



# ***Flood and Water Management Bill:*** **Committee Stage Report**

RESEARCH PAPER 10/08 28 January 2010

This is a report on the House of Commons Committee Stage of the *Flood and Water Management Bill*. It complements Research Paper 09/91 prepared for the Commons Second Reading.

The Bill aims to reduce flood risk and improve the management of water resources. Key features include: requiring the Environment Agency to create a national flood and coastal erosion risk management strategy, which a number of organisations will have to follow; requiring lead local flood authorities to create local flood risk management strategies; enabling the Environment Agency and local authorities to carry out flood risk management works more easily; introducing a more risk-based approach to reservoir management; enabling water companies more easily to control non-essential uses of water, such as the use of hosepipes; enabling water companies to offer concessions to community groups for surface water drainage charges; requiring the use of sustainable drainage systems in certain new developments; and, introducing a mandatory build standard for sewers.

Oliver Bennett  
Elena Ares

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## Research Paper 10/08

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## Summary

The Bill was introduced on 19 November 2009 and Second Reading took place on 15 December 2009. Ten Committee Stage sittings took place between 7 and 21 January 2010.

The Conservatives and Liberal Democrats tabled a number of amendments on a variety of issues. Both parties sought to introduce greater controls on building in flood risk areas and to place a number of property-level resilience measures against flooding on the face of the Bill. The Minister argued that there was no need for these amendments as these issues were being dealt with in other ways.

The Conservatives and Liberal Democrats also raised concerns about the cost implications of the Bill for local authorities. The Minister said that the Government would fund all new burdens on local authorities, and was working to ensure that local authorities have the skills they need to meet the new commitments. The Minister said that he would write to the Committee regarding the Government's discussions with the Local Government Association about these issues.

The Minister also said that he would look again at a number of issues raised during Committee, including whether there was a need to specify on the face of the Bill that groundwater can be a source of flooding (rather than this being implied by clause 1), and whether the compensation arrangements under Schedule 1 needed redrafting.

The Government was defeated on an amendment to the arrangements for Regional Flood and Coastal Committees. Clause 23 as amended now requires the Regional Flood and Coastal Committees to give consent to the Environment Agency's regional programmes before they can be implemented. The Minister spoke against the amendment as he believed it might blur accountability for flood risk management.

## 1 Introduction

The Government published a draft Flood and Water Management Bill in April 2009. The Environment, Food and Rural Affairs Select Committee undertook pre-legislative scrutiny of the document. The Committee welcomed a number of the proposals, but it was concerned that a lack of parliamentary time would undermine the introduction of a comprehensive Bill. The Government introduced a slimmed-down version of the Bill on 19 November 2009.

Background material and the findings of pre-legislative scrutiny can be found in the [Flood and Water Management Bill Research Paper](#).

## 2 Second Reading

On 15 December 2009 **Hilary Benn**, Secretary of State for Environment, Food and Rural Affairs, opened the Second Reading Debate.<sup>1</sup> The Minister gave an overview of the Bill, with many interventions from Members.

Several interventions related to the need to coordinate flood risk management across administrative boundaries. The Minister replied that one of the aims of the Bill was to get all relevant parties with an interest in and responsibility for flood risk management to work together.

Concerns were raised by some Members that the Pitt Review recommendation that the fire and rescue services be given a statutory duty for flood rescue had not been taken forward by the Bill. The Minister responded that the Government did not think that it was necessary to introduce such a duty as fire and rescue services already provided flood rescue services, and that the Government had given additional resources for this work.

**Michael Jack** asked what the Government would do to further social tariffs in water and sewerage bills and take on board the findings of the Walker Review.<sup>2</sup> The Minister responded that as the Review had only recently reported, the Government would have to take time to consider the findings.

