

Title: Overview and Scrutiny of Flood Risk Management Authorities Lead department or agency: DEFRA Other departments or agencies: CLG	Impact Assessment (IA)
	IA No: DEFRA1188
	Date: 14/12/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Maya de Souza GTN 238 6536	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Following the Summer 2007 floods, which had huge costs, a comprehensive review of the floods governance system was carried out by Sir Michael Pitt. This review concluded that there was a fragmentation of responsibility amongst different organizations. It therefore recommended that local authorities were given a lead co-ordinating role. The Pitt Review also found that external authorities with a flood risk role may not fully engage and share information. It made recommendations as to the role of oversight and scrutiny committees of lead local authorities in ensuring engagement. It concluded that scrutiny improves collaborative working and leads to more effective flood risk management. This is the rationale for implementing the relevant provisions of the Flood and Water Management Act.

What are the policy objectives and the intended effects?

The objectives are greater accountability and transparency of the risk management authorities, as well as strengthening of collaborative working, to improve flood risk management across the country. This would involve requiring lead local authority's to invest their overview and scrutiny committees with the powers to scrutinize the activity of other risk management authorities ("RMAs") under the Flood and Water Management Act ("the Act"). This should provide an added mechanism for bringing the work of these authorities together and to hold the different risk management authorities to account. It is intended to seek to keep costs down by using scrutiny arrangements which local authorities are already familiar with.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing - scrutiny provisions are not commenced.
 Option 2: Commence Schedule 2, paragraph 54, and provide for the procedure to reflect current provisions in LGA 2000.
 Option 3: Commence Schedule 2, paragraph 54 and provide for enhanced scrutiny powers namely a power to compel RMAs to attend before scrutiny committees.
 Our preferred option is option 3. Though option 2 may seem like a lighter touch way of achieving the same objectives, it carries the risk, which local authorities are concerned about, that risk management authorities do not attend scrutiny committees. That would hamper the capacity of local authorities to scrutinise and hold them to account weakening the institutional arrangements on flood risk. And if the risk management authorities would attend in any event, there is no harm or additional cost from requiring them to do so.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 04/2016
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Do nothing - scrutiny provisions are not commenced

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

No costs have been monetised but, in practice, an opportunity to reduce the £2bn of annual average damage from flooding (all types, including surface water) through greater transparency and accountability of the relevant institutions would not be realised.

Other key non-monetised costs by 'main affected groups'

There would be a continuing lack of incentive for authorities to manage flood risk effectively and in a co-ordinated manner, with knock-on costs in terms of reduced efficiency, poor planning and a weaker than necessary response to flood incidents.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	Not applicable				
What is the annual change in enforcement cost (£m)?	Not applicable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	18
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	18
Small firms Small Firms Impact Test guidance	No	18
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	18
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	18
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	19
Human rights Human Rights Impact Test guidance	No	19
Justice system Justice Impact Test guidance	No	19
Rural proofing Rural Proofing Impact Test guidance	No	19
Sustainable development Sustainable Development Impact Test guidance	No	19

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Commence Schedule 2, paragraph 54, and provide for the procedure to reflect current provisions in LGA 2000.

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: >0	High: > 0	Best Estimate: > 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1.1	9
High	0	4.3	37
Best Estimate		2.7	23

Description and scale of key monetised costs by 'main affected groups'

Costs to Lead Local Flood Authorities and Risk Management Authorities of extra scrutiny reviews. Note best estimate is the mid-point between low and high costs.

Of these costs, average annual cost to business (9 Water and Sewerage Companies) is estimated at £0.015m-0.060m (10-year present value cost is £0.13-0.52m), though this would be expected to be offset by flood damage reduction to other businesses (see benefits below).

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Benefits cannot be directly monetised, not least because the exact nature and extent of take-up of provisions is discretionary and will vary from place to place. This makes modelling at the national level very difficult. In principle however, the benefit will be reduced flood damage to people, property and the environment. See below.

