

WIRRAL COUNCIL

CABINET

12TH APRIL 2012

SUBJECT:	THE FLOOD AND WATER ACT 2010 – NEW POLICY IMPLEMENTATION
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR DAVE MITCHELL STREETSCENE AND TRANSPORT SERVICES
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

1.1 The Flood & Water Management Act 2010 and the Flood Risk Regulations 2009 established Wirral Council as a Lead Local Flood Authority (LLFA). LLFA's are required to lead the strategic management of local flood risk arising from surface water, groundwater and ordinary watercourses.

1.2 The statutory responsibilities attached to the LLFA role, place substantial new duties on Wirral Council in managing flood risk and this will require the introduction of new policies for:

- flood investigations
- a flood risk asset register

In addition, clarity is required in making decisions in supporting communities in planning for, or during, flooding, and a policy is also now proposed for :

- sandbag provision

2.0 BACKGROUND AND KEY ISSUES

2.1 The Flood & Water Management Act 2010

2.1.1 The first parts of the Flood & Water Management Act commenced on 1 October 2010. These included new definitions of flooding, the requirement to develop national and local flood risk management strategies within a reasonable timeframe, to co-operate and share information, establish Scrutiny Committee arrangements and amendments to Building Regulations in relation to flood resilience.

- 2.1.2 In April 2011, further parts of the Act commenced, and these included a duty for the LLFA to investigate surface water flooding incidents in its area and identify responsibilities; and a duty to maintain a register of structures or features, which may have an effect on flood risk.
- 2.1.3 In April 2012, powers to designate features will be enacted within the legislation. This will enable LLFA's to designate a structure or feature from its flood risk register that could significantly affect flood or coastal erosion risk if altered or removed, such as culverts, bridges, private river and private sea defences. This will require any future alterations to them that may increase flood risk to be approved by the LLFA. In addition, The Flood and Water Management Act 2010 includes for amendments to other acts which will give LLFA's powers and duties in connection with the maintenance and consenting of works to ordinary watercourses.
- 2.1.4 The Flood and Water Management Act 2010 will continue to place additional duties and responsibilities on each LLFA. All the new duties and responsibilities, including those which are not yet enacted, are detailed in **Appendix 1**.

2.2 Flooding Investigation Policy

- 2.2.1 The responsibility to investigate surface water flooding incidents has been shown to be an onerous one following a significant rainfall event in August 2011, when even with the additional resource now available to the Drainage Team, it was not possible to investigate all reported flooding without prioritising incidents by the location and the degree of flooding.
- 2.2.2 A policy to process and prioritise flooding incidents has therefore been developed for approval by Members. The policy states that Wirral Council will always investigate internal property flooding or where there has been an imminent threat of internal flooding or potential high risk to life, flooding to priority highways and other critical infrastructure. It will identify which risk management authority has responsibility for the flooding and that they are exercising that responsibility; and will aim to undertake this flood investigation within 72hrs of the flooding incident. Other flooding will only be investigated if resources permit. See **Appendix 2** for the proposed detailed policy.
- 2.2.3 A basic database for recording the flooding as required by the Act has been developed and has been integrated into the highway drainage maintenance management inventory, which has been re-engineered to support this flood data. The ability to map the incidents will prove valuable in the future in identifying flood hotspots

2.3 Flood Risk Assets Register Policy

- 2.3.1 The duty to establish and maintain a register of assets that may have an effect on flood risk is prescriptive, as is the need to record information about each feature including ownership and state of repair; and for the register to be available for inspection at all reasonable times. This includes inspection by the public but does not include the detailed information recorded. However,

what assets the LLFAs specifically record is not prescriptive, and the Act explicitly states that the assets recorded are those that in the opinion of the LLFA, are likely to have a significant effect on flood risk in its area. Neither Defra nor the Environment Agency (EA) have offered guidance on what nationally maybe considered significant so that the needs for the locality of the flood risk may take precedent. However, they have developed examples of templates for what a register of assets might look like, but again their use is not prescriptive. See **Appendix 3** for the proposed detailed policy

2.3.2 The expectation, by Defra, was that LLFAs would have their registers and records in place, and started populating them, by December 2011. It was intended to link the Wirral Flood Risk Assets Register with the Highway Asset Management System but as this had not progressed as originally planned due to the unaffordability of an integrated system. The Wirral register has therefore been developed utilising the example templates provided by the Environment Agency as a guide and produced as a database and further re-engineering of the highway drainage maintenance inventory to include the flood risk asset register is being investigated as this will enable the combined mapping of flooding, flood risk and flood risk assets; to be graphically represented and utilised to develop Wirral's flood risk management strategy.