**Nick Herbert**, Conservative Shadow Secretary of State for Environment, Food and Rural Affairs, welcomed the Bill and agreed that the Government was right not to have delayed its introduction – although he criticised the Government for not taking forward elements of the Cave and Walker Reviews.<sup>3</sup> He stressed the need to improve protection from flooding as well as improving management of flooding when it occurs. He welcomed the strategic overview role that the Environment Agency would be given. He also welcomed that clear responsibility for flood defence would be given to a lead local flood authority in each area. However, the Shadow Secretary raised concerns about some aspects of the Bill including:

- that the approach of granting extra powers to the Environment Agency might be over-centralised in nature, and whether third party interests would be protected adequately;
- the consultation and approval process for the National Flood and Coastal Erosion Risk Management Strategy;

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<sup>1</sup> HC Deb 15 December 2009 cc835-906

<sup>2</sup> Defra, [Independent Walker Review of Charging and Metering for Water and Sewerage services](#), 8 December 2009

<sup>3</sup> Defra, [Cave Review: Competition and innovation in water markets](#), 22 April 2009  
Defra, [Independent Walker Review of Charging and Metering for Water and Sewerage services](#), 8 December 2009

- that local views might not be taken into account in flood and coastal erosion risk management;
- how the Environment Agency will balance competing environmental, economic and social interests in flood and coastal erosion management schemes (related to [clause 38](#));
- that there would be inadequate consultation on the designation of third party assets, and a lack of an appeal mechanism; and,
- the Bill's cost implications for local authorities—in particular in relation to sustainable drainage systems.

**Martin Horwood** for the Liberal Democrats stressed the need for the Bill to “work with nature, not against it”.<sup>4</sup> He welcomed proposals on concessionary drainage charges for community groups and other aspects of the Bill, but thought that the Bill would fail to tackle many of the problems associated with flooding and water management. In particular he raised concerns about:

- increased costs for local authorities;
- the maintenance of watercourses;
- a possible increase in household bills due to the adoption of private sewers by sewerage companies;
- how the Bill would deal with risks to critical infrastructure, such as water treatment works;
- private flooding insurance costs for those that have experienced flooding in the past, and whether insurance companies were factoring in flood protection measures into their calculations. He called for intervention in the flood insurance market;
- a lack of measures to deal with properties that are at very high risk of flooding, where it would not be economic to protect or insure them; and,
- the need to prevent building in areas at high risk of flooding.

### 3 Committee Stage

The Public Bill Committee first met on 7 January 2010. The Committee heard oral evidence from a range of witnesses including the Department for Environment, Food and Rural Affairs (Defra), the Environment Agency, the Association of British Insurers (ABI) and the Local Government Association. Full transcripts of the Public Bill Committee sessions and written evidence are available on the Public Bill Committee page of the Parliament website.<sup>5</sup> The main points raised during the Committee debates are summarised below.

#### 3.1 Groundwater flooding—clause 1

A number of amendments to the [clause 1](#) definition of flooding sought to place groundwater flooding on the face of the Bill. The Minister, **Huw Irranca-Davies**, said that the definition of

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<sup>4</sup> HC Deb 15 December 2009 cc856

<sup>5</sup> [Public Bill Committee page](#)

flooding was inclusive, and therefore groundwater flooding would be included by it. However, he said that he would go away and consider whether groundwater flooding should be put on the face of the Bill.<sup>6</sup> Clause 1 stood part of the Bill.

### 3.2 One-stop shop for flooding advice—clause 7

In a debate on amendment 91 to clause 7, the Minister stated that the Environment Agency's Floodline would become a 'one-stop shop' for the provision of information on all forms of flooding, suitable to the caller's location.

### 3.3 Development in flood risk areas

**Lawrence Robertson** for the Conservatives sought to introduce a new clause that would have required the Environment Agency to identify areas of high flood risk. Proposals for development over a certain size in any high flood risk area would require the Environment Agency to submit a formal objection. He argued that this was needed as existing development control in Planning Policy Statement 25 (PP25) was failing to discourage development in flood-prone areas.<sup>7</sup>

**Martin Horwood** for the Liberal Democrats agreed that existing arrangements were failing to prevent development in areas at risk of flooding. He also argued that PPS25 “does not look at the landscape as a whole or allow for the consideration of flooding being exacerbated elsewhere, especially in an extreme flood event, and it certainly does not do what Sir Michael Pitt asked, which is ensure ‘that developers make a full contribution to the costs both of building and maintaining any necessary defences’”.<sup>8</sup>

