

EXPLANATORY MEMORANDUM TO
THE REGIONAL FLOOD AND COASTAL COMMITTEES (ENGLAND AND WALES)
REGULATIONS 2011

2011 No. 695

- 1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.
- 2. Purpose of the instrument**

 - 2.1 These Regulations are concerned with the establishment of Regional Flood and Coastal Committees, to be made up of local authority and other members. These new committees are replacing the old Regional Flood Defence Committees, and they will exercise a supervisory role in relation to the Environment Agency's flood and coastal erosion risk management functions. The Regulations specify the procedure, provide details on membership, appointment and proceedings, and make transitional provision.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

 - 3.1 These Regulations are made under separate powers by the Secretary of State and the Welsh Ministers on a composite basis. They provide for the establishment by the Environment Agency of cross-border bodies in England and Wales for the purpose of managing flood and coastal erosion risk across both administrative areas.
 - 3.2 The Environment Agency is required by section 22(1)(a) of the Act to divide England and Wales into regions and, under section 22(1)(b) and (c) of the Act, to establish a Regional Flood and Coastal Committee for each region. The Act was conceived as consistent legislation to be applied in both England and Wales to manage flooding and coastal erosion issues across boundaries. Neither floods nor coastal erosion processes are respecters of administrative boundaries and require consistent management across boundaries.
 - 3.3 The Environment Agency is a cross-border body, and the Act envisages that the regions established by the Environment Agency could cut across the English-Welsh border. The regions may be established following river catchments. Where rivers border England and Wales, flood risk management requires co-ordination between the different administrations on each bank of the river. Adjacent Regional Flood and Coastal Committees need to be able to share information and co-operate with their upstream and downstream neighbours in the management of flood risk. Similarly, coastal erosion risk needs to be managed in

a way that does not create cross-border problems. A composite instrument is likely to minimise the differences of approach between administrations.

- 3.4 Defra and the Welsh Assembly Government (WAG) consider that the convenience and coordination achieved by a composite statutory instrument outweigh any uncertainty which might arise from an annulment motion. Where there is a consistent policy across England and Wales, Defra and WAG consider it is convenient for both administrations and for those governed by the instrument that there be a single instrument for the single legal jurisdiction.

4. Legislative Context

- 4.1 This is the first use of the new powers under sections 22 and 24 of the Flood and Water Management Act 2010. The Regulations are needed to ensure that the establishment of the committees by the Environment Agency is consistent with Government policy.
- 4.2 These Regulations are related to the Environment Agency (Levies) (England and Wales) Regulations 2011 which are being made under section 74 of the Local Government Finance Act 1988. The Environment Agency has a power under section 17 of the Flood and Water Management Act 2010 to issue levies to local authorities to fund flood and coastal erosion risk management functions. Under section 17, these levies must be issued in accordance with regulations made under section 74 of the Local Government Finance Act 1988, and must be consented to by the appropriate Regional Flood and Coastal Committee.

5. Territorial Extent and Application

- 5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Flood and Water Management Act 2010 (“the 2010 Act”) gives the Environment Agency a leadership role across England and Wales in dealing with flood and coastal erosion risk. Sections 22 to 26 of the 2010 Act make provision in relation to the establishment of Regional Flood and Coastal Committees to provide supervision of the Environment Agency’s role. These Regulations specify the procedure to be followed by the Environment Agency in dividing England and Wales into regions (section 22(2)(a) of the 2010 Act), make transitional provision with respect to the establishment of Regional Flood and Coastal Committees in place of regional flood defence committees (section 22(2)(b) of the 2010 Act), and

make provision about committee membership and proceedings (section 24 of the 2010 Act).

- 7.2 Part 1 deals with preliminary matters.
- 7.3 Part 2 addresses the division of England and Wales into regions, and covers the map of the regions and provisions related to revision of boundaries and renaming of regions.
- 7.4 Part 3 covers the establishment of Regional Flood and Coastal Committees including the number of members, committee composition and variation to composition.
- 7.5 Part 4 deals with the selection and appointment of members to Regional Flood and Coastal Committees including eligibility, appointment of chair by the Minister, appointment of members by the constituent authorities, and appointment of members by the Environment Agency.
- 7.6 Part 5 sets out details about holding office as a member of a Regional Flood and Coastal Committee, covering terms and date of appointment, period of office, resignation or removal from office, appointment of acting chair or temporary chair, and nomination of deputies for members representing constituent authorities.
- 7.7 Part 6 provides for proceedings of Regional Flood and Coastal Committees including quorum, consent provisions, voting procedure, declarations of interest, authentication of documents and proof and validity of proceedings.
- 7.8 Part 7 sets out the transitional provisions including provision for the area and membership of transitional committees, specific provision for the inclusion of the Isles of Scilly in a region, membership of transitional committees, holding office as a member of a transitional committee and the conditions for a transitional committee to continue in existence.
- 7.9 These Regulations do not amend other instruments.

