

## **National Assembly for Wales**

### **Draft Flood and Water Management Bill Research Paper**

May 2009

This paper provides background briefing on the Draft Flood and Water Management Bill, which is currently the subject of consultation.

Proposals introduced in the draft Bill are briefly described and include improved flood and coastal erosion risk management, improved reservoir safety, sustainable drainage and changes in the regimes of water industry regulation.

The policy position for Wales in relation to the Bill is described.

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## **National Assembly for Wales**

### **Draft Flood and Water Management Bill Research Paper**

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## Executive Summary

The *draft Flood and Water Management Bill* sets out the UK Government's proposals for improved management of flooding and more efficient management of water as pressures increase on industry and water resources.

The draft *Bill* implements legislative needs identified in three previous UK Government strategy documents (*Future Water*, *Making space for water* and the *Government's response to Sir Michael Pitt's Review of the Summer 2007 Floods*).

The draft *Bill* also aims to implement aspects of the Welsh Assembly Government's *Environment Strategy*, *New Approaches Programme* and the *Strategic Policy Position Statement on Water*.

The Bill has three main aims:

- To improve **security** for people and property from the risk of flooding and coastal erosion. Clear structures and responsibilities for managing risk are outlined. Proposals in the draft *Bill* will enhance leadership on flood risk and will lead to better preparation, prediction and warning systems for flooding. Risk-based strategies for reservoir safety are also outlined. Water supplies will be secured in case of water company failure or drought.
- **Service** for people will be improved through new methods of delivering major infrastructure projects, greater protection of water supplies during drought and improved complaint and enforcement measures.
- **Sustainability** will be enhanced by using sustainable drainage systems in new developments, protecting water resources and raising water quality, protecting communities and the environment from flooding and by helping people to adapt to future severe weather events.

The draft *Bill* intends to create new legislation which applies across Wales and England. The Welsh Assembly Government (Welsh government) supports the need for a new *Flood and Water Management Bill* to manage water resources to optimum effect and reduce the risks of flooding to Welsh communities. The annual damage cost of flooding in Wales is in the region of £70 million.

As it stands, the draft legislation applies to England only, but Welsh government proposals are outlined in the *Consultation Paper* that accompanies the draft *Bill*. The deadline for response to the consultation is 24 July 2009.

The summary impact statement for the draft *Bill* indicates that anticipated costs associated with the legislation would be paid back if only 4% of the benefits are realised, and the draft *Bill* is therefore well justified economically.



# Contents

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
	Purpose of the <i>draft Flood and Water Management Bill</i> .....	1
	Components of the <i>draft Flood and Water Management Bill</i> .....	2
	Territorial extent.....	4
<b>2</b>	<b>Welsh position – Flood and coastal erosion risk management.....</b>	<b>5</b>
	Current position in Wales.....	5
	Addressing the issues in Wales.....	6
<b>3</b>	<b>Welsh Position – Water.....</b>	<b>10</b>
	Current position in Wales.....	10
	Addressing the issues in Wales.....	10
<b>4</b>	<b>Impact Assessment.....</b>	<b>13</b>



# Draft Flood and Water Management Bill

## 1. Introduction

“We can’t stop rain falling from the sky, or make it rain during droughts, but we can be better prepared. That’s why we are publishing this draft bill, which will help us better protect the public by clearly defining the roles and responsibilities of everyone involved in flood risk management.”<sup>1</sup>

Hilary Benn, UK Secretary of State for the Environment, Food and Rural Affairs, April 2009.

The UK Government’s draft *Flood and Water Management Bill*<sup>1</sup> was published on 21 April 2009. Publishing this draft allows pre-legislative parliamentary scrutiny and public consultation. The deadline for responses is 24 July 2009. Current legislation relating to management of flooding and coastal erosion in England and Wales is largely outdated, having not fundamentally changed since the 1930s and 1940s. Numerous reports have highlighted the need for an updated management strategy for future flood and coastal erosion risks. For example, legislation does not currently reflect:

- the creation of the Environment Agency as the sole, national body tasked with flood defence from main rivers and the sea;
- climate change;
- flooding risks from sources other than the sea and rivers;
- the requirement to implement European legislation of flood risk management and the Water Framework Directive;
- a need to expand some features of Ofwat’s regulatory powers;
- a range of commitments from various water policy statements<sup>2</sup>.

