

BRIEFING NOTE

Flood and Water Management Act 2010: Discharge of Duty and Functions**Scope**

The briefing note seeks to provide guidance on possible mechanisms to assist Council to discharge the duties and obligations arising under the Flood and Water Management Act 2010 ('the Act').

Summary of the ActLead Local Flood Authority

Under the Act, Wirral Metropolitan Borough Council is the Lead Local Flood Authority for the Borough of Wirral.

Local Flood Risk Management Strategy

Under Part 1, Section 9(1) of the Act, a **lead local flood authority** must develop, maintain, apply and monitor a strategy for local flood risk management in its area (a "local flood risk management strategy").

A "local flood risk" under the Act means flood risk from:

- (a) surface runoff,
- (b) groundwater, and
- (c) ordinary watercourses.

The lead local flood authority will be responsible for ensuring the strategy is put in place but local partners can and should assist with its development.

The Act sets out the minimum that a local strategy must contain, and the lead local flood authority is required to consult on the strategy with risk management authorities and the public.

Flood Risk Management Function

The flood risk management function is defined under Part 1, Section 4 of the Act as:

- (1) ... a function listed in subsection (2) [detailed below] which may be exercised by a risk management authority for a purpose connected with flood risk management.
- (2) The functions are:
 - (a) a function under this Part [which therefore includes the provision of a flood risk management strategy under Section 9(1) of the Act – see above],
 - (b) a function under section 159 or 160 of the Water Resources Act 1991,
 - (c) a flood defence function within the meaning of section 221 of that Act,

- (d) a function under the Land Drainage Act 1991,
- (e) a function under section 100, 101, 110 or 339 of the Highways Act 1980, and
- (f) any other function, under an enactment, specified for the purposes of this section by order made by the Minister.

Co-operation

There is a specific duty under Part 1, Section 13 of the Act for co-operation, which states:

- (1) A relevant authority must co-operate with other relevant authorities in the exercise of their flood and coastal erosion risk management functions.
- (2) A relevant authority may share information with another relevant authority for the purpose of discharging its duty under subsection (1).
- (3) In subsections (1) and (2) “relevant authority” means—
 - (a) **a risk management authority** [Wirral Council – see definition below], and
 - (b) the Welsh Ministers.

Under Section 13(13) **“Risk management authority” means—**

- (a) the Environment Agency,
- (b) **a lead local flood authority** [Wirral Council],
- (c) a district council for an area for which there is no unitary authority,
- (d) an internal drainage board,
- (e) a water company, and
- (f) a highway authority.

Power to Request Information

Under Part 1, Section 14 of the Act:

- (1) An authority listed in subsection (2) [which would include Wirral Council - see below] may request a person to provide information in connection with the authority's flood and coastal erosion risk management functions.
- (2) The authorities are—
 - (a) the Environment Agency, and
 - (b) lead local flood authorities [which includes Wirral Council].
- (3) ...
- (4) Information requested under subsection (1) or (3) must be provided—
 - (a) in the form or manner specified in the request, and
 - (b) within the period specified in the request.

Role of Overview and Scrutiny Committee

Para 54 of Schedule 2 to the Act amends the Local Government Act 2000 to include a specific obligation concerning flood risk management.

A new clause “21F” has been inserted into the 200 Act.

Under clause 21F, there must be arrangements in place to review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority's area.

The Act intentionally enables the relevant overview and scrutiny committee to hold all the risk management authorities to account. This is considered to be an effective way for the public to be actively involved in ensuring authorities perform.

Clause 21F specifically imposes an obligation upon a risk management authority [defined under 13 of the Act and includes Wirral Council – see above] to comply with a request made by the relevant overview and scrutiny committee for:

- (a) information;
- (b) a response to a report.

The Council, under clause 21F, must have regard to reports and recommendations of the relevant overview and scrutiny committee [in this case the Sustainable Communities O&S Committee] responsible for reviewing and scrutinising the exercise of flood risk management functions.

Options

1. Maintain the informal working group

A working group already exists which specifically focuses on flood risk issues.

The working group has no constitutional status but is a cross-party working group that works well in seeking to develop a co-ordinated approach to flood risk management. There is an intention or desire to create a Wirral Council Flood Action Group designed to assist the working group implement agreed measures and approved actions.

There is no legal or statutory bar preventing a working or action group assisting the Administration discharge the functions arising under the Act. The Administration is generally free to seek advice and support from various sources as it considers appropriate in helping it to discharge the duties and functions arising under the Act.

