

PINS NOTE 1157

To: All Inspectors

Date of Issue: 29 April 2010

Currency: review at 6 months after issue

FLOOD AND WATER MANAGEMENT ACT 2010

Background

1. The Flood and Water Management Act received Royal Assent on 8 April 2010. It extends to England and Wales but not Scotland, other than Section 46 which abolishes the Scottish Fisheries Committee.
2. The purpose of the Act is to provide better, more comprehensive management of flood risk for people, homes and businesses. Its aims include helping to ensure continuity of water supplies to the consumer.
3. It implements several key recommendations of Sir Michael Pitt's [Review of the Summer 2007 floods](#) and takes forward some of the proposals in previous Government strategy documents: Future Water; Making Space for Water; [Environment Strategy for Wales](#); and Wales' [Strategic Policy Position Statement on Water](#).
4. The key provisions of the Act are:
 - new statutory responsibilities for managing flood risk – national strategies and guidance on managing flood risk in England and Wales will be put in place. Unitary and county councils will bring together the relevant bodies, who will have a duty to cooperate, to develop local strategies for managing local flood risk;
 - protection of assets which help manage flood risk – the Environment Agency (EA), local authorities and internal drainage boards will be able to ensure that private assets which help manage the risks of floods, such as eg putting a gate in a wall that is helping protect an area, cannot be altered without consent;
 - powers to carry out environmental works – the EA, local authorities and internal drainage boards will be able to manage water levels to deliver leisure, habitat and other environmental benefits;
 - sustainable drainage – drainage systems for all new developments will need to be in line with new national standards to help manage and reduce the flow of surface water into the sewerage system;

- new sewer standards – all sewers will be built to agreed standards in future so that they are adopted and maintained by the relevant sewerage company;
 - reservoir safety – the public will be protected by a new risk-based regime for reservoir safety. It will reduce the burden on regulated reservoirs where people are not at risk, but introduce regulation for some potentially risky reservoirs currently outside of the system; protection of water supplies – there will be wider powers for water companies to control non-essential domestic uses of water in times of drought;
5. The Act is comprised of three Parts and five Schedules. [Part 1](#) contains provisions relating to flood and coastal erosion risk management. [Part 2](#) deals with miscellaneous matters including sustainable drainage, reservoirs, water use and incidental flooding or coastal erosion. [Part 3 \(Sections 47 – 49\)](#) provides for the consolidation of legislation applying to all sources of flood risk, which was one of the recommendations of the Pitt Review. It enables the Government to amend this and a number of other Acts, including the Water Industry Act 1991, the Water Resources Act 1991, the Reservoirs Act 1975, the Highways Act 1980 (so far as relevant to water), the Environment Act 1995 (so far as relevant to water), and the Coast Protection Act 1949.
 6. The Schedules cover the following matters:
 - 1 - Risk Management: Designation of Features
 - 2 - Risk Management: Amendment of Other Acts
 - 3 - Sustainable Drainage
 - 4 – Reservoirs
 - 5 – Special Administration
 7. [Schedule 3](#) is of particular interest and further details are at Annex A. It requires that new rainwater drainage systems are approved by unitary authorities or county councils ('approving bodies') against a set of national standards before any construction work with drainage implications can begin. It also places a duty on the approving bodies to adopt and maintain approved drainage systems. The Schedule provides for an appeal regime and the Inspectorate is currently in discussion with Defra about the appellate body role.
 8. Provision is made in the Act for a number of other appeal regimes, including in relation to designation of assets and features which affect flood or coastal erosion risk, and reservoirs. Defra has approached the Inspectorate about possible involvement in these but discussions are at a very early stage.

Other related legislation

9. The Flood Risk Regulations 2009 into force on 10 December 2009 to implement the [Floods Directive](#) in England and Wales. These set out the

roles and responsibilities of the various authorities consistent with the Flood and Water Management Act, and make provision for measures required by the Directive:

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

Action

10. [Section 49](#) of the Act makes provision for commencement. Sections 48 and 49 (subordinate legislation and technical provision respectively) came into force on the date of Assent. The remaining sections of the Act will come into force in accordance with dates which will be set out in orders made by the Secretary of State or as appropriate the Welsh Ministers. Inspectors will be kept informed of developments as they happen by updates to this Note as necessary.

11. Further information on the Act can be found on Defra's website:

<http://www.defra.gov.uk/environment/flooding/policy/fwmb/index.htm>;

and in a Defra News Release:

<http://www.defra.gov.uk/news/2010/100409a.htm>.

12. Electronic versions of the Act and associated Explanatory Notes can be accessed through the Library Catalogue, and a small number of hard copies are available on loan from the Library and Information Centre.

13. PINS Note 1143 is cancelled.

14. Please contact XXXX if you have any queries on this Note.

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Director of Policy, Quality and Development Plans

FLOOD AND WATER MANAGEMENT ACT 2010: SUSTAINABLE DRAINAGE PROVISIONS

1. [Section 32 of Part 2](#) of this Act brings into effect [Schedule 3: Sustainable Drainage](#). The Schedule defines 'sustainable drainage' (SuDS) as managing rainwater, and introduces standards for the design, construction, maintenance and operation of new rainwater drainage systems, and 'approving bodies' (ABs). The ABs will be required to approve most types of rainwater drainage systems before any construction work with drainage implications can start.

2. The key provisions relating to SuDS are:

- a duty on the Government to publish national standards (NSs), which may include specific criteria, about how drainage systems should be designed, constructed, maintained and operated for the purpose of implementing SuDS;
- the appointment of approving bodies for drainage systems – these will be unitary authorities or county councils where there is no unitary authority;
- the requirement for approval by the AB before commencement of any construction work which has drainage implications;
- the introduction of two approaches for applying for approval:
 - where planning permission (PP) is not required an application is made directly to the AB; or
 - where PP is required the applicant can choose to combine the application with a planning application, by lodging both applications with the LPA at the same time;
 - for combined applications the LPA must consult the AB and then inform it of its decision on the PP application, and inform the applicant of the AB's determination at the same time that the planning application decision is issued;
- in relation to a SuDS application the AB may:
 - grant it;
 - grant it subject to conditions;
 - refuse it;
- conditions on SuDS approvals may relate to:
 - the construction of the drainage system;
 - the applicant's provision of a non-performance bond;
 - inspection;

the payment of fees for work undertaken in connection with the approval;

- the Government may make regulations about timing and procedure for determination of approval applications, and may specify the consequences of failure to comply;
- a duty on the Government to provide by order for enforcement of the approval requirement, including rights of appeal;
- the Government may issue guidance about approval procedures, to which ABs must have regard;
- an amendment to the Water Industry Act that limits the existing right to connect surface water run-off to the public sewer in certain cases, so that drainage systems requiring AB approval can only be connected if that approval has been given;
- where a drainage system affects the drainage of more than one property the AB must adopt it if it meets certain conditions, and must maintain it according to the NSs;
- the Government must make regulations which confer jurisdiction, make provision about procedure and provide a right of appeal against:
 - decisions on applications for approval;
 - conditions on approval decisions;
 - decisions on the duty to adopt.