House of Commons
Environment, Food and Rural Affairs Committee

Post-legislative scrutiny: Flood and Water Management Act 2010: Government Response to the Committee’s Sixth Report of Session 2016–17

Fourth Special Report of Session 2017–19

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The Environment, Food and Rural Affairs Committee

The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department of Environment, Food and Rural Affairs and associated public bodies.

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Committee staff

The current staff of the Committee are Eliot Barrass (Clerk), Sian Woodward (Clerk), Daniel Schlappa (Second Clerk), Sarah Coe (Senior Committee Specialist), Anwen Rees (Committee Specialist), Ian Hook (Senior Committee Assistant) and Ian Blair (Committee Assistant).

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Fourth Special Report

The Environment, Food and Rural Affairs Committee published its Sixth Report of Session 2016–17 on Post-legislative scrutiny: Flood and Water Management Act 2010 [HC 990] on 26 April 2017. The Government’s response was received on 14 September 2017 and is appended to this report.

Appendix: Government response

Introduction

The government thanks the Efra Committee for its report regarding the implementation of the Flood and Water Management Act 2010. The recommendations on sustainable drainage systems (SuDS) policy are particularly timely, coming as they do while the Department for Communities and Local Government (DCLG) are leading a review to assess the effectiveness of planning policy in delivering SuDS in new developments in England. SuDS provide an efficient way to drain rainwater from developed land, while providing other benefits to communities and the environment. DCLG’s review follows the amendments in 2015 to national planning policy to encourage the greater deployment of SuDS. The review, which will be published in due course, examines the extent to which national and local planning policies have been successful in encouraging the take-up of SuDS in new housing, commercial and mixed-use developments and identifies opportunities for encouraging further take-up of SuDS.

Sustainable drainage systems (SuDS)

1. **We are not persuaded that it is currently essential to commence Schedule 3 of the Act in order to improve the SuDS regulatory framework. Rather, we recommend that the Government strengthens planning approaches to require SuDS schemes to be installed in all developments of more than one property so as to prevent smaller developments cumulatively adding to flood risk. Planning policies must also be significantly tightened to reduce the ability for developers to use cost or practicality reasons to opt-out from installing SuDS. Standards must require schemes to deliver multiple benefits wherever possible, including biodiversity, amenity and water quality benefits as well as simply reducing water run-off rates.**

The National Planning Policy Framework, supported by planning practice guidance, sets out a clear policy approach to protect people and property from flooding, and to manage any residual risk. The framework also sets out policies to conserve and enhance the natural environment, including biodiversity and water quality. DCLG are reviewing the effectiveness of planning policies on the provision of sustainable drainage in new developments – including the strengthened policy for major developments introduced in 2015. The review is assessing the prevalence of SuDS in approved planning applications in a range of (major and minor) developments and reasons why SuDS did not feature in an application. DCLG will publish the review in due course to inform the government’s consideration of its policy approach to SuDS in new development.
2. **The Government should enshrine standards for the design of SuDS in statute to ensure that all new developments install high-quality SuDS. These standards must ensure that developments do not add to surface water flood risk and that that new drainage systems deliver biodiversity, water quality and amenity benefits.**

Seeking legislative change to make statutory standards for SuDS does not offer clear benefits over current arrangements. Planning policy supported by guidance contains the necessary levers for local planning authorities to secure high quality SuDS that mitigate flood risk while providing other benefits. National planning policy for protecting people and property from flooding applies to all sources of flood risk, including from surface water. The policy is clear that when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Planning practice guidance already recognises the importance of SuDS and the opportunities they provide to reduce the causes and impacts of flooding and provide other environmental and amenity benefits. Statutory design standards would not increase uptake of SuDS and would risk stifling innovation. The SuDS guidance and tools available to local planning authorities and developers was considered as part of the SuDS review. DCLG will publish the review outcomes in due course.