Other key non-monetised benefits by 'main affected groups'

Reduction of flood damage and other impacts of flooding (risk to life, health, stress) associated with scrutiny leading to more effective flood management. Although this cannot be monetised directly (see above), total annual average flood damage at the national level is estimated at around £2bn per annum. If this is reduced by just 0.2% (£4.4m pa) then discounted benefits will exceed discounted costs over a ten-year period (even for the "high" cost scenario). Hence, we expect a positive NPV.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Cost estimates are taken from CLG impact assessment of the Local Authorities (Overview and Scrutiny) Bill published in January 2010. Water company costs are assumed equal to CLG's assessment of average costs to "Private businesses" from scrutiny more generally. It is assumed that LLFAs will instigate on average 0.5-2 flood risk related reviews per annum. It is not assumed in calculating these costs that risk management authorities would attend these meetings where there was no power to require them to do so, though in practice this is likely to happen in many cases.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	Not applicable				
What is the annual change in enforcement cost (£m)?	Not applicable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large 0.004
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

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Environmental impacts		
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Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	18
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	19
Human rights Human Rights Impact Test guidance	No	19
Justice system Justice Impact Test guidance	No	19
Rural proofing Rural Proofing Impact Test guidance	No	19
Sustainable development Sustainable Development Impact Test guidance	No	19

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3

Description:

Option 3: Commence Schedule 2, paragraph 54 provide for enhanced scrutiny powers

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: > 0	High: > 0	Best Estimate: > 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1.4	12
High		5.7	49
Best Estimate		3.6	31

Description and scale of key monetised costs by 'main affected groups'

Costs to Lead Local Flood Authorities and Risk Management Authorities of extra scrutiny reviews. Note best estimate is the mid-point between low and high costs.

Of these costs, average annual cost to business (9 Water and Sewerage Companies) is estimated at £0.09m-0.36m (10-year present value cost is £0.8-3.1m), though this would be expected to be offset by flood damage reduction to other businesses (see benefits below).

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Benefits cannot be directly monetised, not least because the exact nature and extent of take-up of provisions is discretionary and will vary from place to place. This makes modelling at the national level very difficult. In principle however, the benefit will be reduced flood damage to people, property and the environment. See below.

Other key non-monetised benefits by 'main affected groups'

Reduction of flood damage and other impacts of flooding (risk to life, health, stress) through enhanced accountability. Although this cannot be monetised directly (see above), total annual average flood damage at the national level estimated at around £2bn per annum. If reduced to just 0.3% (£5.7m pa) then discounted benefits exceed discounted costs over a ten-year period (even for "high" cost scenario). Avoids risks caused by failure to co-operate by authorities. Hence, we expect positive NPV.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Cost estimates are taken from CLG impact assessment of the Local Authorities (Overview and Scrutiny) Bill published in January 2010. Water company costs are assumed equal to CLG's assessment of average costs to "Private businesses" from scrutiny more generally. It is assumed that LLFAs will instigate on average 0.5-2 flood risk related reviews per annum. It is likely that under option 2, risk management authorities will in many cases attend scrutiny review meetings in any event but in terms of costs, we have assumed that they will not. In practice, therefore the costs of options 2 and 3 are likely to be much closer than these figures suggest. It is also assumed that scrutiny is more effective as a result of attendance at meetings. This reflects the views of local authorities.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

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From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	Not applicable				
What is the annual change in enforcement cost (£m)?	Not applicable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large 0.025
Are any of these organisations exempt?	No	No	No	No	No

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Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Flood and Water Management Act 2010
2	Impact Assessment of Local Authorities (Overview and Scrutiny) Bill, CLG, 25 January 2010
3	Learning the Lessons from the 2007 floods: An independent review by Sir Michael Pitt.
4	

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
Total annual costs	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6	3.6
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Background

Sir Michael Pitt's report on the Summer 2007 floods (that cost over £3bn in terms of insurance costs alone), following on from his comprehensive review of the lessons learned, made recommendations as to what might be done differently in the future. The review made findings about the fragmentation of responsibility at a local level. It recommended, in order to resolve this, a clearly defined lead local authority role in relation to local flood risk management underpinned by a wider duty to co-operate. The report also made recommendations for an enhanced role for overview and scrutiny committees of these lead local flood authorities so that they assist in holding the range of authorities involved in local flood management to account (recommendation 90, p.407- 411).