8. Consultation outcome

- 8.1 A similar approach was consulted on as part of the consultation on the Flood and Water Management Act 2010. No formal consultation has been carried out since, however, aspects of these Regulations were the subject of informal consultations by the Environment Agency with interested parties. These, and discussions with Regional Flood Defence Committee chairs, informed the development of these Regulations.

9. Guidance

9.1 No formal guidance is considered necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 Through the extended remit of the new committees, the public sector will be able to deliver its flood and coastal erosion risk management responsibilities more effectively.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No additional monitoring of the committees is planned. Current arrangements for periodic meetings to report progress and problems will be maintained.

12.2 There is no provision for a statutory review process, however a review of the effectiveness of the regulations with respect to the committees will be carried out in 2016.

13. Contact

13.1 John Goudie at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 6173 or email: john.r.goudie@defra.gsi.gov.uk, can answer any queries regarding the instrument with respect to England.

13.2 Nicola Edwards at the Welsh Assembly Government, Tel: 029 2082 3568 or email: nicola.edwards@wales.gsi.gov.uk, can answer any queries regarding the instrument with respect to Wales.

Title: FWMA 2010 RFCC Implementation (sections 17, 22-26 and parts of Schedule 2) including s24 regs and s74 LGFA 1988 regs, as well as technical consequential changes Lead department or agency: Defra Other departments or agencies:	Impact Assessment (IA)
	IA No: Defra 1271 (revised)
	Date: 02/11/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: John Goudie

Summary: Intervention and Options

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

The Flood and Water Management Act 2010 (FWMA 2010) envisages a new and comprehensive system for flood risk management in England and Wales, with the Environment Agency (EA) having strategic oversight and management of risk from all sources of flooding (excluding sewer flooding) and coastal erosion, and proposing regional programmes to address them. Balancing the EA's new and wider strategic role with regional scrutiny and local involvement requires changing the existing Regional Flood Defence Committees (RFDCs) into Regional Flood and Coastal Committees (RFCCs), and giving them a consenting role to the wider programme. The IA on the FWMA 2010 considered the policy framework and justification for the overall new approach. This IA proposes to implement the changeover to RFCCs.

What are the policy objectives and the intended effects?

To implement elements of FWMA 2010 concerning RFCCs to establish an improved, comprehensive management system for flood and coastal erosion risk. The proposals will specifically support the EA's new strategic management of all flood and coastal erosion risks by replacing existing RFDCs with RFCCs; widening remits to cover the whole of the EA's new programme; giving RFCCs a consenting role and, through them, bringing local participation, expertise and balance to the process. It is a policy change of limited direct cost that completes the changes to committees, responsibilities, and levies envisaged in FWMA 2010. Benefits should be a greater understanding of risks overall, an increased focus on local management of risk within the overall context, and more appropriate expenditure of funds overall.

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

1. Do nothing - leave existing legislation with respect to committees as it is, FWMA partly commenced.
2. Do minimum - introduce minimum regulations to implement those measures needed to divide England and Wales into regions and to establish RFCCs with the powers needed to work effectively and efficiently, supported by a membership composition document proposed by EA and approved by Ministers.
3. Full regulation - As per option 2 but with additional regulation so that all details on the composition of the committees, membership, and proceedings of RFCCs are set out in regulation and membership composition document.
4. Disband existing RFDCs and do not establish RFCCs - EA manages risk; no formal local challenge.

Option 2 is preferred: it implements the FWMA and provides the flexibility to amend RFCC membership and procedures quickly, as needed to respond to changes of circumstance, subject to Ministerial approval.

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 2

Description:

Do minimum

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: +ve

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	3	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0.02		0.07	

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

Transitional cost to the Environment Agency to collate risk management information and to align it with the current form of information committees use. Might last 3 years until reporting templates are harmonised. Estimated at +10% current EA staff costs, £23k per year.

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

There are no other anticipated additional costs - existing regions will be retained, committees will have the same chairs and numbers of members and generally the same actual members, and are expected to meet 4 times a year as now.

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

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

No benefits currently capable of being monetised.

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

Main benefit of preferred option is improved flood and coastal erosion risk management overall, especially because the wider range of risks will now be captured through regional committees. The new system will deliver a more consistent programme across the board; improved efficiency of committee decision making able to reflect changes in the balance of risk as it occurs; and deliver a greater local stake in, and political mandate for, the programme in each region.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

There is a risk that the EA and the RFCCs will take longer to develop their new relationships than expected, resulting in a lack of consent to the full programme of work proposed by the EA, or resulting in decisions on programme content that are not fully supported.

There is a risk that committees will take time to bed in to the new RFCC role, but this will be addressed as part of the normal dialogue by discussions/workshops with committee chairs, in advance of the changeover.

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

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales			
From what date will the policy be implemented?			06/04/2011			
Which organisation(s) will enforce the policy?			Environment Agency			
What is the annual change in enforcement cost (£m)?			nil			
Does enforcement comply with Hampton principles?			Yes			
Does implementation go beyond minimum EU requirements?			No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: none	Non-traded: none		
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: n/a	Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)		Micro	< 20	Small	Medium	Large
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	14
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	14
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	14
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	14
Sustainable development Sustainable Development Impact Test guidance	No	14

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.