2.4 Sandbag Provision Policy

2.4.1 In November 2004, a technical report on sandbags identified that the procedures at that time for the request, issue and delivery of sandbags to members of the public varied greatly throughout the Technical Services Department, with requests being received by different Sections and also the Streetscene call centre. It recognised a need to address these inconsistencies in order to deliver a standardised service to the public. The report identified that sandbags could be issued for a number of events, including Tidal, Sewer, River and Rainfall flooding and were issued on both a planned and reactive basis but that any future policy needed to consistently address the issuing of sandbags for all flooding eventualities. The development of a coherent and supportable sandbag policy has therefore long been required but has been difficult to establish.

2.4.2 Neither the EA, United Utilities (UU), or any of our neighbouring authorities issue sandbags to the public. The technical report recommended that the preferred option would be to 'Provide Emergency Response' only. This was a departure from the Council's then ad-hoc procedure and is detailed below.

"Discontinue current inconsistent supply of sandbags, with all requests for sandbags refused. Householders to be referred to commercially available flood protection products. Sandbags only made available for emergency purposes (criteria to be set)"

2.4.3 Difficulties remain since there have been no criteria set for what should be classed as emergency purposes as this still included provision of sandbags to the public and this led to the decision to supply or not supply sandbags remaining with individuals which has continued to lead to inconsistencies in the past provision. Hence, a formal policy is required for making decisions

concerning what is an emergency and whose need is greater. See **Appendix 4** for the detail of the proposed policy.

3.0 RELEVANT RISKS

3.1 Wirral faces a significant risk of flooding with a substantial number of domestic properties identified as at risk from potential future flooding. The proposed policies will allow the Council to meet the relevant new duties/responsibilities brought about by the new flooding legislation and reduce this future risk.

4.0 OTHER OPTIONS CONSIDERED

4.1 None considered.

5.0 CONSULTATION

5.1 Consultation has taken place with other Local Authorities and flood risk management partners, United Utilities and the Environment Agency and the Department of Regeneration, Housing and Planning.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 Flooding affects all voluntary, community and faith groups whether it be directly with their properties being flooded, or in a responder or recovery capacity.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 There are no additional IT, Staffing or Asset resource implications although formalising the decision criteria for the provision of sandbags is likely to lead to the distribution of more sandbags and hence a reduction in highway drainage budget available for other drainage needs.

8.0 LEGAL IMPLICATIONS

8.1 There are no legal implications other than the duties imposed under the new legislation.

9.0 EQUALITIES IMPLICATIONS

9.1 Yes, and impact review is attached. (<http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/technical-services-0>)

9.2 The proposal to deliver sandbags to those that lack the physical ability to provide them themselves is intended to create equality by supporting these residents to satisfy the 'self help' approach.

10.0 CARBON REDUCTION IMPLICATIONS

10.1 There are no specific carbon reduction implications.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 The development of a Flood Risk Asset Register will support the strategy to reduce future local flood risk and hence improve community safety.

12.0 RECOMMENDATION/S

12.1 That Cabinet approve the policies relating to:

- flood investigations;
- the flood risk asset register; and
- the provision of sandbags

13.0 REASON/S FOR RECOMMENDATIONS

13.1 The proposed policies will allow the Council to meet relevant new duties/responsibilities brought about by new flooding legislation and support it in its strategy to reduce future local flood risk.

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APPENDICES

- Appendix 1 Summary of Local Authority issues that will require resourcing in the Floods and Water Management Act 2010
- Appendix 2 Draft Wirral MBC Flooding Investigation Policy
- Appendix 3 Draft Flood Risk Asset Register Policy
- Appendix 4 Draft Wirral MBC Sandbag Policy

REFERENCE MATERIAL

None used.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	21 st July 2011
Cabinet	17 th March 2011

Appendix 1

SUMMARY OF LOCAL AUTHORITY ISSUES THAT WILL REQUIRE RESOURCING IN THE FLOODS AND WATER MANAGEMENT ACT 2010

Enacted sections October 2010

1. **Local Strategy (9)** Lead Local flood Authority (LLFA) develop maintain, apply and monitor a local strategy for Flood Risk Management (FRM). This must be consistent with the National Strategy.
2. **Co-operate and share information (13 & 14)** An authority must co-operate with other authorities in exercising flood and coastal erosion risk management (FCERM), this includes sharing data. LLFA has power to request information from other authorities.
3. **LLFA to establish Scrutiny Committee (31) (Schedule 2 Para 54)** Power to LLFA to allow for scrutiny committees in exercising FCERM.
4. **Building regulations: flood resilience (40)** Provides that building regulations can be made for any type of work in relation to flood resilience and resistance.

Duties and Powers enacted April 2011

1. **Powers & duty to investigate (19)** The LLFA must investigate flooding incidents in its area in order to identify what authority has the flood risk management function and to establish if that authority has or intends to respond. The LLFA must publish results of investigations.
2. **Duty to maintain a register (21)** The LLFA must establish and maintain a register of structures or features, which may have an effect on flood risk in its area. Records must include information on ownership and condition.