Sir Michael Pitt’s review *Learning Lessons from the 2007 floods*<sup>3</sup> identified 92 recommendations for change, particularly highlighting the lack of legislation relating to surface run-off risk and the requirement for a risk-based approach to reservoir safety. The UK government committed to acting on all of these recommendations, although they do not all require legislation<sup>4</sup>.

### 1.1 Purpose of the draft Flood and Water Management Bill

The aim of the draft *Flood and Water Management Bill* is to produce a comprehensive, risk-based approach to managing the risk of flooding and coastal erosion. It will take into account all sources of flooding, and will allow improved management of water quality and resources. Climate change is expected to lead to an increase in the occurrence of severe weather events, and so the draft *Bill* is also designed to guide management and response to these future events. The draft *Bill* will create a more efficient basis for water management as pressures mount on industry and water resources.

<sup>1</sup> Defra, [Draft Flood and Water Management Bill](#), April 2009

<sup>2</sup> Defra, Flood and Water Management Bill, [How did we get here?](#) 21 April 2009, webpage [on 27 April 2009]

<sup>3</sup> Cabinet Office, [The Pitt Review: Learning lessons from the 2007 floods](#), 25 June 2008, webpage [on 27 April 2009]

<sup>4</sup> Defra, [The Government’s Response to Sir Michael Pitt’s Review of the Summer 2007 Floods](#), 17 December 2008, webpage [on 27 April 2009]

The draft *Bill* aims to deliver on three fronts, into which all the aims and provisions can be grouped:

1. **Security** – Enhanced security for people and property from the risk of flooding and coastal erosion through establishment of clearer structures and responsibilities for risk management. Planning for and prediction of floods will be improved. A modern risk based approach to reservoir safety will be implemented. Security of water supplies will be improved to cover essential supplies during drought or in case of water company failure.
2. **Service** – Improved service for people will result from revised methods of delivery of major infrastructure projects, protected water supplies in case of drought, and an overhaul of complaint and enforcement procedures.
3. **Sustainability** – The draft *Bill* aims to enable adaptation and preparation of communities to forthcoming severe weather events which are a probable consequence of climate change. Sustainable drainage systems will be encouraged in new developments. The environment, community and water resources will be better protected from flooding, and water quality enhanced<sup>5</sup>.

The draft *Bill* puts into practice the UK government's response to Sir Michael Pitt's Review *Learning Lessons from the 2007 Floods*<sup>6</sup>, the *Making space for water* programme<sup>7</sup>, and the Water Strategy for England, *Future Water*<sup>8</sup>. In addition, the draft *Bill* aims to implement flood and water considerations from the Welsh Assembly Government's (Welsh government) *Environment Strategy for Wales*<sup>9</sup>, *New Approaches Programme*<sup>10</sup> and the *Strategic Policy Position Statement on Water*<sup>11</sup>. The UK and Welsh government will both consider the recommendations of Martin Cave's *Review of Competition and Innovation in Water Markets*<sup>12</sup> and Anna Walker's *Review of Charging and Metering for Household Water and Sewerage Services*<sup>13</sup>. If changes to legislation are required as a consequence of these reviews, then they will be implemented through this *Bill*.

Legislation arising from the draft *Bill* will, in most policy areas, eventually apply across England and Wales. The Welsh government has been working with the Department for Environment, Food and Rural Affairs (Defra) to make sure that the *Bill* is appropriate for Wales.

## 1.2 Components of the draft Flood and Water Management Bill

The draft *Bill* has eight parts, and brief summaries of each are outlined below. The Welsh policy position with regard to provisions in the draft *Bill* is outlined in sections 2.2 and 3.2.

