

Y Pwyllgor Cynaliadwyedd

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Paratowyd gan:

Jane Davidson AC

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai

Cyflwyniad

Cafodd y Mesur Rheoli Dwr a Llifogydd ei gyflwyno yn y Senedd ar 19 Tachwedd 2009 ac mae'n mynd drwy'r cam Pwyllgorau yn Nhy'r Cyffredin ar hyn o bryd.

Gofynnir i chi nodi bod y papur hwn yn ymdrin â chynnwys y Mesur fel yr oedd ar yr adeg y cafodd ei gyflwyno.

Diben y Mesur Rheoli Dwr a Llifogydd

Bydd y Mesur Rheoli Dwr a Llifogydd yn fodd i ni sicrhau bod perygl llifogydd yn cael ei reoli'n well ac mewn ffordd fwy cynhwysfawr ar gyfer pobl, cartrefi a busnesau, a bydd yn helpu i ddiogelu grwpiau yn y gymuned rhag codiadau na allant eu fforddio yn y taliadau a godir am ddraenio dwr wyneb. Bydd hefyd yn fodd i ddiogelu'r cyflenwadau dwr a ddarperir ar gyfer y defnyddiwr.

Cefndir y Mesur

Ym mis Mai 2008, dywedodd Llywodraeth y DU ei bod yn fwrriad ganddi gyflwyno Mesur Rheoli Dwr a Llifogydd, gan wneud hynny, yn bennaf, mewn ymateb i Adolygiad Syr Michael Pitt o'r llifogydd a gafwyd yn ystod haf 2007.

Yn ystod Adolygiad Pitt, daeth i'r amlwg bod angen fframwaith deddfwriaethol diwygiedig, a hynny am fod bylchau o ran rheoli perygl llifogydd, yn benodol felly mewn perthynas â dwr wyneb ffo a'r angen i fabwysiadu dull o weithredu sy'n fwy seiliedig ar risg mewn perthynas â diogelwch cronfeydd dwr. Yn ogystal â sicrhau bod argymhellion Adolygiad Pitt yn cael eu gweithredu, roed angen deddfu ar y materion sydd wedi codi mewn perthynas â rheoli dwr ers Deddf Dwr 2003.

Mae'r materion y bwriedir i'r Mesur fynd i'r afael â hwy yr un mor bwysig yng Nghymru, ac mae Llywodraeth y Cynulliad wedi bod yn cydweithio'n agos iawn â Llywodraeth y DU drwy gydol y broses o ddatblygu'r Mesur, a hynny er mwyn sicrhau ei fod yn adlewyrchu blaenoriaethau ac anghenion Cymru ac yn rhoi swyddogaethau priodol i Weinidogion Cymru. Mae'r ffaith bod y timau polisi a'r timau cyfreithiol wedi bod mewn cysylltiad dyddiol â'i gilydd ynglyn â phob agwedd ar y Mesur yn tystio i'r cydweithio agos hwn, ac felly hefyd aelodaeth y Panel Gweithredol sy'n mynd ati'n wythnosol i oruchwylio hynt y gwaith ar y Mesur, y galwadau ffôn a'r fideo-gynadleddau niferus, y cyfarfodydd rheolaidd wyneb yn wyneb yn Llundain ac yng Nghaerdydd, a'r hyfforddiant ar y cyd mewn perthynas â'r Mesur.

Cafodd Mesur drafft ei gyhoeddi ar 21 Ebrill 2009 at ddibenion ymgynghori ac at ddibenion craffu cyn deddfu. Daeth yr ymgynghoriad i ben ar 24 Gorffennaf 2009 a daeth cyfanswm o 642 o ymatebion i law o Gymru a Lloegr. Wrth fynd ati i lunio'r Mesur, ystyriwyd yr ymatebion i'r ymgynghoriad, ynghyd ag adroddiad Pwyllgor yr Amgylchedd, Bwyd a Materion Gwledig am y broses craffu cyn deddfu, ac adroddiad Pwyllgor Cynaliadwyedd Cynulliad Cenedlaethol Cymru.