The Pitt Review's recommendations on scrutiny were partly based on assessment of health scrutiny following the Health and Social Care Act 2001. The Pitt Review concluded that these scrutiny committees helped provide democratic accountability on health matters. It pointed to some specific benefits which included collaboration (bringing people together to solve common problems), campaigning (tackling service design and configuration) and challenge (holding decision makers to account). It drew on the Centre for Public Scrutiny's report (June 2007) which found that scrutiny had led to: an improved level of debate about health, collaboration amongst service providers, changes in plans and resource allocation, and improved performance.

The review also highlighted the benefits in those Councils which had held scrutiny reviews such as Gloucestershire (p.408 and paragraph 30.33, p.410) . The opportunity for lay persons to ask questions was found to have acted as a reality check on experts. The Gloucestershire scrutiny review led to recommendations and a commitment by organisations to action. In addition, the Hull Independent Review concluded that effective information exchange coupled with local scrutiny would have provided a better understanding of risk and development of contingency plans. It found that "the people of Hull would undoubtedly have benefited".

The Flood and Water Management Act 2010 Schedule 2 paragraph 54, if implemented, would extend current scrutiny provisions, of lead local flood authorities in England, in the manner recommended by the Pitt Review. It inserts a new section 21F into the Local Government Act 2000. This requires upper tier local authorities to invest overview and scrutiny committees with the powers to scrutinise the flood risk management functions of Flood Risk Management Authorities (RMAs). These are the Environment Agency, Internal Drainage Boards, district councils and county/unitary councils, highways authorities and water and sewerage companies.

These powers would supplement, in a procedurally efficient manner, existing scrutiny powers under the Local Government Act 2000 but only in relation to unitary authorities and county councils, not district councils. Existing scrutiny powers are confined to existing partner authorities which include the Environment Agency and local authorities but not the other RMAs. In addition, scrutiny (other than in respect of specific areas like health) is limited to matters that relate to Local Improvement Targets under Local Area Agreements.

This IA relates to the commencement of the Flood and Water Management Act 2010 Schedule 2 paragraph 54 as well as regulations that can be made under it.

Further issues for consideration

In relation to implementation of these scrutiny provisions, it is also necessary to decide upon:

the most appropriate rules relating to: s.21F(4) of the FWMA 2010 –

- (i) Procedure, (ii) notices, (iii) exemptions, (iv) requirement to attend to give information orally, (v) the nature of information and responses that may be required, and (vi) publication.

The options set out below relate to different variants of these rules.

Options under Consideration

If we are to ensure a set of procedural rules that are consistent with existing scrutiny provisions in relation to health authorities or other partners, there are essentially two approaches that can be taken: the approach under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2006; or the approach under the NHS Act 2007.

Option 1, no additional scrutiny, is used as a baseline measure against which to compare options 2 and 3, which relate to different procedures. Our assessment of the costs and benefits is set out below with quantified cost estimates in Annex A.

Our policy objectives are to:

- Increase the accountability and transparency of the RMAs to improve their performance in respect of flood risk management
- Keep costs for business and authorities to a proportionate level.

Option 1: Current Position (Do Nothing) – Scrutiny Provisions are not commenced

All principal councils in England, whether operating executive arrangements or not, are required under the Local Government Act 2000, to have at least one overview and scrutiny committee. Membership of committees dealing with external matters can also include members of the council's executive.

Scrutiny committees in their current form have powers to require members of the Executive, and officers of the local authority to attend before it, powers to invite other persons such as experts (without obligation) to attend. They also have powers to make reports and recommendations, require LA/ executives to have regards to such reports, and to respond and publish their response to such reports. These committees also have formal scrutiny powers in relation to partner organisations in relation to Local Area Agreement targets, but no power to compel persons from these bodies to attend meetings. They have stronger powers in relation to the NHS and other health authorities which allow them to require attendance at scrutiny meetings.

