

Annex C: LLFA Duties under the Flood and Water Management Act of 2010

This strategy was published under Cumbria County Council's administration as the single Lead Local Flood Authority in Cumbria prior to 1 April 2023.

Following the disaggregation of the former County Council as part of the Local Government Reorganisation in April 2023, Westmorland and Furness Council and Cumberland Council became the new Lead Local Flood Authorities in Cumbria. The contents of this strategy contain elements relevant to both new Authorities.

Annex C relates to the duties of the Lead Local Flood Authority and other Risk Management Authorities. Whilst some of the content of this Annex remain relevant, transitional arrangements are in place as a new Cumbria Flood and Coastal Erosion Risk Management Partnership is developed. This Annex will be updated once new partnership arrangements have been finalised.

The 2022 Strategy is due to be updated in 2027, at which time the content relevant to Cumberland Council will be removed.

Local Flood Risk Management Strategy

April 2024

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A summary of the key provisions of the Act

Section	Date in force	Details
7: National Flood and Coastal Erosion Risk Management Strategy	1/10/2010	Requires the EA to develop a national flood and coastal erosion risk management strategy to maintain and monitor its application.
9: Local Flood Risk Management Strategies	1/10/2010	Requires all LLFAs in England to develop, maintain, review, update as well as apply and monitor the application of a strategy for local flood risk in their area.
11: Effect of national and local strategies	1/10/2010	Requires RMAs, in exercising their flood and coastal erosion risk management functions, to act in a manner consistent with the National Flood and Coastal Erosion Risk Management Strategy and guidance under Section 7.
13: Co-operation and arrangements	1/10/2010	A relevant authority is required to co-operate with any other relevant authority, which is exercising flood or coastal erosion risk management functions.
14: Power to request information	6/4/2011	The section empowers the EA and LLFAs to request a person to provide information in connection with that body's flood and coastal erosion risk management function.
18: Environment Agency: reports	19/7/2011	The EA are required to report about flood and coastal erosion risk management to the Minister (who may by way of regulations specify reporting times or intervals and the information which a report should contain). The report must include information about the application of the National Flood and Coastal Erosion Risk Management Strategy under Section 7.
19: Local authorities: investigations	6/4/2011	Assigns responsibility for investigating flooding incidents to the LLFA, where responsibility is not immediately obvious or accepted.
21: LLFAs: duty to maintain a register	6/4/2011	The section requires LLFAs to establish and maintain a register of structures or features, which may significantly affect a flood risk in their area, as well as a record of information about such structures and features including ownership and state of repair.
22 (1) - (remaining parts): RFCC establishment.	1/4/2011	The section requires the Environment Agency to establish RFCCs for regions in England and Wales. To do so, it must divide England and Wales into regions for this purpose.

Section 19 Flood investigations

Section 19 of the FWMA states

(1) On becoming aware of a flood in its area, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate:

(a) which risk management authorities have relevant flood risk management functions, and

(b) whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.

(2) Where an authority carries out an investigation under subsection (1) it must —

(a) publish the results of its investigation, and

(b) notify any relevant risk management authorities.

This section of the Act leaves the determination of the 'extent' of flood investigation to the LLFA. It is not practical or realistic for Westmorland and Furness Council to carry out a detailed investigation into every flood incident that occurs across the council, but every incident with basic details will be recorded by the LLFA as a Flood Investigation Report (FIR).

A detailed investigation will be carried out and a s19 report prepared and published by the LLFA when the flooding impacts meet the following criteria:

- Where there is ambiguity surrounding the source or responsibility of flood incident
- Internal flooding of one property that has been experienced on more than one occasion
- Internal flooding of five properties has been experienced during one single flood incident
- There is a risk to life as a result of flooding

"Internal flooding" is defined as living and habitable parts of a dwelling. It does not include detached buildings.

Initial investigation of any flood incident will be carried out by local RMAs closest to the event with a record made by the LLFA.

Flood events will be discussed by the area MSfWG.

Reporting on flood incidents associated with main rivers and the coast will remain with the EA.

Residents affected by flooding will be consulted on draft flood investigation reports produced by the LLFA. When flooding of fewer than 5 properties occurs, a short report will be prepared, and the residents/occupants will be consulted on its contents. When flooding of 5 or more properties is involved, a more comprehensive s19 report will be prepared and a community meeting will be held known as a Flood Forum. Once reports have been published, actions will be followed through to their conclusion by each MSfWG, as part of work in progress.

Section 32 Consenting on Ordinary Watercourses

Section 32 of the FWMA states

Section 32 of the FWMA amends Section 23 of the Land Drainage Act 1991 as follows: -

32 (1) Section 23 (prohibitions on obstructions) is amended as follows.

(2) For subsection (1)(b) substitute—

(b) erect a culvert in an ordinary watercourse, or

(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse”.

Under Schedule 2 of the Act, enforcement powers have been transferred from local authorities to the LLFA. These are permissive powers, not duties, W&FC can choose to exercise.

As the authority for consenting works on ordinary watercourses, W&FC must have due regard to the environmental impacts of the works. Each consent application is considered in the context of a wide range of environmental legislation, such as:

- the Salmon and Freshwater Fisheries Act 1975
- the Habitats Regulations 2010 (as amended);
- the Water Framework Directive 2000;
- the Wildlife and Countryside Act 1981 (as amended);
- the Natural Environment and Rural Communities Act 2006, Section 40 biodiversity duty.

Potential impacts of works on designated wildlife sites such as Sites of Special Scientific Interest (SSSI) and Special Areas of Conservation are examined, involving consultation with Natural England. The Habitats Regulations 2010 requires the LLFA to screen for likely significant effect on the features of the site and, if this may occur, it requires the LLFA to carry out an appropriate assessment to ensure there is no adverse impact on site integrity, considering mitigation

measures and in combination with other projects. This process is now known as the Habitats Regulations Assessment.

There is a statutory 2 month consideration period for all Ordinary Watercourse Flood Defence Consent applications administered by the LLFA to allow for examination and consultation.

Any works in an ordinary watercourse that are likely to have any impact on flood risk require consent from the LLFA. Individuals or organisations intending to carry out such works should contact the LLFA LFRM team on:

Tel. 01228 221330

E: LLFA.consent@WestmorlandAndFurness.gov.uk

Environment Agency Culverting Policy

In carrying out these duties Cumbria LLFA has adopted the culverting policy of the Environment Agency which states:

“We are generally opposed to the culverting of watercourses because of:

- *the adverse ecological impacts;*
- *increased flood risk;*
- *human safety impacts;*
- *aesthetic impacts.*

“Watercourses are important linear features of the landscape and should be maintained as continuous corridors to maximise their benefits to society.

We will consider each application to culvert a watercourse on its own merits and in accordance with our risk-based approach to permitting. We will only approve a culvert if:

- *there is no reasonably practicable alternative;*
- *we think the detrimental effects would be so minor that a more costly alternative would not be justified.*

“In all cases where it is appropriate to do so, applicants must:

- *provide adequate mitigation measures;*
- *accept sole ownership and responsibility for future maintenance.*

“We will normally object to proposals to build over existing culverts because of health and safety considerations, increased maintenance costs, and because this would preclude future options to restore the watercourse.

We will actively pursue the restoration of culverted watercourses to open channels.”