O ystyried y pwysau ar amserlen y Senedd yn ystod y bumed sesiwn, mae'r Mesur a gyflwynwyd yn canolbwyntio ar faterion penodol yn hytrach nag ymdrin â'r holl faterion a godwyd yn ystod yr ymgynghoriad ac yn y Mesur drafft. Mae gwaith yn dal i fynd rhagddo ar ddarpariaethau sy'n ymdrin â'r holl faterion hynny, gyda golwg ar eu cynnwys mewn deddfwriaeth a gaiff ei chyflwyno yn y dyfodol.

Cynnwys y Mesur Rheoli Dwr a Llifogydd

Dyma grynodedd o'r materion allweddol y mae'r Mesur yn mynd i'r afael â hwy:

rolau a chyfrifoldebau o ran rheoli perygl llifogydd ac erydu arfordirol

asedau rheoli perygl llifogydd ac erydu arfordirol sy'n eiddo i drydydd partïon

draenio cynaliadwy

diogelwch cronfeydd dwr

gweinyddu dwr

datblygu dull o weithredu seiliedig ar brosiectau ar gyfer prosiectau seilwaith mawr yn y sector dwr

mesurau rhag sychder

cyflwyno safon orfodol ar gyfer adeiladu carthffosydd

taliadau dwr wyneb – cynlluniau consesiynau

cywiro anghysondeb yn ymwneud â rhoi caniatâd ar gyfer prosiectau seilwaith mawr yng Nghymru o dan adran 167 o Ddeddf y Diwydiant Dwr 1991, unwaith y bydd y diwygiadau y bwriedir eu gwneud i'r adran honno drwy gyfrwng Ddeddf Cynllunio 2008 wedi dod i rym

Mae tair rhan i'r Mesur ac eir ati isod i roi crynodeb o'r hyn sydd wedi'i gynnwys yn y Rhannau hynny (mae rhagor o fanylion yn yr Atodiad).

Rhan 1: Rheoli Perygl Llifogydd ac Erydu Arfordirol

Mae'r Rhan hon y darparu ar gyfer rheoli perygl llifogydd, gan ymhelaethu ar y cysyniad o amddiffyn rhag llifogydd a geir mewn deddfwriaeth sy'n bodoli eisoes. Mae'n cynnig eglurdeb ynglyn â rolau a chyfrifoldebau'r sefydliadau hynny sydd â rôl mewn perthynas â rheoli perygl llifogydd. Mae hefyd yn sicrhau bod y ddeddfwriaeth yn ymdrin â llifogydd o bob math, gan fod y ddeddfwriaeth sy'n bodoli eisoes yn canolbwyntio ar lifogydd ar brif afonydd a'r môr heb fynd i'r afael â llifogydd dwr wyneb.

Mae'n rhoi trosolwg strategol i Weinidogion Cymru dros reoli perygl llifogydd ac erydu arfordirol yng Nghymru.

Mae'n rhoi pwerau sy'n ymwneud â'r cyfrifoldebau hyn i Asiantaeth yr Amgylchedd, i'r awdurdodau lleol ac i gyrrff eraill, gan wneud hynny drwy ddiwygio Deddf Adnoddau Dwr 1991, Ddeddf Draenio Tir 1991 a Deddf Diogelu'r Arfordir 1949, ac yn uniongyrchol drwy'r Ddeddf hon.

Mae hefyd yn rhoi cyfrifoldeb ar awdurdodau lleol yng Nghymru i baratoi ac i sefydlu strategaethau i reoli perygl llifogydd a achosir gan ddwr daear, dwr wyneb a chyrtsiau dwr cyffredin yn eu hardaloedd hwy.

Rhan 2 Darpariaethau Amrywiol

Eir ati yn y Rhan hon i sefydlu system ar gyfer cymeradwyo a mabwysiadu systemau draenio cynaliadwy ac i gyflwyno darpariaethau a fydd yn pennu Safonau Cenedlaethol y bydd yn rhaid i systemau draenio newydd gydymffurfio â hwy.

Mae nifer o ddarpariaethau yn y Rhan hon hefyd sy'n diweddu'r trefniadau sy'n bodoli eisoes mewn perthynas â diogelwch cronfeydd dwr. Yn benodol, mae ynddi ddarpariaethau sy'n cyflwyno dull o weithredu ar sail risg ac sy'n darparu ar gyfer trothwy is o ran maint y cronfeydd y caniateir eu cynnwys yn y trefniadau sy'n gysylltiedig â diogelwch cronfeydd dwr.