3. **The Government must clarify how the effective management of SuDS on private land can be better secured through robust agreements for funding and monitoring the long-term maintenance of schemes.**

Planning practice guidance explains that, in considering a development that includes a sustainable drainage system, the local planning authority should be satisfied that there are clear arrangements in place for ongoing maintenance. This approach provides flexibility for developers and local planning authorities to identify and agree the most appropriate arrangements for the development and surface water management in question. Maintenance of SuDS is considered as part of the SuDS review, which will be published by DCLG.

4. **Barriers to Water and Sewerage Companies (WaSCs) being able to adopt SuDS must be removed: the definition of a sewer must be amended to remove any uncertainty over WaSCs’ legal ability to build or adopt SuDS. Such adoptions must be accompanied by robust agreements for the funding by private developments of ongoing maintenance costs incurred by WaSCs.**

Water UK are currently developing standards for water and sewerage companies to adopt SuDS. The government supports this initiative and is working with Water UK to assess if there are barriers to effective SuDS adoption by water companies and if so, how these can best be overcome.

5. **We called in our Future flood prevention report for WaSCs to become Water and Drainage Companies with a remit for local surface water management: this would incentivise the installation of new, high-quality SuDS systems. Bringing local flood management and water management together would drive companies to adopt holistic solutions such as SuDS since these would often provide the most cost-effective methods for delivering their regulated range of obligations.**

The government is implementing the commitment in the National Flood Resilience Review to consider the issue of surface water this year. A cross government project is looking
at options for improving existing arrangements between Lead Local Flood Authorities, highways authorities and water and sewerage companies to manage local flood risk more effectively. Further evidence would be required before considering a change to the framework.

Sewerage undertakers have duties to provide, maintain and improve a public sewer system to effectually drain their area. The government’s strategic policy statement to Ofwat makes it clear that we expect the regulator to challenge sewerage undertakers to improve planning and investment to meet the wastewater needs of current and future customers, while protecting the environment. This could include promoting, adopting or maintaining SuDS or co-investing in flood risk management as a means of effectually draining an area.

6. **The automatic right for new developments’ surface water drainage to be connected to conventional drainage systems must be repealed. This would provide a strong incentive to developers to install SuDS systems in far greater numbers.**

The government’s planning practice guidance already includes a hierarchy for sustainable drainage options that favours non-sewer solutions. The guidance is clear that draining to a combined sewer should be the least favoured option in new development. Removing the right to connect to an existing sewer does not offer clear benefits over the current arrangements. It is likely to add costs and delay to the planning process. The uptake of SuDS in new developments was considered as part of the SuDS review. DCLG will publish the review outcomes in due course.

7. **Improvements to the SuDS policy framework must be matched by effective local delivery arrangements. Under a planning-led approach, it is vital that all Local Planning Authorities and Lead Local Flood Authorities have sufficient skills and expertise on SuDS to ensure that high quality schemes are developed and standards for their construction and maintenance are enforced effectively. The Government must set out the actions it is taking in partnership with the local government sector to ensure that all local authorities with SuDS roles can develop sufficient capacity and expertise.**

Defra have developed a local flood risk management action plan which, working alongside local government, identifies a number of actions to help develop skills and capability at local level. This relates to the full range of local flood risk management responsibilities, not just SuDS. It includes advice from the Environment Agency in identifying local authorities in need of priority support in undertaking their local flood risk management responsibilities and helping them develop capability plans as well as the development by the Association of Directors of Environment, Economy, Planning and Transport of a skills sharing and support system for Lead Local Flood Authorities. The availability of relevant skills and capacity at local authority level was considered as part of the DCLG-led SuDS review. The outcomes of this review will be published in due course.

8. **The Government has conceded the need to review the adequacy of its current approaches. Departments must set out a clear timetable for completion of this work and for the implementation of findings in light of the forthcoming General Election. Consultation arrangements must enable all interested parties to contribute their views. The review must take into account the recommendations in this Report together with the recommendation in our previous Future flood prevention report.**
DCLG will publish the report of the review in due course to inform the Government’s consideration of its policy approach to SuDS in new development. The review process has taken account of relevant reports and has been developed in consultation with stakeholders, including steering group meetings and a stakeholder workshop where a wide range of parties were encouraged to provide input to shape the development of the review outcomes.