If we were to do nothing and not commence section 21F, Councils would retain their existing powers. However, in respect to scrutiny of wider flood risk management issues (outside Local Area Agreement targets⁴) and in relation to Internal Drainage Boards and water companies, which are not partner authorities, they would have no powers. They would remain reliant on voluntary co-operation of external bodies (RMA's), and these bodies would not have a duty and would have a limited incentive to participate in scrutiny reviews. Not extending scrutiny powers would hamper necessary improvements in local flood risk management arrangements and would not deliver the Pitt Review recommendations. We have consulted with local authorities, RMAs and other bodies about extending scrutiny powers to cover RMAs. There was strong support for this in the 2009 consultation with only two water companies and a District Council dissenting. In a more recent consultation of representative bodies, there was no suggestion that the provisions should not be commenced.

Options 2 & 3: Implement section 21F – Flood Risk Management Scrutiny

⁴ Government commitment to remove LAAs. The ending of LAAs has now been announced.
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101013/wmstext/101013m0001.htm>

Implementing the new section 21F does two things: (a) it allows lead local authority scrutiny committees to scrutinise existing partner authorities but going beyond these LAA targets, extending to flood and coastal erosion risk management; (b) it allows them to scrutinise additional bodies – Internal Drainage Boards and water companies – in relation to their flood and coastal erosion risk management functions.

In terms of the detailed procedure, there are 2 current models:

- (1) the Local Government Act 2000 (LGA) amended by the Local Government Public Involvement in Health Act 2007 (**option 2**); and
- (2) the National Health Services Act 2006 (**option 3**)

Option 2: Commence Schedule 2, paragraph 54, and provide for the procedure to reflect current provisions in LGA 2000.

If we were to adopt this model, the procedure that currently applies in relation to partners would apply in relation to the RMAs. The key elements of procedure are as follows:

Attend scrutiny committee hearings

A scrutiny committee of a local authority or a sub-committee of such a committee would be able to request members of the executive and officers of the authority to attend before it to answer questions, but there would be **no duty to attend on the part of the Risk Management Authority**.

Make and Publish reports for the attention of the executive/authority

Committee reports would be made available to the Council's Executive/the Authority and also be copied to the RMA where they are being required to have regard to its recommendation. Where the scrutiny committee makes its report/recommendation publicly available so must the RMA have to do so in its response.

Formally respond to reports and recommendations

The scrutiny committee would be able to in writing require the RMA to consider the report/recommendation. The RMA would have to respond indicating what action if any, they intend to take, within 2 months of the date on which the report was first received.

Provide information to the scrutiny committees

Scrutiny committees would be able to request information from RMAs who would be required to provide relevant information. There would be no exception for confidentiality. However, the scrutiny committee would not be able to publish information which is confidential because: (a) it is information furnished to the council by a Government department upon terms which forbid the disclosure of the information to the public; and (b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

Option 3: Commence Schedule 2, paragraph 54 and provide for enhanced scrutiny powers (as under NHS Act 2006) namely a power to compel RMAs to attend before scrutiny committees.

If this model were to be applied, the scrutiny committee would have some additional powers. The main additional power is to be able to require the RMAs to attend meetings. The relevant differences are as follows:

Attend scrutiny committee meetings

The scrutiny committee would have the power to require an officer of the RMA to attend before the committee to answer questions, where reasonable notice has been given.

Make and Publish reports for the attention of these bodies

The scrutiny committee would be able to make and publish reports for the attention of the RMAs and its Executive/the Authority on any matter falling within scope of the Act. Where a committee makes reports and recommendations it shall include an explanation of the matter reviewed/scrutinised, summary of evidence considered, a list of participants involved in scrutiny, as well as any recommendations on the matter. So there are some additional requirements here on the scrutiny committee over and above what is in the LGA 2000.

Formally respond to reports and recommendations

The scrutiny committee may request a response from the RMA to whom it has made a report or recommendation in writing, and they must respond within 28 days. So this is a shorter time period than in relation to option 2.

Provide information to the scrutiny committees

Risk Management authorities would have to provide information, provided request is within scope and not confidential, to the scrutiny committee where the request is reasonable.

Lead local authorities and their representative bodies during the Flood and Water Management Bill consultation stressed the importance of having the power to require attendance by RMAs, as there have been issues as to co-operation in the past. Though they expect to be able to obtain their co-operation without having to compel reluctant RMAs to attend, they recognise the importance of being able to compel attendance if necessary. The incentives to co-operate are weak without such a power, because if recommendations are made without the participation of a RMA they only need to have regard to those recommendations.

