATER MANAGEMENT ACT 2010 AND FLOOD RISK REGULATIONS 2009

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Summary

This report is intended to inform Members about new responsibilities that are placed on the Council by the Flood and Water Management Act 2010 and the Flood Risk Regulations 2009. The report will highlight a number of areas where details of responsibilities are not yet fully known and will be followed by further reports as details of regulations and guidance emerge.

The Committee is asked to recommend to Council that the review and scrutiny of flood and coastal erosion risk management functions under the Flood and Water Management Act 2010 is added to the terms of reference of this Committee.

1. Budget and Policy Framework

- 1.1 No decisions are proposed as this paper is primarily for information. The responsibilities are new and are not, therefore, within the current budgetary or policy framework. Some funding is provided within the overall grant.
- 1.2 Policy issues and administrative matters will be further developed as guidance is developed and issued.

2. Background

- 2.1 The title refers to two recent pieces of legislation that impose new, or extended, responsibilities on the Council. The Flood and Water Management Act 2010 (the Act) is the result of the Pitt Review of flooding in England which reported in 2007. The Flood Risk Regulations (the Regulations) transpose the requirements of the EC Floods Directive 2007/60/EC (the Directive) in England and Wales.
- 2.2 The two pieces of legislation are interlinked, essentially the Act imposes certain new responsibilities and the Regulations provides the detail as to what, specifically, the Council is required to do. The Act establishes Medway

Council as a Lead Local flood Authority by virtue of it being a Unitary Authority. There will be further regulations published which will provide more detail about other areas of new responsibility although the dates are not yet certain.

- 2.3 Whilst the regulations that apply to flood risk and management are dealt with in some detail in this report, the Act also introduces new local authority responsibility for Sustainable Urban Drainage Systems (SUDS). As the Act states that local authorities will be required to approve and adopt such systems, this could impose a significant burden.

3. Responsibilities

- 3.1 The Regulations require Lead Local Flood Authorities (LLFAs) to identify significant Flood Risk Areas on the basis of guidance to be issued by the Secretary of State in England and Welsh Ministers in Wales. Flood Risk Areas need to be meaningful areas that require flood hazard and flood risk mapping, and management through flood risk management plans. LLFAs must prepare flood risk maps and flood hazard maps for these areas by 22 June 2013 and flood risk management plans by 22 June 2015.
- 3.2 Once approved by the Department of Environment, Food and Rural Affairs (Defra) the national criteria will be issued to LLFAs along with joint Defra and Water Advisory Group (WAG) guidance on how to apply it. The Environment Agency (EA) will issue LLFAs with indicative Flood Risk Areas using the national criteria, based on nationally held data. LLFAs will need to review these areas taking account of local flood risk data and submit their determination to the Environment Agency by 22 June 2011. The EA issued the indicative flood risk areas in December 2010.

4. The Regulations

- 4.1 The Regulations transpose the requirements of the EC Floods Directive³ (the Directive) in England and Wales. The aim of the Directive is to reduce the likelihood and consequence of flooding by establishing a common framework for understanding and managing flood risk.
- 4.2 The Regulations require a number of key documents to be prepared including:
- preliminary flood risk assessments (PFRA);
 - flood hazard maps and flood risk maps; and
 - flood risk management plans.
- 4.3 The PFRA (and any subsequent maps and plans) will form part of the local flood risk management strategies that LLFAs are required to prepare under the Act. Local strategies will set out how LLFAs will manage the local flood risks in their areas and will also cover areas not identified as being at significant flood risk under the Regulations.
- 4.4 The Regulations set a deadline for the Environment Agency to publish the preliminary flood risk assessments (the assessments), flood risk maps and flood hazard maps (the maps) and flood risk management plans (the plans).

As the Environment Agency requires six months to review the documents to ensure national consistency, LLFAs must be submitted to them before 22 June in the year of publication. The dates by which the Environment Agency requires the documents are mandatory.

4.5 The Regulations require LLFAs to:

- Carry out an assessment of all sources of flooding except main rivers, the sea and reservoirs, focusing on “local flood risk” by 22 June 2011. The assessments should, however, take into account main rivers, the sea and reservoir flooding where they interact with flooding from another source;
- On the basis of these assessments, identify Flood Risk Areas, which are areas of significant risk, taking into account local sources of flood risk and having regard to national criteria set by the UK Government and the Welsh Assembly Government and any guidance issued by the Environment Agency by 22 June 2011;
- Prepare hazard maps and risk maps in Flood Risk Areas by 22 June 2013, and
- Prepare plans setting out risk management objectives for these Flood Risk Areas by 22 June 2015.

4.6 The plans will need to bring together these different elements, as well as set objectives and measures that relate to the prevention of flooding, protection of individuals, communities and the environment against the consequences of flooding, and arrangements for forecasting and warning.

4.7 This process is to be repeated over subsequent six year cycles taking into account the pressure of new development and the impact of climate change. This may prioritise new areas at risk and show that the risks in existing areas are being successfully managed.