**Huw Irranca-Davies** rejected these arguments by saying that flood risk is already taken into account in the planning process and through the Environment Agency's flood map. He said that the existing process is working in the vast majority of cases.<sup>9</sup>

### 3.4 National Flood and Coastal Erosion Risk Management Strategy— clause 7

A number of amendments were tabled that would make a number of organisations and groups statutory consultees for the national flood and coastal erosion risk management strategy (clause 7). **Anne McIntosh** for the Conservatives argued that land owners and managers should be consulted—**Martin Horwood** called for relevant charities and Natural England to be included on the list. **Huw Irranca-Davies** said that such bodies would be consulted under existing consultation arrangements and that he was reluctant to specify on the face of the Bill that these organisations had to be consulted. However, he said that the Secretary of State would be able to issue guidance to the Environment Agency stipulating those bodies that should be consulted. Clause 7 stood part of the Bill.

### 3.5 Local Flood and Coastal Erosion Risk Management Strategies—clause 9

In a debate on an amendment to clause 9, **Martin Horwood** questioned whether the national strategy would be adhered to by local authorities. He spoke to an amendment that would make the Regional Flood and Coastal Committees (RFCCs) have a specific “check and balance on the quality” of the local strategies. He thought that this would also be beneficial as these committees “will not be as unelected and unaccountable as the Environment

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<sup>6</sup> PBC Deb 12 January 2010 c83

<sup>7</sup> DCLG, [Planning Policy Statement 25: Development and Flood Risk](#), 7 December 2006

<sup>8</sup> PBC Deb 12 January 2010 c107

<sup>9</sup> Ibid c124



Agency” and “will have a bit more local knowledge and more specific knowledge of the flood issues in an area”.<sup>10</sup>

**Huw Irranca-Davies** responded that the RFCCs would have a “pivotal” role in reviewing and in providing oversight to the strategies, as would the Environment Agency, under the flood risk regulations that implement the EU floods directive. However, he thought that giving a specific approval role to the RFCCs would shift some responsibility for the management of flood risk away from local authorities. He was reluctant for that to happen. He said that guidance issued by the Secretary of State would clarify the relationship between the RFCCs and local authorities.<sup>11</sup> The amendment was withdrawn.

### 3.6 Costs to local authorities

**Anne McIntosh** spoke to amendment 29 to clause 9 which would have required an independent assessment of the costs to local authorities of developing local strategies. She argued that it was not clear where the resources would come from. **Martin Horwood** spoke to an amendment that would have required a review of the training required in local authorities to take forward the local strategies. **Huw Irranca-Davies** responded that all net new burdens on local authorities would be fully funded by Defra:

... we would fully fund the local authority’s role in respect not only of the diversity of training needs and so on, but of any new duties, powers and responsibilities that emanate from the Bill.

We have carefully assessed the new burdens that we are placing on local authorities, and we have committed to providing the necessary funding in full. We have said that, from commencement, we will provide an extra £36 million a year to lead flood authorities as area-based grants to fund the new role in England. That will allow local authority-led flood management activity to triple from around £18 million to £54 million a year. In addition, a contingency sum of £8 million has been set aside for year 1. The evidence that we have does not support increasing the funding provision.<sup>12</sup>

He said that these costs were based on independent research undertaken for the draft Bill in 2009.<sup>13</sup> He went on to say that the Government was already working with a number of organisations including the Local Government Association (LGA), Environment Agency and Sector Skills Council “to identify and provide the training required”. He said that a review of skills would be “unduly bureaucratic and could have the unfortunate effect of delaying the management of flood risk”.<sup>14</sup> However, the Minister proposed “putting on a formal footing” the discussions the department was having with the LGA about these issues.<sup>15</sup> He promised to write to the Committee about this. The amendments were withdrawn. Clause 9 stood part of the Bill.