The Pitt Review (paragraph 30.26, p.409) concluded that it was important for scrutiny committees to be able to require relevant persons to attend. It stated that this aids full engagement by local authority members and has the benefit of a greater impetus towards ensuring that risk-based actions actually take place. It also concluded that the additional pressures on RMAs were outweighed by the benefits of scrutiny (though these were finely balanced) (paragraph 30.31, p.410).

Costs and Benefits

Option 1 – Do nothing – no additional provision for flood risk scrutiny

Under this option, scrutiny committees would, as they can at the moment, have the powers to scrutinise their own executive about flood risk management and partner authorities insofar as this related to the local area agreement.

As part of the impact assessment relating to the Local Authorities (Overview and Scrutiny Bill) published in January 2010, CLG estimated the costs of scrutiny reviews in total to be about £32million per annum, based on a survey of local authorities. They calculated that there were about 2,400 reviews a year and the cost of a review was about £14, 000 in total. This cost included all relevant meetings and the work of officers to support them.

The benefits relate to backbenchers being able to scrutinise their executives and officers, and also assist in holding partner authorities to account. They were an important development following the transition to having Executive-run local authorities.

Option 2 – Provision for Scrutiny of RMAs but Without a Power to Require Attendance

This is likely to mean that there are some additional scrutiny reviews or some additional time spent on flood risk management. Considering the constraints that local authorities are under, we are not anticipating that a large number of additional meetings will be held. Assuming on average between ½ and 2 additional meetings per year for a typical LLFA (upper tier local authority), the additional costs in a typical LLFA area could be between about £7,000 and £29,000 a year (see Annex 2, Table 2). Assuming all LLFAs would face these costs, in total this would mean between £1.1 million and £4.3 million of additional costs across the country. Most of these costs would fall on public authorities, but there could be a modest cost of perhaps between £15,000 and £60,000 spread across the nine English water and sewerage companies, which would be classified as Costs to Business.

The benefits of this option over and above option 1 are essentially that local flood authority scrutiny committees will be able to seek reports from all the risk management authorities on matters going beyond Local Area Agreements. This could include progress and compliance with the local flood risk strategy, for example. They would be able to put questions to those authorities and make recommendations that the RMAs would have to have regard to. This will make for more joined-up working and help hold those authorities to account. This is particularly important because of the high costs of poor flood risk management, not least from physical flood damage which at the national level is estimated in the region of £2bn per annum (including local surface water flooding) (Sources: Environment Agency *Long Term Investment Strategy* 2009 and Halcrow Group Ltd *Impact Assessment of Local Flood Risk Management: Supplementary Evidence Base*, August 2009). It is expected by putting pressure on authorities to effectively manage flood risk that these damage costs will be reduced.

It is also reasonable to conclude that local authority-led scrutiny and *the threat* of such scrutiny is likely to lead to the better use of local public sector resources by the risk management authorities. For instance, a review which benchmarks the performance of a local service against other better performing authorities should drive improvement in performance. In the case of partnerships, benefits could arise from improved joint working across individual partners through improved co-ordination of activities. This is supported by the findings of the Pitt Review. Without the powers to require attendance, as provided for in option 3, the full value of these benefits may not be realised.

Overall, If LLFA scrutiny of RMAs leads to an overall flood damage or other cost reduction of just 0.2% of the overall national total (or £4.4m per annum), then the benefits of scrutiny will exceed the upper estimate of annual costs.

Option 3 – Provision for Scrutiny of RMAs with a Power to Require Attendance

This option is also likely to mean that there are additional scrutiny reviews or some additional time spent on flood risk management. Because of the power to invite RMAs it may be that more time is spent on scrutiny than under Option 2. It is difficult to be sure about this because of the constraints that local authorities are under which may mean greater efficiency.

It may also mean higher costs for some RMAs (as shown in Annex 2, Table 1), especially Internal Drainage Boards, Highways Authorities and Water and Sewerage Companies. However, it is possible that RMAs would attend even in the absence of a power, because of: (a) a desire to co-operate, and (b) a risk that they will have to “have regard to” a recommendation of a scrutiny committee without having put their case.