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	The Pitt Review: Lessons learned from the 2007 floods - http://webarchive.nationalarchives.gov.uk/20100807034701/http://archive.cabinetoffice.gov.uk/pittreview/w/thepittreview.html
2	Flood and Water Management Act 2010 - http://www.legislation.gov.uk/ukpga/2010/29
3	Water Resources Act 1991 - http://www.legislation.gov.uk/ukpga/1991/57/contents
4	Environment Act 1995 - http://www.legislation.gov.uk/ukpga/1995/25/contents
5	Local Government Finance Act 1988 (s74) - http://www.legislation.gov.uk/ukpga/1988/41/contents
6	Land Drainage Act 1991 - http://www.legislation.gov.uk/ukpga/1991/59/contents
7	The Impact Assessment on funding provisions prepared for the Flood and Water Management Bill - http://www.defra.gov.uk/environment/flooding/policy/fwmb/impact-assess.htm

+ Add another row

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	.02	.02	.02							
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

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



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

EVIDENCE BASE

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Problem under consideration

Following the widespread and serious flooding in England during June and July 2007, Sir Michael Pitt conducted an independent review of the management of events. His final report (published in June 2008) informed the development of the Flood and Water Management Act 2010. That report put forward 92 recommendations covering prediction and warning of flooding, prevention, emergency management, resilience and recovery. Many were far-reaching recommendations that called for a radical reshaping of flood risk management practices, in particular oversight of the management of **all** flood and coastal erosion risks by a single body, the EA, to improve the strategic overview, consistency and efficiency of delivery.

A logical extension of this idea was for the existing regional committees called Regional Flood Defence Committees (RFDCs) to be replaced with Regional Flood and Coastal Committees (RFCCs), with remits extended to reflect the wider range of risks. The new committees would scrutinise, help develop and consent to the EA's proposed regional programmes (current committees have executive rather than consenting powers). They would also bring improved local participation and a political mandate to the process, through their majority of LA committee members.

The Flood and Water Management Act (FWMA) 2010 was the vehicle for implementing the Pitt recommendations on the roles and responsibilities of the EA and committees and it has been commenced in part. This IA addresses whether and how to implement remaining sections of the Act concerning RFCCs.

Policy objective and effect

The objective is to establish RFCCs, to implement an improved comprehensive and consistent management system for flood and coastal erosion risk. Specifically, to support the EA's new wider oversight of the management of all flood and coastal erosion risks by having a set of regions of England and Wales within which the various risks can be managed effectively, taking account of the mix and magnitude of these risks; to use new RFCCs (regional committees) to scrutinise and consent to the EA's wider programme proposals; and, through RFCC members appointed by those local authorities best placed to comment on the risks (being generally most affected by them), and other members with the range of expertise needed, to provide understanding and advice on risks including local issues and related statutory obligations.

It is expected that RFCCs will deliver a wiser allocation of funding across a wider array of risks than RFDCs did before, taking better account of local needs within the overall risk management context and encouraging local participation where appropriate. Benefits should be more consistent outcomes, a greater understanding of risks overall, an increased focus on local management of risk within the overall context, more appropriate expenditure of funds overall, and a more efficiently delivered programme of work.

The IA for the Flood and Water Management Bill did not address the changeover from RFDCs to RFCCs explicitly. In this IA we seek a proportionate approach to analysis, addressing Levels 1 (describing who will be affected by the proposals), 2 (describing costs and benefits) and to some extent 3-4 (quantifying effects), according to the BIS IA Guidance¹, though there are few elements which it has been possible or is considered proportionate to monetise.

One In, One Out Impact

The net effect of the preferred option on business under OIOO is zero. The preferred option does not bring direct costs or benefits to business (the only identifiable cost is a transitional cost for the EA). It deals with obligations and processes mainly affecting Local Authorities and the EA and there is no material change to the extent and reach of regulation as a result of it.

Background

Prior to the Flood and Water Management Act 2010, England and Wales was divided into 12 administrative regions (11 England, 1 Wales) for the purposes of flood risk management. For each region, a Regional Flood Defence Committee (RFDC) carried out all the Environment Agency's (EA's) functions for flood defence².

