

SCRUTINY COMMITTEE 4 September 2013 - LEAD LOCAL FLOOD AUTHORITY - FLOOD RISK MANAGEMENT STATUTORY FRAMEWORK AT 2013

Regulations and Primary Legislation

- Flood Risk Regulations 2009 (the Regulations).
- Flood and Water Management Act 2010 (the Act).

Associated Legislation

- Land Drainage Act 1991
- Water Framework Directive

Background

The major flooding events in the UK during the summer of 2007, along with the EU Flood Directive which came into force in November of 2007 were the major drivers leading to change in the UK statutory framework relating to Flood Risk Management (FRM). The Flood Risk Regulations (FRA) came into force on 10 December 2009 to transpose the EU directive into UK law. The Flood and Water Management Act 2010 (F&WMA) takes forward the recommendations of Sir Michael Pitt's review of the summer 2007 floods along with "Making Space for Water" the Government's strategy on Flood and Coastal Erosion Risk Management (FCERM).

Lead Local Flood Authority

Sir Michael Pitt's review stated that "the role of local authorities should be enhanced so that they take responsibility for leading the **co-ordination** of FRM in their areas". Both the Regulations and the Act use this designation for the purpose of allocating **duties and powers**. In both cases the LLFA for an area is the Unitary or County Council. District council's are designated as "Risk Management Authorities" (RMA), along with the Environment Agency and Water Companies.

Flood Risk Regulations 2009

The Regulations require the LLFA , (the County Council) to prepare a Preliminary Flood Risk Assessment (PFRA), maps and plans for "local flood risk", which means considering **all sources** of flooding except from main rivers, the sea and reservoirs (which will be covered by the Environment Agency).

Therefore Local Flood Risk Assessments must cover:

- Surface water.
- Ordinary watercourses.
- Land drainage.
- Run-off.
- Highways.
- Sewer flooding **if** caused by ingress from one of the above.

There are three stages to the process required by the Regulations:

- June 2011 - Prepare Preliminary Flood Risk Assessments using "existing information" to identify areas of potential significant flood risk.
- June 2013 - Prepare maps showing the level of hazard and risk in the areas identified.

- June 2015 - Prepare Flood Risk Management Plans for these areas.

Derbyshire's and Derby's PFRAs were completed and approved within the prescribed timescale. In both cases the level of risk does not meet the indicative level of flood risk as prescribed in the EU directive. As such neither Derbyshire's nor Derby City LLFAs are required to carry out stages 2 and 3 of the Regulations.

Flood and Water Management Act

The Act and the Regulations are intrinsically linked as the Act requires the LLFA to develop and implement a "Local Flood Risk Management Strategy", (LFRMS) the basis of which should be informed by the work carried out under the Regulations.

Key Requirements of the Act

Local Partnerships (Section 13 Co-ordination and Arrangements Duty - in force 1 October 2010)

The Act requires relevant authorities to "co-operate" in exercising functions under the Act and by agreement can delegate to each other. It gives the LLFA powers to require information from others if needed for FRM functions.

To facilitate the necessary co-operation, information sharing and co-ordination the Council has established:

- *A Strategic Flood Board.*
- *A Risk Management Authorities Technical Group.*
- *Local Resilience Forum Flood Risk Group.*

Local Flood Risk Management Strategy (Section 9 Local Flood Risk Management Strategies - in force 1 October 2010)

The LLFA must prepare a LFRMS for all sources of flooding covered by the Regulations (surface water, ordinary watercourses etc). The Strategy must be prepared in consultation with relevant RMA and take account of the National Flood Risk Management Strategy (prepared by the Environment Agency under the Act) and "consider" National Guidance. The LLFA and all RMAs must then act in accordance with the National and Local Strategies. This document will establish the Levels of Service required to deliver our statutory duties and set out a financial strategy for the next 5 to 10 years.

There are no statutory timescales for production of the LFRMS. Derbyshire LLFA has conducted the initial scoping consultation with RMAs and the public. On 25 March 2013, the Strategic Director - Environmental Services reported to the Cabinet Member, the intention to re-consult on a draft Strategy by the end of 2013.

Regional Flood and Coastal Committees (RFCC) - Establishment (Section 22 - in force 1 April 2011)

Requires the Environment Agency (after consultation) to establish RFCCs in England and Wales.