Using a similar approach as for Option 2 and again assuming on average between ½ and 2 additional meetings per year for a typical LLFA, the additional costs in a typical LLFA area under Option 3 could increase to between about £9,500 and £37,800 a year (see Annex 2, Table 2). This range of cost is £2,300-9,200 more than under Option 2. Again assuming all LLFAs in England

would face these costs (in practice, it may be that not all will), this would imply a total national cost between £1.4 million and £5.7 million. This is around £0.4-1.4m higher than Option 2. Again, most of these costs would fall on public authorities, but there could be a slightly higher cost of perhaps £90,000- 360,000 spread across the 9 English water and sewerage companies. These would be classified as Costs to Business.

This option is however, expected to have additional benefits over Option 2 because the scrutiny committees would be able to press the authorities to answer questions at meetings. It should also ensure that the committees are properly informed having had the opportunity to ask questions and to probe. Overall, for the purposes of the benefit-cost analysis it is again assumed that the benefit of Option 3 would be sufficient to “break even”. In practice this would only require an overall reduction in national annual average flood damage of 0.3% (£5.7m) and, although hard evidence is lacking, this is felt to be a lower bound on benefit. The benefits of this approach are supported by the Pitt Review (paragraph 30.31, p.410)

This option also means that the risks arising from RMAs failing to co-operate, by not attending meetings voluntarily, are reduced. Attendance at meetings is expected to be very important in ensuring proper scrutiny and obtaining that the full benefits of scrutiny powers.

Conclusion

Introducing flood risk related scrutiny powers over and above current scrutiny powers has benefits in terms of accountability and transparency, as well as collaborative working in this field. The findings of the Pitt Review form the basis of our conclusions that this will improve delivery and, as a result, save costs through more effective flood risk management.

In terms of the appropriate procedure, on balance, our preferred approach is Option 3. This should enable us to obtain the benefits of additional local scrutiny and avoid the risk of the RMAs refusing to co-operate. It may be argued that RMAs would attend voluntarily but if this is the case there is no additional cost in giving local authorities the power to require their attendance, considering that they will have to act reasonably. It would align the flood management system with the other sector specific areas of scrutiny like health and crime.

The costs are not significantly higher than option 2 and would be offset by higher benefit. The extra cost on business would be very modest – at maximum under the analysis above, around £350,000 annually, spread across the nine English Water and Sewerage Companies (so less than £40,000 each). Technically this cost to business makes the provision an “In” under the One In, One Out, regime, albeit at a very modest scale – though in practice, business (in the wider sense) will also benefit from reduced flood damage which the provisions should deliver.

The main factor which will affect costs is how often local authorities decide to hold scrutiny reviews. It will be within their power to decide this. Having many reviews adds to the burden on water companies and other authorities. However, considering the financial pressure that local authorities are under we do not expect that there will be an unreasonably large number of scrutiny meetings.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; Non-statutory review. We will consider the impact of scrutiny on delivery of flood risk management objectives. This will also feed into any wider review of Local Authority scrutiny arrangements.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] It will be a proportionate check that the regulations are working.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] Review will be based on a selective number of local authority scrutiny committees, to determine if Risk Management Authorities are attending meetings and cooperating with Local Authorities. We will also seek to understand the costs and benefits of these provisions, and consider whether the changes have worked as intended.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] N/A - provisions relate to new Local Authority responsibilities/powers</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] Full attendance at meetings by RMA's, cooperating fully in terms of providing information.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review] We will be contacting a number of lead local Authorities to provide details of the number of scrutiny meetings held, and attendance of RMAs. A separate monitoring arrangement will record details of the number of information requests made by Local Authorities that are not complied with.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] N/A</p>

Annex 2

Cost estimates: Scrutiny of flood management authorities

Scrutiny of Risk Management Authorities - Approach to Assessing the Impact

A key difficulty of assessing the impact of these extended scrutiny provisions and the different powers that could be provided is that the uptake of the new enhanced powers is in effect discretionary – local authorities may choose to take full advantage of the new powers or not.