- RFDCs had an executive role under the overall direction of the EA, though the EA had the power to give a direction to an RFDC as to the carrying out of any function relating to flood defence (subject to specified constraints), and the RFDC had a duty to comply.
- An RFDC had the power to recommend a general drainage charge that would apply in a district, collected by the EA. Although not widely used outside the Anglian Region, drainage charges were generally collected from Internal Drainage Boards (a mix of agricultural and typically small community interests).
- An RFDC could agree a 'local levy' - separate to general drainage charges - to be paid by local authority RFDC members for the cost of flood risk management schemes in the area. Since 2004, Flood Defence Grant in Aid has been the main source of funding for flood defences, though the power to raise local levy remained (with a share of funding within Formula Grant arrangements to help local authorities meet the costs). To raise a levy, the majority of local authority (LA) members of the committee would have to vote in favour of it. Schemes funded using local levy tended to be of local importance, and outside the Environment Agency's programme funding, usually because they did not contribute sufficiently to the national investment outcome targets
- To date, decisions of RFDCs have influenced the spending of about three quarters of the funding provided as Flood Defence Grant in Aid, with the remainder going towards direct grants from the EA to local authorities and Internal Drainage Boards. Flood Defence Grant in Aid has been supplemented by RFDCs using local levy, general drainage charges and precept from IDBs.
- Excepting Wales, where no levy was issued, there was a legal requirement for local authority elected members to have a bare majority (one more LA member than other members including the chair, resulting in committees with an odd number of voting members) of the voting members on the committee, to ensure an electoral mandate for the setting of levies.
- RFDC chairs and 'a number of other members' for each committee were appointed by ministers, the EA appointed 2 members per committee, and remaining members to form a bare majority were appointed by the constituent councils (those LAs represented on the RFDCs). The largest committee had about 25 members (minimum in legislation was 11). Committee chairs were paid 'such remuneration and allowances as may be determined by the relevant minister' whereas members were paid 'such allowances as may be determined by the relevant minister'.

Flood and Water Management Act 2010

The Act widens the EA's responsibility from the management of flood risk from rivers and the sea, to include all sources of flooding, except sewer flooding, and coastal erosion, and gives the EA responsibility to manage a coastal erosion risk management programme through operating authorities (including itself and LAs; with the EA providing capital investment and LAs meeting the maintenance costs for defences). Under FWMA 2010, the EA has to divide England and Wales into regions and establish Regional Flood and Coastal Committees (RFCCs), and RFCCs now have consenting rather than executive roles. The EA must now consult each RFCC on the way in which it proposes to carry out its flood and coastal erosion risk management functions in the RFCC's region, and must take into account any representations made by the committee about the exercise of these functions. The EA may not implement its regional programme without the consent of the committee, nor may it issue a levy to a lead local flood authority, nor spend specific revenue raised under provisions of the Water Resources Act 1991, without the consent of the relevant committee.

Proposed new committees - RFCCs

To support the EA's new strategic management of all flood and coastal erosion risks it is proposed to replace existing committees with RFCCs, widening remits to cover the whole of the EA's new flood and coastal erosion risk management programme, giving RFCCs a consenting role to the programme (rather than an executive role) and, through them, to bring local participation, expertise, and balance to the process.

Whilst the overall risk (probability x consequence) that needs to be managed remains as before, the remit of the committees is wider now that some additional sources of flooding as well as coastal erosion are included. The committees now consider proposals for the management of the overall risk as opposed to only part of it, using the resources available as set out in the Comprehensive Spending Review (CSR).

Despite the widening of the remit and slight change of role, the workload of the new committees is not expected to change much compared with the old committees. The EA will present the evidence for its programme, tailored to suit the funding available, which will now include a wider mix of projects, and the committees will consent once they have reached agreement. There may need to be some modification to the way that the committees work, but this is not expected to require a greater time commitment from members.

As before, committee members are expected to understand the variety of risks in their areas and the impacts on the different communities.

The primary difference for RFCCs now is expected to be the nature of the debate on the wider programme needed to arrive at a decision on the amount of levy to be set and the content of the programme. The committees will consider the same type of information as before, prepared by others, however the character of the work needed to support committee decisions may change with the wider remit. This 'additional' activity should not be onerous, as the EA and the other operating authorities were tasked to provide information on the full range of flood and coastal erosion risk management to government anyway, but the information will now be needed in a more robust and consistent form for comparative scrutiny and short-listing of the proposed implementation programme. The degree of robustness of information will be decided by the RFCCs concerned and any additional resource needed will be provided by the EA.

In future most Flood Defence Grant in Aid will be influenced by RFCCs because of their wider role in consenting to expenditure. If total amount of expenditure were to increase, it might be that committee administration costs also increase, however, the outcome of the Spending Review will be the overriding determiner of this. Decisions on general drainage charges and precept from IDBs are for individual RFCCs, and are unaffected by the policy changes in this Impact Assessment.

Investment in local levy is subject to local authority discretion: local authorities have been spending about £27 million a year on local levy with the cost supported through formula grant arrangements. Under the proposals in this IA, RFCCs will also be formally responsible for coastal erosion matters. To date coastal schemes have accounted for about 10% of all investment in flood and coastal erosion risk management (varying from year to year as schemes are prioritised on the basis of the outcomes they deliver and their value for money in benefit cost terms). In the assessment of new burdens associated with the Act, it was assumed that a local levy extended to include coastal schemes as well could be expected to rise by 10% to about £30 million a year (i.e. + £2.7 million), although, to repeat, it is at the discretion of local authorities on the RFCCs, and will be supported through formula grant arrangements³.

Reason for government intervention

Various sections of the FWMA 2010 relating to the new flood and coastal risk management system have been commenced but intervention is necessary to commence remaining aspects of the Act to replace the old committees, responsibilities, and levies with the RFCC system, and to repeal and regulate in some minimal associated areas.

