

Memorandum submitted by Local Government Flood Forum (FW 02)

Introduction

The Local Government Flood Forum (LGFF) is the grass roots voice of local government, it works to ensure that the Floods and Water Management Bill gives local government a fair deal. The LGFF is a medium term task and finish group focused on the publication of the draft Floods and Water Management Bill. The stated aim of the LGFF is:

- To provide a coordinated voice on flooding issues for local government
- To discuss the key flooding issues for local government
- To generate new ideas and policy solutions that help local government

The secretariat of the LGFF is the Local Government Information Unit (LGIU) and the LGFF has over 70 local authority members who are cross party.

The LGFF welcomes the opportunity to present evidence to the scrutiny committee.

This submission is supported by the expertise of LGFF members who have discussed the draft bill and now the bill on five occasions and a survey administered by the LGiU on behalf of LGFF members and wider local government.

Summary

1. In response to the request from the scrutiny committee for evidence the LGFF has two main points:
 - i. Local authorities should be given the powers to streamline and speed up decision making while maintaining local accountability. Which means:
 - a. Rearranging roles and responsibilities in a local area to establish powerful effective partnerships or joint boards.
 - b. Any local authority that pays a levy into a Regional Flood and Coastal Committee should be represented on that committee.
 - c. A common sense approach should be taken with registers, strategies and designations. They should be completed with regard to need, risk and the value that they add.
 - ii. Local authorities should have the core funding required from central government and the freedom to generate new innovative funding streams in response to demand and need from local people.
 - a. There should be a call on the local levy for all flood schemes not just those proposed by the Environment Agency.
 - b. The implementation of the schedule on sustainable drainage should be delayed until a sustainable funding stream is identified or the fees charged by an approving authority should cover the cost of maintenance.

2. A survey by the LGFF of its member reveals that:
 - a. A bill is considered necessary. This bill is flawed but many respondents felt that it could be improved by amendment.
 - b. The bill does clarify responsibilities and provides for 'some' or 'most' of the powers needed by councils.

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Part 1 Bill sections and suggestions

Section 7 National Flood and coastal erosion risk management strategies

Section 7 (3) (a) refers to the agency consulting other stakeholders including the public. The LGFF would point out that the Agency is subject to a duty to secure involvement of the public in the Local Democracy Economic Development and Construction Act 2009 chapter 3 section 23 (2) (a).

Involvement is a step further than consultation and for the avoidance of doubt in subsequent sections of the bill, it should be noted that the 'duty to involve' applies to all local authorities, the Environment Agency and Natural England.

Section 9 Local Flood Risk Management Strategies: England

The LGFF is concerned that to satisfy the requirements of this section will require a large amount of work, especially as the strategies' status in relation to Surface water management Plans is not clarified. Lessons from surface water management planning indicate that if done properly they identify far greater need than was foreseen at far greater cost than was anticipated. The LGFF is concerned that comprehensive strategies could do little more than precisely identify the need for and cost of schemes that can never be completed. The LGFF is also concerned that this section creates the need for a lot of guidance. A section stating that a lead local flood authority may issue guidance seems superfluous.

- Remove section 9 (9)

Section 13 Co-operation and Arrangements

Section 13 (4) (a) refers to functions being exercised on behalf of another risk management authority. The LGFF welcomes this if the word 'function' implies that a risk management authority can take on the decision making role of another risk management authority by mutual arrangement. It is less desirable if function only relates to implementing the decisions of another risk management authority. Section 13 (5) could have the effect of providing greater flexibility for lead local flood authorities. For example, a Unitary Council surrounded by a County Council can produce joint strategies or the boundaries of local strategies can reflect catchment boundaries as well as political boundaries.

- Section 13 (5) (b) add at the end 'except where two or more lead local flood authorities arrange to produce a joint local flood risk management strategy.'