Derbyshire falls into three RFCCs, the boundaries of which are determined by main river catchments. The majority of the County falls within the Trent RFCC. Most of North East Derbyshire/Chesterfield/Bolsover falls within the Don Catchment - Yorkshire RFCC and a

small area of the High Peak falls within the Mersey Catchment - North West RFCC. Derbyshire has elected member representation on Trent and Yorkshire, and we have requested a member be nominated to attend the North West RFCC as discussed with the Chief Whip. All RFCCs levy the Council.

Investigations (Section 19 Local Authorities Investigations - in force 6 April 2011)

The LLFA **has a duty** to investigate flooding incidents within its area to the extent it “considers necessary”.

The purpose of this duty is to establish which RMA has responsibility or function in relation to the cause of the flood and/or whether the authority has given, or plans to give, an appropriate response, and to publish the report.

In June 2011 the Strategic Flood Board approved a Policy Framework which identified a range of flood characteristics and thresholds which would determine whether a formal Section 19 investigation was required.

To date, within the County, seven formal investigations are currently being undertaken after the 2012 floods.

Maintain a Register (Section 21 Local Authorities Duty to Maintain a Register - in force 6 April 2011)

The LLFA **has a duty** to establish and monitor a Register of structures or features (assets) which may significantly affect flood risk in their area. The LLFA should also record “information” on ownership and state of repair. The Register should be available to the public at all times.

The Derbyshire LLFA is currently focussing activity on recording assets in the ownership of the County Council on the Register.

Sustainable Development (Section 27 - in force 1 October 2011)

The LLFA **has a duty** to aim to make a contribution towards the achievement of sustainable development when discharging their FRM function.

This duty also applied to District Councils and the County Council as a Highways Authority. To date no single policy is in place as to how this duty should be discharged.

However, this would involve county-wide action through the Planning and Highways regulatory systems, emergency planning service and other agencies such as the Environment Agency, including:

- *Policies in National Planning and Policy Framework and Local Development Frameworks to achieve provision of sustainable drainage and management of flood water through sustainable location decisions and design and construction methods, green infrastructure, land management and the enhancement and extension of habitats.*
- *Policies in the Local Transport Plan3 and highway maintenance programmes to contribute to achieving the above.*
- *Heeding advice on flood risk from the Environment Agency as part of determining planning applications for development.*
- *Promotion of Community Self Help and Community Response Plans for flooding and extending the remit to cover other emergencies, eg severe weather.*

- *Raising public awareness of areas at risk from surface water flooding and promoting mitigation or adaption techniques.*

Amendments to Land Drainage Act - LDA (Section 31, Schedule 2 - in force 6 April 2012)

Transfers the Environment Agency's responsibilities and duties to consent work on ordinary watercourses and also enforcement powers under Sections 23, 24 and 25 of LDA 1991 to LLFAs .

Approximately 72 Section 23 consents have been issued by the County Council.

As yet no enforcement action has been taken. A Policy on enforcement will be brought to the Strategic Flood Board for consideration at a future date and will be included in the LFRMS as an appendix

Reservoirs (Section 33, Schedule 4 - 1 October 2013)

Via amendment to the Reservoirs Act 1975, it has become a requirement for "Flood Plans" (emergency plans) to be prepared for certain large raised reservoirs. The reservoirs will be identified by the Minister, the LLFAs will have the duty to prepare such plans.

Work on the Contingency Plans for "High Priority" reservoirs designated by the Secretary of State, should be completed by March 2014. After a Defra consultation exercise, further reservoirs may be defined (in future) as "High Risk" reservoirs, this may include reservoirs in the ownership of local authorities. The first phase of this process commenced on 30 July 2013 and will involve the re-classification of existing regulated reservoirs, those over 25000 cubic metre capacity. The Council has several regulated reservoirs for example at Shipley Park. The second phase which will not start until 2015 is likely to involve currently unregulated reservoirs over 10,000 cubic metres.

Sustainable Drainage Systems (SuDS) (Section 32, Schedule 3 – Proposed to be in force 1 April 2014)

The Act places a duty on LLFAs to establish an "approving body" for proposed new sustainable drainage systems. The Act requires the Minister to issue National Standards for SuDs.