### 3.7 Automatic right to connect to the sewerage system—clause 11

**Anne McIntosh** spoke to amendment 11 to clause 11 that would have required water and sewerage companies to be consulted on all major developments. A debate occurred as to whether the Pitt Review recommendation that new developments should no longer have an automatic right to connect surface water drainage to the sewerage system would be addressed by the Bill. She said that water and sewerage companies had interpreted this recommendation as meaning both surface water drainage and foul water sewerage, and

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<sup>10</sup> PBC Deb 14 January 2010 c156

<sup>11</sup> Ibid c158

<sup>12</sup> Ibid c179

<sup>13</sup> Ibid c181

<sup>14</sup> Ibid c182

<sup>15</sup> Ibid c183

argued that the Bill's proposals failed to take forward this recommendation by only removing the automatic right to connect surface water drainage. **Anne McIntosh** asked why water and sewerage companies should foot the bill for improving sewerage capacity for new developments, rather than the developers themselves.

**Huw Irranca-Davies** rejected that this was the aim of Pitt's recommendation, which he said only related to surface water drainage. However, while he was sympathetic to Ms McIntosh's second argument, he said that further consultation would be required to identify whether this was a genuine problem (or whether sewer flooding would be addressed by preventing surface water from entering the sewer system). The amendment was defeated.

### 3.8 Critical infrastructure resilience—clause 21

**Martin Horwood** tabled amendment 106 to [clause 21](#) that would have required lead local authorities to establish and maintain a register of critical infrastructure. The Conservatives spoke to a new clause 17 that would enable the Secretary of State to require utility companies to report on risks to their critical infrastructure. These amendments sought to improve the resilience of critical infrastructure, such as electricity and transport networks, to flooding.

**Huw Irranca-Davies** responded that under the *Civil Contingencies Act 2004*, local authorities were already required to work with utility and transport companies in local resilience forums. He said these forums “relate to a wide range of risks and it would not be appropriate to require a register of infrastructure at risk of flooding and coastal erosion in isolation”.<sup>16</sup> He argued that maintaining a register for flood risk purposes “would not add any value to the existing arrangements and, in fact, would place an additional burden on local authorities”.<sup>17</sup> He went on to say that the Government's Centre for the Protection of National Infrastructure already works with utility companies on resilience, and that the Cabinet Office's critical infrastructure resilience programme had identified infrastructure at risk of flooding:

To give the Committee an idea of how much has been done, the Cabinet Office has screened nearly 1,000 critical infrastructure sites for flood risk. It has identified 171 sites across the nine sectors of national infrastructure that could be flooded by rivers or the sea. By the way, the number of such sites in the water sector is the highest for any of those nine sectors, with the number in the energy sector the second highest.

As I mentioned before, the lead Government Departments are preparing a sector resilience plan for each of those nine sectors to examine the vulnerability to flooding of those 171 sites and to identify what actions are needed to improve resilience to disruption from natural hazards. That work is being co-ordinated by the natural hazards team.<sup>18</sup>

**Martin Horwood** indicated that locally important critical infrastructure may not be captured by this work. **Huw Irranca-Davies** responded that the local resilience forums should identify locally important infrastructure. [Clause 21](#) stood part of the Bill.

### 3.9 Property-level resilience

A number of amendments were proposed by the Conservatives and Liberal Democrats that sought to encourage the uptake of property-level resilience measures against flooding. The Conservatives proposed new clause 18 to require the Environment Agency to submit an annual report to the Secretary of State on the uptake of flood warnings and property-level

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<sup>16</sup> PBC Deb 19 January 2010 c259

<sup>17</sup> Ibid

<sup>18</sup> Ibid c260

flood resilience measures.<sup>19</sup> It would also require the Environment Agency to report on “measures that could be adopted that would reduce the insurance premiums for properties at risk of flooding”.<sup>20</sup> **Anne McIntosh** went on to speak to a new clause 19 that would require the British Standards Institution to report on kitemarks for flood-resistance products, to ensure that when installed such products prevent flooding as claimed. **Martin Horwood** spoke to a new clause that would amend the code for sustainable homes to ensure that new homes are built with flood resilience measures.