Duties and Powers enacted July 2011

1. **Amendment of other Acts (31) (Schedule 2) Para 29;** gives the LLFA powers to carry out works on Ordinary Watercourses in line with the local FRM strategy

Duties and Powers enacted December 2011

1. **Incidental flooding or coastal erosion (38 & 39)** Allows LLFA to carry out works that may increase flooding or coastal erosion if justified.

Duties and Powers to be enacted April 2012

1. **Designation of features (30) (Schedule 1)** Power enabling LLFA to designate a feature that affects flood or coastal erosion risk, this is to prevent future alterations that may increase flood risk.
2. **Ordinary Watercourses Consenting and Enforcement Responsibilities (Para 32 Schedule 2, Amendments to Other Acts - Land Drainage Act s23 & s24)** Transfer of responsibility for issuing and enforcing flood defence consents from Environment Agency to LLFA
3. **Additional Amendments to Other Acts (31) (Schedule2)**
 1. Para 31; gives LLFA power to enforce obligations to maintain or repair a watercourse or bridge
 2. Para 33; gives powers to LLFA to require works for maintaining flow of watercourse

Duties & Powers still to be enacted

1. **Duty to contribute to sustainable development (27).** LLFA must aim to contribute towards sustainable development whilst exercising FCERM.
2. **Sustainable drainage (32) (Schedule 3)** The LLFA will be the Approving Body with the duty to approve rainwater drainage systems before construction and then adopt and maintain the drainage system upon completion. This section of the Act is not likely to be enacted until late in 2012 as the Government has still to consult on issues. Schedule 3 also removes the right to connect to a public sewer in certain cases.

Appendix 2

Wirral MBC Flooding Investigation Policy

S19 Flood and Water Management Act 2010 states that:

(1) On becoming aware of a flood in its areas, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate-

- a) Which risk management authorities have relevant flood risk management functions, and*
- b) Whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.*

(2) Where an authority carries out an investigation under subsection (1), it must-

- a) Publish the results of its investigation, and*
- b) Notify any relevant risk management authorities.*

Policy Statement

Wirral MBC aims to investigate all occurrences of surface water flooding in its local flood risk management area based on the priority listing detailed below but always as resources allow. It will identify which risk management authority, if any, has the relevant risk management function responsibility to respond to the flooding, and notify them accordingly.

Where foul flooding is occurring an initial desktop or visual investigation will be undertaken but it is likely that the responsibility will rest with either an individual or group of properties/business's: or the appropriate Water Company (United Utilities or Welsh Water).

Wirral will endeavour to investigate the flooding within 72hrs, unless it is a significant or an extreme rainfall event (as defined by a severe weather warning from the Met Office) or an event that covers a large area.

Significant Flood Event

For the purpose of reporting Flood Investigations, a flooding incident is deemed significant if it:

- caused internal flooding to 8 or more residential properties/business premises within a kilometre square area.
- flooded one or more items of critical infrastructure e.g., a pumping station, an emergency services station, electricity sub station, hospital etc.
- caused a transport link to be totally impassable for a significant period.
Category 1 highways (motorways) and rail links – 1 hour or more
Category 2 and 3a highways – 2 hours or more
Category 3b, 4a, 4b highways – 4 hours or more

Priority Listing for Investigation of Flooding

Priority	Type of Flooding Incident	Investigate
1	Any internal flooding (affecting more than one property)	Always
2	Flooding to priority highways (category 1, 2 & 3a)/critical infrastructure.	Always
3	Flooding to gardens and open space where potential risk to life was high.	Always
4	Where there has been an imminent threat of internal flooding	Always
5	Flooding to non-priority highways (category 3b, 4a & 4b), that renders it totally impassable for a significant period (4 hours or more)	As resources permit
6	Flooding to gardens, farmland and open space where no risk to life was posed.	As resources permit

Where an investigation has been undertaken following a significant flood event, Wirral will prepare a report within 2 months (resources allowing and depending on extent of the event). The report detailing the investigations and resulting actions will be produced in an appropriate format and be published on the Council's website.

This policy will be reviewed annually and recorded within the annual flood risk management report of the Sustainable Communities Overview & Scrutiny Committee.