The costs below are based heavily on evidence provided in CLG’s Impact Assessment of the Local Authorities (Overview and Scrutiny) Bill, published in January 2010. This Impact Assessment presented a range of cost per general scrutiny review (either “standard” or “enhanced”), and these estimates have informed our view of the likely cost specifically for flood management reviews, making assumptions as detailed in the tables below.

Table 1 presents our assessment of costs per Flood RMA review. The “low” costs are based on the “standard” review from CLG (2010), and this is expected to be the cost of Option 2. This involves fewer witnesses attending which we expect would be the case if scrutiny committees do not have the power to require their attendance. The “high” level of costs per review is based on CLG’s “enhanced” review scenario and intended to relate to Option 3.

Table 1
Cost per average review

	Range of cost (£) (Note 1)	
	Low (Option 2)	High (Option 3)
Committee running costs/secretariat (Note 2)	13,277	16,598
Compliance costs to flood management authorities:	982	2,295
<i>Of which: Environment Agency (3)</i>	313	313
<i>IDBs and Highways Authorities (4)</i>	469	782
<i>Water and Sewerage Companies (5)</i>	200	1,200
Total cost per average review	14,259	18,893

Table 2 presents a range of aggregate cost of RMA reviews, across all 150 Lead Local Flood Authorities (upper tier local authorities) under both Option 2 and Option 3. This is based on a central estimate of 1 review per Lead Local Flood Authority per year, which is then halved and doubled to provide a broad range.

Table 2
Aggregate annual costs per Lead Local Flood Authority and at England level

	Option 2		Option 3	
	0.5	2	0.5	2
Annual number of reviews per LLFA (6)	0.5	2	0.5	2
Total annual cost per average LLFA	7,130	28,518	9,446	37,800
No. of LFAs in England	150	150	150	150
Estimated annual cost at England level	1,069,500	4,277,700	1,416,900	5,670,000
<i>Of which: Environment Agency</i>	<i>23,500</i>	<i>93,900</i>	<i>23,500</i>	<i>93,900</i>
<i>IDBs & Highways Authorities</i>	<i>35,175</i>	<i>140,700</i>	<i>58,650</i>	<i>234,600</i>
<i>Water and Sewerage Co’s</i>	<i>15,000</i>	<i>60,000</i>	<i>90,000</i>	<i>360,000</i>

Notes to tables:

(1) Range is based on the difference between a “standard” (Option 2) and “enhanced” review (Option 3), as set out in CLG 2010, and also the assumed number of reviews per LLFA. The cost of an enhanced review is assumed to increase owing to the expectation that a wider

number of key witnesses would be required to attend review meetings. We are assuming that Option 3 would mean a larger number of witnesses attend, though in practise it may be that they would attend voluntarily under Option 2.

(2) From CLG 2010, Table 1. Assumes average running/secretariat cost for a flood management review is the same as for other Scrutiny Committee Reviews. Based on staff support (across all scrutiny reviews) of 2FTE per LLFA, expenses of £10k and training (in the "High" case) of £500.

(3) EA costs are assumed to be the same as for "internal LA staff" in CLG 2010, Table 2.

(4) Assumed to be the same as for "Other Public/Third Sector" in CLG 2010, Table 2.

(5) Assumed to be the same as the average cost to "Private Businesses" in CLG 2010, Table 2.

(6) Middle of range assumes that, on average, LLFAs will instigate a review after a flood event. Average annual number of flood events per authority taken as total annual events (river, sea, surface water) in England (assumed to be between 100-200) divided by total number of LLFAs (150). This rounds off to broadly one per LLFA. Bottom and top of range are then half, and double, this number respectively.

Annex 3

Legislative Background

The Local Government Act 2000 (“the 2000 Act”) introduced checks and balances to the operation of executive decision making under the new council constitutions through the introduction of a scrutiny system and a new ethical framework. All principal councils in England, whether operating executive arrangements or not, are required under the 2000 Act, to have at least one overview and scrutiny committee.