To Do Nothing would be to prevent the formal wider management of flood risk coming into play, leaving the old committee system, responsibilities, and levies. Although the different parties involved do know the intention behind the Act, and may strive towards delivering the desired wider outcomes, there is a high risk that some participants will fall back on delivering only the outcomes that are mandatory, unless the remaining sections are commenced along with other elements of the preferred option.

Specific areas concerning RFCCs covered by this IA

The preferred option in this IA proposes commencement of specific sections of the FWMA, and implementation of the minimum of regulations required, to enable the new system of flood risk management envisaged in the FWMA to operate. The elements of FWMA 2010 that are the subject of this IA are:

- a) Section 17 – this gives the EA powers to issue levies to the lead local flood authorities consented by the RFCCs and thereby replicates and supersedes the powers available to the RFDCs. The levies must be issued in accordance with regulations made under section 74 of the Local Government Finance Act 1988 (LGFA 1988). New regulations will need to be made which reflect the change of committee name (RFDC to RFCC) and which ensure that local levy can be used for all types of flood risk and coastal erosion within the RFCC's roles and responsibilities. There is the scope as part of the process of amending the detail of the section 74 LGFA 1988 regulations to make changes to the method of calculating levies where this is deemed advantageous, but this is not a requirement of FWMA 2010. It is not proposed now, but will be kept under review. **Section 17 has been commenced in so far as it gives powers for the Secretary of State to make the necessary regulations. Under the Preferred Option, Commencement of the rest of section 17 and amendment of the section 74 LGFA 1988 regulations is planned for April 2011.**
- b) Section 22 – paragraph (1) places a duty on the EA to divide England and Wales into regions and to establish an RFCC for each region. Paragraph (2) empowers the Minister to make regulations to specify the procedure to be followed by the EA in dividing England and Wales into regions and to make transitional provision with respect to the establishment of RFCCs in place of RFDCs. **Paragraph (2) has been commenced. Paragraph (1) has been commenced in so far as it defines English and Welsh committees. Under the Preferred Option, commencement of the rest of section 22 (which will create the duty for the EA to divide England and Wales into regions and to establish an RFCC in each region) is planned for April 2011. It is necessary to make some regulations for this section, particularly with respect to transitional provisions, including a requirement to consult and take account of representations on boundary changes². In terms of regions, the EA intends to continue with the same 11 English regions and one Welsh region and the corresponding committees as before.**

² It should be noted that this requirement would not introduce any practical change with respect to the status quo: if the old committees are retained, the EA would be expected to consult on any proposal to change the committee boundaries as this is customary nowadays (especially with the current focus on local involvement).

- c) Section 23 – this sets out the duties of the EA with respect to consultation with the RFCCs and its response to representations by the RFCC, and the consenting role of RFCCs. *Under the Preferred Option, commencement of section 23 is planned for April 2011.*
- d) Section 24 – this gives the Minister power to regulate to make provisions about a) the number of members of an RFCC; b) conditions of eligibility for appointment; c) the method of selection and appointment; d) the proceedings of a committee. **This section has been commenced.**
- e) Section 25 – this enables payments to committee chairs and members, including empowering the minister to make directions with respect to payments. *Under the Preferred Option, commencement is planned for April 2011.*
- f) Section 26 – this defines ‘the Minister’ with respect to English and Welsh committees. **This section has been commenced.**
- g) Schedule 2, relevant clauses – this addresses the amendment or repeal of other acts:
 - Water Resources Act 1991: a) section 106 (obligation to carry out flood defence functions through committees) is repealed, which removes the executive function of the committees, so allowing them to take on the consenting role set out in section 23 of FWMA 2010; b) section 118 (special duties with respect to flood defence revenues) is amended by deleting two paragraphs that refer to EA powers related to RFDCs that are no longer needed; c) section 133 (power to authorise the Agency to issue levies) is repealed and is now covered by section 17 of FWMA 2010 which relates to the wider remit of risk management activity.
 - Environment Act 1995: a) section 6(4) is replaced by new wording that widens the flood and coastal erosion risk management remit to that set out in Part 1 of FWMA 2010; b) sections 14 to 19 and schedules 4 and 5 (flood defence committees) are repealed paving the way for the creation of RFCCs.

Under the Preferred Option, commencement is planned for April 2011.
- h) Technical consequential changes – there are a number of references to “Regional Flood Defence Committees” in legislation that were overlooked in the FWMA 2010, which need to be changed to “Regional Flood and Coastal Committees” to correct oversights and avoid invalidating such legislation and undermining the intent of Parliament. An example is s1(1)(a) of the Land Drainage Act 1991 where internal drainage districts are defined as being ‘within regional flood defence committee areas’ – if this is not changed to being ‘within regional flood and coastal committee areas’, then Internal Drainage Boards will no longer be defined when the committee changes are made. *Under the Preferred Option, implementation of these is planned for April 2011.*

Consideration of Options 1-4

Four options have been considered:

1. Do nothing – leave existing legislation with respect to committees as it is – **this is the baseline.**
2. Do minimum – introduce minimum regulations to implement those measures needed to divide England and Wales into regions and to establish RFCCs with the powers needed to work effectively and efficiently, supported by a membership composition document proposed by EA and approved by Ministers – **this is the preferred option.**
3. Full regulation – As per Option 2 but with additional regulation so that all details on the composition of committees, membership, and proceedings of RFCCs are set out in regulation and membership composition document.
4. Disband existing RFDCs and do not establish RFCCs – EA manages risk; no formal local challenge.