- **Part 1. Flood and coastal erosion management** – Overall responsibility for supervision and management of flood and coastal erosion in England is given to the Environment Agency. Responsibility for managing local flood risk in England is given to local authorities. Duties and

<sup>5</sup> Defra, [Draft Flood and Water Management Bill](#), April 2009, p 11

<sup>6</sup> Cabinet Office, [The Pitt Review: Learning lessons from the 2007 floods](#), 25 June 2008, webpage [on 27 April 2009]

<sup>7</sup> Defra, [Making space for water](#), February 2004, webpage [on 5 May 2009]

<sup>8</sup> Defra, [Future Water, The Government's Water Strategy for England](#), February 2008

<sup>9</sup> Welsh Assembly Government, [Environment Strategy for Wales](#), May 2006

<sup>10</sup> Welsh Assembly Government, [New Approaches Programme](#), July 2007, webpage [on 28 April 2009]

<sup>11</sup> Welsh Assembly Government, [Strategic Position Statement on Water](#), January 2009, webpage [on 28 April 2009]

<sup>12</sup> Professor Martin Cave, [Independent Review of Competition and Innovation in Water Markets](#): Final Report, April 2009

<sup>13</sup> Defra, Water Industry, [Independent Walker Review of Charging and Metering for Water and Sewerage services](#), 10 March 2009, webpage [on 28 April 2009]

powers are described for the Environment Agency, local authorities and other bodies, which will allow effective management of these risks. This section also sees the requirements of the EU Floods Directive implemented<sup>14</sup>.

- **Part 2. Risk management: designation of features** – This part allows operating authorities in England and Wales to designate structures or other natural/man-made features that might affect coastal erosion or flood risk. These designated structures cannot be removed or altered without consent of the authority<sup>15</sup>. This allows greater regulatory control of the many assets which form risk management systems, but which are not maintained or run by the authority<sup>16</sup>.
- **Part 3. Reservoirs** – A new regime for reservoir safety is outlined and provisions are made for management of flood risk from reservoirs<sup>17</sup>. This reflects the threat to human life that reservoir failure poses<sup>18</sup>. This part requires civil engineers to be appointed to supervise new reservoir builds and monitor high-risk reservoirs, and provides for reservoir managers to make flood contingency plans. Reservoirs will have to register with the Environment Agency<sup>19</sup>.
- **Part 4. Water Administration Regime** – This part replaces the *Water Industry Act 1991*. A special administration regime will become active should water and sewerage undertakers and water suppliers become insolvent or become unable to deliver statutory functions to such a degree that reassignment to a new owner is the only reasonable way to provide security for the interests of water and sewerage customers<sup>20</sup>.
- **Part 5. Sustainable drainage** – Standards are introduced regarding construction and operation of new rainwater drainage systems, which require approval from the relevant (usually local) authority<sup>21</sup>. Where the drainage system will affect more than one property, the approving body will adopt and maintain the system once complete<sup>22</sup>.
- **Part 6. Water industry regulation** – Changes are introduced to the regimes of the main water industry regulators. The Water Services Regulation Authority can make changes to all standard conditions of appointment of water and sewerage undertakers when a certain proportion of the undertakers consent to the change. In addition, the Water Services Regulation Authority is given more extensive powers to pursue contraventions that may require financial penalties, and to gather information on customer service contraventions. A charging mechanism is provided for the Drinking Water Inspectorate and a risk-based enforcement regime provided for the Environment Agency<sup>23</sup>.
- **Part 7. Miscellaneous** – Enabling powers are provided to allow the UK government and Welsh government to update the capacity of water companies to temporarily ban non-essential water

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<sup>14</sup> Defra, [Draft Flood and Water Management Bill](#), April 2009 p11

<sup>15</sup> *ibid*, p36

<sup>16</sup> Defra, [Draft Flood and Water Management Bill](#), [Explanatory Notes](#), April 2009, p2

<sup>17</sup> Defra, [Draft Flood and Water Management Bill](#), April 2009 p42

<sup>18</sup> Defra, [Draft Flood and Water Management Bill](#), [Explanatory Notes](#), April 2009, p2

<sup>19</sup> Defra, [Draft Flood and Water Management Bill](#), April 2009 p42

<sup>20</sup> *ibid*, p74

<sup>21</sup> *ibid*, p86

<sup>22</sup> Defra, [Draft Flood and Water Management Bill](#), [Explanatory Notes](#), April 2009, p3

<sup>23</sup> *ibid*, p3

use during water shortages. In addition, amendments are made to various powers and duties of the Environment Agency under the *Water Resources Act 1991*<sup>24</sup>.