Mae'r Rhan hon hefyd yn moderneiddio'r trefniadau gweinyddu arbennig ar gyfer cwmnïau dwr ac yn cyflwyno darpariaethau newydd fel y bo modd rheoleiddio cwmnïau sy'n cael eu sefydlu er mwyn ymgymryd â phrosiectau seilwaith mawr sy'n gysylltiedig â dwr.

Mae'r Rhan hon yn mynd i'r afael â nifer o faterion eraill, gan gynnwys cyflwyno taliadau consesiynol ar gyfer grwpiau yn y gymuned mewn perthynas â draenio dwr wyneb. Mae'r ddarpariaeth hon yn mynd i'r afael â mater sydd wedi bod yn destun pryder i grwpiau mewn rhai rhannau o Gymru.

Mae cymal 40 yn yr adran hon yn cywiro anghysondeb a nodwyd gan y Pwyllgor Cynaliadwyedd mewn perthynas â gorchmynion gwaith gorfodol.

Rhan 3: Cyffredinol

Eir ati yn y Rhan hon i nodi amryfal ddarpariaethau atodol sy'n gymwys yn gyffredinol i'r Mesur.

Mae hefyd yn nodi i ba diriogaeth y mae'r Mesur, sy'n cynnwys Cymru a Lloegr, yn gymwys. Nid yw pwerau Gweinidogion mewn meysydd polisi sy'n ymwneud â dwr a llifogydd yn dilyn ffin ddaearyddol Cymru a Lloegr bob amser. Yn lle hynny, gall awdurdodaeth yr Ysgrifennydd Gwladol a Gweinidogion Cymru gyfateb, er enghraifft, i'r ardaloedd y penodir ymgymeryd dwr a charthffosiaeth iddynt yn hytrach na'r ffin genedlaethol, er bod y mater hwn yn gymwys i bob rhan o'r Mesur.

Gweithredu'r Mesur

Mae pwerau cychwyn eang yn y Mesur sy'n galluogi Gweinidogion Cymru i roi'r pwerau sydd yn y Mesur mewn grym. Rydym wrthi ar hyn o bryd yn trafod gyda rhanddeiliaid allweddol, gan gynnwys Asiantaeth yr Amgylchedd, Cymdeithas Llywodraeth Leol Cymru a'r cwmnïau dwr, yr amserlen fwyaf priodol ar gyfer gweithredu'r Mesur.

Mae'n fwriad gennym fynd ati yn 2010 i ddatblygu Strategaeth Genedlaethol ddrafft ar Llifogydd at ddibenion ymgynghori. Rydym wrthi eisoes yn cydweithio â Llywodraeth y DU er mwyn datblygu Safonau Cenedlaethol ar gyfer systemau draenio cynaliadwy, ac mae bwriad i ymgynghori yn eu cylch.

Jane Davidson AC

Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai

Atodiad

Content of the Flood and Water Management Bill

Part 1: Flood and Coastal Erosion Risk Management

Clauses 1 - 6: key concepts and definitions

For some time it has been recognised that the legislation governing flood and coastal erosion in England and Wales is narrow both in its coverage and the tools it provides to manage the risks.

The current legislation only covers flooding from rivers and the sea, leaving an obvious gap in respect of flooding from other sources and this Bill is an important step in both updating the legislation and enabling better flood and coastal erosion risk management approaches to be taken in future. Critically, it introduces the concept of risk management into legislation allowing risk management authorities to take additional measures beyond defence.

Clauses 7 - 17: Strategies, co-operation and funding

The Bill introduces a new statutory duty on the Welsh Ministers to produce a national strategy for Flood and Coastal Erosion Risk Management in Wales. The Strategy will set out the risks, provide details of the management authorities including which risks each organisation is responsible for, and include information on investment.

The Strategy will take account of the findings of:

- the Pitt Review of the 2007 floods in England;
- the UK Climate Change Predictions for 2009; the
- pilot studies I commissioned in Prestatyn, Barry and Pwllheli; and
- the Welsh Audit Office Report into Coastal Erosion and Tidal Flooding risks in Wales and the subsequent recommendations of the Public Accounts Committee.

