



# Post-Legislative Scrutiny: Flood and Water Management Act 2010

## INQUIRY

The Environment, Food and Rural Affairs Committee

20 FEBRUARY 2017

### Introduction

This is the Fire Brigades Union (FBU) submission to the Environment, Food and Rural Affairs Committee (EFRA) inquiry into the Flood and Water Management Act 2010. The FBU is the democratic, professional voice of firefighters and other workers within fire and rescue services across the UK. We represent the vast majority of wholetime (full-time) and retained (part-time, on-call) operational firefighters and control staff in the UK.

The FBU welcomes the work of the EFRA committee focusing on flood provision in England. The union welcomed the EFRA committee report, *Future flood prevention*. In particular we support the recommendation that “the Government places a statutory duty on the Fire and Rescue Service in England and Wales to provide an emergency response to flood events and commits the necessary additional funding and staff resources to support delivery of this responsibility”. The FBU agrees that government should consult on methods of imposing and funding this duty.<sup>1</sup>

The FBU appreciates that EFRA’s current inquiry is principally concerned about whether the government has implemented measures in the Flood and Water Management Act 2010 in a timely, proportionate and effective manner. However the union draws the committee’s attention to the unfinished business arising from the Pitt Review, which the Flood and Water Management Act was intended to implement. Among the most outstanding recommendations still not enacted is the statutory duty on fire and rescue services in England to respond to major flooding.

### The Pitt review

The Pitt Review investigated the 2007 floods. Pitt found that “the public and rescuers were put at unnecessary risk by the current lack of clarity over who was responsible for the emergency response to flooding. The review established that “the current provision of boats, PPE and training is predominantly for local rescue, not for the greater scale of response required for multiple rescues in wide-area flooding events”. The report concluded that “in the event of another wide-area flooding emergency, those responding would still not necessarily have the right resources or training to respond safely”.

Pitt’s final report recommended that the government “urgently put in place a fully funded national capability for flood rescue, with Fire and Rescue Authorities playing a leading role, underpinned, as necessary, by a statutory duty... To give clear and unambiguous direction – giving certainty where

there is doubt... the Review strongly believes that a statutory duty is the best means to achieve these outcomes". Pitt made a strong proposal:

Recommendation 39: "The Government should urgently put in place a fully funded national capability for flood rescue, with Fire and Rescue Authorities playing a leading role, underpinned, as necessary, by a statutory duty."

The key motivation given was "to give clear and unambiguous direction – giving certainty where there is doubt". Pitt underlined that "the Review strongly believes that a statutory duty is the best means to achieve these outcomes".<sup>2</sup>

In December 2008, the initial government response to the Pitt Review was to support Recommendation 39 on statutory duty. The detailed response stated:

The Government agrees the need for a properly funded national capability for flood rescue. The Department for the Environment, Food and Rural Affairs (DEFRA) has set up a project, to improve significantly flood rescue capability and co-ordination between the agencies concerned. That will include delivering some additional assets where appropriate.

The priority for the Government is to put in place a co-ordinated multi-agency flood rescue capability as soon as possible. In light of the findings of the project on a national capability for flood rescue, the Government will consider further how the role of the organisations involved might be clarified or enhanced, and whether there is a need for statutory underpinning for the role of any of the agencies involved.<sup>3</sup>

To deliver this response it was announced that the Defra would establish a Flood Rescue National Enhancement Project. The project was given a "one off" sum of £2m to initiate the work required to ensure best use of existing teams and resources. The issue of "statutory clarity and certainty" in relation to flood rescue, considered to be of critical importance by Pitt and many respondents, was not decided definitely by the Westminster government at that stage.

## **Flood and Water Management Act 2010**

The Flood and Water Management Act 2010 was the primary legislative vehicle for implementing the findings of the Pitt Review. However the government did not include the statutory duty of fire and rescue services in the provisions of its Bill, as many expected it would after such a serious review. Despite efforts by MPs on all sides of the House of Commons to amend the Bill, statutory duty was rejected. However Huw Irranca-Davies, the Defra minister responsible stated that the government "do not reject totally the idea of a statutory duty option 'if necessary'".<sup>4</sup> A similar sentiment was expressed when amendments were laid in the House of Lords that would have implemented statutory duty.<sup>5</sup> Defra's final progress report on the Pitt Review in 2012 listed Recommendation 39 as "implemented; ongoing work continuing".<sup>6</sup>

Exercise Watermark, the flood exercise suggested by the Pitt review, took place 4-11 March 2011. Firefighters raised a number of concerns with the FBU over the exercise. In particular, on Day 4, during an east coast sea/tidal event affecting Humberside, Lincolnshire, Norfolk, Suffolk, Essex and Kent, there were insufficient appliances and firefighters available to be mobilised. In other cases, crews working very long shifts and other safety concerns were raised during helicopter rescues. Defra's Exercise Watermark final report promised that statutory duty would be considered. The report found that "flood rescue assets [were] challenging to track and manage", while participants needed to decide "whether there is enough resource and to consider how best to coordinate with others". It stated:

**Key recommendation 26** – The review recommends that Defra should work with the Department for Communities and Local Government, the Cabinet Office and the Welsh Government to clarify how local and national flood rescue assets should be coordinated, for example statutory duty, framework, Memorandum of Understanding, etc.<sup>7</sup>

Sadly, governments at Westminster since then have decided not to implement the statutory duty, despite the experience firefighters have had tackling major flooding in the winter of 2013-14 and in December 2015.

