

FINAL REGULATORY IMPACT ASSESSMENT

Title of proposal

1. Impact assessment on the implementation in the north of Ireland of EU Council Directive 2007/60/EC on the assessment and management of flood risks.
2. The Regulations implementing the Directive in the north of Ireland will apply only here. Separate legislation will be brought forward in England, Scotland and Wales.

Purpose and intended effect

Objectives

3. The objective is to bring forward Regulations to implement Council Directive 2007/60/EC on the assessment and management of flood risks in the north with the aim of reducing and managing flood related risks to human health, the environment, cultural heritage and economic activity.
4. The principal direct effects of the proposals would be on public bodies in the form of additional administrative requirements in implementing the requirements of the Directive.

Background

5. There is no existing EU legislation in the field of flood risk management, although some related issues, notably the management of the environmental effects of flooding are covered in other legislation, particularly the Water Framework Directive.
6. The principal rationale for the EU Floods Directive rests on the need to avoid inconsistent or contradictory approaches to flood risk management, and to ensure co-ordinated planning and action within river basins and in particular river basins which span two or more Member States. The growing incidents of severe flood events in some parts of Europe, the increasing risks from climate change and the risks from continuing development in flood plains are other reasons cited. The Commission holds the view that because flooding is a serious problem with major social, environmental and economic consequences, there is a need for concerted action.
7. The Directive provides a framework within which flood risk may be assessed and managed across the Community with the aim of reducing the adverse consequences of flooding on human health, the environment, cultural heritage and economic activity.

8. The main requirements contained within the Directive and transposed in the north of Ireland's Regulations are to:
 - a) Undertake a Preliminary Flood Risk Assessment of all river basins and coastal zones in the north by December 2011. On the basis of this assessment, identify all areas at potential significant flood risk;
 - b) Produce detailed Flood Hazard and Flood Risk maps for the areas determined to be at potential significant flood risk by December 2013;
 - c) Produce Flood Risk Management Plans that are focused on prevention, protection and preparedness and which contain objectives and measures to reduce significant risk in these areas. Plans must be produced by December 2015;
 - d) Co-ordinate efforts with the south of Ireland in relation to implementation of the provisions in international catchments;
 - e) Encourage the active involvement of interested parties in the production of Flood Risk Management Plans and co-ordinate this with the involvement of interested parties to the Water Framework Directive.
 - f) Make available to the public the Preliminary Flood Risk Assessment, Flood Hazard maps, Flood Risk maps and the Flood Risk Management Plans.
9. The north of Ireland is in a different position than Britain as only in the north are there river basins and coastal zones shared with another Member State.

Risks and rationale for government intervention

10. The risk of flooding is undoubtedly a serious issue in the north of Ireland as well as in the other EU countries. The effective management of this risk requires the intervention of government, working in cooperation with public bodies and the public. Government is the only body with the wide-ranging responsibilities and powers that are necessary to effectively manage flood risk.

Options

Option 1 - Do nothing / Non Implementation of the Directive

11. With this option no action would be taken to transpose the Floods Directive and a failure to implement the Directive in full would be a breach of our EU obligations. This would inevitably lead to the Commission taking infraction proceedings against the UK Government and the imposition of sanctions by the European Court.
12. The Floods Directive provides an opportunity to establish a legal framework for reducing flood risk through the best practice and nationally consistent approach of flood risk management. As government embraces the principles of flood risk management the 'Do nothing' option would be an unreasonable proposition.

Option 2: Implementation of Directive to exclude all flooding from sewerage systems

13. This option is to ensure the legal and administrative framework for complying with the Directive is put in place. However, It is possible that the EC may take the view that this option, in the relevant circumstances particular to the north of Ireland, does not constitute effective and proportionate implementation of the Directive.
14. Article 2(1) of the Directive states that floods from sewerage systems may be excluded and therefore the decision with respect to this matter is at the discretion of individual member states. However the EC must be satisfied that the decision taken must be consistent with the basic principle that the Directive should be implemented in a manner such that effect is given to what they require. It is clear that the principal aim of the Directive is to reduce the adverse effects of flooding in areas determined to be at significant risk of flooding. It is a matter of record that the most significant source of the flooding that affected the many thousands of properties in 2007 and 2008 was surface water and that this directly links to inundation of the urban sewerage systems. Therefore in view of this fact, it is possible that the EC may take the view that flooding from sewerage systems is a significant risk in the north and that it should not be excluded from our transposing legislation.
15. Understandably, members of the public have no regard for the source of the flooding that affects their communities and will have an expectation that government should be equally committed to reducing flooding to property regardless of whether the source is a river, the sea or surface water. Therefore if flooding from sewerage systems is excluded from the regulations it is possible that government and the EC may be lobbied by the public and their representatives to have it included and that a failure to include it could lead to infraction proceedings by the Commission against Britain and the north of Ireland.

Option 3: Implementation of Directive to include floods from sewerage systems that have been designed to accept hydraulic loading from stormwater and excluding system failure (such as blockages or pump failures)

16. This is the only option that is certain to meet all of the requirements of the Directive.
17. The inclusion of flooding from sewerage systems that are designed to withstand external hydraulic loading from stormwater is considered because in many circumstances these systems are the only practical vehicle by which to reduce the risk of surface water flooding. This source of flooding represents a significant risk and is known to have been responsible for a high percentage of the flooding to property in the recent flood events in June 2007 and August 2008.