To improve the transparency and accountability of executive decision making, overview and scrutiny committees were provided with broad powers allowing them to review/scrutinise individual decisions or consider council policy more generally, and make recommendations to the council or executive on how matters might be improved. This was limited to scrutiny of the Council and its Executive.

The Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) substantially strengthened local government overview and scrutiny committees particularly in respect of local authority partners in relation to Local Area Agreements (LAAs). Overview and scrutiny committees were provided with the powers to:

- require information on relevant LAA matters from public bodies covered by the duty to co-operate;
- copy reports to these bodies on recommendations relating to LAA delivery and require that they have regard to those recommendations when exercising their functions;
- require the council/executive to consider and publicise their response to overview and scrutiny recommendations within 2 months; and
- form joint overview and scrutiny committees in certain circumstances.

The National Health Services Act 2006 provided for overview and scrutiny committees to scrutinize the operation of health services in the area of the local authority, extending local authority scrutiny powers over external bodies. In the main, powers over health partners are for upper tier authorities only and not unitary authorities other than in cases like the London Boroughs. These health scrutiny provisions are limited to NHS bodies. They also allow for joint scrutiny committees (JSC) comprising of a county and one or more districts in that area.

The Police and Justice Act 2006 provided for overview and scrutiny committees to scrutinise those responsible for crime and disorder. This is similar to the NHS Act.

Specific Impact Tests

- Option 1: Baseline - do nothing
 Option 2: Provision for Scrutiny of RMAs but Without a Power to Require Attendance
 Option 3: As option 2 but with enhanced scrutiny powers

The following impact tests have been considered;

Statutory Equality Duties

There are no limitations on meeting the requirements of the options on the grounds of race, disability or gender. The options do not impose any restriction or involve any requirement that a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and business involved in the activities.

Economic Impacts – Competition

The following table outlines the OFT Competition questions and the likely responses for each of the options under consideration;

Question	Option 1	Option 2 & 3
Directly limit the number of suppliers?	No change	No
Indirectly limit the range of suppliers?	No change	No change
Limit the ability of suppliers to compete?	No change	No
Reduce supplier's incentives to compete vigorously?	No change	No change

Economic Impacts - Small Firms

None identified.

Environmental Impacts - Greenhouse gas assessment

None of the options will have an impact on greenhouse gas emissions.

Environmental Impacts - Wider environmental issues

Environmental Issue	Option 1	Option 2 & 3
Impacts of climate change	No change	No change
Waste Management	No change	No change
Air Quality	No change	No change
Landscape and Townscape	No change	No change
Water pollution, levels of water abstraction and exposure to flood risk	No change	Reduction in damages from flooding due to better local management of risk.
Nature Conservation	No change	No change
Noise	No change	No change

Social Impacts – Health and well-being

Scrutiny powers contribute to a more integrated approach to flood risk management, recommended by Sir Michael Pitt in his review of the 2007 floods. Such an approach will help to minimise the impacts of flooding on people and property helping to improve health and well-being.

Social Impacts - Human Rights

The Options are consistent with the Human Rights Act 1998

Social Impacts - Justice System

As this relates to the provision of Civil Sanctions there are no judicial impacts.

Social Impacts - Rural Proofing

The Options are not considered to have a negative effect in rural areas.

Sustainable Development

Working from Defra's Sustainable Development Impact Test;

Question	Option 1	Option 2&3
1a. Are there any significant environmental impacts of your policy proposal (see Wider Environment Specific Impact Test)?	No change	No
2a. Have you assessed the distribution over time of the key monetised and non-monetised costs and benefits of your proposal? This assessment can be included in your Evidence Base or put in an annex.	Baseline	Yes
2b. Have you identified any significant impacts which may disproportionately fall on future generations? If so, describe them briefly.	No change	No
3a. Indicate the balance of monetised costs and benefits:	Baseline	Judgement that benefits likely to exceed costs
3b. Indicate the balance of non-monetised costs and benefits:	Baseline	Judgement that benefits likely to exceed costs
3c. Indicate the results of the SD questions 1-3:	Baseline	Judgement that benefits likely to exceed costs
3d. Indicate, overall, the balance of the monetised and non-monetised costs and benefits and the sustainability issues:	Baseline	Judgement that benefits likely to exceed costs