The SuDS Approving Body will be the County or Unitary Authority although the Secretary of State can approve the appointment of an alternative body. The body will be required to approve most types of rainwater drainage systems before any construction work with drainage implications can start. Where the system affects the drainage of more than one property the approving body will be required to adopt and maintain the system upon satisfactory completion. Again, with the Minister's approval the Approving and Adopting function can be split and transferred to two different bodies.

It is likely that a fees structure for approval will be put in place by regulations made under the Act.

Water Framework Directive

The Water Framework is a European Union directive which commits member states to achieve good qualitative and quantitative status for all ground and surface waters (rivers, lakes, transitional waters, and coastal waters) in the EU. These bodies must achieve "good

quantitative chemical status" (i.e. not polluted) by 2015. The FRM Team take into consideration the effects of the Water Framework Directive in any consents issued and works undertaken and recognize that there are serious fines for breaches of water quality resulting from the Councils activities

Scrutiny Committee 4 September 2013

The briefing note below is intended as a brief, useful overview for Elected Members, on where roles and responsibilities lie in relation to flooding. It also provides contacts for further information or to report issues from respective electoral divisions. The final version of this note will be tailored to each Local Area Committee with Local examples given. The example below relates to South Derbyshire.

Elected Member Flooding Briefing Note

WATERCOURSES

Watercourses have 2 designations, “Main Rivers” and “Ordinary Watercourses”. Some main rivers would be obvious, such as the Trent, Derwent and Dove, however, in South Derbyshire there are a number of designated main rivers that are less apparent such as Twyford Brook, Shardlow Dyke, Barrow Drain and others. They are designated as main rivers because of their flood potential or likelihood of being affected by the larger watercourses like the Trent.

Any watercourse that is not a main river is an ordinary watercourse, so all other streams, brooks, dykes, drains or ditches etc

RESPONSIBILITIES

In general terms, the Environment Agency take responsibility for flooding from main rivers, including the maintenance of flood defences where they exist and also issue flood warnings to residents and businesses.

Ordinary watercourses and surface water flooding, since 2010, have fallen under the responsibility of the County Council, which is now designated as “Lead Local Flood Authority” under the Flood and Water Management Act 2010. The County Council, as Highway Authority (excluding trunk roads such as the A50) are also responsible for draining the highway network and responding to flooded roads). Both the County Council and South Derbyshire District Council have powers under Land Drainage legislation.

Water and Sewerage Companies eg Severn Trent are responsible for the network of Foul and Surface Water sewers.

Despite the above, it needs to be understood, that responsibility for maintaining watercourses free from obstructions and maintaining flow lies with the land owner where the watercourse runs. This is known as Riparian Responsibility (An advisory booklet is enclosed).

FLOOD WARNINGS

The Environment Agency is responsible for issuing flood warnings to those at risk of flooding from main rivers. There are three levels of warning;

- Flood Alerts – Flooding is possible.
- Flood Warning – Flooding is expected.
- Severe Flood warning – Danger to Life.

Flood Alerts tend to be issued over a wider geographical area eg “River Trent in Derbyshire”, whereas Flood Warnings are very much more targeted at communities eg “River Trent at Barrow upon Trent – TR6”.

In addition to the public flood warning service, the Flood Forecasting Centre (a joint EA and Met Office partnership) issue flood guidance statements and severe weather warnings to help anticipate surface water and flash flooding events.

CONTINGENCY PLANNING

All Emergency Plans are backed up by Risk Assessment and Flooding is considered one of Derbyshire’s highest risks, with South Derbyshire considered as “Very High” risk from River Flooding. See Risk Assessment.

Derbyshire Emergency Planning Division has prepared a Multi-Agency Flood Contingency Plan and are responsible for co-ordinating the response to serious flooding events.

FURTHER INFORMATION AND CONTACTS

On all issues related to the County Councils Duties under the Flood and Water Management Act, the first point of contact should be James Biddlestone in the Environmental Services Dept, james.biddlestone@derbyshire.gov.uk 01629 538563.

On Emergency Planning issues contact Nick Elliott or Stephen Peace, nick.elliott@derbyshire.gov.uk stephen.peace@derbyshire.gov.uk 01629 538361.

On issues relating to main rivers, flood warnings and flood defences, contact the Environment Agency, lucy.jarvis@environment-agency.gov.uk 0115 9828345.