18. The exclusion of flooding from sewerage systems due to a system failure (such as blockages or pump failure) is considered because it would be impractical to produce flood models to replicate the consequences of system failures which in theory could occur at any time and at almost any point in the sewer network. As modelling for system failure does not fit with the requirements of the floods Directive to produce flood hazard/risk maps flood events with particular return periods it is unlikely that this exclusion would be viewed unfavourably by the Commission.
19. In comparison with other sources, flooding that occurs solely as a consequence of foul sewerage systems has a relatively minor adverse affect. In view of the limited potential benefits, it would not be appropriate or proportionate to include this source of flooding within the terms of the transposing Regulations. Therefore flooding that occurs solely from foul sewerage systems shall not be subject to the requirements of the Regulations.

Preferred option

20. The preferred option is to implement option 3.

21. Benefits, Costs and Risks

Option	Cost	Benefit	Risk
Option 1	No direct costs.	None	There is a probability of heavy penalties/fines being imposed on UK government by the European Court for non transposition.
Option 2	<p>The work programmes necessary to ensure full compliance with the Directive may cost government in excess of £5.5m over the next 6 years.</p> <p>However, in the absence of the Directive, DARD-Rivers Agency, like all other flood protection authorities in Britain, would still be committed to significant spending on flood risk assessments and plans that are closely aligned with those required by the Directive.</p>	<p>May satisfy the EC requirement for full implementation of the Directive.</p> <p>Establishes a robust legal framework for the assessment and management of flood risk and places obligations on all public bodies to exercise their functions in a manner that takes account of the risk of flooding.</p> <p>The processes laid down by the Directive, encourage best practice in flood risk management and will result in a reduction in flood risk and the cost of flood damages in the future.</p> <p>Potential for the implementation of measures that reduce the adverse affects of flooding and protect and enhance the environment.</p>	<p>Insofar as surface water flooding is considered to be a significant source of flooding the EC may take a view that sewerage systems (which vent surface water) should be included in the transposing regulations. Consequently, there is a risk that the EC may take infraction procedures against Britain and the north of Ireland and this will result in legal costs and possibly fines.</p> <p>By excluding flooding from all sewerage systems an opportunity to assess and manage the significant risk from surface water will be denied and those affected by flooding from this source will consider that they are being unfairly treated.</p> <p>This option to exclude all flooding from sewerage systems is not consistent with the approach taken in Britain and the south of Ireland.</p>
Option 3	Costs as for Option 2, plus a marginal increase due to the cost of flood modelling of sewer networks as required in areas of potential significant flood risk.	<p>Certain to satisfy the EC requirement for full implementation of the Directive.</p> <p>This option is consistent with the approach taken in Britain and in the south of Ireland.</p> <p>Establishes a robust legal framework for the assessment and management of flood risk and places obligations on all public bodies to exercise their functions in a manner that takes account of the risk of flooding.</p> <p>The processes laid down by the Directive, encourage best practice in flood risk management and will result in a reduction in flood risk and the cost of flood damages in the future.</p> <p>Potential for the implementation of measures that reduce the adverse affects of flooding and protect and enhance the environment.</p>	None

Small business impact test

22. The principal direct impact of the Regulations will be on Government and on NI Water which has responsibility for water and sewerage in the north and is a government owned company.
23. The policy may have a positive impact on businesses which are located in flood prone areas as the main purpose of the policy is to reduce the risk of flooding. Even in the circumstances that it is not possible to reduce the likelihood of flooding to some businesses, the flood mapping requirements of the Regulations will ensure that businesses are at least aware of the flood risk to their property and can take appropriate steps to mitigate the risk.

Equality and other impacts

24. The proposals have been subject to an Equality impact assessment screening exercise and this has concluded that flooding is not discriminate and that no adverse differential impact is likely on section 75 groups.
25. Screening exercises for all other impacts concluded that the proposals would have no direct negative impacts. Proposals are considered to have an indirect positive impact as all sections of the community will benefit from the reduction in the adverse effects of flooding.
26. In relation to the Environmental impact it concluded that the Flood Risk Management Plans required by the Regulations are likely to have a significant effect on the environment and will be subject to a Strategic Environmental Assessment. Likewise, any proposed structural measures arising from these plans shall be subject to Environmental Impact Assessment.
27. The objectives and measures defined to mitigate flood risk, contained within the Flood Risk Management plans, will be subject to further screening exercises to assess possible impacts and assessments completed as necessary.

Enforcement and sanctions

28. No enforcement or sanctions are applicable in the regulations.

Consultation

29. The Department has worked closely with Defra and the other devolved administrations in putting in place arrangements to transpose the requirements of the Directive throughout Britain and the north of Ireland. Consultation through a Departmental Steering Group is ongoing. The Department is also working closely with the south of Ireland to ensure coordination in transboundary catchments.
30. The proposals are being subject to full public consultation, including consultation with all relevant stakeholders.

Implementation and delivery plan

31. It is proposed to bring the Regulations into operation by 25 November 2009 with full implementation of the Directive within the timescales imposed. DARD has been designated as the competent authority to ensure implementation and compliance of the Directive here in the north.

Monitoring and post-implementation review

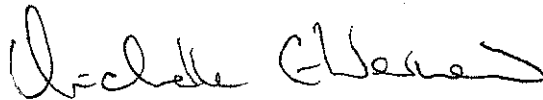
32. The effectiveness of the Regulations will be monitored as part of the on-going policy process and by the Commission under the reporting regime to be agreed.

Summary

33. The Directive on the assessment and management of flood risk provides a framework for a consistent approach to flood risk management across the EU. It encourages the involvement of the public and interested groups in the planning process.

Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.



15.10.09