Welsh Ministers will retain their current funding powers and overall responsibility for the strategic direction of flood and coastal erosion risk management policy in Wales.

The Environment Agency will be given an enhanced role under the terms of the Bill, covering coastal erosion in addition to their current responsibilities for flooding. As now they will lead on flood risks from main rivers and the sea. In parallel to this local authorities will lead on the flood risks posed by ground water, surface water and ordinary watercourses. This is the first time statutory responsibility for surface water risk management will have been allocated to any of the risk management authorities and represents a significant improvement on the current legislative picture.

To enable local authorities to fully meet their new responsibilities, they will be required to produce local strategies, explaining how they will implement the national objectives and manage the local flood risks. Again, this is a new responsibility. There is currently no requirement to produce local plans or strategies and this will greatly improve the current understanding of the risks we face and the options available to manage them.

Clauses 18 - 21, 30,31 and Schedules 1 and 2: Supplemental powers and duties

The Bill requires the Environment Agency to produce periodic 'state of the nation' reports on flood risk and require local authorities to investigate local flood incidents.

The Bill updates existing legislation to ensure the Environment Agency and local authorities have the necessary powers and functions to undertake and maintain the works necessary to manage the risks posed.

In addition to this the Bill also provides the Environment Agency, local authorities and Internal Drainage Boards with a power to designate and register certain assets within their areas of responsibility that impact upon flood or coastal erosion risk management. Again, this new power will ensure the public are better protected, preventing gaps emerging within the defence system.

Clauses 22 - 26: Regional Flood and Coastal Committees

The clauses require the Environment Agency to establish Regional Flood and Coastal Committees (RFCCs) in accordance with the procedure laid down by the Welsh Ministers in regulations in relation to committees in Wales. It also provides powers for the Welsh Ministers to set out in regulations the procedure for establishing a RFCC, membership requirements and to require the Environment Agency to pay the Chair and to determine the amounts or maximum amounts that may be paid.

These committees will replace Regional Flood Defence Committees (RFDCs) and the Welsh Ministers are given power by order to make transitional provision for this change.

These clauses also requires the Environment Agency to consult an RFCC about the way in which it intends exercise its flood and coastal erosion risk management functions in the Committee's region to take into account any representations made: and before it issues any levy under clause 17, to first obtain the consent of the relevant RFCC.

Clauses 27 - 31: General

Clause 27 relates to sustainable development - it requires certain authorities (listed in sub clause 3) to make a contribution to the achievement of sustainable development when exercising flood or coastal erosion risk management functions. The remaining clauses primarily provide clarification of points in the rest of Part 1: give effect to Schedule 1 on the designation of features and Schedule 2, which provides for various amendments to the Water Resources Act 1991, the Land Drainage Act 1991, the Coast Protection Act 1949,

and the Environment Act 1995 so that flood and coastal erosion risk management provisions are introduced into those Acts: or make provision to enable consequential amendments.

Part 2: Miscellaneous

Clause 32 and Schedule 3 (Sustainable drainage)

These clauses contain a number of measures designed to implement a change in the way rainwater drainage is managed and to support the uptake of sustainable drainage systems.

The new approach has a number of important benefits, including reduced flood risk and improved water quality. In moving to a more sustainable approach to rainwater drainage, the Bill requires the Minister to publish National Standards for the implementation of sustainable drainage. In order to make the necessary changes, local authorities will take on responsibility for approving, inspecting and in most cases, adopting new sustainable drainage systems (Sustainable Drainage Approval Body - SAB). The approval process will operate in parallel with the planning process. A number of delegated powers are proposed to allow the appointment of alternative organisations as the SAB and to facilitate the approval and adoption process.

The existing right for a developer to automatically connect surface water drainage from a site to the public sewerage system will be constrained in relation to sustainable drainage systems built to the National Standard and will be subject to the approval of the SAB.

Clause 33 and Schedule 4 (reservoirs)

These clauses introduce amended legislation to enhance the reservoir safety regime in Wales. While the lowering of the threshold for the registration of reservoirs from the current 25,000m³ to 10,000m³ will mean that more reservoirs are initially subject to the regime it will also ensure that those reservoirs that pose a risk to human life are more easily identified. The full inspection regime will only apply to those that pose the most significant risks.