- **Part 8. General** – Outlines various supplementary provisions which relate to the draft *Bill*<sup>25</sup>.

### 1.3 ***Territorial extent***

In many areas, the legislation outlined in the draft *Flood and Water Management Bill* introduces new policy in England only. However, where new powers are being introduced in England, it is intended that after consultation similar actions will also be introduced in Wales. In most cases it will be at the discretion of the Welsh Ministers as to how to implement provisions in Wales to best meet the needs of the Welsh people<sup>26</sup>.

To clarify the current position of the Welsh government with regard to the draft *Bill*, the *Consultation Paper* includes an Annex dedicated to the Welsh proposals<sup>27</sup>. The eight parts of the draft *Bill* (outlined above) are considered within two broader categories in this Annex, namely 'Flood and Coastal Erosion Risk Management' and 'Water'. The main proposals of the Welsh Ministers for eventual inclusion the *Flood and Water Management Bill*, as discussed in the *Consultation Paper*, are described in the next two sections.

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<sup>24</sup> Defra, *Draft Flood and Water Management Bill*, [Explanatory Notes](#), April 2009, p3

<sup>25</sup> *ibid*, p3

<sup>26</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p19

<sup>27</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p124-143

## 2. Welsh position - Flood and coastal erosion risk management

### 2.1 The current position in Wales

Flooding has a significant impact on Wales, annually causing approximately £70 million of damage. There are around 170,000 properties in Wales at risk of flooding with a total estimated value of £8-12 billion<sup>28</sup>. The Welsh government provides the most funding for dealing with the issues of flooding and coastal erosion, and this is delivered through the Environment Agency and the 22 local authorities. The current, annual budget for flood and coastal risk management in Wales is approximately £40 million<sup>29</sup>. Funding has increased 50% since 2002, and support of £30 million has recently been obtained from the European Structural Funds<sup>30</sup>.

Flooding is currently addressed using separate systems to coastal erosion in Wales, and is focused on an outdated defensive infrastructure approach. The lack of a combined approach to flood and coastal erosion can create gaps in service provision. As well as being outdated, a significant amount of the legislation relating to flooding and coastal erosion was written prior to devolution. In addition, the legislation involves a large number of items and involves a significant number of organisations. Bearing this in mind, and remembering that new challenges lie ahead, such as climate change, the Welsh government believe there is a clear need to revise the existing legislative framework<sup>31</sup>.

Several objectives have been outlined by the Welsh government to help create a management system covering all aspects of the risks and consequences of flooding and coastal erosion. This includes many of the issues identified in Sir Michael Pitt's Review *Learning Lessons from the 2007 Floods*<sup>32</sup>. The objectives are as follows:

- to renew the focus of legislation, to move beyond the current limitations;
- to establish a single overarching risk management approach;
- to establish the case for the allocation of an oversight role;
- to ensure a comprehensive understanding of local risk is in place;
- to allocate and clarify the responsibilities of the operating authorities;
- to close the gaps between the responsibilities of the operating authorities; and
- to establish a clearly understood risk management planning and delivery framework, in line with Welsh government priorities on sustainable development<sup>33</sup>.

Proposals outlined in the *Consultation Paper*<sup>34</sup> relating to these objectives will be discussed in the following section.

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<sup>28</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p124

<sup>29</sup> *ibid*, p136

<sup>30</sup> Welsh Assembly Government, Topics, [Convergence Programme](#), webpage [on 01 May 2009]

<sup>31</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p124

<sup>32</sup> Cabinet Office, [The Pitt Review: Learning lessons from the 2007 floods](#), 25 June 2008, webpage [on 27 April 2009]

<sup>33</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p125

## 2.2 Addressing the issues in Wales

### *Focus of legislation*

The focus of legislation must be to implement an effective and overarching flood and coastal risk management system in Wales. This should protect people, properties, businesses and the environment by prioritising investment, resources and action. Risks from numerous sources, including groundwater and surface water, will be incorporated into the legislation.