## **The devolved administrations**

The attitude of successive governments at Westminster is in stark contrast to the reaction of the devolved administrations across the UK. Scottish fire and rescue service has a statutory duty to respond to serious flooding, derived from legislation implemented in 2005. The Northern Ireland assembly government took evidence on statutory duty in 2011, including material presented by the FBU. As a result, a duty on major flooding came into force in Northern Ireland on 1 January 2012. This was a timely decision in light of subsequent flooding. The Northern Ireland Fire and Rescue Service announced it had enhanced its Special Rescue Team by adding a dozen extra personnel to establish a team of 28 firefighters providing flood rescue capability alongside urban search and rescue. Specialist rescue incidents more than doubled over the last five years, with flooding a contributor.<sup>8</sup>

During 2016, the Welsh government conducted an extensive consultation on implementing a flood statutory duty on fire and rescue services. The FBU commended the serious, well researched proposals set out in the consultation paper, which reflected a considerable amount of work done to tackle flooding in Wales. The union also acknowledged the role of the Welsh government's Fire and Rescue Consultative Forum, which has discussed flooding issues thoroughly over a number of years. The FBU supported the Welsh government's approach on this question and argued that its proposals on statutory duty would significantly improve resilience to flooding in Wales. Current indications suggest strong support in Wales for implementing the statutory duty at the earliest legislative opportunity.

## **Climate change**

The FBU believes that there have also been important changes in the climate risks since the Pitt Review and the Flood and Water Management Act. Last year, the EFRA committee took evidence on future flood prevention. Experts were asked about the meaning of one-in-100 year flood risk, which they explained was widely misunderstood. Daniel Johns, head of adaptation at Committee on Climate Change told MPs that a 1-in-100 flood refers to the chance of that specific event happening in that particular place. However in terms of the frequency of flooding, he said that "it is almost to be expected that there should be a significant flood event almost every other year somewhere in England".<sup>9</sup>

The UK Climate Change Risk Assessment (CCRA) 2017 published a highly instructive summary report on England last year. The report noted that flooding is a threat to life. It quoted estimates that there are 2.3 million residential properties at any degree of risk of flooding across England, of which 690,000 (3%) are at 1:75 or greater risk. By the 2050s the projected number of people at 1:75 or greater risk is estimated to rise to around 1.7 million (under a 2 degree scenario) and 2.2 million (for a 4 degree scenario).<sup>10</sup> The FBU believes that these assessments reinforce the case for a statutory duty on fire and rescue services in England and should be incorporated into any assessment of legislation designed to improve flood resilience.

## Conclusion

The Flood and Water Management Act 2010 could have been a vehicle for implementing the Pitt Review in full, including the proposal for a statutory duty on fire and rescue services to respond to major flooding in England. The alternative now would be to utilise the draft statutory instrument produced in September 2004 by the Office for the Deputy Prime Minister (ODPM).<sup>11</sup> The document made the case for a statutory duty on the fire and rescue service to respond to major flooding, along with chemical, biological, radiological and nuclear (CBRN) incidents and search and rescue. This would be a relatively straightforward amendment to the Fire and Rescues Services Act, without the need for primary legislation. The legislation from devolved administrations provide another ready-made wording. Such a change in England would put future flood emergency response on a solid statutory footing and improve resilience in the face of the increased risk of flooding. The FBU believes there is a strong case for this legislation and urges MPs to progress it as swiftly as possible.

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<sup>1</sup> Environment Food and Rural Affairs Committee, Future flood prevention: Second Report of Session 2016–17, 2 November 2016: pp.25, 44

<sup>2</sup> Michael Pitt, Learning lessons from the 2007 floods – Full Report. London: Cabinet Office, 2008: pp.181, 185, 190.

<sup>3</sup> Defra, The Government’s Response to Sir Michael Pitt’s Review of the Summer 2007 Floods, December 2008, p.73

<sup>4</sup> Hansard HC Deb 2 Feb 2010, vol. 505, col. 200-27

<sup>5</sup> Hansard HL Com 17 Mar 2010, vol. 718, col. GC241-251

<sup>6</sup> Defra, The Government’s Response to Sir Michael Pitt’s Review of the Summer 2007 Floods: Final Progress Report, 27 January 2012: pp.30-31

<sup>7</sup> Defra, Exercise Watermark final report, October 2011: p.24

<sup>8</sup> Statutory duty for specialist rescue and flooding, *Fire* magazine, October 2014: p.7

<sup>9</sup> Environment Food and Rural Affairs Committee, Future flood prevention inquiry: oral evidence, 13 April 2016

<sup>10</sup> Adaptation Sub-Committee of the Committee on Climate Change, UK Climate Change Risk Assessment 2017 Evidence Report – Summary for England, 2016: pp.66-67

<sup>11</sup> ODPM (2004) *Emergencies for Fire and Rescue Authorities: A Consultation Document*, September. London: ODPM.