**Huw Irranca-Davies** responded with a range of points:

- research was being conducted on flood resilience, which would lead to a consultation on new guidance on flood resilience;
- the Government was considering how flood resilience and resistance could be improved through building regulations—a consultation would follow;
- the Secretary of State can require the Environment Agency to report on flood resilience under clause 18 of the Bill;
- Planning Policy Statement 25 already required local authorities to consider how the design of developments “should incorporate flood resilience”, in line with guidance published by Defra, DCLG and the Environment Agency;<sup>21</sup>
- the Association of British Insurers had recently “strengthened the guidance on resilience repair and made clear to individual householders the potential benefits and cost savings on their insurance if they take up the issues”;<sup>22</sup> and,
- a working group comprised of Government and industry had reviewed the BSI kitemark for flood protection products—“the group has confidence that the scheme is right”<sup>23</sup>.

Clause 21 stood part of the Bill.

### 3.10 Regional Flood and Coastal Committees—clause 23

**John Grogan** tabled an amendment to clause 23 that would require the Regional Flood and Coastal Committees (RFCCs) to give consent to the Environment Agency’s regional programmes before they could be implemented.<sup>24</sup> He said that RFCCs bring local democracy and knowledge to bear on flood and coastal protection management, and give a degree of accountability to Environment Agency work. He argued that the RFCCs should not simply be advisory bodies.

**Huw Irranca-Davies** rejected these arguments by saying that the importance of the RFCCs was recognised throughout the Bill— the Environment Agency would be required to consult the RFCCs and would have to justify its reasoning if it failed to follow their advice. He thought that giving the RFCCs an approval role would blur accountability for flood risk management.

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<sup>19</sup> Property-level flood resilience measures are measures that can be incorporated at property level to improve flood resilience and resistance in homes and businesses.

<sup>20</sup> Ibid c244

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid c266

<sup>24</sup> PBC 19 January 2010 c275

The Government was defeated by 8 votes to 7—clause 23 stood part of the Bill, as amended.<sup>25</sup>

### 3.11 Sustainable development—clause 27

**Martin Horwood** tabled an amendment that would define sustainable development in the Bill. He took his definition from the Sustainable Development Commission; other members offered alternative definitions. He argued that the amendment was required to prevent a weak interpretation of sustainable development from being applied to the Bill later.

**Huw Irranca-Davies** rejected this, saying that it would not be “appropriate to fix one definition in primary legislation”.<sup>26</sup>

The amendment was defeated by 8 votes to 2.

### 3.12 Designation of features—Schedule 1

**Martin Horwood** raised concerns about the compensation provisions that would apply should a flood risk management authority cause damage to private property while exercising its powers under the schedule. He said that the clauses as drafted (14 (3) and 14 (4)) meant that compensation could not be paid. **Huw Irranca-Davies** disagreed with this analysis, but said that he would look again at the provisions:

I do not think that the hon. Gentleman's amendment is necessary... [but] I am happy to concede to the spirit of what he is saying by taking it away and bringing something back on that. I do not think that it is necessary, but I am happy to do that.<sup>27</sup>

### 3.13 Sustainable Drainage – Schedule 3

Amendments to Schedule 3 were tabled by **Anne McIntosh** and included a definition of what would be considered to be a Sustainable Urban Drainage System (SuDS). This was rejected by **Huw Irranca-Davies** on the grounds that regulations combined with a national standard for SuDS would be more flexible.<sup>28</sup> He also made clear that the schedule referred to sustainable drainage, in any area, not just in an urban environment.<sup>29</sup> The amendments were defeated.