Option 1: Do nothing – leave existing legislation with respect to committees as it is – **baseline**

This means no further commencement of clauses in FWMA 2010 related to the regional structure and the creation of RFCCs, so previous legislation would remain in force and RFDCs would retain their current role and powers as committees of the EA.

Costs & benefits

No costs or benefits are assigned to the base case in the IA, but the current annual costs to the EA and Welsh Assembly Government of running the 12 RFDCs is tabled below for information.

Cost base for operating the 12 RFDCs in 2010

Description	£ p.a.
Remuneration and allowances (Chair and members) plus meeting venue costs	600,000
Environment Agency staff costs	235,000
Total	835,000

Risks

If the sections of FWMA 2010 related to RFCCs are not implemented, the existing responsibilities, committees, and levies will remain, such that the improvements of efficiency and local accountability envisaged by the Pitt Report (and FWMA 2010) will not be achieved reliably and quickly. The committees will retain the current role as committees of the EA and will not become the consenting committees that the legislation intends.

Whilst it is likely that the different players will aim to work together, there will not be the formal structure needed to ensure the best outcome overall. There is a very high likelihood that a mindset of 'current responsibilities' will prevail, rather than the desired, wider remit. The increased benefits from improved efficiency of flood risk management envisaged by FWMA 2010 will not be realised if Act implementation does not progress – with the current financial constraints, this is a real loss of opportunity.

Overall impact

The intention of the FWMA 2010 to improve the management of flood and coastal erosion risk overall, taking note of the Pitt recommendations, will not be realised. In particular, the retained RFDCs will not be able to consent to the raising of levies for the management of the wider flood risks and coastal erosion which will constrain the increase of local initiatives envisaged by FWMA 2010.

Cost and benefit to business

Business does not contribute towards the cost of running the committees. Business pays nothing directly to the management of flood and coastal erosion risk other than general drainage charges that are paid by agricultural land holders through IDBs or special drainage charges paid directly by agricultural land holders.

Option 2: Do minimum – introduce minimum regulations to implement those measures needed to divide England and Wales into regions and to establish RFCCs with the powers needed to work effectively and efficiently, supported by a membership composition document proposed by EA and approved by Ministers – preferred option

This option involves commencement of those necessary aspects of the Act (s17, remainder of s22, s23, & s25, and those aspects of schedule 2 – amendments and repeals that relate to RFCCs), and the making of minimal regulations under s22 and s24 and under s74 of LGFA 1988, as well as technical consequential changes. The EA will prepare a membership composition document that addresses the composition of the committees for approval by Ministers and a committee handbook that provides additional guidance on procedures and processes for committees and their supporting secretariats to supplement the minimum regulations. The new regulation under s74 of LGFA 1988 will make the minimum changes needed to the existing regulation to maintain the current approach to setting levies for the wider range of risk management responsibilities by the new committees.

Costs

- **Committee membership and costs:** The existing regions will be retained. The existing RFDCs will be renamed RFCCs with the same chairs and generally the same members, noting that the schemes of membership to be prepared by the EA may recommend some changes of detail in the membership to broaden the experience needed on each committee for the wider remit whilst retaining the bare majority of LA members. The number of committee members is not expected to change, so the cost of committees should remain the same. Costs are borne by the EA.
- **The EA workload** to support the committees may increase to reflect the wider remit. We assume as much as a 10% increase costing +£23k p.a. for the collection of information concerning the wider remit, and reworking to align the risk management information with current information that committees use (see table under Option 1, above). This additional effort might conceivably last 3 years, until reporting templates from the different operating authorities become harmonised. The cost is borne by the EA.
- **Admin costs:** Although there might conceivably be nominal cost increases associated with the accommodation for meetings etc, this is not considered sufficiently certain or material to quantify. The number of committee meetings remains at four per year. The cost is borne by the EA.
- **Levies raised:** The change from RFDC to RFCC does not itself alter the amount of drainage levies as these are based on historic cost recovery and planned work.

The additional cost of Option 2 is £23k p.a. for the first 3 years (approx 10% uplift in relevant EA staff cost), borne by the EA.