All of these changes enhance the current legislative regime and are designed to protect the public and our critical infrastructure from the risks posed by flooding and coastal erosion. The Bill updates existing legislation where necessary and introduces new elements where gaps in coverage have been identified.

Clause 34 and Schedule 5 (special administration)

The Bill makes provision to amend the special administration regime in the Water Industry Act 1991 to bring it into line with modern insolvency practice. It will also streamline the procedures for transferring a failing company to new owners.

Ministerial functions under the existing special administration provisions within the Water Industry Act 1991 are devolved to the Welsh Ministers in relation to water and sewerage undertakers wholly or mainly in Wales (but not in relation to licensed suppliers to the extent that regime applies to them). Ministerial functions under the various insolvency and companies Acts are not devolved. This presents practical issues in the application of the regime in Wales. In order to provide for a consistent system the order making power to amend schedule 2 and the powers to make Regulations applying the Insolvency Acts and Companies Act provisions will rest with the Secretary of State in relation to water and sewerage companies in England and Wales, subject to a requirement that the Secretary of State seeks the consent of the Welsh Ministers before making Regulations.

Clause 35 (Provision of infrastructure)

The Bill contains provisions to enable the regulation of companies set up to deliver large water infrastructure projects and to require that certain projects are put out to tender.

Clause 36 (Water use: temporary ban)

The Bill contains an enabling power to allow the Secretary of State and Welsh Ministers to extend water company hosepipe ban powers to cover other non-essential uses of water. These provisions would apply in relation to Wales with the relevant functions being conferred on the Welsh Ministers for those water and sewerage company areas that are wholly or mainly in Wales.

Clause 37 (Civil sanctions)

This clause relates to the existing ability under the Regulatory Enforcement and Sanctions Act 2008 for certain regulators (such as the Environment Agency) to be given (by Order) the ability to impose various kinds of civil sanctions on persons who have committed offences, as an alternative to prosecution.

This stems from the "Macrory Report" which was concerned that some regulators were over-reliant on criminal prosecution as a means of enforcement and this can lead to a compliance gap. It recommended introducing a set of administrative penalties that would allow regulators to impose proportionate, flexible and meaningful sanctions. Civil sanctions can include financial penalties and restoration notices.

This clause ensures that offences in legislation that are created or amended by the Bill are eligible for orders granting the ability for civil sanction alternatives to be available.

Clause 38 - 39 (Incidental flooding or coastal erosion: Environment Agency and Incidental flooding or coastal erosion: local authorities)

These clauses allow the Environment Agency and lead local flood authorities or internal drainage boards to carry out works, under certain conditions, that may or will cause flooding, an increase in the amount of water below the ground, or coastal erosion.

Clause 40: Compulsory works orders

This clause provides that the amendments made to section 167 of the Water Industry Act 1991 by the Planning Act 2008 cease to have effect, so that the Welsh Ministers retain their powers to make compulsory works orders. Subsection (2) provides that the Secretary of State will no longer be able to make compulsory works orders in relation to England. Subsection (3) confirms that this amendment does not affect Welsh Ministers' functions under section 167, which are retained.

Clause 41: Agreements on new drainage systems

This clause qualifies the right, under section 106 of the Water Industry Act 1991, for owners of premises and sewers to communicate with the public sewer. It provides that after this new section comes into force, that right to communicate with the public sewer via a lateral drain or private sewer may only be exercised where two conditions are satisfied.

Clause 42: Drainage: concessionary charges for community groups

The clauses makes explicit provision to allow water and sewerage undertakers to operate concessionary schemes for community groups for surface water drainage charges and enables Ministers to issue guidance to undertakers in respect of concessionary schemes.

Clause 43: Abolition of Fisheries Committee (Scotland)

This clause abolishes the Fisheries Committee as regards Scotland.

Part 3: General

Clause 44: Pre-consolidation amendments

This clause is intended to allow for the consolidation, in a subsequent consolidation Bill, of legislation applying to flood and water as recommended by the Pitt review which called for a single unifying Act for flood risk management.

Clause 45: Subordinate legislation

This clause defines what is meant by "subordinate legislation" and sets out the sort of provision which can be contained within a statutory instrument made under the Bill as well as applicable procedures.

Clause 46: Technical provision

This clause makes a series of detailed technical provisions in relation to the application and coming into force of this Bill.