Appendix 3

Flood Risk Asset Register Policy

S21 Flood and Water Management Act 2010 states that:

- (1) *A lead local flood authority must establish and maintain -
(a) a register of structures or features which, in the opinion of the authority, are likely to have a significant effect on a flood risk in its area, and
(b) a record of information about each of those structures or features, including information about ownership and state of repair.*
- (2) *The Minister may by regulations make provision about the content of the register and record.*
- (3) *The lead local flood authority must arrange for the register to be available for inspection at all reasonable times.*
- (4) *The Minister may by regulations provide for information of a specified description to be excluded from the register or record.*

Policy Statement

Wirral MBC will establish a flood risk asset register listing those assets in its local flood risk management area that have the potential to have a significant effect on flood risk. The individual flood risk asset record will hold relevant information such as the size, materials and any construction features, as deemed necessary, together with ownership (where this can be established) and the present state of repair. The register or list of flood risk assets will be accessible via the Council's website but the individual asset records will not.

Significant Effect

For the purpose of recording Flood Risk assets, an asset is deemed significant if it has the potential to:

- cause internal flooding to 8 or more residential properties/business premises within a kilometre square area.
- flood one or more items of critical infrastructure e.g., a pumping station, an emergency services station, electricity sub station, hospital etc.
- cause a transport link to be totally impassable for a significant period.
Category 1 highways (motorways) and rail links – 1 hour or more
Category 2 and 3a highways – 2 hours or more
Category 3b, 4a, 4b highways – 4 hours or more

This policy will be reviewed annually and recorded within the annual flood risk management report of the Sustainable Communities Overview & Scrutiny Committee.

APPENDIX 4

Wirral MBC Emergency Sandbag Policy

It should be noted that there is no statutory requirement for local authorities to provide sandbags for flood protection to assist private households or businesses. The primary responsibility for protecting property from the risk of flooding rests with the property owners themselves. However, both Wirral Council and the Environment Agency have over the years committed a large amount of resources enhancing flood protection and prevention infrastructure to limit this risk. In addition, the Environment Agency also notify property owners in known flood risk areas of the risks they face and encourage them to plan their own arrangements to protect themselves and their properties.

The Council supports this 'self help' approach and urges those living within areas identified as being at risk from flooding to follow the advice of the Environment Agency and register for Floodline Warnings Direct Service by calling Floodline on 0845 9881188 or visit the Environment Agency website. Property owners need to be aware that, in the event of the threat of flooding in the Borough, the Council may not have the resources necessary to support property owners at risk and that priorities will have to be made. This could inevitably lead to some properties flooding, which, with some pre planned preventative measures taken by the occupant, could have been avoided or minimised.

However, as a responsible authority, the Council recognises that the level of individual preparedness will vary enormously and it is prudent to plan for some additional support to those vulnerable sections local community and with this in mind the Council has developed the following policy:

In the event of deteriorating weather or tidal conditions leading to the issue of severe weather warnings or tidal flooding alerts that could potentially affect part of the Wirral Borough Council administrative area, officers from Technical Services will monitor the threat.

The resulting flood risk will be continually assessed and updated and these assessments could be area wide or site specific. They could include information obtained from the public and site visits by Council Officers or by other Professional Partners. In the event of the Council's flood risk assessment for a defined area identifying that the use of sandbags would be appropriate to minimise or mitigate the risk of flooding to properties the Council may start to issue sandbags but on a priority basis.

Any allocation of sandbags will depend upon a number of factors. These factors include:

- the limited number of sandbags available;
- an assessment of the viability of protecting a particular property with sandbags against the demands from other emergency flood defence measures involving the use of sandbags that might protect a greater number of properties;
- the need to protect infrastructure assets e.g. Roads, Energy Distribution Sites, Communication Network Sites, Hospitals and;
- the need to protect the Council's own Public Buildings etc. and;
- the availability of the Council's limited staff/workforce resources. (During out of hours, weekends and Bank Holidays, the available resources will be further limited and it may take up to 4 hours or longer to deliver any sandbags)

Assistance may be given to the occupants of properties where protection from the risk of flooding using sandbags is assessed as viable but they lack the physical ability to provide them themselves. Thus the Council may subject to the availability of the necessary resources and the assessed priorities at the time provide sandbags to the elderly, the house bound and those with disabilities that prevents the 'self help' approach.

It must be emphasised that residents of the Council administrative area and particularly those that live in locations that have flooded in the past or have been identified as at flood risk should not solely rely upon the Council to respond to a threat of flooding to their property and are therefore recommended to put in place their own flood protection plan.

The provision of sandbags and assistance by the Council under this policy will not incur a charge, however, once the flood threat has passed, responsibility to dispose of any sandbags supplied rests with the property owner although again every effort will be made to support those unable to follow the 'self help' approach. In addition, the Council do not accept any responsibility for flooding to property that may occur when sandbags are either not delivered, are delivered but not in enough quantity or are delivered too late to be of any benefit, nor where they have been installed, at the owners request, by its Contractor.

This policy will be reviewed annually and recorded within the annual flood risk management report of the Sustainable Communities Overview & Scrutiny Committee.