Benefits

- **Improved flood and coastal erosion risk management** overall, as envisaged by FWMA 2010, especially because the wider range of risks will now be captured. The new system will deliver a more consistent programme across the board. This will be demonstrated by the reduction of adverse comment from stakeholders on the unfairness of funding allocation and by improved delivery as demonstrated by annual returns from the EA.
- It is assumed that **committee business will be carried out more effectively**, particularly it is assumed that decision making will be made on a more consistent basis.
- The flexibility provided by using the minimum of regulation (as opposed to Option 3) allows changes to the membership of the committees to be carried out more quickly, so **improving overall efficiency of decision making** to reflect changes in the balance of risk as it occurs.
- There will be a **political mandate** for a programme that addresses the wider range of flood and coastal erosion risks covered by FWMA 2010. The EA has to consult with each RFCC on the way it proposes to carry out work in that region and the committee has to be content that local considerations as well as wider issues have been adequately addressed. The voting majority of LA members effectively gives a political mandate for the programme in each region which should improve local confidence in the outcomes.
- The wider remit also addresses the government's **'Big Society' agenda** more fully by ensuring that all risks are considered together and that the right balance between local action and regional management issues is delivered.

Risks

There is a risk that the EA and the RFCCs will take longer to develop their new relationships than expected, resulting in a lack of consent to the full programme of work proposed by the EA, or resulting in decisions on programme content that are not fully supported. If the former, there will be delays to programme implementation delaying and possibly reducing the benefits from the programme. If the latter, there may be local political reaction that will need management by the EA initially, and might even escalate to ministers.

There is a risk that committees will take time to bed in to the new RFCC role, but this will be addressed as part of the normal dialogue by discussions/workshops with committee chairs, in advance of the changeover.

Overall Impact

Overall the preferred option will deliver a net benefit to society, although only the immediate additional costs are readily monetised. The benefits from an improved flood and erosion risk management programme and more local accountability are not readily quantified or monetised.

Cost and benefit to business

There are no direct costs or benefits to business. Improved risk management will benefit all elements of society including business.

Option 3: Full regulation – As per Option 2 but with additional regulation so that all details on the composition of committees, membership, and proceedings of RFCCs are set out in regulation and membership composition document.

This option involves commencement of those necessary aspects of the Act (s17, remainder of s22, s23, & s25, and those aspects of schedule 2 – amendments and repeals that relate to RFCCs), and the making of comprehensive regulations under sections 22 and 24 and under s74 of LGFA 1988, as well as technical consequential changes. The s22 regulation will set out the transition arrangements from RFDCs to RFCCs, the s24 regulation will fully address those aspects of the Environment Act 1995 being repealed that deal with the composition of the committees, membership, and proceedings. There will be a membership composition document that addresses the composition of the committees approved by Ministers. Any committee handbook prepared by the EA will be focused on ensuring consistency of application of the regulations. The new regulation under s74 of LGFA 1988 will make the minimum changes needed to the existing regulation to maintain the current approach to setting levies for the wider range of risk management responsibilities and the new committees.

Implementation of RFCCs will be delayed by at least six months, so delaying the benefits from implementing FWMA 2010.

For the purposes of this option, it is again assumed as in Option 2 that the current regions will remain the same and that the current chairs and committees transfer directly from RFDCs to RFCCs, and that there is no change in the basis for calculating levies.

Costs

Committee costs and EA support costs will be as Option 2, since the difference between the options is in the amount of regulation, rather than the workings of the committees.

(**Administration costs for government** will increase to support development of more complex regulations.)

Delayed benefits: There will be a delay in the setting up of the new committees and the achievement of envisaged efficiency gains and other benefits, compared with Option 2.

Less flexibility: Making full regulations (rather than minimum as in Option 2) reduces the flexibility of this option compared with Option 2 to amend the membership and committee procedures quickly as needed in response to changes of circumstance, subject to ministerial approval.

Benefits

There will be full clarity of legislative requirements in the future. Benefits will be essentially the same as Option 2, but delayed and possibly reduced.

Risks

It is highly likely that the legislation needed will not be in place for the planned start of the new system in April 2011, due to its complexity. This will cause a delay to the consenting of the wider flood and coastal erosion risk management programme and will delay the ability of RFCCs to consent to levies for local initiatives addressing the wider flood risks as well as coastal erosion risks – a loss of opportunity.

Overall Impact

The overall impact is similar to Option 2, except that the benefits envisaged from the changes will be delayed and possibly reduced, and flexibility to respond to change will be less.

Cost and benefit to business

As with Option 2 there are no direct costs or benefits to business.

Option 4: Disband existing RFDCs and do not establish RFCCs – EA manages risk; no formal local challenge.

This option would involve some completely new legislation to disband all RFDCs, while those aspects of the FWMA 2010 to establish RFCCs will not be taken forward.

The EA will still deliver its flood and coastal erosion risk management programme, but without the scrutiny provided by the committees. There will be no mechanism for approving or consenting to the EA's programme, and any formal 'localism' input will be lost. There will be no powers to issue levies as envisaged by both current and new legislation (FWMA 2010), so the additional funding for dealing with local issues or contributing towards wider projects will be lost. This is likely to have the greatest impact on local drainage issues, which will have negative impacts on agricultural businesses, since they benefit from appropriate drainage to maximise production.

This option is presented for completeness, but there is no suggestion that it has support. The loss of political mandate by LAs for the EA programme of work is unlikely to be agreed by Parliament.

Costs

(Administration costs for government will increase, to support the necessary changes to legislation.)