However, should the working group be the preferred model to assist the Council discharge its functions under the Act, clarity will be required in relation to lines of responsibility, who would be the lead member, membership and frequency of meetings.

The working group would not be a decision making body, but could through the Cabinet Portfolio Member or relevant Chief Officer make recommendations to the Council's Cabinet for consideration and approval.

Terms of Reference

Any working or action group should be underpinned by clear Terms of Reference.

A robust Memorandum of Understanding and where possible a Protocol should also be agreed with all key partners/stakeholders. The Memorandum of Understanding and Protocol would set out what is expected from all parties and would provide a mechanism for the dissemination and sharing of critical information between the Council and partners/stakeholders so that informed recommendations can be made by the working group.

The Memorandum of Understanding and Protocol could be reviewed in 3 or 6 months time to assess how effective the new arrangements are working in practice.

Working Group falling under the remit of an Overview and Scrutiny Committee?

The current working group, as I understand, is aligned, albeit informally, to the Sustainable Communities Overview and Scrutiny Committee. The working group could remain part of the Sustainable Communities O&S Committee and assist with the review and scrutiny of the Council as the lead local flood authority. [See also point 4 below].

The jurisdiction of any such working group would be limited to assisting the Committee to discharge its obligations to review and scrutinise the discharge of the functions arising under the Act rather than develop any strategies or plans under the Act.

2. Create a Wirral Flood and Water Management Partnership

This would essentially be a formal model of the working group mentioned above.

As with the working group, clear terms of reference, a protocol, membership, frequency of meetings, etc would need to be defined.

A partnership model would raise the profile and importance of the duties and obligations arising under the Act, and therefore may lead to better co-operation and knowledge sharing with relevant partners/stakeholders.

Key stakeholders/partners would of course need to be willing to become members of the partnership and allocate resources accordingly.

The Council would need to lead and there would be an expectation that the Council provides the necessary administrative support to the partnership. The resources implications should therefore be considered.

Political membership to the partnership could be made through Council (although there is no specific requirement). However, it would reinforce the cross-party working arrangement that currently exists.

The partnership could be recognised in the Council's Constitution and would be referred to in any event if Council agrees the member appointments (annual appointments to an outside body at the AGM).

As with the working group, the partnership would not be a decision making body but would make recommendations to the Council's Cabinet for consideration and approval.

3. Create a Cabinet sub-committee/panel

This can be done by the Cabinet without any constitutional change or Council approval being necessary.

As with options 2 and 3 clear terms of reference, a protocol, membership, frequency of meetings, etc would need to be defined.

The Cabinet sub-committee/panel could be lead and chaired by the Leader or relevant Cabinet Portfolio Member. How formal the meeting should be is a discretionary point but the administrative and resource implications should be considered.

Whilst it is hoped that cross-party working would continue, membership of any Cabinet sub-committee/panel should exclude members of the Sustainable Communities O&S Committee.

This option does not however prevent the Leader or Cabinet requesting the Sustainable Communities O&S Committee to consider how the functions under the Act could be effectively discharged as part of the development of any strategies/plans.

Whilst recommendation can be made to Cabinet approval of any strategy required under the Act should be approved by Council.

4. Create a 'sub-committee/panel' of the Sustainable Communities O & S Committee (Constitutional change required)

Any sub-committee/panel of the Sustainable Communities O&S committee would exclude any Cabinet Member from its membership.

A sub-committee/panel could provide specific focus and help develop knowledge and understanding in relation to technical issues which would assist the Council ensure it discharges its duties and responsibilities.

There is no power under the Constitution for an O&S Committee to create a formal sub-committee/panel. Should this option be preferred, Constitutional change would be required.

Whilst the Leader/Cabinet Portfolio Member could be given the right to make representations to the sub-committee/panel, he/she could not take part in any deliberations or decision making.

This would be a formal committee of the Council and all legal and constitutional requirements applicable to a committee would apply (i.e. formal agendas, minutes, etc). This option would involve more resources to administer.

Detailed Terms of Reference would need to be drafted setting out the role of the sub-committee/panel. Under the Act there is a need for the Council's overview and scrutiny committee to review and scrutinise how effectively the Council discharges its flood risk management functions or coastal erosion risk management functions under the Act.

Should no sub-committee/panel be established, the role of review and scrutiny under the Act would be undertaken by the Sustainable Communities O&S Committee.

For clarity and the avoidance of any doubt, the terms of reference for the Sustainable Communities O&S Committee should be amended to include the duty to review and scrutinise arising under the Act.

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