**Anne McIntosh** also tabled amendments that would have required a review of the costs of implementation, and a pilot scheme to be established by the Environment Agency in advance of full implementation. She also highlighted the concerns of the LGA that the proposed model for charging for sustainable urban drainage system was unfair, and called for all properties to pay a drainage charge, regardless of their drainage system.<sup>30</sup> **Martin Horwood** did not support the amendments and highlighted the impact assessment which had already been carried out. This had concluded that the measures would add up to £12 per household per annum to the cost of water bills.<sup>31</sup> **Huw Irranca-Davies** told the Committee that the Government was having discussions with the LGA on the issue and that “the duty to adopt SuDS will be funded in full one way or the other”.<sup>32</sup> He also stated that the long term funding options had yet to be decided:

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<sup>25</sup> Ibid c282

<sup>26</sup> Ibid c292

<sup>27</sup> Ibid c318

<sup>28</sup> Ibid c329

<sup>29</sup> Ibid c330

<sup>30</sup> Ibid c342

<sup>31</sup> Ibid

<sup>32</sup> Ibid c344

In respect of the options for long-term funding of SuDS maintenance, there are some obvious candidates, but none of them is so straightforward that we can decide right now, straight away, without proper further consideration. For example, there could be commuted sums on developers or direct charges on householders benefiting from the SuDS, who can expect as a result of those to pay a reduced water bill depending on any connection to the sewer. Charges could be collected either by the local authority or as part of water bills or we could leave it with taxpayers in general to fund, through specific grants to local authorities. But we will make the position clear before the legislation commences, rather than just grabbing something now and bolting it on to the Bill.<sup>33</sup>

The amendment was defeated by 9 votes to 7.

Further opposition amendments called for Internal Drainage Boards to be consulted as appropriate and for regulations to be put in place on the process and timings of approvals of drainage schemes. **Huw Irranca-Davies** accepted that these were issues that needed to be addressed and promised to return with amendments on these matters for the Report stage.

There were a number of amendments on the ownership of SuDS; the Minister made clear that local authorities would be able to transfer their adoption functions, but not their liability, to water and sewerage companies:

I am sure hon. Members will be pleased to hear that the Bill does not prevent local authorities, in their role as SuDS-approving bodies, from transferring their adoption functions to water and sewerage companies by agreement. However, the local authority SuDS-approving body would retain responsibility and liability for SuDS. That keeps true to our aim to have a single body responsible for SuDS approval and adoption.<sup>34</sup>

The final topic of discussion focused on whether it should be possible for SuDS to be connected to the public sewer without the approval of a water company. **Anne McIntosh** called for this approach:

Unamended, the Bill will give the SuDS-approving body the authority to approve a connection, but no accountability for the consequences of that decision. If the connection causes flooding and pollution, the sewerage undertaker and its customers will have to meet the cost of repairing the sewer. It should fall to the occupants of the major new development, whether it is business property or housing, to pay the charge for the increased capacity that is needed for the development.<sup>35</sup>

However, the Minister rejected this on the grounds that it would allow “companies to protect their own financial management [...] rather than provide a public drainage service fit for households and business”.<sup>36</sup> The amendment was defeated by 9 votes to 5.

Several Government amendments were agreed including one that would designate roads with SuDS as “streets with special engineering difficulties” and another providing powers to act if non-maintenance of a SuDS in a single private property causes problems to neighbouring areas.<sup>37</sup>

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<sup>33</sup> Ibid c346

<sup>34</sup> Ibid c356

<sup>35</sup> PBC 21 January 2010 c369

<sup>36</sup> Ibid

<sup>37</sup> Ibid c372

## **Appendix 1 – Members of the Public Bill Committee**

Chairmen: Mr Christopher Chope, Mr Eric Martlew

16 Members:

- Blackman-Woods, Dr Roberta (City of Durham)
- Drew, Mr David (Stroud)
- Griffith, Nia (Llanelli)
- Grogan, Mr John (Selby)
- Horwood, Martin (Cheltenham)
- Irranca-Davies, Huw (Ogmore)
- Kumar, Dr Ashok (Middlesbrough South and East Cleveland)
- McIntosh, Miss Anne (Vale of York)
- Morden, Jessica (Newport East)
- Reed, Mr Jamie (Copeland)
- Robertson, Mr Laurence (Tewkesbury)
- Smith, Chloe (Norwich North)
- Turner, Mr Andrew (Isle of Wight)
- Watkinson, Angela (Upminster)
- Williams, Mr Roger (Brecon and Radnorshire)
- Wright, David (Telford)