The loss of local scrutiny is considered a policy cost, undermining the 'localism' agenda. Performance measures for the EA, such as Outcome Measures, do not adequately address the balance between local and regional issues. The loss of the committees will constitute a lost opportunity in this area leading to less equitable decisions, with the possibility of a sub-optimal mix of local and regional schemes and funding allocation, and less local input and support.

Benefits

Committee costs, set out in baseline Option 1, will be saved.

Risks

There are risks for the overall programme's decision making, as this option will remove the local mandate that can ensure that the right level of localism is reflected in the programme. The EA is likely to concentrate on the delivery of risk management solutions contributing towards its performance measures, and this is unlikely to deliver an acceptable balance between local and regional issues.

It is unlikely that Parliament will approve the legislative measures needed for this option because of the loss of political mandate provided by the LA majorities on committees.

If the legislation needed is passed, there is likely to be political reaction from LAs in particular, and there could be orchestrated representations to ministers from pressure groups (taking up ministerial and officer time as well as parliamentary time) and creating reputational risk.

Overall impact

Overall, there is an initial monetary saving compared with the Preferred Option, but a significant likelihood that the outcome will be highly detrimental for flood and coastal erosion risk management. There will be a loss of political support needed for the programme and this option could well undermine LA willingness to participate positively in delivering their flood and coastal erosion risk management responsibilities. There is no support for this option: it is included for completeness.

Cost and benefit to business

As with Option 2 there are no direct costs or benefits to business. The less effective overall flood risk management programme would be detrimental to all society including business.

Specific Impact tests

The preferred option does not have effects under the specific impact tests, but as that may seem counter-intuitive, we mention the most relevant tests here.

Statutory Equality Duties

There are no statutory equality duty consequences of the proposals. The membership of the several committees is not expected to change initially. When new members need to be recruited, the competitive recruitment process is fully compliant with statutory equality duties, focusing on the knowledge and experience needed for the committee in question. The decisions made by the committees are compliant with statutory equality duties and are made at the community rather than the individual level where the gender and disability mix is not normally a key concern, but there are examples such as a school for the blind or a single sex religious community where particular care will be taken over decisions. Committees already approve funding for the particular needs of ethnic communities especially where it is known that communication is an issue (e.g. leaflets or warnings in a range of languages).

Wider Environmental Issues

There are no environmental consequences of the proposals. It is expected that the new committees will still include an environmental specialist who will be able to advise on the environmental impacts of the programme generally, as well as on specific environmental obligations that should be considered in consenting to the proposed programme.

Health and Well-being

There are no health and well-being consequences of the proposals. It is expected that the LA members of the committees will continue to bring a good understanding of well-being issues associated with the implementation of the proposed programme and seek to ensure that well-being benefits are maximised.

Rural Proofing

There are no rural proofing consequences of the proposals. It is expected that the committees will continue to deliver national policy with respect to rural proofing through the use of levy funding for smaller worthwhile projects, typically in rural areas, that are unable to compete for mainstream funding with larger projects protecting more densely populated areas.

Sustainable Development

There are no sustainable development consequences of the proposals. The EA programme should be developed with sustainable development principles in mind and committees will continue to be expected to consider that in its deliberations.

Footnotes

¹ p19 BIS IA Guidance at <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-898-impact-assessment-guidance.pdf>

² The composition of the committees, membership, and proceedings, as well as arrangements for boundary changes, were set out in the Environment Act 1995. The RFDC functions were set out under the Water Resources Act 1991, the Land Drainage Act 1991, and the Environment Act 1995.

³ For more detail see Impact Assessment on funding provisions prepared for the Flood and Water Management Bill, at: <http://www.defra.gov.uk/environment/flooding/policy/fwmb/impact-assess.htm>.

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.

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];

The effectiveness of the flood and coastal erosion risk management programme is under annual review by DEFRA through consideration of the annual reports of the EA. A formal review of the effectiveness and utility of the new committees will be carried out in 2016.

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?]

The annual review of performance of the programme and of the EA in particular considers how well objectives have been met, the appropriateness of objectives and whether major change is needed. The review of the effectiveness and utility of the committees is likely to consider feedback from the EA annual reports on the working of committees with respect to consenting the programme of work, particularly aspects that might have undermined progress, as well as the reports from committee chairs. Views could also be sought from sources that can provide comment on how well the committees have been able to balance regional and local risk management issues.

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]

EA reports are likely to be considered for adverse comment on the workings of committees with respect to consenting the programme, and consequent delays. The review will clarify the circumstances of the comment and check that it is not erroneously assigning blame to the committee rather than the EA. The review will consider how any problems found can be avoided and will recommend a way forward.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Prior performance of the EA under the old committee system, noting that for the new CSR the performance measures will be changed.

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]

The EA performs better than envisaged - as assessed by how many households are protected and other outcome measures to be agreed over the period of the CSR. Feedback from interested parties on how well the new committees are ensuring the delivery of a balanced and successful risk management programme by the EA.

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]

Current arrangements for performance monitoring will be retained, modified as needed where new outcome measures are introduced. It may be necessary to instruct the EA to formally comment on how committee workings have impacted on their ability to deliver programme objectives.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]