Initiation of a broad array of measures is suggested to help achieve these aims. These include: building and maintaining hard defences; using sustainable drainage systems (SUDS)<sup>35</sup>; making use of natural environments such as salt marshes; incorporating flooding and coastal erosion into planning decisions; designing buildings for improved resilience; identifying areas for water storage; increasing planning and preparedness for events; engaging with communities on flood issues; improving warning systems; and improving event response.

Welsh Ministers believe that the measures outlined in the draft *Bill* provide the desired holistic flood and coastal erosion risk management system. Presently, provisions do not create new policy in relation to Wales, but they will apply equally in Wales as in England. Welsh Ministers will be given relevant powers in the final *Bill*<sup>36</sup>.

### *Division of responsibilities*

It is proposed that the Welsh government will have the following responsibilities with regard to flood and coastal erosion risk management<sup>37</sup>:

- determine Welsh policy in relation to flood and coastal erosion;
- prepare guidance for delivery of flood and coastal erosion risk management policy;
- allocate responsibilities to individual operating authorities across Wales
- allocate funding in line with identified priorities
- promote public awareness of flood risk; and
- promote and facilitate implementation of the full range of risk management measures.

The Environment Agency's (EA) current supervisory duty on flood defence in Wales will be replaced by an enhanced oversight role relating to all flood and coastal erosion management issues (as in part 1 of the draft *Bill*). The EA will implement and monitor the Welsh government's strategic policies on flood and coastal erosion risk management. The policy position in Wales outlines the following more specific roles for the EA<sup>38</sup>:

- develop the methods and tools required to assess all risks;
- develop risk modelling and mapping processes;
- develop forecasting and warning systems for all flood risks;
- collect, store and share technical data relating to flood and coastal erosion risk management;

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<sup>34</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p125

<sup>35</sup> Sustainable Drainage Systems (SUDS) help deal with the problems of excess water by mimicking natural drainage patterns.

<sup>36</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p126

<sup>37</sup> *ibid*, p129

<sup>38</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p130

- establish and issue guidance on the format and content of risk management plans;
- co-ordinate risk management plans produced for all operating authorities in line with requirements of the EU Floods Directive;
- monitor and report compliance with risk management plans;
- provide technical advice and support to other operating authorities;
- undertake the regulator role for reservoir safety; and
- report to Welsh government on flood and coastal risk and its management.

Welsh Ministers propose the following responsibilities for the local authorities in Wales<sup>39</sup>:

- assess and manage flood risks from ordinary watercourses
- assess and manage coastal erosion risks;
- collect, store and share technical data relating to flood and coastal erosion risk management;
- lead on all matters relating to flood risk;
- prepare flood risk maps for all local flood risk;
- communicate the risk of flooding and coastal erosion to local communities;
- encourage the development of community resilience;
- promote resilience in the built environment via the planning process.

Finally, it is proposed that Internal Drainage Boards (IDBs)<sup>40</sup> in Wales should have responsibility for:

- assessing and managing local drainage issues and flood risks from ordinary watercourses;
- undertaking works to assist local authorities and the EA as required; and
- collecting, storing and sharing technical data related to flood and coastal erosion risk management.

A number of other changes to IDBs for both England and Wales are proposed in the draft *Bill Consultation Paper* and include: transferring responsibility to consent to works on ordinary watercourses to local authorities, allowing IDBs to form consortia or private companies, and to give county and unitary local authorities supervision of IDBs rather than the EA<sup>41</sup>.

### *Surface Water Management*

No single authority currently has responsibility for surface water in Wales. Sir Michael Pitt's Review suggested that local authorities should coordinate surface run-off management and improve local flood risk understanding through Local Surface Water Management Plans<sup>42</sup>. Provisions are made to give local authorities responsibility for local flood risk in Part 1 of the draft *Bill*. Welsh Ministers are inviting consultation on the issue of how best to manage surface run-off and local flood risk in Wales<sup>43</sup>.

<sup>39</sup> *ibid*, p129

<sup>40</sup> Internal Drainage Boards (IDBs) are responsible for land drainage in areas in areas of special drainage need. They are independent statutory bodies.