4.8 It should be noted, however, that even though the Regulations require Medway to take account of sea and main river flooding in its assessment of local flood risk, the responsibility for assessing the direct impact of such flooding rests with the EA. In other words, it is up to the EA to produce flood maps of Medway which show the risk of flooding from the river. Medway’s mapping responsibility is to assess the impact of heavy rain on a local basis but assuming the drainage outfalls are blocked or surcharged by such a flood. The area flooded by the river is to be mapped by the EA, the area flooded because a drain is consequently blocked is Medway’s responsibility.

4.9 The Regulations provide for an exception from preparing an assessment where the Environment Agency or an LLFA has:

- undertaken an assessment by 22nd December 2010 - enabling the identification of areas of significant flood risk; or
- decides to produce Flood Hazard Maps and Flood Risk Maps, together with Flood Risk Management Plans, for its entire area.

- 4.10 The Environment Agency intends to exercise the latter exception on the basis that it already produces maps and plans for all large raised reservoirs, main rivers and sea flooding and can adapt these to meet the full requirements of the Regulations. The project to produce the Strategic Flood Risk Assessment for the Medway led by the Council a few years ago provides most the information the EA need. It may be the case that, because the primary risk of significant flooding in Medway arises only from tidal flooding and not from rainfall or river floods that this authority might be able to apply for an exemption. Until further guidance is published as to the definition of “significant” this will not be known.
- 4.11 The Regulations require authorities to comply with the principles of the Act. Of particular note is the section in the regulations that states - “Should an LLFA fail to produce a map or plan for an agreed Flood Risk Area the UK may face costly penalties. Where additional costs are incurred as a consequence of directing another authority to complete an assessment, map or plan on behalf of an LLFA those costs may be re-charged to the LLFA.”
- 4.12 Under the Localism Bill, there are proposals that if a penalty or fine is levied on the UK government as a result of actions or failures to act on the part of a local authority, the UK government will be able to pass the fine or penalty on to the local authority.

5. Duties under the Act

- 5.1 The following notable duties are imposed on Medway Council by the Act:
- Develop, maintain, apply and monitor a strategy for local flood risk management
 - Ensure the local flood risk management strategy is consistent with national strategy
 - Investigate flooding incidents
 - Maintain a register of structures or features which it considers has a significant effect on flood risk in the area; at a minimum recording ownership and state of repair
 - To contribute to sustainable development in discharging their flood and coastal erosion risk management
 - Take over the EA role in deciding whether to allow works by third parties that may affect water flows in certain water courses.
- 5.2 Again it should be noted that these duties are for the areas not covered by the EA.

6. Current Position and Next Steps

- 6.1 The EA initial maps of flood risk have not yet been published. However the Highways team has already commissioned work to identify and map flood risk areas away from the main rivers. This work is being done as part of the asset management programme. Whilst the reason for carrying out the work was not compliance with the Act, the outcome is that Medway is already well advanced in providing the necessary information and mapping.

- 6.2 Once the EA maps are provided they will be compared with the maps already in preparation. The risks and register will continue to be developed. There is an expectation within the published guidance that this committee will be involved in this process and a report will be presented to this Committee for comments in due course.
- 6.3 It is anticipated that the department will be able to meet its obligations to provide the mapping and assessment of risk. There is a small amount of government funding (£20,000) provided to assist. What is likely to be a greater challenge will be the investigation of flooding and the new role to control critical ordinary water courses. It is not known how great a burden this will impose at this time. In the worst case, hydrological advice and modeling would be required and those skills are not available within the council.
- 6.4 The Act also requires a LLFA to develop, maintain, apply and monitor a strategy for local flood risk management in its area. The future strategy will be submitted to this committee for consideration when appropriate.

7. Sustainable Urban Drainage Systems

- 7.1 This is an new area of responsibility established by the Act. Although it is linked to the wider issue of drainage, it has been considered as a separate section in the report because its implications are potentially far more onerous for the Council, though guidance and standards have not yet been published.
- 7.2 The intent of the Act is to require local authorities to adopt and maintain Sustainable Urban Drainage Systems (SUDS). SUDS are intended to control and partially clean surface water run-off from development, slowly releasing it back into the environment via water courses or soakaways. The principle is to use 'natural' processes such as swales or reed beds rather than collecting rainwater and carrying it through large pipes to the river or into a soakaway. There are clear environmental benefits in doing so, the water remains in the local environment for longer, is partially cleaned by natural processes and large pipes which are empty for most of the time are then no longer installed to cope with intense rainfall.
- 7.3 However, the maintenance of such systems is much more arduous than for a piped system. Many rely on permeable surfaces to allow immediate soakage and these need to be kept clean, maintaining plants and ditch depths is also more difficult. For example, weedkiller washed off a driveway into the surface water system could kill the plants. Although SUDS have been permitted for some years, Water Authorities have been unwilling to adopt them for drainage purposes.
- 7.4 Although the guidance has not been published it is worth highlighting a number of key areas of responsibility that will fall to the Council.
- 7.5 The Act establishes a SUDS Approving Body (SAB) at county or unitary local authority level. This SAB would be responsible for approval of proposed drainage systems in new developments. There will be a minimum threshold but that quantum is not yet known. Approval must be given before a developer can start building. The guidance suggests that the application to the SAB could be lodged at the same time as the planning application but that the SAB will determine the drainage application. The SAB will be responsible for