Section 17 Levies

Section 17 (1) refers to the levy being in respect of the Agency's flood and coastal erosion risk management. The LGFF believe that to maintain maximum flexibility and public accountability the levy should be made available to fund all sources of local flood risk. Subsection 4 will remain as this completes the cycle of accountability and prevents levy funding being diverted into schemes which only serve the narrow interest of the local authority in question.

- The amendment to section 17 (1) would be remove 'the Agency's flood and coastal erosion risk management functions in that area' and replace with 'all sources of local flood risk in that area'.

Section 19 Local Authorities Investigations

Section 19 (1) refers to the event of a flood. Flood is defined in section 1(1) as 'includes any case where land not normally covered by water becomes covered by water'. The LGFF believe that this is an unnecessarily broad definition to use when compelling a lead local flood authority to investigate. In many cases its not in doubt who is responsible so the LGFF suggests that a qualifying statement be inserted that makes it clear that the lead local flood authority only need investigate where its not clear who was responsible.

Section 19 (2) describes the actions a lead local flood authority should undertake after the investigation. Notwithstanding that the LGFF feel that this duty should be exercised sparingly, it does recognise that it is sometimes very important to establish who is responsible in order for a practical remedy to be delivered. For this reason it is suggested that the Secretary of State be informed of the result after an investigation process.

In addition, section 20 describes ministerial directions that can be used to direct one risk management authority to exercise a function on behalf of another 'defaulting authority'. Whilst the LGFF welcomes this as a sensible step it is not clear what would trigger such a direction. The LGFF suggest that the Secretary of State being informed of the result of an investigation under section 19 could be that trigger.

- Section 19 (1) insert 'where it is not clear who is responsible' between 'in its area,' and 'a lead local flood authority must investigate'.
- Section 19 (2) insert section 19 (2) (c) 'notify the Secretary of State'.

Section 21 Duty to Maintain a Register

Section 21 (1) (a) refers to a register guided by the opinion of the authority which the LGFF support. However, this locally accountable process could be unnecessarily undermined by section 21 (2) which encourages the minister to make provisions about the content of the register. The LGFF suggest that section 21 (2) is unnecessary and should be removed.

- Remove section 21 (2)

Section 24 Membership

While the LGFF understand that it is prudent to make membership of Regional Flood and Coastal Committees (RFCC) subject to further regulation, it does believe that it is important to establish certain principles. In particular, that lead local flood authorities who pay levy into the RFCC have the right to be represented. Consequently, the LGFF suggest that a new section be added which makes it clear that the regulations should deliver a method for proper representation of lead local flood authorities.

- Insert new 24 (b) 'the method for ensuring that lead local flood authorities who pay levy are adequately represented'

Section 27 Sustainable Development

The LGFF welcome a section on sustainable development but are surprised that it does not refer to the local Sustainable Communities Strategies that councils have been developing and publishing for many years and actually drive the performance framework. Section 27 describes the mechanics but any content is left to section 27 (2) and will be in the form of further guidance from the minister, including the 'meaning of sustainable development' The LGFF would argue that the meaning of sustainable development is clearly defined in government policy and has been used to develop sustainable communities strategies. To issue new guidance with a new special flooding definition of sustainable development seems to be unnecessary.

- Section 27 (2) delete 'the meaning of sustainable development' and replace with 'the connections between flood and coastal erosion strategy with existing sustainable development policies, nationally and locally.'

Section 29 Restructuring

The LGFF has been arguing for legislation that allows for streamlining of decision making structures (in particular the establishment of Flood Management Boards) and so is pleased to see that the Secretary of State can step in and reassign responsibilities. However, it is not clear how this process is instigated and what role lead local flood authorities, districts and Internal Drainage Boards may have in that instigation. The LGFF would like to make it possible for the restructuring to be the result of careful consideration by the organisations on the ground and suggest that a new section is inserted that provides for lead local flood authorities to request that the minister look into restructuring flood provision and respond giving reasons for decision.