<sup>41</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p72

<sup>42</sup> Cabinet Office, *The Pitt Review: Learning lessons from the 2007 floods*, 25 June 2008, p xviii

<sup>43</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p128

## *Flood Risk Management Wales*

Flood Risk Management Wales is an executive committee of the EA, and is the Regional Flood Defence Committee (RFDC) for Wales. Their role is to oversee all flood defence functions of the EA in Wales. However, with the proposed changes in the roles of the Welsh government and the EA, as described above, the remit of Flood Risk Management Wales requires revision. Expansion would be required to fit with the scope of the enhanced oversight role of the EA, although this is likely to be more time consuming for the committee and might result in delays in processing work. Defra are also proposing that English RFDC's extend their functions to include coastal erosion and flooding from the sea (Part 1 of the draft *Bill*). Consultation on this issue for Wales is invited.

## *EU Flood Directive*

The EU *Floods Directive*<sup>44</sup> requires member States to review historic flooding and its potential future impact, to map the risk and produce plans to manage the risk. The first required output is a Preliminary Flood Risk Assessment (PFRA) by the 22 December 2011<sup>45</sup>. The draft *Bill* proposes that the EA should be the competent authority for implementing the Directive, taking control of national flood risk matters, with support from local authorities in respect of local flood risk mapping and planning. Welsh Ministers agree with this approach and propose that provisions relating to competent authority in Wales reflect those in England<sup>46</sup>.

## *Sustainable Drainage Systems (SUDs)*

Welsh Ministers agree with proposals in the draft *Bill* for sustainable drainage (Part 5), these include:

- development of National Standards for how surface water drainage systems must be constructed and for how they operate. These reflect the need to prevent flood damage, enhance water quality, protect the environment and protect health and safety;
- formation of an approval system for surface water drainage systems of most new developments;
- requirement for unitary and county authorities to adopt and maintain new SUDs which affect drainage of other properties; and
- requirement for developers to show that they have achieved national standards for the application of SUDs techniques before connecting any residual surface water to public sewers.

Welsh Ministers are consulting on where responsibility for adoption of SUDs in Wales should lie<sup>47</sup>.

## *Reservoir safety*

Welsh Ministers concur with the provisions in the draft *Bill* relating to reservoir safety (Part 3). The main provisions include:

- all reservoirs with a minimum volume capacity above 10,000 cubic metres to be included on an EA register;

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<sup>44</sup> EU [Directive on the Assessment and Management of Flood Risks](#), 2007/60/EC, 23 October 2007

<sup>45</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p55

<sup>46</sup> *ibid*, p133

<sup>47</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p137

- EA to classify relevant reservoirs according to whether they pose a threat to human life, or meet technical conditions which mean that the risk is negligible;
- specification of duties for reservoir managers; and
- specification of duties for supervising engineers<sup>48</sup>.

It is intended that the provisions will apply in Wales with relevant functions being given to Welsh Ministers.

#### *Consenting and enforcement*

Subject to the consultation, Welsh Ministers would like the EA to have responsibility for consenting to works relating to the sea, main river flooding and coastal erosion, along with enforcement of the consent conditions. It is proposed that county and unitary authorities have responsibility for consenting to work performed on ordinary water courses and for enforcing related consent conditions<sup>49</sup>.

#### *Third Party Assets*

Welsh Ministers agree with draft *Bill* provisions (Part 2) that allow the EA, local authorities and IDBs to formally designate assets that are important for flood and coastal erosion risk management and which are owned, operated or maintained by third parties. It is intended that the provisions will apply to Wales with relevant functions being given to Welsh Ministers<sup>50</sup>.

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<sup>48</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p66

<sup>49</sup> *ibid*, p138

<sup>50</sup> *ibid*, p62

### **3. Welsh Position - Water**

#### **3.1 *The current position in Wales***

The *Strategic Water Policy Position Statement*<sup>51</sup> outlines the current water policy for the Welsh government for areas that have changed or have developed following the publication of the *Environment Strategy for Wales*<sup>52</sup> in 2006. Water legislation is considerably more up to date than legislation on flood risk management. However, there are numerous policy priorities that need to be addressed through primary legislation. It is intended that the draft *Flood and Water Management Bill* addresses these issues<sup>53</sup>.