adopting and maintaining SUDS which serve more than one property. In addition any SUDS must be included on the register of structures affecting flooding referred to previously. There is a clear administrative and maintenance burden imposed by these responsibilities. It is assumed that a charge for assessing and determining the application will be permitted and also it is assumed that commuted sums for maintenance of the SUDS will be imposed on developers. However this has not been expressly stated in the guidance.

- 7.6 Whilst national standards and guidance will be published it will still fall to the Council to assess and approve any application for a new SUDS. Relevant officers will be trained in the design and assessment of SUDS.
- 7.7 Nothing in the Act prevents Medway and KCC establishing a joint SUDS Approving Body and there are obvious merits in a consistent approach, not least of which is cost control. However under such an arrangement it could be the case that a planning application approved by one Authority cannot be implemented because the SAB refuse SUDS consent. An alternative would be to incorporate the approval within the planning process.
- 7.8 In terms of process there will be a need to establish a new process:-
- 1 Policy preparation
 - 2 Application administration
 - 3 SUDS assessment
 - 4 SAB Approval
 - 5 Construction inspection
 - 6 Future maintenance.
- 7.9 In parallel with other new developments, it would seem reasonable to assume at this stage that 1,2 and 4 would be dealt with by the Planning team, 3 and 5 by Capital Projects and 6 by Highways.
- 7.10 As previously stated this report is only for information at this time and to Members that new responsibilities may be coming and a further report will be produced once the guidance and standards are known.

8. Overview and Scrutiny Arrangements

- 8.1 These arrangements apply to a local authority which is a LLFA for an area.
- 8.2 Within the legislation there are arrangements to review and scrutinise the exercise by risk management authorities of flood risk management functions which may affect the authority's area.
- 8.3 A risk management authority must comply with a request made by an overview and scrutiny committee for information or a response to a report. A risk management authority must also have regard to reports and recommendations of an overview and scrutiny committee in the course of making its arrangements.

9. Risk Assessment

- 9.1 The risks exposed by a failure to effectively adopt and maintain Sustainable Urban Drainage Systems (SUDS) are great. There is a clear administrative and maintenance burden imposed by the new responsibilities.
- 9.2 In monetary terms the impact of this new legislation is unknown and will be analysed and reported on at a later stage.
- 9.3 The risks associated with different levels of flood and response will be established as part of the process. The powers and duties are new to Unitary Authorities and will lead to the development of a new policy document.

10. Financial Implications

- 10.1 There will be financial implications associated with the new responsibilities and some funding has been included within the settlement grant. However, at this stage it is not possible to identify the costs associated with the specific duties and responsibilities as guidance has yet to be published.

11. Legal implications

- 11.1 The Act provides for the replacement of the existing Regional Flood Defence Committees (RFDC) by Regional Flood and Coastal Committees (RFCCs). In doing so it will reconcile the legal position with current practice and extend the remit of the committees to include coastal erosion as well as flooding. The Act allows for transitional arrangements and the new Committees will continue much of the work of the RFDCs. Regulations are awaited on how RFCC Chairmen and Members will be appointed. Currently Medway is represented by Councillor Tandy (a Bexley Councillor) on the RFDC.
- 11.2 The Act requires local authorities to put arrangements in place for the review and scrutiny of the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority area.
- 11.3 A risk management authority must comply with a request from the relevant Overview and Scrutiny Committee for information or a response to a report and must have regards to reports and recommendations of the overview and scrutiny committee.
- 11.4 It is recommended that responsibility for scrutiny of flood risk management under the Flood and Water Management Act 2010 should be added to this committee's terms of reference.
- 11.5 Many of the provisions of the Act are not yet in force and as yet there is no specific date to bring those provisions in to force. However, the Committee is given this briefing report at an early stage as there will be significant preparatory work to be undertaken in order to comply with the Act.

12. Recommendations

- 12.1 That Members consider and comment on the contents of this report.
- 12.2 That the Council is recommended to add responsibility for the review and scrutiny of flood and coastal erosion risk management functions under the Flood and Water Management Act 2010 to this Committee's terms of reference.

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Background papers

Pitt Review of flooding in England which reported in 2007
Flood and Water Management Act 2010
Flood Risk Regulations 2009
EC Floods Directive 2007/60/EC in England and Wales

All papers used in the preparation of this report are in the public domain and the majority are available on the Environmental Agency or DEFRA websites.