- Section 29 insert new section 'Where all lead local flood authorities in an area request that the Minister consider reassigning responsibilities within that area, and the Minister respond with reasons'.

Section 39 Incidental Flooding: Local Authorities

The LGFF appreciate that section 39 gives them the flexibility to deliver innovative solutions and understand that one driver of incidental flooding would be biodiversity considerations and so would expect to see Natural England as a body to involve in the decision making process.

- Section 39 (4) (a) remove 'has consulted the Environment Agency' and replace with 'has involved the Environment Agency and Natural England'.

Schedule 1 Designation of features

The LGFF appreciate that the ability to designate features may be useful in certain circumstances. It is concerned that the guidance to the bill links designations to the register of assets implying that lead local flood authorities will develop comprehensive designating programmes. Given the cost of administering designations the LGFF feel that it is highly unlikely that such a comprehensive approach will be taken by many authorities unless specific funds are made available to do so.

Schedule 3 Sustainable drainage

The LGFF would point out that there appears to be an inconsistency in definitions of a 'drainage system' and 'sustainable drainage'. The former refers only to rainwater but the latter to 'rainwater (including snow and other precipitation)'. It would be helpful if this were clarified.

The LGFF recognise the importance of sustainable drainage for the management of future flood risk, though are deeply concerned that sustainable drainage is not matched by sustainable funding. This is so important that the LGFF believe that the bill should clearly state that the implementation of the sustainable drainage schedule will be delayed until legislation is passed that identifies suitable funding or that the fees in schedule 3 section 13 be amended so that they will cover the maintenance costs of sustainable drainage systems.

Either:

- Schedule 3 section 7 (1) insert after 'approving body' the words 'and funding is secured to maintain the drainage system as approved.'

Or

- Schedule 3 section 13 (2) insert (c) 'provide for fees to be paid that cover the cost of maintaining the approved drainage system.'

Part 2 A survey of local government opinion of the bill

52 out of 233 responded a rate of 22%

Do you believe we need a Bill to ensure effective delivery of flood risk management at the local level?		
Answer Options	Response Percent	Response Count
Yes	98.0%	49
No	2.0%	1
<i>answered question</i>		50
<i>skipped question</i>		2

Does the Bill give local authorities enough powers to take on their lead role and responsibilities?		
Answer Options	Response Percent	Response Count
Yes, it gives me all the powers	17.0%	8
Yes, it gives me most of the powers	34.0%	16
Yes, it gives me some of the powers	36.2%	17
No, it does not give me enough powers	12.8%	6
What additional powers do you believe the Bill should give to local authorities?		21
<i>answered question</i>		47
<i>skipped question</i>		5

"The Bill clarifies the role and responsibilities of local authorities." To what extent to you agree with this statement?		
Answer Options	Response Percent	Response Count
Strongly disagree	4.2%	2
Disagree	25.0%	12
Agree	68.8%	33
Strongly agree	2.1%	1
<i>answered question</i>		48
<i>skipped question</i>		4

To what extent does the Bill give you (a)clarity and (b)flexibility on the governance structure needed to enable effective delivery at the local level?					
Answer Options	Very poor	Poor	Good	Very good	Response Count
(a) clarity	6	16	26	0	48
(b) flexibility	1	14	30	3	48
<i>answered question</i>					48
<i>skipped question</i>					4

Which of the following statements most fit your opinion of the Bill?

Answer Options	Response Percent	Response Count
a. The Bill is not ready and should be delayed.	17.0%	8
b. The Bill is flawed and needs improving through amendments.	31.9%	15
c. The Bill is flawed but it is necessary to pass it.	31.9%	15
d. The Bill clarifies responsibilities and allows local authorities to get on with managing flooding.	19.1%	9
e. Other (please specify)		4
<i>answered question</i>		47
<i>skipped question</i>		5

General comments on the Bill:

Answer Options	Response Count
	25
<i>answered question</i>	25
<i>skipped question</i>	27

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