For some policy areas Welsh Ministers have responsibility for provisions relating to Wales, while in other areas they are responsible for the area covered by 'water and sewerage undertakers wholly or mainly in Wales'. Water policy also entails an aspect of cross-border cooperation because actions often require a catchment-wide approach, and river catchments are clearly not confined to convenient geographical borders.

The main water issues addressed by the draft Bill are discussed in the following section along with the policy position in Wales.

#### **3.2 *Addressing the issues in Wales***

##### *Hosepipe bans*

Part 7 of the draft *Flood and Water Management Bill* allows Welsh Ministers to extend water company hosepipe ban powers<sup>54</sup>. A wider range of discretionary uses can be banned and action can therefore be taken to conserve water earlier in the drought period.

##### *Environmental permitting*

Part 6 of the draft *Bill* will allow Welsh Ministers to make regulations that will allow licensing for water abstraction and impoundment to be combined into a single environmental permitting system<sup>55</sup>.

##### *Minor amendments to the Water Resources Act 1991 and the Water Industry Act 1991*

Amendments to section 172 of the *Water Resources Act 1991*<sup>56</sup> are proposed in Part 7 of the draft *Bill*, to provide power of entry to the EA. This will allow monitoring equipment (e.g. rainfall gauges and gauging stations) to be installed and maintained, or for experimental borings to be conducted, if these enable statutory functions to be effectively carried out<sup>57</sup>.

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<sup>51</sup> Welsh Assembly Government, [Strategic Position Statement on Water](#), January 2009, webpage [on 28 April 2009]

<sup>52</sup> Welsh Assembly Government, [Environment Strategy for Wales](#), May 2006

<sup>53</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), April 2009, p139

<sup>54</sup> Defra, [Draft Flood and Water Management Bill](#), p 100

<sup>55</sup> *ibid*, p 95

<sup>56</sup> Office of Public Sector Information, [Water Resources Act 1991](#), webpage [on 5 May 2009]

<sup>57</sup> Defra, [Draft Flood and Water Management Bill](#), p 103

A further change relates to charges for water abstraction for irrigation in section 127 of the *Water Resources Act 1991*. Non-spray irrigators previously did not have to pay charges, but now will be treated in the same way as spray irrigators. Land restrictions associated with these agreements have been removed<sup>58</sup>.

The EA will no longer have to maintain a register of waterworks (Section 195 of the *Water Resources Act 1991*) as this information is obtainable through other means. Finally, water abstracted from surface water (e.g. streams or rivers) is prohibited from running to waste<sup>59</sup> (amendment to section 71 of the *Water Industry Act 1991*<sup>60</sup>).

All of these amendments apply equally in Wales and England.

### *Water Administration Regime*

Part 4 of the draft Bill brings the special administration regime of the *Water Industry Act 1991* up to date, in line with modern insolvency practice. The regime is used when financial difficulties occur for water undertakers, sewerage undertakers or licensed water suppliers that hold a combined license and own a strategic water supply. The water administrator is given objectives to instigate a rescue plan or to transfer the failing company to one or more new owners. The administrator will also run the company until it is out of administration<sup>61</sup>. Welsh Ministers support this approach and intend similar provisions in the final *Bill* for water and sewerage undertakers wholly or mainly in Wales<sup>62</sup>.

### *Drinking Water Inspectorate Recovery of Charges*

The Drinking Water Inspectorate (DWI) ensures that water companies meet their regulatory requirements and support policy programmes. Their roles include inspection and assessment of water companies; investigation of water quality events and incidents; guidance on drinking water quality regulations; and providing scientific and technical advice to UK Ministers, Defra and the Welsh government. Part 6 of the draft *Bill* introduces a new power within the *Water Industry Act 1991* that will allow the drinking water inspectorate to recover costs of their regulatory functions with a charging scheme. Water companies and licensed water suppliers would have to pay the charges to the DWI, and these costs can be included in customer water bills. It is intended that these provisions apply in relation to Wales, and that Welsh Ministers will be given the relevant functions<sup>63</sup>.