9. **Our successor Committee may wish to review progress in improving the SuDS regime in 18 months’ time to ensure that a far higher proportion of new developments are installing high-quality SuDS. If policies fail to provide as robust a regime as that under the Flood and Water Management Act by the end of 2018, we consider it would be appropriate for that Committee to consider recommending commencement of Schedule 3 measures.**

Findings from DCLG’s SuDS review include an assessment of the prevalence of SuDS in the planning applications assessed, as well as other factors. DCLG will publish the review in due course to inform the Government’s consideration of its policy approach to SuDS in new development.

**Sewer adoption**

10. *We therefore recommend commencement of the provisions in section 42 of the Flood and Water Management Act as soon as Parliamentary time is available after the General Election as this constitutes a fairer and lower-cost option than current approaches.*

The 2011 transfer of private sewers resolved issues related to disparate ownership of the historic sewerage network. Customers with sewerage that was connected to the public sewer network before July 2011 now have a regulated company responsible for maintaining and repairing the sewerage system serving their property, working to minimum standards of service overseen by Ofwat.

Section 42 of the Flood and Water Management Act 2010 provides for the automatic adoption by the sewerage companies of new sewers for new properties, and sets build standards before this responsibility is assumed. The government is looking again at the economic case for implementing this provision.

**Reservoir safety**

11. *The next Government must update our successor Committee on the findings of this research. It is vital that, should the Government propose reducing the threshold to apply provisions to reservoirs with a capacity of 10,000 cubic metres or more, that it sets out a full evidence base to justify how its decision balances safety, economic and water management issues.*

Defra will publish the results of the research following its completion in December 2018. The research considers the impacts of the more recent regulatory changes implemented by the Flood and Water Management Act 2010, on the reservoir industry. It will also provide an evidence base to improve our understanding of the number and state of small
raised reservoirs in England (reservoirs with a capacity between 10,000 and 25,000 cubic metres), the risk they pose and what impact existing regulations could have, should there be any reduction in the threshold.

**Water customer debt**

12. *The Government must review the operation of voluntary initiatives such as Landlord Tap with landlords and the water industry and to make recommendations by the end of 2017 on improving communication so as to improve take-up of the scheme. We recommend also that the Government assesses by the end of 2017 the experience of the Welsh water industry to analyse the impact of a mandatory scheme on both bad debt levels and on costs on landlords. Take-up of the voluntary scheme must significantly improve by the end of 2018: we recommend that our successor Committee consider reviewing this issue then to assess whether the Government should commence the provisions of the Flood and Water Management Act to require landlords to provide information to Water and Sewerage Companies about their tenants for billing purposes.*

The government is aware that recent evidence from Landlord Tap and Water UK shows that the number of landlords registering tenants is low in England compared with uptake of the mandatory scheme in Wales. We propose to carry out a review of the scheme in Wales, particularly to examine the impact that it has had on the levels of bad debt and other customers’ bills.

We propose completing the review by the middle of 2018. This will enable us to take account of research due to be published this autumn on how the water sector and other sectors, including energy, telecoms and local authorities, deal with bad debt. The outcomes of the Government’s review of the Welsh scheme and the effects of other measures taken by the water companies will inform any further actions to decrease bad debt.

Bad debt affects not only those customers who may not be able to pay due to affordability problems but all those that pay water bills. The government’s strategic policy statement places an expectation on Ofwat that its regulatory framework will incentivise companies to reduce bad debt significantly. Ofwat has published its draft methodology for the 2019 price review, which will inform company business plans for the 2020–2025 period. The methodology places greater emphasis on the companies to address affordability of bills for all, and the companies are expected to challenge their existing approaches to bad debt.

Recognising that bad debt adds around £21 to the average household water bill, we are additionally exploring with the water companies whether a reduction in bills could be guaranteed if section 45 were commenced.