### *Mandatory build standard for sewers / Misconnections*

New builds of sewers and lateral drains are required to meet standards approved by the Secretary of State or Welsh Ministers; this will allow automatic connection to the public sewerage system to be implemented<sup>64</sup> by water and sewerage companies. The proposals are outlined in Part 6 of the draft

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<sup>58</sup> Defra, [Draft Flood and Water Management Bill](#), p 102

<sup>59</sup> *ibid*, p 103

<sup>60</sup> Office of Public Sector Information, [Water Industry Act 1991](#), webpage [on 5 May 2009]

<sup>61</sup> Defra, *Draft Flood and Water Management Bill*, [Explanatory Notes](#), p 3

<sup>62</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Paper](#), p141

<sup>63</sup> *ibid*, p102-105

<sup>64</sup> Defra, *Draft Flood and Water Management Bill*, [Consultation Document](#), p 105

*Bill*<sup>65</sup>. In addition, to decrease pollution of water that results from misconnected sewers, sewerage companies will have similar powers to local authorities to repair misconnections<sup>66</sup>.

### *Large infrastructure projects*

It is proposed in part 6 of the draft *Bill* that a specialist third party infrastructure provider company will have responsibility for funding and implementing large infrastructure projects in the water sector in England. It is hoped that this will produce cost-effective funding and delivery solutions for large scale projects. The proposals are only in the initial development stage and the application of these proposals will evolve through the consultation. Welsh Ministers will have responsibility for large infrastructure projects in the water sector in Wales<sup>67</sup>.

### *Complaint handling*

Part 6 of the draft *Bill* will implement changes regarding the complaints procedure, so that complaints against water companies are given to the most appropriate organisation<sup>68</sup>. For example, the Consumer Council for Water will deal with consumer complaints against water undertakers and will only pass the complaint to Ofwat (the regulator) if the consumer is unsatisfied with the outcome<sup>69</sup>. It is intended that the provisions apply in Wales as in England.

### *Securing compliance*

Ofwat's powers of enforcement are increased in Part 6 of the draft *Bill* and this will help protect the interests of the consumer to a greater degree. Ofwat will be able to obtain more information from companies that are not achieving any standard of performance, as described in the Guaranteed Standards Scheme. The time limit for which Ofwat can apply penalties is also increased from one to five years. The provisions will apply equally in Wales and England<sup>70</sup>.

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<sup>65</sup> Defra, [Draft Flood and Water Management Bill](#), p 91

<sup>66</sup> Defra, [Draft Flood and Water Management Bill](#), [Consultation Document](#), p 106

<sup>67</sup> *ibid*, p 142

<sup>68</sup> Defra, [Draft Flood and Water Management Bill](#), p 98

<sup>69</sup> Defra, [Draft Flood and Water Management Bill](#), [Explanatory Notes](#), p 48

<sup>70</sup> Defra, [Draft Flood and Water Management Bill](#), [Consultation Document](#), p 113

#### 4. Impact Assessment

By summing up the annual cost of each policy included in the *draft Flood and Water Management Bill* a total annual cost of £105 million for England and Wales is produced. This figure should, however, be treated with caution as one-off and transitional costs are excluded and not all costs have been monetised.

Total annual benefits of £282 million have been calculated, with largest benefits occurring in local flood risk management measures (£172 million per year). Again, these figures should be treated with caution as only some benefits are currently monetised and annual benefits are projected to rise over different time periods for each proposed policy. A total net present value of these policies is given of over £5 billion.

The summary impact assessment suggests that there is reason for confidence in the cost-benefit case, although there is uncertainty over the scale of the net benefit. The policies outlined should contribute to delivery of a number of benefits relating to flood risk management and achieving ecological objectives for water bodies. It is suggested that the draft *Bill* policies would pay back anticipated costs even if only 4% of the benefits were delivered. However, the Government expects a far greater percentage of benefits to result, and therefore believe that the draft *Bill* is very well justified economically<sup>71</sup>.

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<sup>71</sup> Defra, *Draft Flood and Water Management Bill*, [Summary Impact Assessment](#), p 10-11